for the national courts and must be settled by them under national law in so far as no provisions of Community law are relevant. In those circumstances it is for the courts of the Member States to provide, in pursuance of the requirement of co-operation embodied in Article 5 of the direct effect of the Community provisions both when such provisions create obligations for the subject and when they confer rights on him. It is thus for the national legal system of each Member State to determine the courts having jurisdiction and to fix the procedures for applications to the courts intended to protect the rights which the subject obtains through the direct effect of Community law but such procedures may not be less favourable than those in similar procedures concerning internal matters and may in no case be laid down in such a way as to render impossible in practice the exercise of the rights which the national courts must protect.

Such considerations apply both where there is an express reference to national laws as there is in Article 8 of Regulation No 729/70, and where an implied reference is made to such laws.

3. Community law in its present state and Article 6 (5) of Regulation No 1957/69 in particular do not preclude the application, in proceedings concerning the recovery by the authorities of the Member States of sums paid in error as export refunds to traders, of a principle of legal certainty based on national law whereby financial benefits granted in error by the public authorities may not be recovered if the error committed was not due to incorrect information supplied by the beneficiary or if such error, despite the fact that the information supplied was incorrect though supplied in good faith, could easily have been avoided.

In Case 265/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven [administrative court of last instance in matters of trade and industry], The Hague, for a preliminary ruling in the action pending before that court between

H. FERWERDA B.V., Rotterdam,

and

PRODUKTSCHAP VOOR VEE EN VLEES [Board for Cattle and Meat], Rijswijk,

on the interpretation of Regulation (EEC) No 1957/69 of the Commission of 30 September 1969 on additional detailed rules for granting export

refunds on products subject to an single price system (Official Journal, English Special Edition 1969 (II), p. 417),

THE COURT,

composed of: A. O'Keeffe, (President of the First Chamber), Acting as President, A. Touffait (President of the Second Chamber), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco and T. Koopmans, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The judgment making the reference to the Court and the written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may de summarized as follows:

I — Facts and procedure

In the course of 1976 Ferwerda B.V., the plaintiff in the main action, which has its place of business in Rotterdam, in accordance with two export declarations dated respectively 16 March and 2 November, dispatched to Netherlands ships cruising in waters off Bermuda two consignments of frozen meat in respect of which it had obtained an advance fixing and pre-financing of the refund on exports to third countries laid down in Regulation (EEC) No 441/69 of the Council of 4 March 1969 laying down additional general rules for granting export refunds on products subject to a single price system, exported unprocessed or in the form of certain goods not covered by Annex II to the Treaty (Official Journal, English Special Edition 1969 (I), p. 91).

According to Article 6 (5) of Regulation (EEC) No 1957/69 of the Commission of 30 September 1969 (Official Journal,

English Special Edition (II), p. 417), which laid down detailed rules for the implementation of Regulation No 441/69, "the amount of the refund paid, plus any increase, shall be repaid in accordance with the provisions of this article if the proofs referred to in paragraph (1) are not furnished within the time-limits laid down. In such case, if repayment has been claimed but is not received, the deposit which was lodged shall be forfeited". The proofs to be furnished "within the time-limits laid down" include a requirement that the products shall have "reached their destination within the meaning of Article 3 of Regulation No 1041/67". Furthermore Article 3 of Regulation (EEC) No 192/75 of the Commission of 17 January 1975 (Official Journal 1975, L 25, p. 1) laying down detailed rules for the application of export refunds in respect of agricultural products treats as equivalent to exportation, for the purposes of entitlement to a refund, "supplies for victualling within the Community sea-going vessels or aircraft ...".

