JUDGMENT OF THE COURT (Fifth Chamber)
10 July 1997 *

In Case C-261/95,

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

Rosalba Palmisani

and

Istituto Nazionale della Previdenza Sociale (INPS)

on the interpretation of Article 5 of the EC Treaty and of the principle of State liability for loss or damage caused to individuals by a breach of Community law attributable to the State,

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L. Sevón, D. A. O. Edward, P. Jann and M. Wathelet (Rapporteur), Judges,

* Language of the case: Italian.

Advocate General: G. Cosmas,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Rosalba Palmisani, by M. D'Antona, of the Rome Bar, and A. Schiavi, of the Frosinone Bar,

— the Istituto Nazionale della Previdenza Sociale (INPS), by G. Violante, of the Frosinone Bar, V. Morielli, of the Naples Bar, L. Cantarini and R. Sarto, of the Rome Bar,

— the Italian Government, by Professor U. Leanza, Head of the Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agent, and by D. Del Gaizo, Avvocato dello Stato,

— the United Kingdom Government, by L. Nicoll, of the Treasury Solicitor's Department, acting as Agent, and by S. Richards and C. Vajda, Barristers,

— the Commission of the European Communities, by L. Gussetti, of its Legal Service, assisted by H. Kreppel, a national civil servant on secondment to that Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Rosalba Palmisani, represented by M. D'Antona, the Istituto Nazionale della Previdenza Sociale (INPS), represented

by V. Morielli, R. Sarto, and A. Todaro, of the Rome Bar, the Italian Government, represented by D. Del Gaizo, the United Kingdom Government, represented by L. Nicoll, and by S. Richards and N. Green, Barristers, and the Commission, represented by L. Gussetti, M. Patakia, of its Legal Service, and E. Altieri, a national civil servant on secondment to that Service, acting as Agents, at the hearing on 3 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 23 January 1997,

gives the following

Judgment

1 By order of 27 June 1995, received at the Court on 3 August 1995, the Pretura Circondariale (District Magistrate's Court), Frosinone, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question concerning the interpretation of Article 5 of that Treaty and of the principle of State liability for loss or damage caused to individuals by a breach of Community law attributable to the State.

2 That question was raised in proceedings between Rosalba Palmisani and the Istituto Nazionale della Previdenza Sociale (hereinafter 'the INPS') concerning the conditions governing reparation for the loss or damage sustained by her as a result of the belated transposition of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23, hereinafter 'the Directive').

3 The Directive is intended to guarantee to employees a minimum level of protection under Community law in the event of the insolvency of their employer, without prejudice to more favourable provisions existing in the Member States. To that end it provides in particular for specific guarantees of payment of outstanding claims to remuneration.

4 Under Article 11(1) of the Directive, the Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 23 October 1983.

5 The Italian Republic failed to fulfil that obligation, as the Court found in its judgment in Case 22/87 *Commission* v *Italy* [1989] ECR 143.

6 Furthermore, in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357 (hereinafter '*Francovich I*'), the Court held, first, that the provisions of the Directive which determine the rights of employees must be interpreted as meaning that the persons concerned could not enforce those rights against the State in proceedings before the national courts where no implementing measures were adopted within the prescribed period and, secondly, that the Member State was required to make good loss or damage caused to individuals by failure to transpose the Directive.

7 On 27 January 1992, the Italian Government adopted Legislative Decree No 80 (GURI No 36, 13 February 1992, hereinafter 'the Legislative Decree'), pursuant to Article 48 of Enabling Law No 428 of 29 December 1990.

