

Downloaded via the EU tax law app / web

ORDER OF THE COURT (Fourth Chamber)

30 May 2006 (*)

(First subparagraph of Article 104(3) of the Rules of Procedure – Vehicle leasing – Prohibition on using in a Member State a vehicle belonging to a leasing company established in another Member State and registered in that State – Permanent use on the territory of the first Member State)

In Case C-435/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Cour de cassation (Belgium), made by decision of 6 October 2004, received at the Court on 14 October 2004, in the criminal proceedings against

Sébastien Victor Leroy,

THE COURT (Fourth Chamber),

composed of K. Schiemann, President of the Chamber, N. Colneric (Rapporteur) and E. Levits, Judges,

Advocate General: E. Sharpston,

Registrar: R. Grass,

the Court, proposing to give its decision by reasoned order in accordance with the first subparagraph of Article 104(3) of its Rules of Procedure,

after hearing the Advocate General,

makes the following

Order

1 This reference for a preliminary ruling concerns the interpretation of Articles 49 EC to 55 EC.

2 The reference was made in the context of criminal proceedings brought against Mr Leroy, who is resident in Belgium, for having driven a vehicle which was not registered in that Member State and was not carrying the registration plate issued at the time of the prescribed registration.

Legal context

Community legislation

3 The first paragraph of Article 49 EC provides:

‘Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.’

National legislation

4 Article 2(1) of the Royal Decree of 20 July 2001 on the registration of vehicles (*Moniteur belge* of 8 August 2001, p. 27031) states that:

‘A vehicle can only be put into circulation if it is registered and carries the registration plate issued at the time of registration.’

5 Article 3 of that decree provides:

‘(1) Persons residing in Belgium shall register the vehicles that they intend to put into circulation in Belgium in the register of vehicles referred to in Article 6, even if those vehicles have already been registered abroad.

...

(2) Nevertheless, in the cases referred to below, the registration in Belgium of vehicles registered abroad and put into circulation by the persons mentioned in paragraph 1, is not compulsory for:

1 a vehicle which a foreign lessor makes available to a natural or legal person entered in the population registers of a Belgian commune or in a Belgian register of companies, for a maximum duration of 48 hours;

...’

6 Article 29 of the Royal Decree of 16 March 1968 on the coordination of the laws relating to the regulation of road traffic (*Moniteur belge* of 27 March 1968, p. 3145) includes a system of penalties.

The main proceedings and the question referred for a preliminary ruling

7 Mr Leroy, resident in Belgium, was found guilty, under Article 2(1) of Royal Decree of 20 July 2001 and Article 29 of Royal Decree of 16 March 1968, of having driven a vehicle which was not registered in that Member State and was not carrying the registration plate issued at the time of the prescribed registration.

8 He admitted to being the main user of that vehicle, which belonged to a leasing company established in the Grand Duchy of Luxembourg. He did not claim that the vehicle was used for the purposes of carrying out a business activity in a Member State other than the one in which he resides.

9 The Cour de cassation, to which Mr Leroy appealed, decided to stay the proceedings and refer the following question to the court for a preliminary ruling:

‘Do Articles 49 to 55 of the Treaty of 25 March 1957 establishing the European Community preclude a national law of a Member State which prohibits a person who resides and works in that State from using in that State a vehicle which belongs to a leasing company established in another Member State when that vehicle has not been registered in the former State, even if it has been in the latter?’

The question referred for a preliminary ruling

10 Under the first subparagraph of Article 104(3) of the Rules of Procedure, when the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law, the Court may give its decision by reasoned order.

11 According to consistent case-law, Article 49 EC precludes the application of any national legislation which without objective justification impedes a provider of services from actually exercising that freedom (see, in particular, Case C-451/99 *Cura Anlagen* [2002] ECR I-3193, paragraph 29). Moreover, freedom to provide services is enjoyed by providers and recipients of services (Case C-429/02 *Bacardi France* [2004] ECR I-6613, paragraph 31).

12 There is no dispute that the obligation to register in the Member State where they are used vehicles which have been leased from an undertaking established in another Member State has the effect of making cross-border leasing activities more difficult. (*Cura Anlagen*, paragraph 37). The obligation to register does not cease to be an impediment just because the company established in another Member State may obtain registration of the vehicle in its own name in Belgium without having a fixed establishment there (Joined Cases C-151/04 and C-152/04 *Nadin and Others* [2005] ECR I-0000, paragraph 38).

13 With regard to a possible justification for the obligation to register, the Court has already examined the legislation at issue in the main proceedings in its judgment in *Nadin and Others*. As regards Article 43 EC, in paragraph 55 of that judgment it held that it was contrary to that provision for the domestic legislation of one Member State to require a self-employed worker residing in that Member State to register there a company vehicle made available to him by the company for which he works, established in another Member State, when it is not intended that that vehicle should be used essentially in the first Member State on a permanent basis and it is not, in fact, used in that manner.

14 Similarly, it is contrary to the first paragraph of Article 49 EC for the domestic legislation of one Member State, such as the legislation at issue in the main proceedings, to require a person residing in that Member State to register there a vehicle rented from a leasing company established in another Member State, when it is not intended that that vehicle should be used essentially in the first Member State on a permanent basis and it is not, in fact, used in that manner.

15 It is for the national court to assess the length of the leasing contract at issue in the main proceedings and how the leased vehicle has in fact been used (see *Nadin and Others*, paragraph 42).

16 Having regard to the foregoing considerations, the reply to the question referred for a preliminary ruling must be that Articles 49 EC to 55 EC do not preclude the domestic legislation of a Member State, such as that at issue in the main proceedings, from prohibiting a person who resides and works in that State from using, in that State, a vehicle which he has rented from a leasing company established in another Member State, when that vehicle has not been registered in the first State and it is intended that it should be used there essentially on a permanent basis or is, in fact, used in that manner.

Costs

17 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds, the Court (Fourth Chamber) hereby orders:

Articles 49 EC to 55 EC do not preclude the domestic legislation of a Member State, such as that at issue in the main proceedings, from prohibiting a person who resides and works in that State from using, in that State, a vehicle which he has rented from a leasing company established in another Member State, when that vehicle has not been registered in the first State and it is intended that it should be used there essentially on a permanent basis or is,

in fact, used in that manner.

[Signatures]

* Language of the case: French.