JUDGMENT OF THE COURT (Second Chamber)

20 May 2010 *

In Case C-56/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Commissione tributaria provinciale di Roma (Italy), made by decision of 14 January 2009, received at the Court on 9 February 2009, in the proceedings

Emiliano Zanotti

v

Agenzia delle Entrate – Ufficio Roma 2,

* Language of the case: Italian.

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Rosas, U. Lõhmus, A. Ó Caoimh (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: J. Kokott,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 4 February 2010,

after considering the observations submitted on behalf of:

— E. Zanotti, by C. Romano and E. Zanotti, avvocati,

— the Italian Government, by G. Palmieri, acting as Agent, and D. Del Gaizo, avvocato dello Stato,

— the European Commission, by A. Aresu and R. Lyal, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 49 EC and 18 EC relating to the freedom to provide services and citizenship of the European Union respectively.

2 The reference was made in proceedings between Mr Zanotti and the Agenzia delle Entrate – Ufficio Roma 2 (Revenue authority – Rome Office 2, 'the Agenzia') concerning the deduction from gross tax of the costs of attending a university course provided in another Member State.

National legal context

3 Article 15(1)(e) of Presidential Decree No 917 of 22 December 1986 approving the Consolidated text of the law on income tax (Testo unico delle imposte sui redditi) ('the TUIR') provides as follows:

'An amount equal to 19 % of the following costs incurred by the taxpayer shall be deducted from gross tax, where such costs are not deductible for the purpose of determining the individual items of income that go to make up total income:

…

(e) the costs of attending secondary and university courses, up to the maximum amount laid down for the registration and course fees of State establishments.'

4 It is apparent from the observations submitted to the Court that the Ministry of Finance adopted circulars setting out how the provisions of the TUIR are to be interpreted and applied.

5 Point 1.5.1 of Circular No 95 of the Ministry of Finance of 12 May 2000 ('Circular No 95/2000') provides that the costs of attending educational establishments or private or foreign universities are deductible up to the maximum amount laid down for registration and course fees paid for similar tuition offered by Italian State educational establishments. For the purposes of deducting the costs of attending university

courses abroad, reference is to be made to the corresponding costs laid down for attending similar courses at the Italian State university nearest to the taxpayer's residence for fiscal purposes.

6 Circular No 11 of the Ministry of Finance of 23 May 1987 ('Circular No 11/1987') provides that, for the purposes of deducting course fees paid by students enrolled at private universities in Italy, university 'laurea' (diploma) courses provided by those universities are to be treated in the same manner as identical or similar courses provided at the Italian State university in the same city as the private university or a university in a city in the same region.

The main proceedings and the question referred for a preliminary ruling

7 During the academic year 2003-2004, the applicant in the main proceedings, a tax lawyer resident in Rome, followed a Masters degree course in International Tax Law at the International Tax Centre ('the ITC'), Leiden (the Netherlands).

8 In his declaration for the tax year 2003, in accordance with Article 15(1)(e) of the TUIR, the applicant deducted from gross tax an amount equal to 19 % of the costs incurred in attending the Masters degree course, as deductible costs for university tuition fees. Those fees were stated to be EUR 12 000.

9 It is apparent from the order for reference that the Agenzia refused to take into account, for the purposes of deduction, the tuition fees for the specialist course attended by Mr Zanotti in the Netherlands, and even ruled out completely the possibility of any deduction in respect of those fees, without providing any appropriate justification, in

particular as regards the reasons for which the amount deductible could not be ascertained by reference to the amount that would have been charged by a similar educational establishment in Italy, as is provided for under national legislation.

10 It is also apparent from the order for reference that, on 8 August 2007, the applicant in the main proceedings received a notice of assessment in the amount of EUR 2 621.84 relating to the tax return for the tax year 2003.

11 On 14 December 2007, he challenged that notice before the Commissione tributaria provinciale di Roma (Provincial Tax Court, Rome), contesting the failure to recognise the deduction at issue and arguing that the limits on deductions imposed by the Italian legislation were incompatible with Community law.