8 Article 2(7) of the Legislative Decree lays down the conditions governing reparation for the loss or damage caused by the belated transposition of the Directive, by reference to the terms laid down, pursuant to the Directive, for giving effect to the liability of the guarantee institutions in favour of employees who have suffered as a result of their employer's insolvency. That provision is worded as follows:

'For the purposes of determining any compensation to be paid to employees under the procedures referred to in Article 1(1) (namely, insolvency, composition with

creditors, compulsory administrative liquidation and the extraordinary administration of large undertakings in periods of crisis) by way of reparation of the loss or damage resulting from the failure to transpose Directive 80/987/EEC within the prescribed period, the relevant time-limits, measures and procedures shall be those referred to in Article 2(1), (2) and (4). The action for reparation must be brought within a period of one year to run from the date of entry into force of this Decree.'

9 Rosalba Palmisani had been employed by the firm Vamar from 10 September 1979 to 17 April 1985, the date on which the company was declared insolvent by the Tribunale (District Court), Frosinone. Only a very small part of her salary claims was paid on distribution of the final dividend from the liquidation of the undertaking.

10 On 13 October 1994, that is to say after the limitation period of one year provided for in the Legislative Decree had expired, Rosalba Palmisani brought an action for reparation under Article 2(7) of the Legislative Decree against the INPS, the agency responsible for managing the Guarantee Fund.

11 She cited as justification for the delay in bringing proceedings the uncertainty, not dispelled by Article 2(7), as to the identity of the public body liable to pay reparation and as to the court in which that type of action should be brought. She also pointed to the manifest difference between the system established by the Legislative Decree and the general system of reparation in cases of non-contractual liability, in particular as regards the time-limits for bringing actions.

12 The national court shares the doubts of the plaintiff in the main proceedings only in part. It raises the question whether the Italian State may, in the light of the principles set out by the Court of Justice, lay down in national law different — and, in certain respects, less favourable — rules of procedure with regard to reparation of the loss or damage sustained as a result of the belated transposition of the Directive as compared with the ordinary system of reparation, in matters of non-contractual liability, under Article 2043 of the Italian Civil Code. The national court states in that connection that pursuant to Article 2(7) of the Legislative

Decree, an action for reparation must be brought within a limitation period of 12 months running from the date of entry into force of the Legislative Decree, whereas an action for reparation under Article 2043 of the Civil Code is subject to a prescription period of five years under Article 2947 of the Civil Code, which may be interrupted, in particular by extra-judicial acts, and suspended, pursuant to Articles 2941 et seq. of the Civil Code.

13 The national court also refers, for purposes of comparison, first to the prescription period of one year laid down in Article 2(5) of the Legislative Decree governing applications for the benefits provided for in the Directive, which runs from the date on which the application is submitted to the Guarantee Fund, and secondly to the limitation period of one year from the date on which the application is submitted, which may not be interrupted or suspended, provided for by Article 4 of Law No 438 of 14 November 1992 governing applications for social security benefits (other than pensions).

14 In the light of the foregoing, the national court decided to refer the following question to the Court for a preliminary ruling:

'Is a law of a Member State which, in laying down the procedural rules by which citizens who have a right to the reparation of damage conferred on them by Community law following the failure to implement directives which are not directly applicable, requires the injured party to bring judicial proceedings subject to a one-year limitation period starting from the date when the aforementioned domestic rules entered into force compatible with the correct interpretation of Article 5 of the Treaty, as construed in the light of the principles laid down in the case-law of the Court of Justice cited in the grounds of this order (see Case C-208/90 *Emmott* [1991] ECR I-4269; Joined Cases 331/85, 376/85 and 378/85 *Bianco et Girard* [1988] ECR 1099; Case 199/82 *San Giorgio* [1983] ECR 3595; Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* [1983] ECR 2633; Case 826/79 *Mireco* [1980] ECR 2559; Case 811/79 *Ariete* [1980] ECR 2545; Joined Cases 66/79, 127/79 and 128/79 *Salumi and Others* [1980] ECR 1237; Case 68/79 *Just* [1980] ECR 501; Case 33/76 *Rewe* [1976] ECR 1989 and Joined Cases 6/90 and C-9/90 *Francovich I*, cited above), where, in contrast, under the domestic law of the Member State in question actions for the reparation of non-contractual damage are normally subject to a five-year prescription period and the action for obtaining

