JUDGMENT OF THE COURT (Grand Chamber)

18 July 2007 *

In Case C-119/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Consiglio di Stato (Italy), made by decision of 22 October 2004, received at the Court on 14 March 2005, in the proceedings

Ministero dell'Industria, del Commercio e dell'Artigianato

v

Lucchini SpA, formerly Lucchini Siderurgica SpA,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and K. Lenaerts, Presidents of Chambers, J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Schiemann (Rapporteur), J. Makarczyk, G. Arestis, A. Borg Barthet, M. Ilešič and J. Malenovský, Judges,

* Language of the case: Italian.

Advocate General: L.A. Geelhoed,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 June 2006,

after considering the observations submitted on behalf of:

— Lucchini SpA, formerly Lucchini Siderurgica SpA, initially by F. Lemme, avvocato, and subsequently by G. Lemme and A. Anselmo, avvocati,

— the Czech Government, by T. Boček, acting as Agent,

— the Italian Government, by I.M. Braguglia, acting as Agent, and P. Gentili, avvocato dello Stato,

— the Netherlands Government, by H.G. Sevenster, M. de Grave and C. ten Dam, acting as Agents,

— the Commission of the European Communities, by V. Di Bucci and E. Righini, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 September 2006,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the principles of Community law applicable to the revocation of a national measure granting State aid incompatible with Community law which was adopted pursuant to a final decision of a national court.

2 This reference was made in proceedings brought by Lucchini SpA (formerly Siderpotenza SpA and subsequently Lucchini Siderurgica SpA) ('Lucchini'), a company incorporated under Italian law, against the decision of the Ministero dell'Industria, del Commercio e dell'Artigianato (Ministry for Industry, Trade and Crafts) ('MICA') ordering the recovery of State aid. MICA was the successor to other bodies which had previously been responsible for the management of State aid in the Mezzogiorno region (collectively, 'the competent authorities').

Legal context

Community legislation

3 Article 4(c) of the ECSC Treaty prohibits the Member States from granting subsidies or aid, in any form whatsoever, in the steel and coal sectors.

4 From 1980, as a result of the increasingly serious and widespread crisis in the steel sector in Europe, a series of measures derogating from this absolute and unconditional prohibition was adopted on the basis of the first and second paragraphs of Article 95 of the ECSC Treaty.

5 In particular, Commission Decision No 2320/81/ECSC of 7 August 1981 establishing Community rules for aids to the steel industry (OJ 1981 L 228, p. 14) ('the second code') established a second code on State aid for the steel industry. The purpose of that code was to permit aid to be granted for the restructuring of undertakings in the steel industry and for a reduction in their production capacity to the level of foreseeable demand whilst at the same time providing that such aid should be phased out in accordance with a fixed timetable as regards the notification of such aid to the Commission (up to 30 September 1982), approval of such aid (up to 1 July 1983) and disbursement of such aid (up to 31 December 1984). Those periods were extended as regards notification until 31 May 1985, as regards approval until 1 August 1985, and as regards payment until 31 December 1985 by Commission Decision No 1018/85/ECSC of 19 April 1985 amending Decision No 2320/81 (OJ 1985 L 110, p. 5).

6 The second code provided for a procedure of mandatory approval by the Commission of all the aid covered. In particular, Article 8(1) of that code states that:

'The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aids. ... The Member State concerned shall put its proposed measures into effect only with the approval of and subject to any conditions laid down by the Commission.'

7 Commission Decision No 3484/85/ECSC of 27 November 1985 establishing Community rules for aid to the steel industry (OJ 1985 L 340, p. 1) ('the third code') replaced the second code and established a third code on State aid for the steel industry with a view to permitting a further, albeit more restricted, exception to the prohibition laid down in Article 4(c) of the ECSC Treaty between 1 January 1986 and 31 December 1988.

8 Under Article 3 of the third code, the Commission was able, inter alia, to approve general aid to bring plants into line with new statutory environmental standards. The amount granted could not exceed 15% net grant equivalent of the investment costs.

