await the prior setting aside of such provisions by legislative or other constitutional means.

Kutscher Sørensen Bosco

Donner Pescatore Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 9 March 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 16 FEBRUARY 1978 [1]

Mr President,
Members of the Court,

In July 1973 the defendant in the main action imported some beef for human consumption into Italy from France. At the frontier it underwent a veterinary and public health inspection in accordance with an Italian law dating back to 1934. Fees had to be paid for the inspection at the scale in force at the date of importation which had been laid down under a law of 30 December 1970.

The Simmenthal company takes the view that this is incompatible with Community provisions on the free movement of goods and for that reason has brought an action before the Pretore di Susa for repayment of the fees. During these proceedings an application was made for a preliminary ruling (Case 35/76, *Simmenthal S.p.A.* v *Italian Minister for Finance* [1976] ECR 1871 *et seq.*) and in the operative part of its judgment of 15 December 1976 the Court ruled as follows:

"1. (a) — Veterinary and public health inspections at the frontier, whether carried out systematically or not, on the occasion of the importation of animals or meat intended for human consumption constitute measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty, which are prohibited by that provision, subject to the exceptions laid down by Community law and in particular by Article 36 of the Treaty.

1 — Translated from the German.

(b) As far as concerns the products referred to in Regulations Nos 14/64 and 805/68 on the common organization of the market in beef and veal the prohibition of such measures, subject to the exceptions mentioned above, took effect on the date when the said regulations entered into force.

2. Although systematic veterinary and public health inspections at the frontier of the products mentioned in Directives Nos 64/432 and 64/433 are no longer necessary or, consequently, justified under Article 36 as from the latest dates specified in the directives for the entry into force of the national provisions which are necessary in order to comply with the said directives and although, in principle, a mere examination of the documents (health certificates) which are required to accompany the products should disclose whether the conditions with regard to health have been fulfilled, occasional veterinary or public health inspections are not ruled out, provided that they are not increased to such an extent as to constitute a disguised restriction on trade between Member States.

3. (a) Pecuniary charges imposed by reason of veterinary or public health inspections of products on the occasion of their crossing the frontier are to be regarded as charges having an effect equivalent to customs duties.

(b) The position would be different only if the pecuniary charges related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike.

4. Charges imposed by the various public authorities on the occasion of veterinary and public health inspections carried out within Member States on both domestic and imported products constitute internal taxation to which the prohibition of discrimination in Article 95 of the Treaty applies."

Accordingly on 24 January 1977 the Pretore di Susa made an order for the repayment of the fees together with interest, giving as his reason that the levying of the fees was unlawful.

The fiscal authorities against whom the order was made filed an objection against the order. They point out that the prohibition on charging fees — under Community law — may be found in Regulation No 14/64/EEC (Journal Officiel No 34, 27 February 1964, p. 562) and Regulation (EEC) No 805/68 of the Council (Official Journal, English Special Edition 1968 (I), p. 187) which contain a confirmation of the applicable provisions. On the other hand the basis under Italian law for charging fees is to be found in the law of 30 December 1970, which altered the scale of fees and thereby confirmed that they could be charged. In relation to the Community provisions that law is therefore a *lex posterior*. Consequently having regard to the principle of the separation of powers the national court cannot simply fail to apply a national law which ostensibly conflicts with Community law. On the contrary, as long as the legislature does not effect an amendment the court is required to bring the matter before the Constitutional Court which may then in pursuance of Article 11 of the Italian constitution declare that the national law is unconstitutional. The Italian Constitutional Court's judgment No 232 of 30 October 1975 and other decisions of that court make this quite clear.

