JUDGMENT OF THE COURT
17 November 1998 *

In Case C-228/96,

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

Aprile Srl, in liquidation,

and

Amministrazione delle Finanze dello Stato,

on the interpretation of Community law concerning the recovery of sums paid but not due,

THE COURT,

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

* Language of the case: Italian.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Aprile Srl, in liquidation, by Ernesto Beretta and Aldo Bozzi, of the Milan Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo M. Braguglia, Avvocato dello Stato,

— the French Government, by Catherine de Salins, Deputy Head of Directorate in the Legal Directorate, Ministry of Foreign Affairs, and Gautier Mignot, Secretary for Foreign Affairs in the same department, acting as Agents,

— the United Kingdom Government, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, and Nicholas Paines, Barrister,

— 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 Aprile Srl, in liquidation, represented by Aldo Bozzi, the Italian Government, represented by Ivo M. Braguglia, the French Government, represented by Gautier Mignot, the United Kingdom Government, represented by Stephanie Ridley, of the Treasury Solicitor's Department, acting as

Agent, and Nicholas Paines, and the Commission, represented by Enrico Traversa, at the hearing on 17 February 1998,

after hearing the Opinion of the Advocate General at the sitting on 2 April 1998,

gives the following

Judgment

1 By order of 25 June 1996, received at the Court Registry on 28 June 1996, the Giudice Conciliatore (Judge-Conciliator), Milan, referred to the Court of Justice for a preliminary ruling under Article 177 of the EC Treaty four questions on the interpretation of Community law concerning recovery of sums paid but not due.

2 Those questions were raised in proceedings brought by Aprile Srl, in liquidation (hereinafter 'Aprile'), against Amministrazione delle Finanze dello Stato (State Finance Administration, hereinafter 'the Administration') concerning the latter's refusal to repay to Aprile certain charges collected in breach of Community law in respect of customs transactions.

3 In its judgments in Case 340/87 *Commission* v *Italy* [1989] ECR 1483 and Case C-209/89 *Commission* v *Italy* [1991] ECR I-1575, the Court held that the Italian Republic had failed to fulfil its obligations under the provisions of the Treaty concerning the prohibition of charges having an effect equivalent to customs duties by charging traders in respect of intra-Community trade the cost of inspections and administrative formalities carried out during part of the normal business hours of customs offices at frontier posts as determined by Council Directive 83/643/EEC of 1 December 1983 on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States (OJ 1983 L 359, p. 8), as amended by Council Directive 87/53/EEC of 15 December 1986

(OJ 1987 L 24, p. 33), and by requiring from each undertaking individually, where services were rendered simultaneously to several undertakings individually, in connection with the completion of customs formalities in intra-Community trade, payment of an amount disproportionate to the cost of the services provided.

4 The Italian Republic complied with those judgments by amending its rules with effect from 13 June 1991 and 1 November 1992 respectively. However, those measures did not apply to situations existing before their entry into force, in particular the repayment by the Administration to the traders concerned of amounts collected by the customs offices in breach of Community law.

5 It was in those circumstances that the main proceedings were brought before the Giudice Conciliatore, Milan, who, in a previous request for a preliminary ruling, had asked the Court of Justice for guidance as to the applicability to trade with non-member countries of Directive 83/643, as amended by Directive 87/53, and the provisions of the Treaty concerning the prohibition of charges having equivalent effect.

6 By judgment of 5 October 1995 in Case C-125/94 *Aprile* v *Amministrazione delle Finanze dello Stato* [1995] ECR I-2919, hereinafter '*Aprile I*') the Court held, first, that Directive 83/643, as amended by Directive 87/53, was not applicable to customs formalities in respect of goods from non-member countries, and, second, that the Member States were not entitled unilaterally to impose charges having equivalent effect in trade with those countries.

7 Following the judgment in *Aprile I*, it fell to the national court to consider an objection raised by the defendant administration to the effect that Aprile's claimed right to reimbursement had become statute-barred by virtue of Article 29 of Law No 428/1990 of 29 December 1990 (Community law for 1990, GURI No 10 of

12 January 1991), which relates to the 'repayment of taxes recognised to be incompatible with the Community rules'. Pursuant to Article 29(1):

'The five-year time-bar laid down in Article 91 of the Consolidated version of the provisions relating to customs duties ... shall be deemed to apply to all claims and actions which may be brought for refund of sums paid in connection with customs operations. That period, and also the limitation period laid down in Article 84 of the same instrument, shall be reduced to three years as from the 90th day following the entry into force of this Law.'

