JUDGMENT OF THE COURT (Grand Chamber)

19 September 2006 *

In Joined Cases C-392/04 and C-422/04,

REFERENCES for a preliminary ruling under Article 234 EC from the Bundesverwaltungsgericht (Germany), made by decisions of 7 July 2004, received at the Court on 16 September and 4 October 2004 respectively, in the proceedings

i-21 Germany GmbH (C-392/04),

Arcor AG & Co. KG (C-422/04), formerly ISIS Multimedia Net GmbH & Co. KG,

v

Bundesrepublik Deutschland,

* Language of the cases: German.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and J. Malenovský, Presidents of Chambers, S. von Bahr (Rapporteur), J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Lenaerts, E. Juhász, G. Arestis, A. Borg Barthet and M. Ilešič, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 1 February 2006,

after considering the observations submitted on behalf of:

— i-21 Germany GmbH, by M. Geppert and M. Schütze, Rechtsanwälte, and B. Kemper, Rechtsanwältin,

— Arcor AG & Co. KG, by N. Nolte and J. Tiedemann, Rechtsanwälte,

— Bundesrepublik Deutschland, by S. Prömper, acting as Agent,

— the Netherlands Government, by H.G. Sevenster and C. ten Dam, acting as Agents,

— the Commission of the European Communities, by M. Shotter and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 March 2006,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Article 11(1) of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (OJ 1997 L 117, p. 15) and of Article 10 EC.

2 The references have been made in the course of two sets of proceedings between, first, i-21 Germany GmbH ('i-21') and, second, Arcor AG & Co. KG, formerly ISIS Multimedia Net GmbH & Co. KG ('Arcor'), and the Bundesrepublik Deutschland (Federal Republic of Germany) concerning fees paid by those companies in order to obtain a telecommunications licence.

Legal context

Community law

3 Article 11(1) of Directive 97/13 provides:

'Member States shall ensure that any fees imposed on undertakings as part of authorisation procedures seek only to cover the administrative costs incurred in the issue, management, control and enforcement of the applicable individual licences. The fees for an individual licence shall be proportionate to the work involved and be published in an appropriate and sufficiently detailed manner, so as to be readily accessible.'

4 Directive 97/13 was repealed by Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

National law

5 Article 11(1) of Directive 97/13 was transposed into German national law by the Law on Telecommunications (Telekommunikationsgesetz) of 25 July 1996 (BGBl. 1996 I, p. 1120, the 'TKG'), which is an enabling law, and by the Regulation on Telecommunications Licence Fees (Telekommunikations-Lizenzgebührenverordnung) of 28 July 1997 (BGBl. 1997 I, p. 1936, the 'TKLGebV'), adopted by the Federal Minister for Post and Telecommunications on the basis of the TKG.

6 Paragraph 48(1) of the Law on Administrative Procedure (Verwaltungsverfahrensgesetz) of 25 May 1976 (BGBl. 1976 I, p. 1253), in the version published on 21 September 1998 (BGBl. 1998 I, p. 3050), provides:

'Withdrawal of unlawful administrative acts

An unlawful administrative act may, even after it can no longer be challenged, be withdrawn either wholly or in part with prospective or retroactive effect. An administrative act by which a right or a legally significant advantage has been either conferred or confirmed (an administrative act conferring a benefit) may only be withdrawn under the conditions set out in subparagraphs 2 to 4.

...'

7 In relation to a fee assessment for a telecommunications licence, the Bundesverwaltungsgericht (Federal Administrative Court) states that, in the event of withdrawal of an assessment, the undertakings concerned are entitled to reimbursement of the sums unlawfully charged pursuant to Paragraph 21 of the Law on Administrative Costs (Verwaltungskostengesetz) of 23 June 1970 (BGBl. 1970 I, p. 821).

8 It follows from the referral decisions that, according to German case-law, the administrative authority has discretion in principle, pursuant to Paragraph 48 of the Law on Administrative Procedure, to withdraw an unlawful administrative act which has become final. That discretion may, however, be extinguished if to uphold the act in question would be 'downright intolerable' in respect of public policy, good faith, fairness, equal treatment or manifest unlawfulness.