The national court points out that in the Netherlands those Community provisions formed the subject-matter of a circular of 15 October 1976 issued by the Produktschap voor Vee en Vlees [hereinafter referred to as "the Produktschap"], which implies that it was issued after the first export declaration. It appears however from the file put before the Court that this circular was preceded by another dated 12 March 1976. According to the annexes to those two circulars, for such products a trader could claim a refund in respect of supplies to "special destinations" (leveranties aan bijzondere bestemmingen) and a note stated that such special destinations included "supplies for victualling sea-going vessels" (leveranties voor de bevoorrading van zeeschepen), adopting the wording of Article 3 of Regulation No 192/75, but omitting the point contained in that article that such supplies to ships must be for victualling "within the Community". On the basis of that circular Ferwerda claimed from the Produktschap, the respondent in the main action, and obtained in the course of 1976, export refunds on meat which it had sent to Netherlands ships cruising off Bermuda. In the forms which it was required to complete Ferwerda made clear the destination of the consignments dispatched. When the Produktschap subsequently noticed its mistake it sent Ferwerda a letter on 16 December 1977 demanding repayment of the refunds paid, claiming that the grant of such refunds was contrary both to Article 3 of Regulation No 441/69 of the Council, since Bermuda does not appear in the list of non-member countries constituting destinations in respect of which exports of beef and veal qualify for refunds, and to Article 3 of Regulation No 1092/75 of the Commission, since, for the purposes of granting refunds, the victualling of ships is not treated as equivalent to export unless such victualling is effected *within* the Community.

Ferwerda instituted proceedings before the College van Beroep voor het Bedrijfsleven to contest this request for repayment maintaining that it was entitled to claim a refund because the wording of the circular of 15 October 1976 listed amongst the specific destinations which were treated as equivalent to an exportation qualifying for the grant of refunds "supplies for victualling sea-going vessels" without

giving any reason to think that these words referred exclusively to "supplies for victualling within the European Economic Community sea-going vessels". It was thus misled by the circular in question and this precludes the right of the Produktschap to claim repayment of the refund wrongly granted.

The Produktschap does not dispute that its circular was ambiguously worded but considers on the one hand that the ambiguity was not such as to mislead Ferwerda and on the other that Article 6 (5) of the above-mentioned Regulation No 1957/69 in any event prevents it from waiving repayment of the refunds made.

In its judgment of 15 December 1978 the College van Beroep voor het Bedrijfsleven considers first of all the legal basis in Netherlands law for the obligation to repay refunds wrongly received. In this connexion it quotes Article 9 (1) of the In- en Uitvoerwet (import and export law) of 5 July 1962, Staatsblad 1962, No 295, p. 741 [hereinafter referred to as "the 1962 Law"]. That provision states that "the competent minister may withdraw a licence, refund or exemption if the information given in order to obtain it appears incorrect or incomplete with the result that a different decision would have been taken on the application if the true position had been fully known at the time when it was considered". In the same judgment the College declares that in its provisional view (naar het voorlopig oordeel van het College) Article 9 of the 1962 Law does not, having regard to the circumstances of this case, provide a legal basis for a claim for repayment and that such a claim might conflict with the general principle of proper administration (algemeen beginsel van behoorlijk bestuur), embodied in the Netherlands legal system, which requires legal certainty to be preserved.

The national court wonders in any case whether general rules or principles of Community law preclude the application of the general rules and principles of domestic law referred to above, and if so to what extent.

In those circumstances the national court took the view that the dispute gave rise to problems of interpretation of Community law and by its judgment of 15 December 1978, which was received at the Court Registry on 21 December 1978, referred the following questions to the Court of Justice for a preliminary ruling:

"1. Properly interpreted, does Article 6 (5) of Regulation (EEC) No 1957/69 signify that reliance on the principle of legal certainty laid down in, or applied pursuant to, a national law is precluded in respect of a claim for repayment of a refund?

2. Does it follow from a proper interpretation of Article 6 (5) of Regulation (EEC) No 1957/69 that a decision to seek repayment of a refund is not subject to the principle of legal certainty derived from Community law?

3. If the answer to Questions 1 and 2 must be that it is not possible in those cases to rely on a national or Community principle of legal certainty, does Article 6 (5) of Regu-

lation (EEC) No 1957/69 also preclude a claim for damages by the exporter against the administration which has sought repayment of the refund, based on the same facts and circumstances which might justify reliance on the principle of legal certainty if this were not precluded by the said Article 6 (5)?"

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the respondent in the main action, represented for this purpose by its President, G. A. Meijer, and by the Commission of the European Communities represented for this purpose by H. J. Bronkhorst, a member of its Legal Department, acting as Agent.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

A — Observations of the Produktschap voor Vee en Vlees.