social security payments under the statutory system arising out of the full implementation of the Directive [80/987/EEC] is subject to a one-year time-limit, which, however, is a prescription period, thereby introducing, for the purposes of the judicial protection of rights based on Community law, a procedural mechanism which differs in the aforementioned respects from "similar" actions and remedies provided for by the domestic law of the Member State in question, bearing in mind that, in any event, all claims for payments to be made by the agency which is required by law to make reparation for the damage are subject at present to a one-year limitation period under the domestic law of the Member State in question? Is the national court bound, where appropriate, to disapply that limitation period, thereby enabling citizens who have suffered damage to bring an action outside the one-year limitation period and, if so, within the five-year prescription period prescribed for the ordinary action for reparation or within the one-year prescription period laid down for obtaining social security payments under the "basic" system?'

Admissibility of the question submitted

15 The INPS contends that Community law can furnish no information to assist the national court in determining the dispute in the main proceedings other than that which the Court of Justice has already had occasion to provide in Joined Cases C-6/90 and C-9/90 *Francovich I*, cited above.

16 The INPS adds that the Court has no jurisdiction to interpret the provisions of a directive which do not have direct effect, that any conflict between Community law and national law must be resolved by the Corte Costituzionale (Constitutional Court) which has already adjudicated on the validity of Article 2(7) of the Legislative Decree, and that if the national court continued to entertain doubts as to the validity of the national provision at issue it should have referred the matter back to the Corte Costituzionale.

17 Lastly, the INPS considers that examination of the compatibility of the compensation scheme established by the Legislative Decree with the principles set out by the Court is a matter solely for the national courts.

18 According to settled case-law, it is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the particular facts of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court (see, in particular, Case C-297/94 *Bruyère and Others* v *Belgian State* [1996] ECR I-1551, paragraph 19). Only where it is quite obvious that the interpretation of Community law or examination of the validity of a Community rule sought by a national court bears no relation to the actual facts of the main action or its purpose may a reference for a preliminary ruling be held to be inadmissible (see, in particular, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 61).

19 In this case, it need merely be noted that the national court considered it necessary to seek a ruling from the Court concerning the interpretation of Community law in order to enable it to assess the compatibility therewith of the procedural rules governing an action for reparation of loss or damage sustained as a result of the belated transposition of the Directive.

20 Furthermore, Article 177 of the Treaty gives national courts the power and, where appropriate, imposes on them the obligation to refer a case for a preliminary ruling, once the judge perceives either of his own motion or at the request of the parties that the substance of the dispute raises a point referred to in the first paragraph of Article 177. It follows that national courts have the widest discretion in referring matters to the Court of Justice if they consider that a case pending before them raises questions involving interpretation, or consideration of the validity, of provisions of Community law, necessitating a decision on their part (Case 166/73 *Rheinmühlen* v *Einfuhr- und Vorratsstelle Getreide* [1974] ECR 33, paragraphs 3 and 4).

21 Lastly, under Article 177, the Court has jurisdiction to give preliminary rulings concerning the interpretation of acts of the Community institutions, regardless of whether they are directly applicable (Case 111/75 *Mazzalai* v *Ferrovia del Renon* [1976] ECR 657, paragraph 7).

22 Consequently, the objections raised by the INPS regarding the admissibility of the question referred for a preliminary ruling and the jurisdiction of the Court cannot be upheld. The question submitted must therefore be answered.

The question submitted for a preliminary ruling

23 By its question the national court asks, essentially, whether Community law precludes a Member State from requiring any action for reparation of the loss or damage sustained as a result of the belated transposition of the Directive to be brought within a limitation period of one year from its transposition into national law.