12 In those circumstances the Commissione tributaria provinciale di Roma decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Do the general principles of the Treaty and of Community law regarding full and effective judicial protection, equal treatment and freedom of movement preclude the application of Article 15[(1)](e) of [the TUIR] and of Point 1.5.1 of Circular No 95[/2000] and does the limitation, pursuant to those provisions, of the recognition of the costs referred to therein conflict with Community law?'

Admissibility of the action

13 Without formally raising an objection of inadmissibility, the Italian Government submits that the question referred for a preliminary ruling is irrelevant for the purposes of deciding the dispute before the national court. Contrary to what the referring court states, the Italian tax authorities did not completely preclude deduction of the costs incurred by the applicant in the main proceedings for the courses provided abroad, but simply reduced the amount deductible by reference to the quantitative and territorial limits applicable under Italian legislation. Accordingly, in the main proceedings, it is for the national court alone to determine whether the tax authorities' assessment in identifying a similar course to be used by way of comparison in calculating the amount to be reimbursed, and its assessment of the course identified, were correct and appropriate.

14 That objection cannot be accepted.

15 According to settled case-law, questions on the interpretation of Community law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233, paragraph 22 and case-law cited).

16 In the present case, despite a lack of clarity in the order for reference as to whether the deduction claimed from gross tax was disallowed or simply reduced, it is not obvious

that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose.

17 It is apparent from the documents before the Court that the applicant in the main proceedings challenges either the refusal to allow the tuition fees incurred in a private establishment in another Member State to be deducted from gross tax on the ground, in particular, that there were no comparable specialist courses in Italy, or the limitation imposed on the tax deduction to which the applicant claims he is entitled as a result of the imposition of quantitative and territorial limits which vary according to whether the educational course concerned is offered by a private establishment in Italy or an establishment in another Member State.

18 The reference for a preliminary ruling is made in order to ascertain whether national legislation such as the TUIR, as interpreted and applied by the competent national authorities, is consistent with the provisions of Community law. In the context of the main proceedings, the reference is clearly not irrelevant.

19 The Italian Government also submits that the order for reference is unclear with regard to the Community law provisions at issue. It maintains that is not possible, on the basis of the national file and the order for reference, to identify any evidence that might indicate a link between the situation of the applicant in the main proceedings and the exercise of freedom of establishment and freedom to provide services.

20 That objection must also be rejected.

21 As the applicant in the main proceedings has argued, it is clear from the order for reference that the national court seeks to ascertain whether the right to freedom of movement for citizens of the European Union and the freedom to provide services, laid down by Articles 18 EC and 49 EC respectively, preclude national legislation which refuses to allow the costs of attending university courses in another Member State to be deducted from gross tax or, in any event, limits those costs to the corresponding costs of attending similar courses at the State university nearest to the taxpayer's residence for fiscal purposes.

22 It follows that the question referred for a preliminary ruling is admissible.

The question referred

23 By its question, the referring court asks, in essence, whether Articles 18 EC and 49 EC must be interpreted as precluding national legislation which, as interpreted and applied by the competent national authorities, precludes deduction of the costs of attending university courses in another Member State from gross tax, whereas the costs of attending university courses at establishments in that Member State are deductible, or which allows the costs of attending university courses in another Member State to be deducted, but only up to the maximum amount set for the corresponding costs of attending similar courses at the national State university nearest to the taxpayer's residence for fiscal purposes.

Preliminary observations on the provisions of European Union law applicable

24 It should be noted, first, that Article 18 EC, which lays down generally the right for every citizen of the Union to move and reside freely within the territory of the Member States, finds specific expression in the provisions guaranteeing the freedom to provide services. If, therefore, the case in the main proceedings falls under Article 49 EC, it will not be necessary for the Court to rule on the interpretation of Article 18 EC (see, inter alia, Case C-92/01 *Stylianakis* [2003] ECR I-1291, paragraph 18, and Case C-76/05 *Schwarz and Gootjes-Schwarz* [2007] ECR I-6849, paragraph 34).

25 It is therefore necessary to rule on Article 18(1) EC only in so far as the case in the main proceedings does not fall within the scope of Article 49 EC.

