

Press and Information Division

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Judgment of the Court of Justice in Case C-129/00

Commission of the European Communities v Italian Republic

**THE ITALIAN ADMINISTRATIVE PRACTICE AND JUDICIAL DOCTRINE
RELATING TO THE REIMBURSEMENT OF TAXES IMPOSED IN
VIOLATION OF COMMUNITY LAW, INFRINGE ITALY'S OBLIGATIONS
UNDER THE EC TREATY**

Italy must modify the provision in its legislation because it has been interpreted in such a way as to make it excessively difficult for the taxpayer to exercise his right to reimbursement.

A provision of an Italian law of 1990¹, "Community law" (so as to apply the obligations resulting from Italy's membership of the European Communities), provides that customs import duties or other taxes,² levied through the application of national provisions which are incompatible with Community legislation, are to be reimbursed only if the corresponding burden has not been passed on to third parties.

The Commission believed that this provision was applied by the Italian authorities and by certain courts (notably the Corte suprema di cassazione, Supreme Court) so as to prevent the reimbursement of customs duties or taxes improperly levied, with the authorities being able to rely on the presumption that the charge had been passed to third parties.

The Commission argued that the Italian Supreme Court presumed that the burden of such charges had been passed on to third parties on the sole basis that the applicant was a

¹ Article 29, paragraph 2, of Law n° 428 of 29 December 1990.

² Manufacturing and consumption taxes, surcharges on sugar and State duties.

commercial enterprise, occasionally also citing as reasons the fact that the company had not gone bankrupt and the tax had been levied uncontested for a number of years throughout the country.

The Commission further underlined that certain Italian courts looked unfavourably upon any failure on the part of the applicant to produce their accounts (systematically requested by the authorities) and that the authorities considered a failure to account for charges, for the year of payment, in the form of advances to the public purse for undue taxes, as a credit to the assets in the balance sheet of the company claiming reimbursement, as proof that the charges had been passed to third parties.

According to the Commission such an interpretation of the 1990 provision renders the reimbursement of undue taxes practically impossible or excessively difficult and is contrary to Community law.

The Court of Justice of the European Communities recalls that a Member State can be found to have failed to fulfil its obligations under Community law, even where this failure results from the acts of a constitutionally independent institution.

The Court holds that if the legislative text in question is in itself neutral with regard to the requirements of community law, its effect should be determined taking into account the interpretation of that provision by the national courts.

The reasoning of the Supreme Court is based on the notion that indirect taxes are normally passed along the sales chain by economic operators.

According to the Court of Justice, such a **premiss constitutes a simple presumption** which is **not admissible** within the context of the examination of requests for reimbursement of indirect taxes contrary to Community law.

The **failure to produce accounts** requested by the administration **within the statutory preservation period** of such documents, can, however, be taken into account to show that the charges have been passed on to third parties, but does not suffice on its own, neither to presume this fact, nor to place the burden of proof on the applicant to rebut this presumption.

In situations where the authorities demand the production of these documents **after the expiry** of the period during which they must legally be kept, such a requirement renders excessively difficult the exercise of the right to reimbursement of taxes contrary to community law.

Finally, the fact of not having accounted - for the year of its payment - for undue taxes as an advance to the public purse, cannot constitute proof that the charge has been passed to third parties. In effect, this assumes that the taxpayer immediately considers that he has a high chance of successfully disputing his payment, although, under the terms of the 1990 law, he has a time limit of several years within which to make his application. Moreover,

taking into account the difficulty of obtaining reimbursement, such a requirement could in itself prove contrary to the principles of lawful accounting.

For these reasons the Court has found that the Italian Republic has failed to fulfil its obligations under the Treaty establishing the European Communities.

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: English, French and Italian.

*The full text of the judgment can be found on the internet (www.curia.eu.int).
In principle it will be available from midday CET on the day of delivery.*

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