24 In that connection, the Court has repeatedly held that the principle of State liability for loss or damage caused to individuals as a result of breaches of Community law for which the State can be held responsible is inherent in the system of the Treaty (*Francovich I*, cited above, paragraph 35; Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 31; Case C-392/93 *British Telecommunications* [1996] ECR I-1631, paragraph 38; and Case C-5/94 *Hedley Lomas* [1996] ECR I-2553, paragraph 24; Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94 *Dillenkofer and Others* [1996] ECR I-4845, paragraph 20).

25 With regard to the conditions under which a Member State is required to make reparation for the loss or damage thus caused, it follows from the case-law cited above that these are three in number, namely that the rule of law infringed must have been intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties (*Brasserie du Pêcheur and Factortame*, paragraph 51; *British Telecommunications*, paragraph 39; *Hedley Lomas*, paragraph 25; and *Dillenkofer and Others*, paragraph 21). Those conditions are to be applied according to each type of situation (*Dillenkofer and Others*, paragraph 24).

26 As for the extent of the reparation payable by the Member State responsible for the breach of Community law, it follows from *Brasserie du Pêcheur and Factortame*, cited above, paragraph 82, that reparation must be commensurate with the loss or damage sustained, that is to say so as to ensure effective protection for the rights of the individuals harmed.

27 Lastly, it follows from consistent case-law since *Francovich I*, cited above, at paragraphs 41 to 43, that subject to the foregoing, it is on the basis of the rules of national law on liability that the State must make reparation for the consequences of the loss or damage caused; further, the conditions, in particular time-limits, for reparation of loss or damage laid down by national law must not be less favourable than those relating to similar domestic claims (principle of equivalence) and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation (principle of effectiveness).

28 As regards the compatibility of a time-limit of the kind provided for in the Legislative Decree with the principle of the effectiveness of Community law, the setting of reasonable limitation periods for bringing proceedings satisfies that requirement in principle, inasmuch as it constitutes an application of the fundamental principle of legal certainty (see, in particular, Case 33/76 *Rewe*, cited above, paragraph 5).

29 Furthermore, a time-limit of one year commencing from the date of the entry into force of the measure transposing the Directive into national law, which not only enables the beneficiaries to ascertain the full extent of their rights but also specifies the conditions under which loss or damage sustained as a result of the belated transposition will be made good, cannot be regarded as making it excessively difficult or, *a fortiori*, virtually impossible to lodge a claim for reparation.

30 In that connection, however, Rosalba Palmisani claims that Article 2(7) of the Legislative Decree has left a degree of uncertainty as regards the public law body responsible for making good the loss or damage and as regards the court before which an action for reparation should be brought. That uncertainty was only removed, in her view, by a circular issued by the INPS on 18 February 1993, that is to say ten days before the limitation period expired.

31 As the Advocate General stated in paragraph 30 of his Opinion, it follows from settled case-law that Article 177 of the Treaty instituted a system of direct cooperation between the Court of Justice and the national courts by way of a non-contentious procedure which is completely independent of any initiative by the parties, who are merely invited to state their case within the legal limits laid down by the national court (see, in particular, Case 62/72 *Bollmann* [1973] ECR 269, paragraph 4). In this case the national court, in the order for reference, expressly rejected the plaintiff's allegations; they cannot therefore be taken into account in the context of the reference for a preliminary ruling.

32 As regards the question whether a time-limit of the kind provided for by the Legislative Decree complies with the principle that it must be equivalent to the conditions relating to similar domestic claims, it should be noted that the national court refers more specifically to the procedural rules governing applications for benefits submitted to the guarantee body under the Legislative Decree, actions for obtaining social security benefits (other than pensions) pursuant to Law No 438 of 14 November 1992 and ordinary actions for damages governed by Article 2043 et seq. of the Italian Civil Code.

33 Although, in principle, it is for the national courts to ascertain whether the procedural rules intended to ensure that the rights derived by individuals from Community law are safeguarded under national law, and in particular that loss or damage caused to individuals by breaches of Community law for which a Member State can be held responsible are made good, comply with the principle of equivalence, certain aspects of the case provide a basis for the following remarks by the Court.