The main proceedings and the questions referred for a preliminary ruling

9 Arcor and i-21 are two telecommunications undertakings. By way of two assessment notices of 14 June 2000 and 18 May 2001, the undertakings were charged fees for individual telecommunications licences of approximately EUR 5 420 000 in the case of i-21 and approximately EUR 67 000 in the case of Arcor. They paid the fees without objection and did not appeal against them within the time-limit of one month from the date of notification of the fee assessments.

10 Under the TKLGebV, the amount of the fee is to be based on the anticipated general administrative costs of the regulatory authority over a period of 30 years, to be charged in advance.

11 In the course of proceedings for annulment of a fee assessment notice which was challenged within the permitted time-limits, the Bundesverwaltungsgericht held in a judgment of 19 September 2001 that the TKLGebV was not compatible with higher-ranking legal rules, namely the TKG and German constitutional law, and upheld the annulment of the assessment in question which had been delivered by an appeal court.

12 Following that judgment, i-21 and Arcor sought repayment of the fees which they had paid. However, their claims were not granted. They therefore each brought proceedings before the Verwaltungsgericht (Administrative Court), which dismissed them on the ground that their fee notices had become final and that in the present situation there were no grounds for challenging the administrative body's refusal to withdraw those assessments.

13 Arcor and i-21 took the view that the Verwaltungsgericht had erred in law in relation not only to national law but also to Community law and brought

proceedings for an appeal on a point of law before the Bundesverwaltungsgericht. I-21 submits that it had to pay a fee more than one thousand times higher than that imposed on the telecommunications undertakings following the judgment of 19 September 2001 cited above.

14 In its referral decisions, the Bundesverwaltungsgericht states that the appeals on a point of law could not succeed on the basis of national law alone. According to that court, these are not cases in which to uphold the fee assessments would be 'downright intolerable' and in which the administration's discretion was reduced to such a degree that it had no choice other than to withdraw the notices. The Bundesverwaltungsgericht takes the view that upholding the fee assessments does not prejudice the concepts of good faith, equal treatment or those of public policy or fairness, and that the notices at issue are also not based on manifestly unlawful legislation.

15 The national court, however, raises the question of the scope of Community law. It considers that Article 11(1) of Directive 97/13 seems to preclude legislation such as that at issue in the main proceedings. On the assumption that its interpretation of that provision is correct, the Bundesverwaltungsgericht then enquires as to whether that provision, read in conjunction with Article 10 EC concerning the obligation of loyal cooperation, fetters the regulatory authority's discretion having regard, inter alia, to Case C-453/00 *Kühne & Heitz* [2004] ECR I-837.

16 The Bundesverwaltungsgericht is in particular unsure as to whether Article 11(1) of Directive 97/13 is to be interpreted as requiring the Member States, when calculating the fee, to comply with the objectives of the directive and ensure that those objectives are observed. Those objectives include that of facilitating significantly the entry of new competitors onto the market. However, upholding the fee assessments at issue amounts to a restriction on competition for the

undertakings concerned, which are at a disadvantage compared, in particular, with those undertakings which contested the assessments addressed to them within the given time-limits and succeeded in having them annulled. According to the Bundesverwaltungsgericht, if that article were to be construed as prohibiting such a restriction on competition, the principle of cooperation contained in Article 10 EC might give rise to an obligation to reopen the fee assessments at issue under national law without the administrative authority having any discretion.

17 In those circumstances, the Bundesverwaltungsgericht decided to stay the proceedings and to refer the following questions to the Court:

'(1) Is Article 11(1) of Directive 97/13/EC ... to be interpreted as precluding the imposition of a licence fee calculated to anticipate the amount of a national regulatory authority's general administrative costs over a period of 30 years, to be charged in advance?

If the answer to Question 1 is in the affirmative:

(2) Are Article 10 EC and Article 11 of the Directive [97/13] to be interpreted as meaning that a fee assessment that determines fees within the meaning of Question 1 and which has not been contested, although such a possibility is afforded under national law, must be set aside where that is permissible under national law but not mandatory?'

18 By order of 6 December 2004, Cases C-392/04 and C-422/04 were joined for the purposes of the oral procedure and the judgment.

The first question

Observations of the parties

19 Arcor, i-21 and the Commission of the European Communities maintain that Article 11(1) of Directive 97/13 precludes a charge such as that provided for in the German legislation at issue in the main proceedings.

20 The German Government contends, on the contrary, that that article does not apply to the present cases, since Directive 97/13 was repealed by Directive 2002/21 and the latter directive does not contain any transitional measures relating to the application of Article 11(1).

21 The German Government maintains that, in any event, Article 11(1) of Directive 97/13 does not preclude the imposition of a charge such as that provided for in the German legislation. First, the administrative costs referred to in that article include general administrative costs. Secondly, that article does not provide that only administrative costs actually incurred can be included in the charge, to the exclusion of future administrative costs. Taking the latter into account constitutes a guarantee of certainty for undertakings which are assured of being subject to no further charges in the future in relation to the licence.

The Court's reply

22 It is first of all appropriate to examine the argument of the German Government that Article 11 of Directive 97/13 does not apply to the disputes at issue in the main proceedings on the ground Directive 97/13 was repealed by a later directive.

23 It should be noted in that regard that Directive 97/13 was repealed by Article 26 of Directive 2002/21 with effect from 25 July 2003 in accordance with the second subparagraph of Article 28(1) of the latter directive.

24 It follows, however, from reading Article 26 and the second subparagraph of 28(1) of Directive 2002/21 that the legislature did not intend to prejudice the rights and obligations arising under Directive 97/13 and that Directive 2002/21 applies only to legal situations arising from 25 July 2003.

25 Consequently, despite the fact that Directive 97/13 was repealed by Directive 2002/21, the validity of a charge such as that imposed on i-21 and Arcor by the fee assessments of 14 June 2000 and 18 May 2001 respectively, at a time when Directive 2002/21 was not yet applicable, has to be examined in the light of Article 11(1) of Directive 97/13.

26 It is also necessary to establish whether the concept of 'administrative costs' referred to in that article covers the general administrative costs arising from individual licensing regimes, calculated over a period of 30 years.

27 The Court has already had an opportunity to examine the scope of Article 11(1) of Directive 97/13.

28 In Joined Cases C-292/01 and C-293/01 *Albacom and Infostrada* [2001] ECR I-9449, paragraph 25, the Court pointed out that Article 11(1) of Directive 97/13 provides that Member States are to ensure that any fees imposed on undertakings which hold individual licences seek only to cover the administration costs generated by the work involved in implementing those licences.

29 It is clear from the wording of that provision, as interpreted by the Court in paragraph 25 of *Albacom and Infostrada*, cited above, that that work must relate only to four activities, namely the issue, management, control and enforcement of individual licences. Furthermore, the fee must be proportionate to the work involved and be published in an appropriate and sufficiently detailed manner, so as to render the information readily accessible.

30 These requirements meet the objectives of proportionality, transparency and non-discrimination of the individual licensing regimes referred to in the second recital in the preamble to Directive 97/13.

31 It is thus necessary to establish whether the method of calculating the fee at issue in the main proceedings, consisting of taking into account the general costs over a period of 30 years generated by implementing the individual licences, is in line with the provisions of Article 11(1) of Directive 97/13 read in the light of those objectives.

32 In this respect, it should be pointed out, first of all, that the concept of administrative costs is sufficiently wide to cover so-called 'general' administrative costs.

33 Those general administrative costs must, however, relate only to the four activities expressly referred to in Article 11(1) of Directive 97/13 and recalled in paragraph 29 of the present judgment.

34 According to the information submitted to the Court, the calculation of the fee at issue in the main proceedings includes expenditure relating to other tasks such as the regulatory authority's general supervisory activities and, in particular, monitoring possible abuses of a dominant position.

35 Since this form of monitoring goes beyond the work strictly generated by the implementation of individual licences, it follows that taking into account expenditure linked to this monitoring is contrary to Article 11(1) of Directive 97/13.

36 Secondly, it is necessary to check whether the general administrative costs relating to the four activities referred to in Article 11(1) can be estimated over a period of 30 years and included in the calculation of the fee.