The Produktschap concedes that the information on the destination of the consignments dispatched, which was contained in the forms completed by Ferwerda for the Produktschap, namely "ms Rotterdam — Bermuda — eilanden" ("M.S. Rotterdam — Bermuda Islands"), was correct and complete so that Article 9 (1) of the 1962 Law is not applicable to Ferwerda's case. Ferwerda was granted refunds on the basis of an interpretation by the Produktschap of Article 3 of Regulation 192/75 which was mistaken owing to the fact that the provision concerning the victualling of ships had never been relied upon previously in respect of ships anchored in the waters of non-member countries.

In those circumstances, the respondent states, the College van Beroep voor het Bedrijfsleven considers that the point to be established is whether Article 9 of the 1962 Law, which is clearly intended to protect the person concerned, "impinges" in any way upon the general rule of Community law whereby sums lost as a result of irregularities or negligence must be recovered (Article 8 of Regulation No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970, (I), p. 218), or, more specifically, upon the above-mentioned provision in Article 6 (5) of Regulation No 1957/69 of the Commission.

The Produktschap considers that there can be no question of such impingement. The objective of the system of pre-financing is to make provision, in order to offset the advantages for which inward processing traffic qualifies, for a similar advantage in respect of goods which are to be exported but which are still in bond, that is, that the refund may be paid in advance in respect of such goods on the assumption that it will be subsequently established that the grant of a refund was justified.

It is accordingly an integral feature of that system that the payments are made at a time at which it is uncertain whether the person concerned will fulfil his obligations. The Produktschap analyses the system of deposits established by Regulation No 441/69 of the Council and Regulation No 1957/69 of the Commission and compares them with the

system laid down in Article 12 of Regulation No 192/75 of the Commission. It reaches the conclusion that advance payment of the refund is made subject to the condition subsequent that the goods to which the pre-financing system applies shall not merely be exported to a non-member country or earmarked for a special destination, for example the victualling of ships within the Community, but further that a refund may properly be granted for such future operations. The justification for the refund paid in advance thus depends on the facts of the situation as subsequently established.

The situation in this case is that the exports were indeed effected but to a territory for which no refund was provided. This objective situation is unaffected by the fact that the person concerned may have erred in interpreting the Community provisions or by the fact that at the outset the Produktschap perhaps created the impression that the statement of the destination was such that the payment would not subsequently be called in question. In that case the rights of the person concerned could only be queried if he had formed the view in good faith that provision had also been made for granting a refund in respect of supplies to ships anchored outside the EEC.

According to the Produktschap it is moreover unlikely that a person who has been engaged for a number of years in supplying ships should never have read Article 3 of Regulation No 192/75 which specifically excludes the possibility of such a grant. It is accordingly irrelevant to rely on the Produktschap's inaccurate circular because the person concerned cannot rely on it in good faith.

The reply to the first question must be that the objective of the system of pre-financing precludes the possibility of waiving repayment of a refund wrongly obtained unless the behaviour of an agency of the Member State has led the person concerned to believe that the decision was irrevocable and could not be called in question again without a breach of the principle of legal certainty.

With regard to the replies to be given to the second and third questions the Produktschap leaves the matter to the Court.

B — Observations of the Commission

First and second questions

The Commission observes first that Article 6 (5) of Regulation No 1957/69 does not apply in the present case. According to that provision the amount of the refund paid is to be repaid if the proofs referred to in paragraph (1) — in particular proof that the goods have left the geographical territory of the Community or reached their destination within the meaning of Article 3 of Regulation No 1041/67 (Official Journal, English Special Edition 1967, p. 323) — have not been furnished within the time-limits laid down. Ferwerda has complied with that requirement as to proof. Further, it is doubtful whether the provision in question is applicable to errors which may be attributed to a national administration. The Commission considers that the application of Article 6 (5) would constitute an *ultra vires* act by the relevant authorities.

On the other hand regard must be had to Article 8 of Regulation (EEC) No 729/70 of the Council of 21 April 1970

on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) in which it is provided that the Member States, in accordance with national provisions laid down by law, regulation or administrative action, shall take the measures necessary to:

— Satisfy themselves that transactions financed by the [European Agricultural Guarantee and Guidance] Fund are actually carried out and are executed correctly;

— Prevent and deal with irregularities;

— Recover sums lost as a result of irregularities or negligence.

The Commission concludes that, where the provisions of national law apply, it is also appropriate to apply national legal principles such as that which prohibits a national administration from enacting measures in breach of legal certainty.

In the alternative the Commission queries whether the application of national legal principles is not restricted by Community law. In fact the Court of Justice, in its judgment of 28 June 1977 (Case 118/76 *Balkan-Import-Export GmbH,* [1977] ECR 1177), where another general principle of the legal system of a Member State was at issue, concluded that the so-called principle of natural justice which is recognized in the tax law of the Federal Republic of Germany cannot be applied by a national court where to do so would alter the effect of the Community rules relating to the basis of assessment, the manner of imposition or the amount of the charge in question. Nevertheless the Commission doubts whether the view which the Court adopted in Case 118/76, which was concerned with the imposition of a charge, must be applied by analogy to the repayment of a refund. First of all, recovery of a payment wrongly made is a rarity, which is sufficient to show that any proceedings for recovery could not compromise the basis of assessment, the manner of imposition or the amount of the refund. Furthermore the Commission wonders whether it is proper to treat the principle of legal certainty in the same way as the so-called principle of natural justice as it was understood in the Balkan-Import case. The principle of legal certainty has in fact been considered by the Court, for example in its judgment of 21 February 1974 (Joined Cases 15 to 33, 52, 53, 57 to 109, 116, 117, 123, 132 and 135 to 137/73, *Schots (née Kortner) and Others* [1974] ECR 177) to form part of Community law whilst the Court expressly laid down in the above-mentioned Case 118/76 that there is no legal basis under Community law for the application of the so-called principle of natural justice within the meaning of German tax law.

In the cases to which Article 6 (5) of Regulation No 1957/69 applies the situation, according to the Commission, is different. In that provision the Community legislature not only laid down the requirements for repayment but also the consequences entailed for the persons concerned where no repayment is made. The Commission doubts whether in such a case, where the rules for recovery of the payment wrongly made are laid down in such detail by Community law, there is any room for the principles of national law.

Third question

With regard to the third question the Commission refers to the judgment of 13 February 1979 (Case 101/78 *Granaria B.V.*, [1979] ECR 623) where the Court ruled that the question of compensation by a national agency for damage caused to private individuals by agencies and servants of Member States, either by reason of an infringement of Community law or by an act or omission contrary to national law must be determined by the national courts in accordance with the national law of the Member State concerned.

The Commission nevertheless indicates that such a principle may give rise to a conflict in a situation where it is recognized that the subject-matter is not governed by national law and that it is appropriate to refer to Community law to settle the question whether the principle of legal certainty applies. In fact, if it appeared in Community law that the concept of legal certainty as defined at Community level creates no obstacle to repayment the person concerned would nevertheless retain the right to rely on provisions of national law on non-contractual liability.

The Commission consequently suggests that the reply to the questions raised by the College van Beroep voor het Bedrijfsleven, The Hague, should be as follows:

"1. Article 6 (5) of Regulation (EEC) No 1957/69 of the Commission of 30 September 1969 does not apply to the exportation of products or goods outside the territory of the Community.

2. The repayment of a refund otherwise than in the cases referred to by Article 6 (5) of Regulation No 1957/69 may be governed by a principle of legal certainty derived from the national legal system of the Member State.

3. Article 6 (5) of Regulation No 1957/69 does not preclude the exporter from claiming damages under national law from a national administration".

III — Oral procedure

The case was called at the hearing on 27 June 1979 and the Advocate General delivered his opinion at the sitting on 27 September 1979.

Decision

1 By a judgment of 15 December 1978 which was received at the Court on 21 December 1978, the College van Beroep voor het Bedrijfsleven referred three questions to the Court for a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of Article 6 (5) of Regulation (EEC) No 1957/69 of the Commission of 30 September 1969 on additional detailed rules for granting export refunds on products subject to a single price system (Official Journal, English Special Edition 1969 (II), p. 417).

2 Those questions are worded as follows:

"1. Properly interpreted, does Article 6 (5) of Regulation (EEC) No 1957/69 signify that reliance on the principle of legal certainty laid down in, or applied pursuant to, a national law is precluded in respect of a claim for repayment of a refund?

2. Does it follow from a proper interpretation of Article 6 (5) of Regulation (EEC) No 1957/69 that a decision to seek repayment of a refund is not subject to the principle of legal certainty derived from Community law?

3. If the answer to Questions 1 and 2 must be that it is not possible in those cases to rely on a national or Community principle of legal certainty, does Article 6 (5) of Regulation (EEC) No 1957/69 also preclude a claim for damages by the exporter against the administration which has sought repayment of the refund, based on the same facts and circumstances which might justify reliance on the principle of legal certainty if this were not precluded by the said Article 6 (5)?"

3 The questions were put in the course of an action between Ferwerda B.V., a Netherlands exporter of meat, and the competent authority in the Netherlands which claims that the former should reimburse it the export refunds which the parties agree were wrongly granted and paid following a mistaken application of Article 3 of Regulation (EEC) No 192/75 of the Commission (Official Journal 1975, L 25, p. 1) laying down detailed rules for the application of export refunds in respect of agricultural products. According to the said Article 3 for the purposes of entitlement to a refund, supplies for victualling within the Community sea-going vessels or aircraft serving on international routes, including intra-Community routes, shall be treated as exports from the Community and confer entitlement to an export refund. The file of the national court establishes that the meat exported was intended for victualling ships flying the Netherlands flag sailing in Bermudan waters so that the condition that victualling must take place within the Community if it is to be treated as an export qualifying for a refund was not fulfilled since Bermuda does not appear in the list of non-member countries constituting destinations in respect of which exports qualify for refunds. The

circumstances of that mistaken application were such that the national court considered it must give a ruling on the point whether the mistaken application was the work of the Netherlands administration or of Ferwerda and decide on what conditions the amounts in question are recoverable from the latter.

4 The national court raises the point whether the obligation to effect a repayment laid down in Article 6 (5) of Regulation No 1957/69, an obligation which has direct effect in the legal systems of the Member States, may be nullified or limited in its effects by a national provision based on a general principle of law. Ferwerda has in fact maintained that the claim made on it to repay the export refunds which it had wrongly received is contrary to the principle of legal certainty. According to the national court that principle is recognized in the legal system of the Netherlands as constituting a valid defence in the context of proceedings for the recovery of moneys by the administration, as is established in particular by a provision of the Netherlands In- on Uitvoerwet (import and export law) of 5 July 1962 and the information given by the Netherlands Government in the recitals thereto.

5 In those circumstances the national court in fact wishes to know whether Community law in general and Article 6 (5) of Regulation No 1957/69 in particular rule out the application of such a principle of national law. If it does the national court wishes to know whether such a principle is to be found in Community law which it must then apply.

6 The export refund obtained by Ferwerda constitutes a financial benefit accorded in pursuance of the Community provisions and financed by the Community from its own resources within the general framework of the budgetary arrangements made by Articles 199 to 209 which constitute the financial provisions of the EEC Treaty.

7 The arrangements for the fixing and the conditions of collection of the financial charges which the Community is empowered to levy and which specifically constitute its own resources, such as customs duties, agricultural levies and monetary compensatory amounts, and the arrangements concerning the conditions for the granting and payment of financial benefits

to traders from the Community budget are laid down by the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (Official Journal, English Special Edition 1970 (I), p. 224) and the regulations in implementation thereof, together with Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218) the provisions of which were extended to monetary compensatory amounts by Article 2 of Regulation No 2746/72 of the Council of 19 December 1972 (Official Journal, English Special Edition 1972 (28-30 December), p. 64). These provisions must be considered within the framework of the general arrangements regarding the financial provisions of the Treaty which, like the corresponding arrangements in the Member States, are governed by the general principle of equality which requires that comparable situations may not be treated differently unless difference of treatment is objectively justified.

8 It follows that the revenues which are contributed to the Community budget and the financial advantages charged thereto must be so arranged and applied as to constitute a uniform burden or to confer uniform benefits on all persons who meet the conditions specified in the Community provisions on such burdens or advantages. That requirement implies that there must be no discrimination in respect of the procedural and substantive conditions on which, on the one hand, traders may challenge Community charges imposed upon them by demanding a refund where payment was wrongly made or claiming the financial benefit of a Community nature to which they are entitled, and on which on the other, the authorities of the Member States, acting on behalf of the Community, may collect the said charges and, if necessary, recover financial benefits which were wrongly granted.

9 The Council has adopted this approach in particular by enacting Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (Official Journal 1979, L 197, p. 1) and Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (Official Journal 1979, L 175, p. 1) which, however, are only to enter into force on 1 July 1980. The arrangements already in existence and the above-mentioned provisions nevertheless provide only a partial solution

to the problems concerning the equality of persons in this sphere and the necessarily technical and detailed nature of such provisions means that a judicial interpretation can only provide a partial remedy.

10 It follows, as the Court held in its judgment of 21 May 1976 in Case 26/74 *Roquette* [1976] ECR 677), that disputes in connexion with the reimbursement of amounts collected for the Community are thus a matter for the national courts and must be settled by them under national law in so far as no provisions of Community law are relevant. In those circumstances it is for the courts of the Member States to provide, in pursuance of the requirement of co-operation embodied in Article 5 of the Treaty, the legal protection made available as a result of the direct effect of the Community provisions both when such provisions create obligations for the subject and when they confer rights on him. It is, however, for the national legal system of each Member State to determine the courts having jurisdiction and to fix the procedures for applications to the courts intended to protect the rights which the subject obtains through the direct effect of Community law but such procedures may not be less favourable than those in similar procedures concerning internal matters and may in no case be laid down in such a way as to render impossible in practice the exercise of the rights which the national courts must protect.

11 The considerations set out above have been stated *inter alia* in the said Regulation No 729/70 of the Council, Article 8 of which expressly requires the Member States acting on behalf of the Community to recover financial benefits which have been improperly granted but adds that such recovery shall be "in accordance with national provisions laid down by law, regulation or administrative action".

12 It follows nevertheless from those considerations that the express reference to national laws is subject to the same limits as those affecting the implied reference, the need for which has been acknowledged in the absence of Community provisions, inasmuch as the application of national legislation must be effected in a non-discriminatory manner having regard to the procedural rules relating to disputes of the same type, but purely national, and

in so far as procedural rules cannot have the result of making impossible in practice the exercise of rights conferred by Community law.

13 Pursuant to those provisions the Court of Justice ruled in its judgment of 28 June 1977 (Case 118/76 *Balkan* [1977] ECR 1177) that even though all the formalities concerning the recovery of Community charges are entrusted to the competent authorities in the Member States the application of a national rule of natural justice (Härteklausel) permitting the administration to provide exemption from charges due under Community law is precluded "in so far as its effect would be to modify the scope of the provisions of Community law concerning the basis of assessment, the manner of imposition or the amount of a charge introduced by that law".

14 It must therefore be considered whether a general principle or specific provision of Community law precludes the application of the national rule referred to by the court making the reference. Consideration of that point shows that this is not so.

15 In this connexion it must be observed that no consideration whatever which under one of the national legal systems of the Member States is or may be based on a principle of legal certainty can in all cases constitute a defence against a claim for the recovery of Community financial benefits wrongly granted. It must in each case be considered whether such application does not jeopardize the very basis of the rule providing for such recovery and whether it does not result in practice in frustrating such recovery.

16 The considerations of the national court show that the principle of legal certainty to which it refers is embodied, with regard to the recovery by the public authorities of export refunds wrongly paid, in Article 9 (1) of the In- en Uitvoerwet in accordance with which "a refund may be withdrawn if the information given in order to obtain it appears incorrect or incomplete with the result that a different decision would have been taken on the application if the true position had been fully known at the time when it was considered".

17 Although in the context of an application for a preliminary ruling it is not for the Court of Justice to interpret the national provision in question or determine its precise scope it must nevertheless be found that an application of a principle of legal certainty based on national law, whereby financial benefits wrongly conferred on a trader may not be recovered if the error committed was not due to incorrect information supplied by the recipient or if, despite the fact that the information was incorrect though supplied in good faith, the error could easily have been avoided, does not in the present state of Community law conflict with a general principle thereof.

18 It must nevertheless be considered whether Article 6 of Regulation No 1957/69, and in particular paragraph (5) thereof, the interpretation of which has been requested, constitutes a special provision which forms an exception to the reference to national law and substitutes for it a Community rule unconditionally requiring the trader in question to reimburse the refund granted in error.

19 Regulation No 1957/69 lays down detailed rules in addition to those already prescribed in other regulations of the Council and of the Commission and in particular in Regulation No 441/69 of the Council of 4 March 1969 (Official Journal, English Special Edition 1968 (I), p. 91) with regard to the granting of export refunds. It refers to a certain number of specific situations such as the case where products qualifying for export refunds are processed before their exportation and in that case, in conjunction with the provisions of Regulation No 441/69 of the Council and of Regulation No 1041/67 of the Commission of 21 December 1967 (Official Journal, English Special Edition 1967, p. 323), subsequently replaced by Regulation No 192/75 of the Commission of 17 January 1975 (Official Journal 1975 L 25, p. 1) replaced by Regulation No 2730/79 of 29 November 1979 (Official Journal 1979, L 317, p. 1) authorizes the granting in advance of all or part of the refund. According to Article 6 (1) of Regulation No 1957/69 the application of the procedures laid down in Articles 2 and 3 of Regulation No 441/69 — that is to say the granting in advance of the refund — shall, as has been stated above, be conditional on the lodging of a deposit. That deposit is intended to provide a guarantee that within certain time-limits proof will be furnished that the products or goods have reached the destination in respect of which the refund was granted.

Article 6 (5) provides that "the amount of the refund paid, plus any increase, shall be repaid in accordance with the provisions of this article if the proofs

referred to in paragraph (1) are not furnished within the time-limits laid down. In such case, if repayment has been claimed but is not received the deposit which was lodged shall be forfeited".

20 It is unnecessary to decide whether the said Article 6 (5) covers situations such as those at issue in this case and it is sufficient to find that it is impossible to establish from the wording of paragraph (5), and in particular from the words "in accordance with the provisions of this article" alone that it was intended by that provision to make, for proceedings which might arise from the particular situations governed by Regulation No 441/69 of the Council and of the above-mentioned Regulations Nos 1041/67, 192/75 and 2730/79 of the Commission, specific Community arrangements concerning the recovery of payments wrongly made whilst in all other disputes concerning the recovery of refunds national law is to be applied where no Community provisions are applicable.

21 It follows from the foregoing considerations that the reply to the first question must be that Community law in its present state and in particular Article 6 (5) of Regulation No 1957/69 of the Commission do not preclude the application in proceedings concerning the recovery by the authorities of the Member States of sums paid in error as export refunds to traders, of a principle of legal certainty based on national law whereby financial benefits granted in error by the public authorities may not be recovered if the error committed was not due to incorrect information supplied by the beneficiary or if such error, despite the fact that the information supplied was incorrect though provided in good faith, could easily have been avoided.

22 It follows from the wording of the second and third questions that, in view of the reply which has been given to the first question, the former are devoid of purpose.

Costs

23 The costs incurred by the Commission of the European Communities which submitted observations to the Court are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the College van Beroep voor het Bedrijfsleven, by a judgment of 15 December 1978, and received at the Court Registry on 21 December 1978, hereby rules:

Community law in its present state and Article 6 (5) of Regulation No 1957/69 of the Commission of 30 September 1969 (Official Journal, English Special Edition, 1969 (II), p. 417) in particular do not preclude the application, in proceedings concerning the recovery by the authorities of the Member States of sums paid in error as export refunds to traders, of a principle of legal certainty based on national law whereby financial benefits granted in error by the public authorities may not be recovered if the error committed was not due to incorrect information supplied by the beneficiary or if such error, despite the fact that the information supplied was incorrect though supplied in good faith, could easily have been avoided.

O'Keeffe Touffait Mertens de Wilmars

Pescatore Mackenzie Stuart Bosco Koopmans

Delivered in open court in Luxembourg on 5 March 1980.

A. Van Houtte
Registrar

A. O'Keeffe
President of the First Chamber,
Acting as President