26 In that regard, it should first be noted that, whilst the third paragraph of Article 50 EC refers only to the active provision of services, where the provider moves to the beneficiary of the services, it is apparent from well-established case-law that the freedom to provide services includes the freedom of the persons for whom the services are intended to go to another Member State, where the provider is, in order to enjoy the services there (Joined Cases 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377, paragraphs 10 and 16).

27 The main proceedings concern the manner in which the tuition fees incurred at a university situated in another Member State are treated for tax purposes in the Member State of residence of the person for whom the services are intended.

28 It must therefore be ascertained whether the courses provided by a university such as the ITC constitute 'services ... normally provided for remuneration', in accordance with the first paragraph of Article 50 EC.

29 According to the European Commission's observations, endorsed by the applicant in the main proceedings, the ITC is a private establishment operating in conjunction with Leiden State University. The Italian Government maintains, on the contrary, that it is unclear from the file whether the ITC is a private or public establishment.

30 The Court has already held that, for the purposes of the first paragraph of Article 50 EC, the essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question (see, inter alia, Case 263/86 *Humbel and Edel* [1988] ECR 5365, paragraph 17; Case C-157/99 *Smits and Peerbooms* [2001] ECR I-5473, paragraph 58; and *Schwarz and Gootjes-Schwarz*, paragraph 38).

31 The Court has thus excluded from the definition of services within the meaning of Article 50 EC courses offered by certain establishments forming part of a system of public education financed, entirely or mainly, by public funds. The Court has made clear that, by establishing and maintaining such a system of public education, funded as a general rule from the public purse and not by pupils or their parents, the State was not seeking to engage in gainful activity, but was fulfilling its duties towards its own population in the social, cultural and educational fields (see, to that effect, *Humbel and Edel*, paragraphs 17 and 18, and Case C-109/92 *Wirth* [1993] ECR I-6447, paragraphs 15 and 16).

32 However, the Court has held that courses offered by educational establishments essentially financed by private funds, in particular by students and their parents, constitute services within the meaning of Article 50 EC, since the aim of those establishments is to offer a service for remuneration (*Wirth*, paragraph 17, and *Schwarz and Gootjes-Schwarz*, paragraph 40).

33 Therefore, courses essentially financed by persons seeking training or professional specialisation must be regarded as constituting services within the meaning of Article 50 EC.

34 It is for the national court to assess the facts and, in particular, the terms and conditions of the specialist course attended by the applicant in the main proceedings.

35 It follows that Article 49 EC is applicable to facts such as those in the main proceedings where a taxpayer of a given Member State attends a university in another Member State which may be regarded as providing services for remuneration, that is to say, which is essentially financed by private funds, which it is for the national court to verify.

Whether there is an obstacle to the freedom to provide services

36 The order for reference states that the Agenzia refused to take account of the tuition fees for the specialist course attended by Mr Zanotti in the Netherlands, without providing any appropriate justification in that respect.

37 Mr Zanotti submitted that, at the material time, the Masters degree for which he studied at the ITC could not be obtained at any public or private institution in Italy. He maintains that, where no advanced training courses that are essentially equivalent in terms of their content and structure are offered by Italian universities, the costs of attending university or post-graduate courses abroad are not deductible at all under the Italian legislation applicable.

38 By contrast, according to the observations submitted to the Court by the Italian Government, the applicant in the main proceedings was not refused the deduction provided for under the TUIR, but the amount of the deduction was simply corrected from EUR 2 481 to EUR 676. Similarly, the Commission submits that the Italian tax legislation, interpreted and applied in the light of Circulars Nos 95/2000 and 11/1987, does not preclude deduction of tuition fees, but provides for quantitative and territorial limits to be applied in calculating the amount of the fees deductible.

39 It is for the national court to establish whether, under the Italian tax legislation, as interpreted and applied by the competent authorities, the deduction from gross tax claimed by the applicant in the main proceedings for university tuition fees incurred in another Member State, is refused, or whether the fees deductible are reduced in accordance with the limits referred to.

40 If a taxpayer who has attended a private establishment in another Member State was refused a deduction, national legislation which excludes, in general, the right to deduct the costs of attending university courses offered in another Member State from gross tax, while at the same time permitting the deduction of the costs of attending university courses offered in that Member State, would result in a larger tax burden for taxpayers attending universities abroad.