37 It is clear from the observations submitted to the Court by i-21, Arcor and the Commission that an estimation covering such a long period raises problems of reliability, having regard to the particularities of the telecommunications sector. Given that this sector is expanding and developing constantly, it would indeed appear difficult to predict the market situation and the number of telecommunica-

tions undertakings in several years' time, all the more so over a period of 30 years. Thus, the number of individual licences to be managed in the future and, therefore, the level of general costs arising from such management are unclear. Furthermore, the applicable legislation has been subject to significant changes, as shown by the new directives adopted in 2002, including Directive 2002/21 which repeals Directive 97/13. Those legislative amendments are also likely to affect the scope of the administrative costs generated by the individual licensing regimes.

38 The lack of reliability of the estimation and its effects on the fee calculation affect the latter's compatibility with the requirements of proportionality, transparency and non-discrimination.

39 First, the calculation of the general costs over a period of 30 years entails an extrapolation of the expenditure that may be incurred in the future which, by definition, does not represent the expenditure actually incurred. In the absence of a mechanism to revise the amount of fee claimed, that amount cannot be strictly proportionate to the work involved, as Article 11(1) of Directive 97/13 expressly requires.

40 Next, since it is not based on expenditure actually incurred, such a system of calculation risks falling foul of the requirement to publish details of the fee as provided for in Article 11(1) of Directive 97/13, and, thereby, the objective of transparency.

41 Finally, the obligation imposed on all telecommunications undertakings to pay a sum representing general costs over a period of 30 years fails to take account of the fact that certain undertakings might only operate on the market for a few years and may thus lead to discrimination.

42 It follows from the foregoing that Article 11(1) of Directive 97/13 precludes the application of a fee for individual licences calculated by taking into account the regulatory body's general administrative costs linked to implementing those licences over a period of 30 years.

The second question

Observations of the parties

43 Arcor, i-21 and the Commission all maintain, albeit for different reasons, that the provisions of Article 10 EC, read in conjunction with those of Article 11(1) of Directive 97/13, preclude upholding an unlawful administrative act, such as the fee assessments at issue in the main proceedings, and require the Member State to repay the sums unlawfully charged.

44 i-21 maintains that to uphold such an administrative act is contrary to the principle of the primacy of Community law and the need to maintain its effectiveness. It submits that even if the Court acknowledges the importance of the principle of legal certainty, the latter does not in every case outweigh the principle of lawfulness. i-21 points out that, in the judgment in *Kühne & Heitz*, cited above, the Court considered that an administrative act which had acquired binding force following a judgment which could not be the subject of an appeal could be annulled, in certain circumstances, if it were contrary to Community law. i-21 takes the view that this possibility becomes even greater in the case of an administrative act which was not the subject of a judicial decision and which became final merely upon expiry of the time-limits allowed for appealing.

45 Arcor considers, for its part, that the judgment in *Kühne & Heitz* is not relevant inasmuch as it concerns an indirect conflict between a rule of national procedure and a rule of substantive Community law, the first rule preventing application of the second. According to Arcor, the case in the main proceedings should be regarded as a direct conflict between two rules of substantive law. Article 11(1) of Directive 97/13, read in the light of Article 10 EC, requires fees levied in breach of Article 11 to be repaid, while the national legislation prohibits such reimbursement. Arcor takes the view that Community law should, in such a case, prevail over conflicting national law.

46 The Commission maintains, on the other hand, that the judgment in *Kühne & Heitz* is a suitable starting point and points out that, in principle, an administrative act which has not been challenged within the time-limits laid down should not be withdrawn. The Commission goes on to state that, in the present case, it must be ascertained whether upholding the unlawful fee assessments should nevertheless be considered to be 'downright intolerable' in the light of Article 11(1) of Directive 97/13 and that that question should be examined in the light of the principles of equivalence and effectiveness.

47 In relation to the principle of equivalence, the Commission submits that, according to German law, an administrative act which is manifestly unlawful under national law cannot be upheld. If that examination were also carried out in the light of Community law, the result would, in the Commission's view, be that the fee assessments at issue in the main proceedings and the legislation on which they are based would have to be considered to be manifestly unlawful in the light of Article 11(1) of Directive 97/13.

48 The Commission arrives at the same conclusion as regards the principle of effectiveness. It takes the view that to uphold the fee assessments would make it practically impossible to exercise the rights derived from Article 11(1) of the directive, by allowing an overcompensation which leads to restricting competition over a period of 30 years.

The Court's reply

49 The context in which the question referred arises should be made clear. Contrary to Arcor's claims, the second question does not relate to a conflict between two sets of rules of substantive law on the repayment of fees levied unlawfully. Neither the provisions of Article 11(1) of Directive 97/13 nor those of the TKG and the TKLGebV, as that Law and that Regulation were presented in the file submitted to the Court, deal with such reimbursement.

50 The question relates rather to the relationship between Article 11(1) of Directive 97/13 and Paragraph 48 of the Law on Administrative Procedure, as interpreted by the Bundesverwaltungsgericht. Pursuant to the latter paragraph, upon expiry of a given period, the fee assessments become final and the addressees of those assessments no longer have a legal remedy enabling them to assert a right which they derive from Article 11(1) of the directive, subject to the proviso that the competent administrative authority should withdraw an unlawful administrative act if it would be 'downright intolerable' to uphold it.

51 In accordance with the principle of legal certainty, Community law does not require that administrative bodies be placed under an obligation, in principle, to reopen an administrative decision which has become final upon expiry of the reasonable time-limits for legal remedies or by exhaustion of those remedies (see *Kühne & Heitz*, paragraph 24). Compliance with that principle prevents administrative acts which produce legal effects from being called into question indefinitely (see, by analogy, Case C-310/97 *Commission* v *AssiDomän Kraft Products and Others* [1999] ECR I-5363, paragraph 61).

52 The Court has, however, acknowledged that there could be a limit to this principle in certain cases. Thus it held in paragraph 28 of the judgment in *Kühne & Heitz* that the administrative body responsible for the adoption of an administrative decision is, in accordance with the principle of cooperation arising from Article 10 EC, under an obligation to review and possibly to reopen that decision if four conditions are fulfilled. First, the administrative body must, under national law, have the power to reopen that decision. Secondly, the administrative decision in question must have become final as a result of a judgment of a national court ruling at final instance. Thirdly, that judgment must, in the light of a decision given by the Court subsequent to it, be based on a misinterpretation of Community law which was adopted without a question being referred to the Court for a preliminary ruling in the circumstances set out in the third paragraph of Article 234 EC. Fourthly, the person concerned must have complained to the administrative body immediately after becoming aware of that decision of the Court.

53 The case giving rise to the judgment in *Kühne & Heitz*, however, was entirely different from those at issue in the main proceedings. Whilst the undertaking Kühne & Heitz NV had exhausted all legal remedies available to it, i-21 and Arcor did not avail themselves of their right to appeal against the fee assessments issued to them.

54 Accordingly, contrary to the argument advanced by i-21, the judgment in *Kühne & Heitz* is not relevant for the purposes of determining whether, in a situation such as that in the main proceedings, an administrative body is under an obligation to review decisions which have become final.

55 The actions pending before the national court seek reimbursement of the fees paid pursuant to fee assessments which have become final, on the ground that the administrative authority responsible is required to withdraw those assessments pursuant to Paragraph 48 of the Law on Administrative Procedure, as interpreted by the Bundesverwaltungsgericht.

56 The issue is therefore whether, in order to safeguard the rights which individuals derive from Community law, the national court before which such actions are brought should consider it necessary to acknowledge the existence of such an obligation on the part of the administrative authority.

57 It must be borne in mind that, according to settled case-law, in the absence of relevant Community rules, the detailed procedural rules designed to ensure the protection of the rights which individuals acquire under Community law are a matter for the domestic legal order of each Member State, under the principle of the procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness) (see, inter alia, C-78/98 *Preston and Others* [2000] ECR I-3201, paragraph 31, and Case C-201/02 *Wells* [2004] ECR I-723, paragraph 67).

58 In relation first of all to the principle of effectiveness, this requires that the rules applicable to the issuing of fee assessments based on legislation incompatible with Article 11(1) of Directive 97/13 do not make the exercise of the rights conferred by that directive impossible or excessively difficult.

59 The undertakings concerned must therefore be able to appeal against such assessments within a reasonable time-limit from the date of notification of those assessments and to assert the rights which they derive from Community law, in particular Article 11(1) of Directive 97/13.

60 In the disputes at issue in the main proceedings, it was not argued that the rules governing appeals, in particular the one month time-limit allowed for this purpose, were unreasonable.