Simmenthal's objection to that argument is, first, that there is in fact no such problem as the one raised by the finance administration. It is illegal to charge fees because the veterinary and public health inspections are unlawful; the law of 1970 to which reference is made does not contain any rules relating to such inspections, which on the contrary were laid down in the law of 1934. However, if the argument put forward by the finance administration is followed, namely that the law of 1970 by fixing new scales of fees by implication confirmed the need for veterinary and public health inspections, then it must on the other hand be accepted that the fact that under Italian constitutional law the Constitutional Court alone can declare a subsequent national law to be incompatible with Community law is not in conformity with the leading decisions of the Court of Justice of the European Communities on the effectiveness of Community law in the legal systems of the Member States and on the direct applicability of Community provisions creating individual rights which national courts must protect. According to these cases intervention by state authorities which might impede or check the unrestricted and uniform operation of Community law in all Member States is unacceptable. But the Italian legal system leads to this result because its courts are unable to avoid applying national law conflicting with Community law; until the Constitutional Court makes its decision therefore the validity of Community law cannot be guaranteed in its entirety. Furthermore it must be borne in mind that decisions of the Constitutional Court in this field only take effect *ex nunc;* a finding of unconstitutionality is not therefore a remedy having retroactive effect and this means that individuals whose legal position is based on Community law are deprived of complete and secure protection.

In view of this difference of opinion the Pretore di Susa decided to stay the proceedings again. By an order of 28 July he referred the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

"(a) Since, in accordance with Article 189 of the EEC Treaty and the established case-law of the Court of Justice of the European Communities, directly applicable Community provisions must, notwithstanding any internal rule or practice whatsoever of the Member States, have full, complete and uniform effect in their legal systems in order to protect subjective legal rights created in favour of individuals, is the scope of the said provisions to be interpreted to the effect that any subsequent national measures which conflict with those provisions must be forthwith disregarded without waiting until those measures have been eliminated by action on the part of the national legislature concerned (repeal) or of other constitutional authorities (declaration that they are unconstitutional) especially, in the case of the latter alternative, where, since the national law continues to be fully effective pending such declaration, it is impossible to apply the Community provisions and, in consequence, to ensure that they are fully, completely and uniformly applied and to protect the legal rights created in favour of individuals?

(b) Arising out of the previous question, in circumstances where Community law recognizes that the protection of subjective legal rights created as a result of 'directly applicable' Community provisions may be suspended until any conflicting national measures

are actually repealed by the competent national authorities, is such repeal in all cases to have a wholly retroactive effect so as to avoid any adverse effects on those subjective legal rights?"

I — Before I consider these questions in detail I must make some preliminary observations occasioned by some objections and comments submitted during the proceedings. They all relate to the problem of the relevance of the decision, that is to the question whether the court making the reference does in fact need the clarification which it has sought to enable it to give judgment.

1. Thus it has been argued that the answers to the questions raised are not needed by the court making the reference, because that court itself appears to acknowledge that it does not have jurisdiction in the matter. It is alleged that since the action concerns the repayment of fees it is not the Pretore but the Tribunale which has jurisdiction.

In this connexion it must be borne in mind that in principle the Court of Justice does not deal with questions concerning the relevance of decisions, at any rate in so far as they involve considerations of national law. Only in one judgment (Case 13/68, *S.p.A. Salgoil* v *Italian Ministry for Foreign Trade* [1968]ECR 453) is there to be found an allusion to any possibility of proceeding in a different way, namely if a manifest error has been made by the court making the reference. However no such possibility has ever arisen in practice. Furthermore it is not my view that there is any ground for embarking on such a course in this case. Evidence of such a state of affairs has not been adduced to us. Obviously the questions raised concerning jurisdiction cannot be answered as unequivocally as the Italian Government has assumed. In my opinion we can proceed on the assumption that, if the court making the reference doubted whether it had jurisdiction, it would not have addressed to this Court the questions set out in the order making the reference.

2. My second preliminary observation relates to the Italian Government's reference to the fact that such questions have already been discussed in Case 52/76, *(Luigi Benedetti* v Munari F.lli s.a.s., judgment of 3 February 1977 [1977] ECR 163) by the parties in that case, which must presumably mean that the Court has already defined its position with regard to them — at least by implication — in that preliminary ruling and that no further ruling is required.