8 The Giudice Conciliatore, Milan, observed in particular that, although purporting to be provisions for the interpretation of the existing legislation, those provisions were in fact intended to amend that legislation, as interpreted by the Corte Suprema di Cassazione. According to the case-law of the latter court, whereas the five-year time-limit laid down by the customs legislation applied only to cases of 'calculation errors in the assessment or the application of a duty other than that laid down in the tariff', actions for repayment where, in breach of Community law, sums had been paid although not due, namely cases of 'objective undue payment' of the kind referred to in Article 2033 of the Civil Code, were subject to the ordinary limitation period of 10 years laid down in Article 2946 of the same code.

9 Entertaining doubts as to the compatibility of the provisions at issue with certain principles of Community law, the Giudice Conciliatore, Milan, sought a preliminary ruling on the following additional questions:

'1. Do the principles of legal certainty, effective protection of rights arising under Community law and non-discrimination as regards the protection in damages of the aforesaid rights (according to which the procedural conditions of domestic law must not be less favourable and, in any event, must not make it excessively difficult to exercise such rights), as formulated in the case-law of the Court of Justice, preclude the introduction of national rules, such as those laid down in the first paragraph of Article 29 of Law No 428 of 29 December 1990, which, whilst it is apparently formulated as an interpretative provision and, as a result, has retroactive effect,

in fact substituted a (five-year) time-limit for the ordinary (10-year) limitation period formerly in force, and which, in further reducing the prescription period to three years, considers those periods to be already in course at the time when it entered into force, thereby derogating, without apparent justification, also from the general principle set out in Article 252 of the implementing and transitional provisions of the Civil Code, under which, in the event that the exercise of a right is made subject to a shorter time-limit than that laid down by previous laws, the new time-limit applicable also to the exercise of rights which arose previously begins to run only as from the entry into force of the new provision?

2. Does the principle that the procedural conditions of domestic law for the protection of rights arising under Community law must not be less favourable than those relating to similar actions of a domestic nature (judgments of 15 December 1976 in Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989 and Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043 upheld in subsequent other judgments) preclude the introduction of a national provision, such as that provided for in the first paragraph of Article 29 of Law No 428 of 29 December 1990, which, whilst apparently designed to standardise the time-limits for the repayment of sums paid in relation to customs operations, in reality (as is clear from the heading and the actual wording of the provision) has the effect of extending the time-limits formerly laid down by Article 91 of the Customs Law (applicable only in the event of calculation errors or where a duty other than that laid down in the tariff is applied) to objective undue payments made as a result of breaches of Community law, whilst analogous claims for the recovery of objective undue payments under the ordinary domestic law (Article 2033 of the Civil Code) are subject to the 10-year limitation period?

3. Is the principle laid down by the Court of Justice in Case C-208/90 *Emmott* v *Minister for Social Welfare and Attorney General* — to the effect that, until such time as an EEC directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred upon him by the provisions of the directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time —, as an application of the principle of legal certainty, binding upon the national courts in the same way as written provisions of Community law?

4. If the preceding question is answered in the affirmative, does the aforementioned principle laid down in Case C-208/90 *Emmott* v *Minister for Social Welfare and Attorney General*, by virtue of its constituting a specific application of one of the fundamental principles of Community law, have general, direct effect, that is to say, is it directly applicable and may it be relied upon before the national courts by individuals whenever a directive is not properly transposed — as in the case relating to Directive 83/643/EEC which formed the subject of the judgment in Case 340/87 *Commission* v *Italy* [1989] ECR 1483 — and, in any event, whenever national provisions are retained or introduced which lay down rules inconsistent with what is provided by directly applicable Community rules, such as those of the Treaty prohibiting charges having equivalent effect and of the Common Customs Tariff which were the subject of the Court's judgment in Case C-209/89 *Commission* v *Italy* and its judgment of 5 October 1995 in Case C-125/94 *Aprile, in liquidation* v *Amministrazione delle Finanze dello Stato*, where the national provisions maintained in force required the payment, contrary to Community law, of charges not due in circumstances (such as the customs clearance of goods) such that the trader was not in a position to refuse to pay? It is therefore asked whether the Member State in breach of the obligation to implement Community provisions having direct effect is entitled to plead that time-limits or limitation periods expired during the time when the incompatible national provisions were maintained in force.'