41 Such legislation would have the effect of deterring taxpayers resident in Italy from attending university courses at establishments established in another Member State. Furthermore, it would also hinder the offering of education by private educational establishments established in other Member States to taxpayers resident in Italy (see, to that effect, *Schwarz and Gootjes-Schwarz*, paragraph 66, and Case C-318/05 *Commission* v *Germany* [2007] ECR I-6957, paragraph 40).

42 Such legislation would constitute an obstacle to the freedom to provide services guaranteed by Article 49 EC. That provision precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services purely within a Member State (see, inter alia, *Smits and Peerbooms*, paragraph 61, and *Schwarz and Gootjes-Schwarz*, paragraph 67 and case-law cited).

43 Such an obstacle can be justified under Community law only if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the legitimate aim of the national provisions.

44 It must be noted in that respect that no justification has been put forward in the present case.

45 Supposing the deduction of fees for university courses offered in another Member State from gross tax to have been allowed, while at the same time being subject to quantitative and territorial limits, it should be recalled that Article 15(1)(e) of the TUIR provides that an amount equal to 19 % of the costs of attending secondary and university courses is deductible from gross tax, up to the maximum amount laid down for the registration and course fees of State establishments.

46 While the costs of attending educational courses in another Member State are deductible within the limits of the ceiling fixed for registration and course fees paid for attending similar courses at the Italian State university nearest to the taxpayer's residence for fiscal purposes, the costs incurred at a private establishment in Italy are deductible within the limits of the ceiling fixed for registration and course fees paid for attending the Italian State university in the same city as the private establishment, or failing that, in the same region.

47 According to the written observations submitted by the Commission, those quantitative and territorial limits are apparent from Article 15(1)(e) of the TUIR, as interpreted and applied by the competent tax authorities in the light of Circulars Nos 95/2000 and 11/1987.

48 At the hearing, the status and applicability of those circulars were called into question by the applicant in the main proceedings, who argued that they were not binding and that, in any event, Circular No 11/1987 concerned a provision of the TUIR other than Article 15(1)(e), and was not applicable to the facts in the main proceedings.

49 However, regardless of whether those circulars are binding and applicable in the main proceedings – which is a matter for the referring court to ascertain and not the Court of Justice – all the parties before the Court acknowledged that, for the purposes of applying Article 15(1)(e) of the TUIR and calculating the amount of the costs deductible, the competent Italian authorities apply the quantitative and territorial limits referred to.

50 The applicant submits that those limits are more onerous for persons who opt for a course in another Member State than those who choose a course in Italy.

51 However, in the light of the considerations set out in paragraph 49, it appears that, first, the quantitative limit in question applies both to private establishments in Italy and to those situated in other Member States.

52 Second, as regards the territorial limit, as is apparent from paragraph 46 above, if an Italian taxpayer attends a university course in another Member State, his costs are

deductible up to a maximum amount laid down for the registration and course fees of the Italian State university nearest to his residence in Italy for fiscal purposes which offers similar courses, whereas if the same taxpayer attends a similar course offered by a private university in Italy, the limit is set by reference to the registration and course fees of the Italian State university in the same city as the private university, or failing that, in the same region.

53 Assuming that that account of the conditions for applying Article 15(1)(e) of the TUIR is correct, it follows that, contrary to what the applicant claims, a taxpayer who decides to attend a private university in Italy does not have available, as a point of reference for setting the maximum amount of deductible costs, the extensive range of State universities throughout the national territory, whereas taxpayers opting for a course abroad are, by contrast, subject to a maximum limit based on the costs of a similar course offered by the State university nearest to their residence for fiscal purposes.

54 The Court has already held that, in order to avoid an excessive financial burden it is legitimate for a Member State to limit the amount deductible in respect of tuition fees to a given level, corresponding to the tax relief granted by that Member State, taking account of certain values of its own, for attendance at educational establishments situated in its territory (see *Schwarz and Gootjes-Schwarz*, paragraph 80).

55 In the present case, in reply to questions put by the Court, it was explained by the applicant, the Italian Government and the Commission that the registration and course fees paid at Italian State universities may vary from one university to another as a consequence of the regional taxes applicable and the fact that the governing body of each State university sets course fees independently.