34 First, as Rosalba Palmisani and the Commission emphasize, the measures implementing the Directive contained in the Legislative Decree pursue an objective that differs from that of the compensation scheme established by that Decree. While the former aim to provide employees, by means of specific guarantees of payment of unpaid remuneration, with protection under Community law in the event of the insolvency of their employer, the latter seeks, by definition, to make good to a sufficient extent the loss or damage sustained by the beneficiaries of the Directive as a result of its belated transposition.

35 In that connection, moreover, the Court has stated, in its judgments of today's date in Joined Cases C-94/95 and C-95/95 *Bonifaci and Others and Berto and Others* [1997] ECR I-3969, at paragraph 53, and Case C-373/95 *Maso and Others* [1997] ECR I-4051, at paragraph 41, that reparation cannot always be wholly ensured by retroactive and proper application in full of the measures implementing the Directive. It is for the national court to ensure that reparation of the loss or damage sustained by the beneficiaries is adequate. Retroactive and proper application in full of the measures implementing the Directive will suffice for that purpose unless the beneficiaries establish the existence of complementary loss sustained on account of the fact that they were unable to benefit at the appropriate time from the financial advantages guaranteed by the Directive with the result that such loss must also be made good.

36 Since applications made in connection with the implementation of the Directive and those made under the compensation scheme laid down by it differ as to their objective, there is no need to undertake a comparison of the procedural rules governing them.

37 For the same reason, that must also be true of actions under national law for obtaining social security benefits other than pensions.

38 As far as the ordinary system of non-contractual liability is concerned, it must be pointed out that, unlike the procedures examined under paragraphs 34 to 37 of this judgment, that system is on the whole, in terms of its objective, similar to that introduced by Article 2(7) of the Legislative Decree, inasmuch as it is intended to guarantee reparation of the loss or damage sustained as a result of the conduct of the perpetrator. However, in order to establish the comparability of the two systems in question, the essential characteristics of the domestic system of reference must be examined. In that regard the Court does not have all the information necessary to determine more specifically whether an action for damages brought by an individual pursuant to Article 2043 of the Italian Civil Code is capable of being directed against public authorities on the ground that they have failed to act or have committed an unlawful act for which they can be held responsible in the exercise of their powers. It falls therefore to the national court to undertake that examination.

39 If the ordinary Italian system of non-contractual liability were to prove incapable of serving as a basis for an action against public authorities for unlawful conduct for which they can be held responsible in the exercise of their powers and the national court were unable to undertake any other relevant comparison between the time-limit at issue and the conditions relating to similar claims of a domestic nature, the conclusion would have to be drawn, in view of the foregoing, that Community law does not preclude a Member State from requiring any action for reparation of the loss or damage sustained as a result of the belated transposition of the Directive to be brought within a limitation period of one year from the date of its transposition into national law.

40 In the light of the foregoing considerations, the answer to the question referred to the Court must be that Community law, as it stands at present, does not preclude a Member State from requiring any action for reparation of the loss or damage sustained as a result of the belated transposition of the Directive to be brought within a limitation period of one year from the date of its transposition into national law, provided that that procedural requirement is no less favourable than procedural requirements in respect of similar actions of a domestic nature.

Costs

41 The costs incurred by the Italian and United Kingdom Governments and the Commission of the European Communities, 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Pretura Circondariale, Frosinone, by order of 27 June 1995, hereby rules:

Community law, as it stands at present, does not preclude a Member State from requiring any action for reparation of the loss or damage sustained as a result of the belated transposition of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer to be brought within a limitation period of one year from the date of its transposition into national law, provided that that procedural requirement is no less favourable than procedural requirements in respect of similar actions of a domestic nature.

Moitinho de Almeida Sevón Edward

Jann Wathelet

Delivered in open court in Luxembourg on 10 July 1997.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber