JUDGMENT OF THE COURT
22 October 1998 *

In Joined Cases C-10/97 to C-22/97,

REFERENCES to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Roma (Italy) for a preliminary ruling in the proceedings pending before that court between

Ministero delle Finanze

and

IN. CO. GE.'90 Srl (C-10/97),

Idelgard Srl (C-11/97),

Iris'90 Srl (C-12/97),

Camed Srl (C-13/97),

Pomezia Progetti Appalti Srl (PPA) (C-14/97),

* Language of the cases: Italian.

Edilcam Srl (C-15/97),

A. Cecchini & C. Srl (C-16/97),

EMO Srl (C-17/97),

Emoda Srl (C-18/97),

Sappesi Srl (C-19/97),

Ing. Luigi Martini Srl (C-20/97),

Giacomo Srl (C-21/97),

Mafar Srl (C-22/97),

on the consequences arising under national law from the incompatibility of a domestic charge with Community law,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, P. J. G. Kapteyn, J.-P. Puissochet (Rapporteur), G. Hirsch and P. Jann (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, D. A. O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet, R. Schintgen and K. M. Ioannou, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Service in the Ministry of Foreign Affairs, acting as Agent, assisted by Francesca Quadri, Avvocato dello Stato,

— the French Government, by Kareen Rispal-Bellanger, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Gautier Mignot, Foreign Affairs Secretary in that directorate, acting as Agents,

— the United Kingdom Government, by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent, and Rhodri Thompson, Barrister, and subsequently by Stephanie Ridley, of the Treasury Solicitor's Department, acting as Agent, and Rhodri Thompson,

— the Commission of the European Communities, by Enrico Traversa, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of IN. CO. GE.'90 Srl, Idelgard Srl, Iris'90 Srl and Sappesi Srl, represented by Gianni Manca, of the Rome Bar; the Italian Government, represented by Ivo M. Braguglia, Avvocato dello Stato; the French Government, represented by Gautier Mignot; the United Kingdom Government, represented by Rhodri Thompson, Barrister; and the Commission, represented by Enrico Traversa, at the hearing on 19 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 14 May 1998,

gives the following

Judgment

1 By 13 orders of 17 December 1996, received at the Court on 16 January 1997, the Pretura Circondariale di Roma (District Magistrate's Court, Rome) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question concerning the consequences arising under national law from the incompatibility of a domestic charge with Community law.

2 That question was raised in a series of disputes between the Ministry of Finance, on the one hand, and IN. CO. GE.'90 and 12 other limited-liability companies ('IN. CO. GE.'90 et al.'), on the other, relating to the detailed rules governing repayment of the *tassa di concessione governativa* (administrative charge) for entering companies on the register of companies (hereinafter 'the registration charge').

3 The registration charge was introduced by Decree No 641 of the President of the Republic of 26 October 1972 (GURI No 292 of 11 November 1972, Supplement No 3, hereinafter 'Decree No 641/72'). In so far as it applies to the registration of documents recording the incorporation of companies, it has been the subject of successive amendments regarding its amount and periodicity.

4 The amount of the registration charge was first substantially increased by Decree-Law No 853 of 19 December 1984 (GURI No 347 of 19 December 1984), converted into law by Law No 17 of 17 February 1985 (GURI No 41*bis* of 17 February 1985), which also provided that from then on the charge would be payable not only upon

registration of the instrument of incorporation but also on 30 June of each calendar year thereafter. The amount of the charge was then further altered in 1988 and 1989. In 1989 the amount came to LIT 12 million for public limited companies and partnerships limited by shares, LIT 3.5 million for private limited companies and LIT 500 000 for other companies.

5 In its judgment in Joined Cases C-71/91 and C-178/91 *Ponente Carni and Cispadana Costruzioni* v *Amministrazione delle Finanze dello Stato* [1993] ECR I-1915, dealing with the registration charge, the Court held that Article 10 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412) was to be interpreted as prohibiting, subject to the derogating provisions of Article 12, an annual charge due in respect of the registration of capital companies even though the product of that charge contributed to financing the department responsible for keeping the register of companies. The Court also held that Article 12 of Directive 69/335 was to be interpreted as meaning that duties paid by way of fees or dues referred to in Article 12(1)(e) might constitute payment collected by way of consideration for transactions required by law in the public interest such as, for example, the registration of capital companies. The amount of such duties, which might vary according to the legal form taken by the company, was to be calculated according to the cost of the transaction, which might be assessed on a flat-rate basis.

6 Following that judgment, the registration charge was reduced to LIT 500 000 for all companies by Decree-Law No 331 of 30 August 1993 (GURI No 203 of 30 August 1993), converted into law by Law No 427 of 29 October 1993 (GURI No 255 of 29 October 1993), and it ceased to be payable annually.

7 Pursuant to Article 633 et seq. of the Italian Code of Civil Procedure, IN. CO. GE.'90 et al. successfully applied to the Pretura di Roma for orders enjoining the Ministry of Finance to repay to them the sums which they had paid by way of the registration charge over previous years.

8 The Ministry of Finance, however, challenged those injunctions by raising two objections alleging, first, that the Pretura di Roma lacked jurisdiction to hear disputes involving tax matters and, second, that the applicants' entitlement to repayment, which, it claimed, was limited to the amounts paid during the three-year period preceding lodgment of their claims, was barred by lapse of time in accordance with Article 13 of Decree No 641/72.

9 It appears from the order for reference that those objections must stand or fall together, in so far as they both hinge on the question whether the dispute is of a fiscal or civil nature. If the dispute is of a fiscal nature, the Pretura will lack jurisdiction to hear it and it will not therefore be open to it to consider the plea of time-bar. On the other hand, if the dispute is not of a fiscal nature but comes under the civil-law rules for recovery of amounts paid but not due, the national court will have to resolve the dispute and the three-year time-limit laid down in Article 13 of Decree No 641/72 will not be applicable.

10 The Pretura di Roma adds, in that connection, that in Judgment No 3458 of 23 February 1996, the Combined Chambers of the Corte Suprema di Cassazione (Supreme Court of Cassation) ruled that repayment of the registration charge falls within the scope of Article 13 of Decree No 641/72 since that provision applies to all charges paid but not due, irrespective of the reason for the undue payment.

11 The national court, however, does not share that view. It points out that, in accordance with the case-law of the Court, a national court is under a duty not to apply any provision of national law, even if adopted subsequently, which is contrary to Community law, without being obliged to request or await the repeal of that provision by legislative or any other constitutional means (Joined Cases C-13/91 and C-113/91 *Debus* [1992] ECR I-3617). In the present cases, the non-application in its entirety of the Italian law which introduced the registration charge necessarily has the effect of divesting of its fiscal nature the legal relationship established between the Ministry of Finance and the applicant companies when the contested amounts were paid. Since those amounts were levied by way of a charge which is non-existent, and thus in the absence of any fiscal debt owed to the State, their

repayment falls within the general rules for recovery of amounts paid but not due, which is subject to a ten-year limitation period under the Civil Code.

12 It was in those circumstances that the Pretura di Roma stayed proceedings and referred the following question to the Court for a preliminary ruling:

Does the incompatibility with Article 10 of Council Directive 69/335/EEC of 17 July 1969, as interpreted by the Court of Justice in its judgment of 20 April 1993 (in Joined Cases C-71/91 and C-178/91 *Ponente Carni and Cispadana Costruzioni* v *Amministrazione delle Finanze dello Stato* [1993] ECR I-1915), of Article 3(XVIII) and (XIX) of Decree-Law No 853 of 19 December 1984, converted into Law No 17 of 17 February 1985, mean, on the basis of the criteria for integration of national law and Community law which that Court has laid down, that the said paragraphs (XVIII) and (XIX) of Article 3 must be set aside in their entirety, and in particular does it mean that the national court must not take account of those internal provisions, even when classifying the legal relationship on the basis of which a national of a Member State calls on the finance administration to refund sums that were paid in contravention of the said Article 10 of Directive 69/335?

Jurisdiction

13 The United Kingdom Government submits that the Court lacks jurisdiction to reply to the question submitted by the Pretura di Roma in so far as that question concerns the interpretation of Italian law and not of Community law. It points out that it is for each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from the Community legal order (Case 33/76 *Rewe* v *Landwirtschaftskammer für das Saarland* [1976] ECR 1989 and Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043).

14 It should be noted in this regard that, according to a consistent line of cases decided by the Court, it is for each Member State to determine which court or tribunal has jurisdiction to hear disputes involving individual rights derived from Community law. However, it is the Member States' responsibility to ensure that those rights are effectively protected in each case. Subject to that reservation, it is not for the Court to involve itself in the resolution of questions of jurisdiction to which the classification of particular situations based on Community law may give rise in the national judicial system (Case 179/84 *Bozzetti* v *Invernizzi* [1985] ECR 2301, paragraph 17; Case C-446/93 *SEIM* v *Subdirector-Geral das Alfândegas* [1996] ECR I-73, paragraph 32; and Case C-54/96 *Dorsch Consult* v *Bundesbaugesellschaft Berlin* [1997] ECR I-4961, paragraph 40).

15 However, the Court has power to explain to the national court points of Community law which may help to solve the problem of jurisdiction with which that court is faced (*Bozzetti*, paragraph 18, and *SEIM*, paragraph 33, both cited above). To that end, it may, if appropriate, extract the relevant points from the wording of the question submitted and the facts set forth by the national court (see, in particular, Case 54/80 *Procureur de la République* v *Wilner* [1980] ECR 3673, paragraph 4).

16 It appears in this regard from the order for reference that the Pretura di Roma is uncertain as to the consequences arising under national law from the incompatibility of a domestic charge with Community law. The Pretura bases its opinion that the disputes pending before it are not of a fiscal nature but fall, under Italian law, within the general rules for recovery of amounts paid but not due on the fact that such incompatibility, inasmuch as its effect is to disapply the relevant national provisions in their entirety and deprive the charge in question of any existence in law, necessarily has the effect of divesting it of its fiscal nature.

17 It follows that the Court does have jurisdiction to reply to the question submitted.

The question submitted

18 The Commission points out that, in its judgment in Case 106/77 *Amministrazione delle Finanze dello Stato* v *Simmenthal* [1978] ECR 629, the Court held, *inter alia*, that the provisions of the Treaty and the directly applicable measures of the institutions have the effect, in their relationship with the domestic law of the Member States, not only of rendering automatically inapplicable any conflicting provision of national law in force but also of precluding the valid adoption of new national legislative measures which would be incompatible with Community provisions. From this, the Commission infers that a Member State has no power whatever to adopt a fiscal provision that is incompatible with Community law, with the result that such a provision and the corresponding fiscal obligation must be treated as non-existent.

19 That interpretation cannot be accepted.

20 In *Simmenthal*, the issue facing the Court related in particular to the consequences of the direct applicability of a provision of Community law where that provision was incompatible with a subsequently adopted provision of national law. The Court had already stressed, in its previous decisions (see, in particular, Case 6/64 *Costa* v *ENEL* [1964] ECR 585), that it was impossible for a Member State to accord precedence to a national rule over a conflicting rule of Community law, but did not draw any distinction between pre-existing and subsequently adopted national law. So, in *Simmenthal*, the Court held that every national court must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which the latter confers on individuals, setting aside any provision of national law which may conflict with it, whether prior or subsequent to the Community rule (*Simmenthal*, paragraphs 21 and 24). That case-law has been reaffirmed on numerous occasions

(see, in particular, *Debus*, cited above, paragraph 32; Case C-158/91 *Levy* [1993] ECR I-4287, paragraph 9; and Case C-347/96 *Solred* v *Administración General del Estado* [1998] ECR I-937, paragraph 30).

21 It cannot therefore, contrary to the Commission's contention, be inferred from the judgment in *Simmenthal* that the incompatibility with Community law of a subsequently adopted rule of national law has the effect of rendering that rule of national law non-existent. Faced with such a situation, the national court is, however, obliged to disapply that rule, provided always that this obligation does not restrict the power of the competent national courts to apply, from among the various procedures available under national law, those which are appropriate for protecting the individual rights conferred by Community law (see Case 34/67 *Lück* v *Hauptzollamt Köln-Rheinau* [1968] ECR 245).

22 It remains to be considered whether non-application, as the result of a judgment given by the Court, of national legislation which introduced a levy contrary to Community law has the result of depriving that levy retroactively of its character as a charge and thereby divesting of its fiscal nature the legal relationship established when that charge was levied between the national tax authority and the companies liable to pay it.

23 It is settled case-law that the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177 of the Treaty, the Court gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its entry into force. It follows that the rule as so interpreted may, and must, be applied by the courts to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied (see Case 61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit Italiana* [1980] ECR 1205, paragraph 16, and Case C-188/95 *Fantask and Others* v *Industriministeriet* [1997] ECR I-6783, paragraph 37).

24 Further, in terms of that case-law, entitlement to the recovery of sums levied in breach of Community law is a consequence of, and an adjunct to, the rights conferred on individuals by the relevant Community provisions as interpreted by the Court. A Member State is therefore in principle required to repay charges levied in breach of Community law (*Fantask and Others*, paragraph 38).

25 However, in the absence of Community rules governing the matter, such repayment may be claimed only if the substantive and formal conditions laid down by the various national laws are complied with, provided that such conditions are not less favourable than those governing similar domestic actions and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (see, in particular, Case C-312/93 *Peterbroeck* v *Belgian State* [1995] ECR I-4599, paragraph 12, and Case C-212/94 *FMC and Others* v *Intervention Board for Agricultural Produce and Ministry of Agriculture, Fisheries and Food* [1996] ECR I-389, paragraph 71).

26 Thus, the obligation on the national court to ensure that a domestic charge levied in breach of Community law is refunded must, subject to compliance with the two conditions laid down by the Court in its case-law, be discharged in accordance with the provisions of its national law. It follows that the detailed rules for repayment which are to apply and the classification, for that purpose, of the legal relationship established when that charge was levied between the tax authorities of a Member State and particular companies in that State are matters which fall to be determined under national law.

27 Furthermore, as the Court has recently held, Community law does not in principle preclude the legislation of a Member State from laying down, alongside a limitation period applicable under the ordinary law to actions between private individuals for the recovery of sums paid but not due, special detailed rules governing claims and legal proceedings to challenge the imposition of charges and other levies (Case C-231/96 *Edis* v *Ministero delle Finanze* [1998] ECR I-4951, paragraph 37, and Case C-260/96 *Ministero delle Finanze* v *Spac* [1998] ECR I-4997, paragraph 21).

28 The possibility thus recognised by the Court of applying those special detailed rules to the repayment of charges and other levies found to be contrary to Community law would be deprived of any effect if, as the Commission argues, the incompatibility between a domestic levy and Community law necessarily had the effect of depriving that levy of its character as a charge and divesting of its fiscal nature the legal relationship established, when the charge in question was levied, between the national tax authorities and the parties liable to pay it.

29 The answer to the question submitted must therefore be that the obligation on a national court to disapply national legislation introducing a charge contrary to Community law must lead that court, in principle, to uphold claims for repayment of that charge. Such repayment must be ensured in accordance with the provisions of its national law, on condition that those provisions are not less favourable than those governing similar domestic actions and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law. Any reclassification of the legal relationship established between the tax authorities of a Member State and certain companies in that State when a domestic charge subsequently found to be contrary to Community law was levied is therefore a matter for national law.

Costs

30 The costs incurred by the Italian, French and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Pretura Circondariale di Roma by orders of 17 December 1996, hereby rules:

The obligation on a national court to disapply national legislation introducing a charge contrary to Community law must lead that court, in principle, to uphold claims for repayment of that charge. Such repayment must be ensured in accordance with the provisions of its national law, on condition that those provisions are not less favourable than those governing similar domestic actions and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law. Any reclassification of the legal relationship established between the tax authorities of a Member State and certain companies in that State when a domestic charge subsequently found to be contrary to Community law was levied is therefore a matter for national law.

Rodríguez Iglesias Kapteyn Puissochet

Hirsch Jann Mancini

Moitinho de Almeida Gulmann Murray

Edward Ragnemalm Sevón

Wathelet Schintgen Ioannou

Delivered in open court in Luxembourg on 22 October 1998.

R. Grass G. C. Rodríguez Iglesias

Registrar President