The admissibility of the questions

10 The French Government has expressed doubts as to the admissibility of the questions on which a preliminary ruling is sought. In its view, the scope of the provisions at issue is uncertain and if an interpretation were to be adopted according to which the action for repayment brought by Aprile was brought within the prescribed period, the questions submitted would not be necessary in order for judgment to be given in the proceedings.

11 In that regard it need only be pointed out that it is for the national court to assess the scope of the national provisions and the manner in which they must be applied

(see, in particular, the judgment in Case C-45/94 *Ayuntamiento de Ceuta* [1995] ECR I-4385, paragraph 26). Since the national court is best placed to assess, in view of the particularities of the case, the need for a preliminary ruling in order to give its judgment, the preliminary questions cannot be regarded as inadmissible for reasons relating to a certain interpretation of the provisions at issue (see, by analogy, Case C-194/94 *CIA Security International* v *Signalson and Securitel* [1996] ECR I-2201, paragraph 20).

12 The questions submitted by the national court should therefore be examined.

The first and second questions

13 By its first and second questions the national court seeks essentially to ascertain whether Community law precludes the application of a national provision which, for all actions for reimbursement of customs charges, introduces a special time-limit of five, and subsequently three, years instead of the ordinary limitation period of 10 years laid down for actions for the recovery of sums paid but not due.

14 Aprile considers that the answer to those questions should be in the affirmative since the provision at issue, operating retroactively, conflicts fundamentally with the earlier provisions of the Civil Code and the customs legislation, as interpreted by the Corte Suprema di Cassazione. That court held that an action for sums paid but not due under Community law, based on the lack of a power of taxation is governed by the general limitation rules of the Civil Code and not the special time-limit laid down by the tax or customs legislation, which applies only to actions for the recovery of sums paid in excess as a result of an error of calculation or incorrect application of a tariff.

15 The Italian, French and United Kingdom Governments contend, on the contrary, that the time-limit imposed by the contested provision is amply sufficient to ensure that the exercise of rights under Community law is not rendered impossible or excessively difficult and that that period applies in the same way to all actions for reimbursement of customs charges, whether based on national or Community law. The Italian Government explains that the same period of three years applies in national law in relation to various taxes and observes that the same period is laid down by Community law for the repayment or remission of customs duties. It also refers to the most recent case-law of the Corte Suprema di Cassazione, which applied to an action for recovery of sums paid but not due under Community law the time-limit specifically laid down by the national tax legislation and not the limitation period laid down for actions for recovery of sums unduly paid brought under the ordinary law.

16 For its part, referring to its observations in Case C-231/96 *Edis* [1998] ECR I-4951, the Commission suggests that the questions be reformulated. In its view, they essentially seek to ascertain whether Community law precludes national legislation which makes actions for the reimbursement of charges which were paid in connection with customs operations and have been recognised as incompatible with Community law subject to a time-limit which presupposes the existence of a power to impose tax and a tax debt owed to the State rather than to a limitation period which, under the same legislation, is applicable in cases of objective undue payments deriving from the absence of any such power or debt. In response, the Commission refers in particular to Case 240/87 *Deville* v *Administration des Impôts* [1988] ECR 3513 in which it was held that a national legislature may not, subsequent to a judgment of the Court from which it follows that certain legislation is incompatible with the Treaty, adopt a procedural rule which specifically reduces the possibilities of bringing proceedings for repayment of charges levied though not due under that legislation.

17 As the Court has held on several occasions, a comparison of the national systems shows that the problem of disputing charges which have been unlawfully claimed or refunding charges which have been paid when not due is settled in different ways in the various Member States, and even within a single Member State, according to the various kinds of taxes or charges in question. In certain cases, objections or claims of this type are subject to specific procedural conditions and time-limits

under the law with regard both to complaints submitted to the tax authorities and to legal proceedings. In other cases, claims for repayment of charges which were paid but not due must be brought before the ordinary courts, mainly in the form of claims for the refunding of sums paid but not owed, such actions being available for varying lengths of time, in some cases for the limitation period laid down under the general law (see Case 68/79 *Just* v *Ministry for Fiscal Affairs* [1980] ECR 501, paragraphs 22 and 23, Case 61/79 *Denkavit Italiana* [1980] ECR 1205, paragraphs 23 and 24, Case 811/79 *Amministrazione delle Finanze dello Stato* v *Ariete* [1980] ECR 2545, paragraphs 10 and 11, and Case 826/79 *Amministrazione delle Finanze dello Stato* v *Mireco* [1980] ECR 2559, paragraphs 11 and 12).

18 This diversity between national systems derives mainly from the lack of Community rules on the refunding of national charges levied though not due. In such circumstances, it is for the domestic legal system of 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 Community law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, second, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see, most recently, *Edis*, cited above, paragraphs 19 and 34, and Case C-260/96 *SPAC* v *Ministero delle Finanze* [1998] ECR I-4997, paragraph 18).

19 As regards the latter principle, the Court has held that it is compatible with Community law to lay down reasonable time-limits for bringing proceedings in the interests of legal certainty which protects both the taxpayer and the administration concerned (Case 33/76 *Rewe* v *Landwirtschafskammer Saarland*, cited above, paragraph 5, and Case 45/76 *Comet* v *Produktschap voor Siergewassen*, cited above, paragraphs 17 and 18; *Denkavit Italiana*, cited above, paragraph 23; see also Case C-261/95 *Palmisani* v *INPS* [1997] ECR I-4025, paragraph 28, and Case C-90/94 *Haahr Petroleum* v *Åbenrå Havn and Others* [1997] ECR I-4085, paragraph 48). Such time-limits are not liable to render virtually impossible or excessively difficult the exercise of rights conferred by Community law. In that regard, a time-limit of three years under national law, reckoned from the date of the contested payment, appears reasonable (see *Edis* and *SPAC*, cited above, paragraphs 35 and 19 respectively).

20 Observance of the principle of equivalence implies, for its part, that the procedural rule at issue applies without distinction to actions alleging infringements of Community law and to those alleging infringements of national law, with respect to the same kind of charges or dues. That principle cannot, however, be interpreted as obliging a Member State to extend its most favourable rules governing recovery under national law to all actions for repayment of charges or dues levied in breach of Community law (see *Edis* and *SPAC*, cited above, paragraphs 36 and 20 respectively).

21 Thus, Community law does not 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, which are less favourable, governing claims and legal proceedings to challenge the imposition of charges and other levies. The position would be different only if those detailed rules applied solely to actions based on Community law for the repayment of such charges or levies (see *Edis* and *SPAC*, cited above, paragraphs 37 and 21 respectively).

22 In this case, it must be noted that the time-limit at issue expressly applies to all claims and proceedings for the reimbursement of sums paid in respect of customs operations. Moreover, according to the Italian Government, whose statement to that effect has not been contradicted, a similar time-limit applies to actions for the repayment of a number of indirect levies. Thus, as the Advocate General observed in point 31 of his Opinion, that time-limit thus applies without distinction to all actions for recovery of charges of that kind, whatever their basis, and cannot therefore be regarded as contrary to the principle of equivalence.

23 The Commission, however, has stated, referring to its observations in *Edis*, cited above, that the provision at issue prompted the Corte Suprema di Cassazione to depart from its earlier case-law in that hitherto it had restricted the application of time-limits such as the one at issue to cases of errors in the calculation of taxes. By making repayment of the sums paid subject to the three-year time-limit laid down in Article 29 of Decree-Law No 428/1990 rather than the 10-year limitation period

under the ordinary law, that provision, as interpreted by the Corte Suprema di Cassazione, specifically curtailed the opportunity for the persons concerned to bring proceedings to secure repayment of charges levied in breach of Community law, thereby disregarding the judgments in Case 309/85 *Barra* v *Belgium and Another* [1988] ECR 355 and *Deville*, cited above.

24 It should be noted that in paragraph 19 of *Barra*, cited above, the Court held that Community law precludes a national legislative provision which restricts repayment of a duty held to be contrary to the Treaty by a judgment of the Court solely to plaintiffs who brought an action for repayment before the delivery of that judgment. Such a provision simply deprives natural and legal persons who do not meet that condition of the right to obtain repayment of amounts paid but not due and therefore renders the exercise of the rights conferred on them by Community law impossible.

25 Similarly, in *Deville*, cited above, the Court held that a national legislature may not, subsequent to a judgment of the Court from which it follows that certain legislation is incompatible with the Treaty, adopt a procedural rule which specifically reduces the possibilities of bringing proceedings for repayment of charges levied though not due under that legislation.

26 It is clear from those judgments that a Member State may not adopt provisions making repayment of a tax held to be contrary to Community law by a judgment of the Court, or whose incompatibility with Community law is apparent from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those which would otherwise be applied to repayment of the tax in question.

27 As the Advocate General observed in point 45 of his Opinion, the matters by which this case is characterised differ considerably from those noted in the abovementioned judgments.

28 In the first place, the provision at issue, although significantly reducing the period within which reimbursement of sums paid but not due may be claimed, sets a time-limit which is sufficient to guarantee the effectiveness of the right to reimbursement. It is clear from the written observations and oral argument presented to the Court that the Italian courts, including the Corte Suprema di Cassazione itself, have interpreted that provision as allowing proceedings to be instituted within the three years following its entry into force. In those circumstances, that provision cannot be regarded as having retroactive effect.

29 Next, the time-limit at issue is applicable not solely to a particular kind of charge which has previously been declared incompatible with Community law but to a whole range of internal charges and taxes for which the legislation has standardised the rules on time-limits and limitation periods.

30 Finally, the adoption of the contested Law, although subsequent to the judgment of 30 May 1989 in *Commission* v *Italy*, cited above, preceded the judgment of 21 March 1991 in *Commission* v *Italy*, cited above, and the judgment in *Aprile I*.

31 In view of those factors, the legislation at issue cannot be regarded as a measure intended to limit specifically the consequences of the Court's findings in the above-mentioned judgments. In that regard, it is important, as observed in paragraph 22 of this judgment, to note in particular that the provision at issue relates to all claims and proceedings for the repayment of sums paid in relation to customs operations, whatever the grounds on which reimbursement is claimed, and that it sets a time-limit similar to that already laid down for various taxes.

32 Moreover, the findings made in the judgment of 30 May 1989 in *Commission* v *Italy*, cited above, the only judgment delivered before the adoption of that provision, related very specifically to the imposition on traders, in respect of intra-Community trade, of the cost of inspections and administrative formalities carried out during part of the normal business hours of customs offices at frontier posts. However, as is clear from paragraph 19 of the judgment in *Aprile I*, it is common

ground that some of the goods imported by Aprile and affected by the charges of which Aprile seeks reimbursement originated in non-member countries. Moreover, as the Advocate General stated in point 19 of his Opinion preceding that judgment, it was made clear in the main proceedings that they were specifically concerned with charges for customs services provided outside normal business hours.

33 It follows that the solution adopted in *Barra* and *Deville*, cited above, is not applicable to this case.

34 The answer to the first two questions must therefore be that Community law does not preclude the application of a national provision which, for all actions for repayment of customs charges, imposes a special time-limit of five, and subsequently three, years, instead of the ordinary limitation period of 10 years for actions for the recovery of sums paid but not due, provided that that time-limit, which is similar to that imposed for certain taxes, applies in the same way to actions based on Community law for repayment of such charges as to those based on national law.

The third and fourth questions

35 By its third and fourth questions, the national court, referring to the judgment of 25 July 1991 in Case C-208/90 *Emmott* v *Minister for Social Welfare and Attorney General* [1991] ECR I-4296, seeks essentially to ascertain whether Community law precludes a Member State from relying on a national time-limit to resist actions for the repayment of taxes levied in breach of Community provisions at a time when that Member State has not yet amended its national rules to render them compatible with those provisions.

36 Aprile considers that those questions should be answered in the affirmative since the principle laid down in *Emmott* is very wide in scope and is intended to govern all similar situations in which the existence of national provisions contrary to the Community provisions prevents a citizen from ascertaining his rights.

37 The Italian, French and United Kingdom Governments contend on the contrary that that principle is not applicable in a case like this in which the rights invoked derive not from a directive but from rules contained in Treaties, international agreements and Community regulations. In the view of those Governments, it is clear from Case C-338/91 *Steenhorst-Neerings* [1993] ECR I-5475 and Case C-410/92 *Johnson* [1994] ECR I-5483) that the course followed in *Emmott* was justified by the specific circumstances of that case and did not in any way amount to an expression of a fundamental principle of Community law.

38 Initially, the Commission maintained that *Steenhorst-Neerings* and *Johnson*, cited above, concerned social benefits that had been improperly withheld and were not therefore relevant to this case. It thus considered that the solution adopted in *Emmott* should be followed in proceedings for repayment of charges levied in breach of Community law, otherwise a defaulting Member State might be allowed to profit from its own non-compliance. However, at the hearing the Commission abandoned that thesis, acknowledging that it had been undermined by the judgment in Case C-188/95 *Fantask and Others* [1997] ECR I-6783.

39 It is clear from the answer given to the first two questions that Community law does not in principle prohibit a Member State from resisting actions for repayment of duties levied in breach of Community law by relying on a time-limit under national law of three years.

40 It is true that in paragraph 23 of *Emmott*, cited above, the Court held that, until such time as a directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred on him by the provisions of a directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time.

41 However, as was confirmed by the Court in paragraph 26 of *Johnson*, cited above, it is clear from the judgment in *Steenhorst-Neerings*, cited above, that the solution adopted in *Emmott* was justified by the particular circumstances of that case, in which a time-bar had the result of depriving the plaintiff in the main proceedings of any opportunity whatever to rely on her right to equal treatment under a Community directive (see also *Haahr Petroleum*, cited above, paragraph 52, and Joined Cases C-114/95 and C-115/95 *Texaco and Olieselskabet Danmark* [1997] ECR I-4263, paragraph 48).

42 The Court thus held in *Fantask and Others*, cited above, that Community law does not prevent a Member State which has not properly transposed 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) from resisting actions for repayment of duties levied in breach thereof by relying on a limitation period under national law of five years reckoned from the date on which those duties became payable.

43 In this case, it does not appear from the documents before the Court and the arguments presented at the hearing that the conduct of the Italian authorities, in conjunction with the existence of the contested time-limit, had the effect, as it did in *Emmott*, of depriving the plaintiff company of any opportunity of enforcing its rights before the national courts.

44 Moreover, it is clear from the case-law of the Court (*Haahr Petroleum*, cited above, paragraph 53, and *Texaco and Olieselskabet Danmark*, cited above, paragraph 49) that the solution adopted in *Emmott* is not applicable to claims for repayment not based on the direct effect of a directive. Even though the Court, in *Aprile I*, gave a ruling as to the scope of Directive 87/53, it is clear from the documents now before the Court that the incompatibility of the charges at issue with Community law derives not from a failure to implement, or incorrect transposition of, that directive but from infringement of the provisions of the Treaty or of other directly applicable Community instruments.

45 The answer to the third and fourth questions must therefore be that, in circumstances such as those of the main proceedings, Community law does not prohibit a Member State from resisting actions for repayment of charges levied in breach of Community law by relying on a time-limit under national law even if that Member State has not yet amended its national rules in order to render them compatible with those provisions.

Costs

46 The costs incurred by the Italian, French and United Kingdom Governments and the Commission, which has 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

in answer to the questions referred to it by the Giudice Conciliatore, Milan, by order of 25 June 1996, hereby rules:

1. **Community law does not preclude the application of a national provision which, for all actions for repayment of customs charges, imposes a special time-limit of five, and subsequently three, years, instead of the ordinary limitation period of 10 years for actions for the recovery of sums paid but not due, provided that that time-limit, which is similar to that imposed for certain taxes, applies in the same way to actions based on Community law for repayment of such charges as to those based on national law.**

2. **In circumstances such as those of the main proceedings, Community law does not prohibit a Member State from resisting actions for repayment of charges levied in breach of Community law by relying on a time-limit under national law even if that Member State has not yet amended its national rules in order to render them compatible with those provisions.**

Rodríguez Iglesias Kapteyn Puissochet

Mancini Moitinho de Almeida Gulmann

Murray Sevón Wathelet

Schintgen Ioannou

Delivered in open court in Luxembourg on 17 November 1998.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President