61 Furthermore, it should be pointed out that under Paragraph 48(1) of the Law on Administrative Procedure, an unlawful administrative act can be withdrawn even if it has become final.

62 Next, in relation to the principle of equivalence, this requires that all the rules applicable to appeals, including the prescribed time-limits, apply without distinction to appeals on the ground of infringement of Community law and to appeals on the ground of disregard of national law.

63 It follows that, if the national rules applicable to appeals impose an obligation to withdraw an administrative act that is unlawful under domestic law, even though that act has become final, where to uphold that act would be 'downright intolerable', the same obligation to withdraw must exist under equivalent conditions in the case of an administrative act which does not comply with Community law.

64 It is clear from the information provided by the national court that, for the purposes of construing the term 'downright intolerable', the national court examined whether upholding the fee assessments at issue in the main proceedings ran counter to the national legal principles of equal treatment, fairness, public policy or good faith, and whether the incompatibility of the fee assessments with rules of higher-ranking law was manifest.

65 As regards the principle of equal treatment, the Bundesverwaltungsgericht considers that there is no breach of that principle in so far as undertakings such as i-21 and Arcor, whose fee assessments have been upheld, had not exercised their right to challenge those assessments. They are therefore not in a situation comparable to that of undertakings which, having exercised that right, succeeded in having the fee assessments which had been addressed to them withdrawn.

66 Such an application of the principle of equal treatment provided for in the legislation at issue in the main proceedings does not differ according to whether the dispute relates to a situation arising under national law or to a situation arising under Community law and therefore does not appear to breach the principle of equivalence.

67 Moreover, it was not alleged that the principles of public policy, good faith or fairness were applied differently according to the nature of the dispute.

68 However, the question has been raised as to whether the concept of manifest unlawfulness was applied in an equivalent manner. According to the Commission, the national court examined whether the fee assessments were based on legislation that was manifestly unlawful with regard to rules of higher-ranking law, namely the TKG and German constitutional law, but did not or did not correctly conduct that examination with regard to Community law. The Commission maintains that the legislation is manifestly unlawful with regard to the provisions of Article 11(1) of Directive 97/13 and that the principle of equivalence has therefore not been complied with.

69 Where, pursuant to rules of national law, the authorities are required to withdraw an administrative decision which has become final if that decision is manifestly incompatible with domestic law, that same obligation must exist if the decision is manifestly incompatible with Community law.

70 In order to assess the degree of clarity of Article 11(1) of Directive 97/13 and to determine whether or not the incompatibility of the national law with that article is manifest, the objectives of that directive, which is among the measures adopted for the complete liberalisation of telecommunications services and infrastructures and is intended to encourage the entry of new operators onto the market, must be taken into account (see, to that effect, *Albacom and Infostrada*, cited above in paragraph 35). In that regard, the imposition of a very high fee to cover an estimation of the general costs over a period of 30 years is such as to seriously impair competition, as the national court points out in its references for a preliminary ruling, and constitutes a relevant factor in that assessment.

71 It is for the national court, in the light of the foregoing, to ascertain whether legislation which is clearly incompatible with Community law, such as that on which the fee assessments at issue in the main proceedings is based, constitutes manifest unlawfulness within the meaning of the national law concerned.

72 The reply to the second question must therefore be that Article 10 EC, read in conjunction with Article 11(1) of Directive 97/13, requires the national court to ascertain whether legislation which is clearly incompatible with Community law, such as that on which the fee assessments at issue in the main proceedings are based, constitutes manifest unlawfulness within the meaning of the national law concerned. If that is the case, it is for the national court to draw the necessary conclusions under its national law with regard to the withdrawal of those assessments.

Costs

73 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 11(1) of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services precludes the application of a fee for individual licences calculated by taking into account the regulatory body's general administrative costs linked to implementing those licences over a period of 30 years.**

2. **Article 10 EC, read in conjunction with Article 11(1) of Directive 97/13, requires the national court to ascertain whether legislation which is clearly incompatible with Community law, such as that on which the fee assessments at issue in the main proceedings are based, constitutes manifest unlawfulness within the meaning of the national law concerned. If that is the case, it is for the national court to draw the necessary conclusions under its national law with regard to the withdrawal of those assessments.**

[Signatures]