I should not like to follow that argument either. The determinative factor is that the judgment in the last-mentioned case, in conformity with the questions raised, contains only statements on the effect of preliminary rulings, namely that such judgments are binding upon the court making the reference as to the interpretation of the Community provisions and acts in question. The problems raised in this case plainly go further. They concern another aspect of the scope of Community law. What has to be considered is the effectiveness of directly applicable provisions of Community law as against *subsequently* enacted national laws and specifically the question whether the latter are to cease to be applied forthwith or whether on the other hand it is necessary to await the decision of the Constitutional Court. There is no unequivocal case-law on this point and for this reason we ought not to miss the opportunity of throwing light upon this fundamental question of Community law.

3. My third preliminary observation originates in facts which first became known during the oral procedure. We learnt then that Law No 889, passed on

14 November 1977, provided that fees may no longer be charged in pursuance of Law No 1239 of 30 December 1970 for veterinary and public health inspections. We were also told — and this is still more important because according to the Constitutional Court the said law only applies for the future — that in its judgment No 163 of 29 December 1977 the Constitutional Court held that the charging of fees for veterinary and public health inspections *inter alia* of goods covered by Regulation No 805/68 is unconstitutional.

The Italian Government is of the opinion that in view of that judgment the question raised by the Pretura di Susa no longer has any purpose; that court can now determine the case brought before it without requiring an answer to the question whether it can of its own motion decline to apply the Italian law of 1970 or whether it can only do so after the Constitutional Court has declared it to be unconstitutional.

In fact according to that argument it might be reasonable to suppose that the questions raised or at least the first of them no longer have any relevance to the decision. However there are two reasons why I do not suggest that the Court should decide in this way and why for my part at least I continue to pursue the subject of the references.

In the first place the view may be taken that the issue is whether a reference is admissible at the moment when it is brought before the Court. That is undoubtedly the case here. As regards subsequent events one may follow the evaluation of circumstances in which an order for a reference is challenged or the main action disposed of, by focusing on the question whether the court making the reference officially notifies this Court that an answer to the questions raised is no longer necessary. Obviously there has been no such notification in the present case.

On the other hand the questions raised are of such fundamental importance and are so very likely to be raised again in other proceedings that for these reasons alone there is no justification for not determining them now once and for all.

4. Finally I must deal briefly with the notion brought into the argumentation by the Commission and the Italian Government that a law must be interpreted in accordance with Community law, which was undoubtedly prompted by the general obligation upon Member States embodied in Article 5 of the EEC Treaty.

In fact in a number of cases conflicts between Community and national law which appear at first sight can be resolved in this way, for example by holding that the Community provision is the *lex specialis* and the national law only applies to those cases which are not governed by Community law. In the present case it was impossible to reject out of hand the consideration — as was mentioned by the Commission — that, since the law of 1970 only amended the scale of fees, it could not be assumed that the legislature intended in this way to declare a provision to be applicable which was incompatible with the Treaty.

It is true that, as we now know, it must be recorded that such a solution was not considered by the national court simply because the Constitutional Court — as already mentioned — has recently declared that the said law is unconstitutional. However that would certainly not have happened if, in the view of the Constitutional Court, the conflict between the national law and Community law could have been solved by means of an interpretation of the former.

II — After making these preliminary observations, which have shown that there is no compelling reason why the questions raised should not be dealt

with, I now turn to an examination of them.

1. In my view it would be appropriate to start the observations which have to be made in this matter with a comprehensive account of the relevant decided cases of the Court on the nature of Community law and on its effectiveness for citizens of the Common Market as well as on the relationship between Community and national law. I think it right to remind the Court of this case-law not only because this will make apparent the spirit and basic attitude adopted by the Court in dealing with such problems, but also because the cases hitherto decided give a definite indication of the solution of the problem before us.

In the first place emphasis must be laid on a ruling of a fundamental nature which was to some extent made in a very early case. This is that the Community constitutes a new legal order of international law and that Community law is independent of the legislation of Member States (Case 26/62, judgment of 5 February 1963 in *N.V. Algemene Transport- en Expeditie Onderneming van Gend & Loos* v *Nederlandse Administratie der Belastingen (Netherlands Inland Revenue Administration)* [1963] ECR 12). Similarly in Case 6/64 (judgment of 15 July 1964 in *Flaminio Costa* v *ENEL* [1964] ECR 593) it is stated that the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States, and in Case 11/70 (judgment of 17 December 1970, *Internationale Handelsgesellschaft mbH* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1134) it is stated that the law stemming from the Treaty is an independent source of law.