56 It is none the less the case that such variation affects not only the maximum amount of costs that may be deducted by a taxpayer attending a private establishment in another Member State but also the maximum amount of costs deductible by a taxpayer following a course offered by a private establishment in Italy.

57 National legislation that gives rise to such variations, which affect both taxpayers attending educational courses in Italy and those exercising their right to freedom of movement in order to attend such courses in other Member States, and which are the result of the factors referred to at paragraph 55 above, does not constitute a restriction on the freedom to provide services within the meaning of Article 49 EC.

58 Indeed, the deduction of the tuition fees incurred by a taxpayer is not subject to different tax rules according to whether the educational course attended is held in other Member States or in the Member State concerned. In the present case, by attending a course provided by a university situated in another Member State, the applicant did not necessarily find himself in a less favourable situation, as regards the tax deduction at issue, than he would have been in had he attended a private university in Italy. Depending on the private university chosen in Italy, the amount of deductible costs would have been greater or less than the amount calculated by reference to the costs of attending the Italian State university nearest to his residence for fiscal purposes, that is to say, the point of reference applied for educational courses provided in other Member States.

59 The aim of the points of reference is to determine the amount of the tuition fees paid at a private establishment situated in Italy or in another Member State which a taxpayer is permitted to deduct.

60 As the Commission has argued, the point of reference introduced for private establishments situated in Italy is of no assistance in the case of a private establishment situated in another Member State.

61 Even if, when calculating deductible costs, a single point of reference were adopted for all private establishments within or outside the Member State concerned – that is, the costs of attending similar courses provided at the Italian State university nearest to the taxpayer's residence for fiscal purposes – the fact remains that the amount of costs deductible by a taxpayer such as the applicant in the main proceedings, who has attended university abroad, would remain unchanged.

62 Accordingly, as regards the tax regime implemented by Article 15(1)(e) of the TUIR, it is not possible to identify any factor which might dissuade taxpayers resident in Italy from attending university courses at establishments situated in another Member State.

63 That conclusion is not called into question by the Commission, which, at the end of the hearing, argued that the best way of complying with Community law was to take as the point of reference the registration and course fees paid at the Italian State university offering the highest-level course comparable to that attended by the taxpayer in another Member State.

64 In the absence of harmonisation measures, it is for the Member States, in exercising their powers, to lay down the criteria for calculating deductible university tuition fees, provided that the relevant rules comply with the provisions of the EC Treaty and, in particular, in a case such as that in the main proceedings, do not dissuade taxpayers resident in Italy from attending university courses offered by establishments situated in other Member States.

65 In any event, in so far as the Italian legislation, as interpreted and applied by the competent authorities, imposes an upper limit on deductible costs in accordance with the quantitative and territorial limits referred to, that legislation does not, for the reasons set out in paragraphs 51 to 62 above, constitute an obstacle to Article 49 EC. Thus, the alternative criterion put forward by the Commission as being more appropriate need not be considered.

66 In the light of the foregoing considerations, Article 49 EC must be interpreted as:

— precluding national legislation which allows taxpayers to deduct from gross tax the costs of attending university courses provided by universities situated in that Member State but excludes generally that possibility for university tuition fees incurred at a private university established in another Member State;

— not precluding national legislation which allows taxpayers to deduct from gross tax university tuition fees incurred at a private university established in another Member State up to the maximum amount set for the corresponding costs of attending similar courses at the national State university nearest to the taxpayer's residence for fiscal purposes.

Whether there is an obstacle to citizenship of the European Union

67 As indicated in paragraphs 24 to 35 above, since the referring court might conclude that Article 49 EC does not apply to the facts in the main proceedings, it is also necessary to examine legislation such as that at issue in the main proceedings in the light of Article 18 EC.

68 The status of citizen of the European Union is destined to be the fundamental status of nationals of the Member States, enabling those among such nationals who find themselves in the same situation to enjoy the same treatment in law within the area of application *ratione materiae* of the Treaty irrespective of their nationality, subject to such exceptions as are expressly provided for in that regard (see, in particular, Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31, and *Schwarz and Grootjes-Schwarz*, paragraph 86).