It is of the essence of these findings that the Member States have limited their sovereign rights, albeit within limited fields (Case 26/62) or — as is stated in Case 6/64 — that the Member States' sovereign powers have been transferred to the Community. The judgment in Case 48/71 (judgment of 13 July 1972 in *Commission of the European Communities* v *Italian Republic* [1972] ECR 527) indeed mentions a definitive limitation of their sovereign rights — an idea which incidentally is also to be found in the case-law of the Italian Constitutional Court (judgment No 183) with reference to Article 11 of the Italian constitution.

Furthermore an important feature of Community law is that the subjects of this law include the nationals of the Member States (Case 26/62). A whole host of provisions of Community law — there is an extensive case-law on this point — have direct effect in the national law of all Member States (Case 48/71), that is to say that they confer upon individuals rights which they may invoke before their national courts (Case 26/62) and which national courts are bound to apply (Case 6/64).

As far as the relationship between Community law and national law in general is concerned the findings of the Court — for example in Case 6/64 ([1964] ECR at p. 594) and in Case 167/73 (judgment of 4 April 1974 in *Commission of the European Communities* v *French Republic* [1974] ECR 317) mean that Community law takes precedence over national provisions. In other cases these findings are defined as meaning that this precedence applies as against national provisions of every kind (Case 48/71 and judgment of 7 July 1976 in Case 118/75, *Lynne Watson* and *Allessandro Belmann* [1976] ECR at p. 1198); in this connexion later legislative measures (Case 6/64 and judgment of 14 December 1971 in Case 43/71, — *Politi S.A.S.* v *Ministry for Finance of the Italian Republic* [1971] ECR 1039 as well as constitutional law (Case 11/70) are expressly mentioned. Accordingly — as is stated in Case

167/73 [1974 ECR at p. 371] — "all contrary provisions of internal law are rendered inapplicable"; they "cannot therefore be inconsistent" with the Community legal system (Case 6/64 at page 594) and cannot therefore be invoked against Community law (Cases 48/71 and 118/75).

Moreover in this connexion the arguments for a uniform application of Community law (for example in Case 11/70) must be borne in mind. In the judgment in Case 6/64 (at p. 594) the Court held on this point that "the executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws"; in an order in Case 9/65 of 22 June 1965 *(Acciaierie San Michele S.p.A. (in liquidation)* v *High Authority of the ECSC*, published with the judgment of 2 March 1967 in Joined Cases 9 and 58/65 [1967] ECR at p. 30) the Court stressed that the Treaty cannot have different legal consequences varying with the Member State concerned; the complete and uniform application of the Treaty is imperative. In other parts of the case-law — for instance in Case 48/71 [1972] ECR 532 — the Court lays general emphasis on the proposition that the rules of Community law must be fully applied at the same time and with identical effects over the whole territory of the Community.

Finally other passages from the last-mentioned case which have particular relevance to this case must be quoted. Thus it is stated in that case ([1972] ECR at p. 532) that in the case of a directly applicable Community rule "the argument that its infringement can be terminated only by the adoption of measures constitutionally appropriate to repeal the provision establishing the tax would amount to saying that the application of the Community rule is subject to the law of each Member State and more precisely that this application is impossible where it is contrary to a national law." These passages also stress that an automatic consequence of the validity of Community law is that the competent national authorities are prohibited from applying a national rule declared to be incompatible with the Treaty and Member States cannot place any obstacle in the way of any such prohibition.

2. Against the background of this case-law the only possible answer to the first question is that, in the case of directly applicable Community provisions, conflicting national provisions which were adopted subsequently may no longer be applied; this position applies with immediate effect and it is not necessary to await repeal by the legislature or a declaration by a constitutional court that they are unconstitutional.

In this connexion the question of what effects in point of time are to be ascribed to a declaration of unconstitutionality under Italian law cannot play any decisive rôle. On this point we have been told during the proceedings that under Article 136 of the Italian Constitution and a law of 1953 the effect of a declaration of unconstitutionality is that the provision in question ceases to have effect as from the day after delivery of the judgment. However, according to the case-law of the Corte di Cassazione this must be understood as meaning that the relevant provision as from that day is no longer part of the legal system and consequently can no longer be applied to matters arising before that date. In fact, therefore, we must proceed on the basis that the declaration of unconstitutionality has retroactive effect, at all events in so far as the matters at issue have not been finally disposed of or the legal relationships in question have not expired — and here factors such as *res judicata*, limitation and observance of time-limits come into the picture.

The following considerations appear on the contrary to be decisive.

There are first of all circumstances in which such retroactive effect does not lead to a situation equivalent to the direct application of Community law. Even a retroactive finding that national provisions are unconstitutional does not therefore always lead to a complete restoration of the rights to be derived from the Community legal order and the defendant in the main action has quoted examples of this.

Then there is another matter of importance, namely that under Italian law, since an approach has necessarily to be made to the Constitutional Court, the requisite proceedings are complicated and expensive and frequently take up to three years. This may discourage persons with rights to enforce and deter them from removing obstacles standing in the way of the application of Community law.

Furthermore it should not be forgotten that during such proceedings national law continues to be applied — especially by administrative authorities — and the validity of Community law is thereby suspended. I do not see how this could be reconciled with the principle, to which reference has already been made, that Community law has direct effect.

Moreover it must be borne in mind that the prescribed procedure under Italian constitutional law — since under that procedure the prerequisite for the application of Community law is, having regard to national constitutional law, an act of the Constitutional Court — disregards the principle of the precedence of Community law. However, even though an appropriate constitutional arrangement was a condition precedent to the foundation of the Community, that principle does not apply by virtue of any national constitutional law but on the contrary stems from autonomous Community law and especially from its structure and functions.

Finally attention must be drawn to the fact that, since the Italian procedure does not allow Community law to be directly enforced as it can be in other Member States, even in those which also have a constitutional court, it rules out the possibility of the *simultaneous* application of Community law. This imperils the uniformity of the Community legal order, a principle the importance of which has been emphasized not only in the decided cases which I have just quoted but also in many proceedings where the issue was whether there had been infringements of the Treaty owing to non-compliance with time-limits laid down in directives.

3. That however does not conclude the matter. In order to effect an exhaustive examination of the subject-matter of the proceedings it is on the contrary still necessary to deal with certain arguments put forward during the proceedings which are intended to conduce to a different appreciation of the problem.

(a) Thus the argument that in matters in which domestic law is incompatible with Community law the legal consequences are governed by national law and in particular by national constitutional law was supported by reference to the judgments in Cases 34/67 (judgment of 4 April 1968 in *Firma Gebrüder Lück* v *Hauptzollamt Köln-Rheinau* [1968] ECR 245) and Joined Cases 51 to 54/71 (judgment of 15 December 1971 in *International Fruit Company N.V. and Others* v *Produktschap voor Groenten en Fruit* [1971] ECR 1107).

In my opinion, however, it very soon becomes clear that nothing conclusive is to be found in these judgments.

This certainly applies to the judgment in Joined Cases 51 to 54/71 ([1971] ECR 1115 and 1116). The only question in fact at issue in that judgment was

whether the powers of Member States under the Treaty could be transferred to specific national bodies only by express provisions. On this question — and on this question only — the Court held that it is for the Member States to determine which institutions within the national legal system should be empowered to adopt measures under Article 5 of the Treaty, and that when provisions of the Treaty or of regulations confer power or impose obligations upon the States for the purposes of the implementation of Community law the question of how the exercise of such powers and the fulfilment of such obligations may be entrusted by Member States to specific national bodies is solely a matter for the constitutional system of each State.

However, the same applies also to the judgment in Case 34/67 ([1968] ECR 251). According to that judgment Article 95 of the Treaty has the effect of excluding the application of any national measure incompatible with it. Accordingly the question arose what effects the precedence of Community law has on conflicting national law, in particular whether the national court must treat such provisions as not being applicable in so far as they are incompatible with Community law or whether it must declare them void as from the expiry of the period prescribed by the third paragraph of Article 95 of the Treaty. On this question the Court held that it is for the competent national courts to apply, from among the various procedures available under national law, those which are appropriate for the purpose of protecting the individual rights conferred by Community law. In particular when an internal tax is incompatible with the first paragraph of Article 95 only beyond a certain amount it is for the national court to decide, according to the rules of its national law, whether the illegality affects the whole tax or only so much of it as exceeds that amount.

That certainly does not justify the argument that, should there be a conflict between national and Community law, it is for the national legal system to confer upon the Constitutional Court the exclusive jurisdiction to find the necessary solution.

(b) It was also pointed out the answer to the question whether national law is incompatible with Community law is not always clear-cut, even in cases in which there has previously been an interpretation of Community law in a preliminary ruling. In this connexion reference was made to the judgments in Case 60/75 (judgment of 22 January 1976 in *Carmine Antonio Russo* v *Azienda di Stato per gli Interventi sul Mercato Agricolo (AIMA)* [1976] ECR 45) and Case 52/76 (already mentioned), in which the question for consideration was whether certain consequences of national law were unacceptable under Community law, and also to the judgment in Case 118/75 (already mentioned) in which such undefined concepts as "the reasonableness of the period fixed" or observance of the principle of proportionality in the fixing of national penalties played a part. If in such cases it were left to each national court to consider the compatibility of national law with Community law, that might lead to widely varying assessments. That however would be incompatible with the principle of legal certainty and such consequences are ruled out under Italian law which concentrates jurisdiction to determine all such questions in the hands of the Constitutional Court.

In my view the first thing to notice in this connexion is that the uncertainties in question certainly do not exist in cases in which a judgment under Article 169 of the EEC Treaty has also been delivered. However, even in such cases under Italian law their courts are not

allowed simply to disregard national law which conflicts with the Treaty.

With reference to the decided cases which have been quoted there is moreover this to be said. The first two judgments can scarcely be quoted in support of the proposition that the consideration of the question whether national law is compatible with Community law may prove to be difficult. The judgment in Case 60/75 makes quite clear what is to be regarded as unacceptable: influencing market conditions in such a way that prices fall below the level of the target prices, for example a sale of cereals by government intervention agencies at prices below the level of the target prices. When on the other hand the judgment in Case 52/76 ([1977] ECR 163) omitted any final clarification and only stated in general terms that the objectives or the operation of the common organization of the market must not be jeopardized the principal reason was that, as was repeatedly stressed in the judgment, insufficient particulars and findings of fact had been supplied by the court making the reference.

However, in so far as preliminary rulings admit of differing evaluations concerning the compatibility of national law with Community law — the Commission's claim that in most cases the discretion of the national court is very limited is certainly correct — it is in my view significant that it cannot always be clearly established when this situation arises and that it is hardly possible therefore to create a special category of those cases in respect of which it might be possible, if necessary, to accept the exclusive jurisdiction of the Constitutional Court. It is also particularly significant that bringing the national Constitutional Court into the matter would not in many such cases produce a decisive result. Such a court — as far as the criterion of "Community law" is concerned — just cannot produce the greater clarification which is required. The European Court would on the contrary have jurisdiction in such a matter perhaps after a further reference for a preliminary ruling.

For all these reasons the fact that the direct application of Community law by national courts from time to time requires a further clarification of questions of Community law and a more precise interpretation of its content can in my view scarcely be advanced as an argument against such direct application.

(c) Finally when the questions are answered account must also be taken of the fact that the procedure adopted in Italy — a mandatory approach to the Constitutional Court — also has beneficial effects for Community law. In this connexion attention has been drawn to the fact that in such a case the declaration of the inapplicability of national law is not merely restricted to the grounds of a judgment, which moreover may be set aside again by a superior court, and which is restricted to the parties to the proceedings. The judgment of the Constitutional Court is final, it takes effect *erga omnes* and to all intents and purposes is tantamount to the annulment of the national law conflicting with Community law. In certain circumstances the parties may save time as a result of that procedure — for instance when there is an immediate application to the Constitutional Court at first instance — and the procedure avoids the danger that a given case will be decided differently by different courts; this is the particular reason why there is said to be a reinforcement of the effect of Community law because this procedure ensures a uniform application in all cases.

The first point to be made in answer to these observations which are undoubtedly impressive is that Community law is not in any way concerned to eliminate, as it were, from Italian law the procedures designed to

obtain a declaration that a national law is unconstitutional. What matters as far as Community law is concerned is only that its application — in those cases where direct applicability is intended — does not encounter any kind of obstacle under national law. However, the fact that the Constitutional Court *alone* is to have jurisdiction to bar the application of national law conflicting with Community law is — as I have shown — without any doubt to be regarded as an obstacle of this kind.

It must also be stressed — because the case-law expressly refers to the rights of *individuals* — that for this Court the all important question in the examination of the problem is whether in a particular case the application of Community law can proceed without difficulties. That is obviously not the case with the Italian system under which Community law remains unapplied for a considerable period with all the attendant disadvantages as far as concerns conditions of competition for undertakings and individuals carrying on business in Italy or for individuals and undertakings from other Member States for whom access to the Italian market is made more difficult. From the standpoint of Community law which must be uniformly applied everywhere that is unacceptable. In this respect there cannot be a kind of counterbalancing of these and other disadvantages — for example it may be the need to carry on proceedings before several courts — with the advantages which may be derived from decisions of the Constitutional Court for the implementation of Community law by reason of the fact that it is then established with binding force that certain national provisions can in no circumstances be applied any longer.

(d) To sum up therefore, none of the arguments adduced during the proceedings in favour of a mandatory approach to the Constitutional Court can have decisive weight; consequently the answer to the first question must be the one dictated by the case-law of the Court, as I have previously demonstrated.

4. There is accordingly no need in fact for further consideration to be given to the second question in the order making the reference. However, I can make the following brief observations.

The considerations which I have already put forward make it quite clear that the second question can only be answered in one way. Thus if the Italian court actually had to await the decision of the Constitutional Court with a view to avoiding the application of national law conflicting with Community law, it would be in all circumstances essential that the judgment of the Constitutional Court should have retroactive effect as from the date of the entry into force of the relevant provision of Community law. This would be a basic prerequisite for Community law to prevail as far as possible at least *ex post facto* and for the necessary compensation for its temporary non-application.

In addition to this one might in any case go on to say that the principle of legal certainty must naturally be observed. In this connexion questions concerned with limitation, *res judicata* or the non-observance of time-limits must be borne in mind. Everything essential on this aspect of the matter has already been stated in Case 33/76 (judgment of 16 December 1976, *REWE-Zentralfinanz eG and REWE-Zentral AG* v *Landwirtschaftskammer für das Saarland* [1976] ECR 1989) and Case 45/76 (judgment of 16 December 1976, *Comet BV* v *Produktschap voor Siergewassen* [1976] ECR 2043) and so with the reference to those two cases the matter can now rest.

III — Accordingly I consider it appropriate to answer the questions raised by the Pretura di Susa as follows:

The effectiveness of provisions of Community law which have direct effect and are therefore directly applicable within the meaning of the consistent case-law of the Court in this matter cannot be impaired by incompatible national provisions whether they were adopted earlier or later. The fact that a constitutional court may declare such a national law to be unconstitutional cannot be allowed to prevent the national court from applying directly applicable provisions of Community law, even if the conflicting national provisions have not yet been declared unconstitutional.

The protection of the subjective rights of individuals, conferred by directly applicable provisions of Community law must be guaranteed with effect from the entry into force of the Community law. A national court before which the matter is brought must therefore ensure compliance with the Community law as from the date when it enters into force.