69 Situations falling within the scope of Community law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 18 EC (see, in particular, *Grzelczyk*, paragraph 33, and *Schwarz and Gootjes-Schwarz*, paragraph 87).

70 Inasmuch as a citizen of the Union must be granted in all Member States the same treatment in law as that accorded to nationals of those Member States who find themselves in the same situation, it would be incompatible with the right to freedom of movement were a citizen to receive in the Member State of which he is a national treatment less favourable than he would enjoy if he had not availed himself of the opportunities offered by the Treaty in relation to freedom of movement (Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 30, and *Schwarz and Gootjes-Schwarz*, paragraph 88).

71 Those opportunities could not be fully effective if a national of a Member State could be deterred from availing himself of them by obstacles placed in the way of his stay in the host Member State by legislation in his State of origin penalising the mere fact that he has used them (*Schwarz and Gootjes-Schwarz*, paragraph 89 and case-law cited).

72 By attending a university situated in another Member State, the applicant in the main proceedings has availed himself of his right to freedom of movement.

73 In the case of national legislation, interpreted and applied by the competent tax authorities so that, in general, the tax deduction provided in respect of university tuition fees is precluded on the ground that those fees have been incurred at a university situated in another Member State, whereas that possibility exists for the costs of attending university courses offered in that Member State, such legislation would place taxpayers at a disadvantage solely on the ground that they have availed themselves of their freedom of movement by going to another Member State to attend a university course there.

74 Such an exclusion would constitute an obstacle to the freedoms conferred by Article 18(1) EC on every citizen of the Union.

75 Exclusion from the right to deduct the costs of attending university courses offered by establishments situated in other Member States cannot be justified solely by the fact that similar tuition is not provided by Italian State universities.

76 In the present case, no justification has been put forward in respect of the alleged exclusion from the right to deduct, which is referred to in the order for reference. While it is permissible for the Member States to establish objective criteria on the basis of principles specific to each Member State enabling it to be determined which types of tuition fees confer entitlement to a tax deduction, such a general exclusion from the right to deduct on the sole basis of the fact that the course is offered in another Member State and/or there is no equivalent course in the Member State of residence of the taxpayer is contrary to Article 18 EC.

77 As regards the imposition of the quantitative and territorial limits referred to in paragraphs 46 and 47 above when calculating the amount of the tuition fees deductible, it must be noted that, for the same reasons as those already set out in paragraphs 51 to 62 above in relation to the freedom to provide services, those limits do not constitute obstacles to the free movement of citizens of the Union in breach of Article 18 EC.

78 In the light of the foregoing considerations, Article 18 EC must be interpreted as:

— precluding national legislation which allows taxpayers to deduct from gross tax the costs of attending university courses provided by universities situated in that Member State but excludes generally that possibility for university tuition fees incurred at a university established in another Member State;

— not precluding national legislation which allows taxpayers to deduct from gross tax university tuition fees incurred at a university established in another Member State up to the maximum amount set for the corresponding costs of attending

similar courses at the national State university nearest to the taxpayer's residence for fiscal purposes.

Costs

79 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. Article 49 EC must be interpreted as:

— **precluding national legislation which allows taxpayers to deduct from gross tax the costs of attending university courses provided by universities situated in that Member State but excludes generally that possibility for university tuition fees incurred at a private university established in another Member State;**

— **not precluding national legislation which allows taxpayers to deduct from gross tax university tuition fees incurred at a private university established in another Member State up to the maximum amount set for the corresponding costs of attending similar courses at the national State university nearest to the taxpayer's residence for fiscal purposes.**

2. Article 18 EC must be interpreted as:

— **precluding national legislation which allows taxpayers to deduct from gross tax the costs of attending university courses provided by universities situated in that Member State but excludes generally that possibility for university tuition fees incurred at a university established in another Member State;**

— **not precluding national legislation which allows taxpayers to deduct from gross tax university tuition fees incurred at a university established in another Member State up to the maximum amount set for the corresponding costs of attending similar courses at the national State university nearest to the taxpayer's residence for fiscal purposes.**

[Signatures]