9 Article 1(3) of the third code stipulated that aid could be granted only after the procedures laid down in Article 6 had been complied with and was not to be payable after 31 December 1988.

10 Article 6(1), (2) and (4) of the third code provided as follows:

'1. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid ... It shall likewise be informed of plans to grant aid to the steel industry under schemes on which it has already taken a decision under the EEC Treaty. The notification of aid plans required by this Article must be lodged with the Commission by 30 June 1988 at the latest.

2. The Commission shall be informed, in sufficient time for it to submit its comments, and by 30 June 1988 at the latest, of any plans for transfers of State resources by Member States, regional or local authorities or other bodies to steel undertakings in the form of acquisitions of shareholdings or provisions of capital or similar financing.

The Commission shall determine whether the financial transfers involve aid elements ... and, if so, shall examine whether they are compatible with the common market under the provisions of Articles 2 to 5.

...

4. Where, after inviting interested parties to submit their comments, the Commission finds that aid in a given case is incompatible with the provisions of this Decision, it shall inform the Member State concerned of its decision. The Commission shall take such a decision not later than three months after receiving the information needed to assess the proposed aid. Article 88 of the ECSC Treaty shall apply in the event of a Member State's failing to comply with that decision. The planned measures falling within paragraphs 1 or 2 may be put into effect only with the approval of and subject to any conditions laid down by the Commission.'

11 The third code was replaced with effect from 1 January 1989 until 31 December 1991 by a fourth code, established by Commission Decision No 322/89/ECSC of 1 February 1989 establishing Community rules for aid to the steel industry (OJ 1989 L 38, p. 8), which reproduced, inter alia, Article 3 of the third code.

12 Since the ECSC Treaty expired on 23 July 2002, the regime laid down in the EC Treaty has also applied to State aid granted to the steel industry.

National legislation

13 Legge n° 183/1976 sulla disciplina dell'intervento straordinario nel Mezzogino (Law No 183 relating to special intervention measures for the Mezzogiorno) of 2 May 1976 (GURI No 121 of 8 May 1976) ('Law No 183/1976') provided, inter alia, for the possibility of awarding subsidies by way of capital grants and interest rate subsidies of up to 30% of the investment costs for industrial projects in the Mezzogiorno.

14 Article 2909 of the Italian Codice Civile (Civil Code), entitled 'Final judgments', provides as follows:

'Findings made in judgments which have acquired the force of *res judicata* shall be binding on the parties, their lawful successors and assignees.'

15 According to the Consiglio di Stato (Council of State), that provision covers not only the pleas in law actually invoked in the course of the proceedings in question but also those which could have been invoked.

16 In procedural terms, that provision precludes all possibility of bringing before a court a dispute in respect of which another court has already delivered a final judgment.

The dispute in the main proceedings and the questions referred for a preliminary ruling

Lucchini's aid application

17 On 6 November 1985, Lucchini applied to the competent authorities for aid under Law No 183/1976 for the modernisation of certain steel plants. For a total investment of ITL 2 550 million, Lucchini applied for a subsidy of ITL 765 million (corresponding to 30% of the costs) and for an interest rate subsidy in respect of a loan of ITL 1 020 million. The credit institution charged with examining the loan application approved a loan in the sum requested over a period of 10 years at a reduced rate of interest of 4.25%.

18 By letter of 20 April 1988, the competent authorities informed the Commission of the plan to grant aid to Lucchini in accordance with Article 6(1) of the third code. According to the notification, the aid concerned an investment in the improvement of environmental protection. The value of the subsidy in respect of the interest on the loan of ITL 1 020 million was stated to be ITL 367 million.

19 By letter of 22 June 1988, the Commission requested further information on this aid measure with regard to the nature of the assisted investment and the precise conditions (interest rate, term) of the requested loan. That letter also requested the competent authorities to indicate whether the aid was granted under a general scheme for the protection of the environment aimed at enabling plants to be brought into line with new standards and for details of those standards. The competent authorities did not respond to that letter.

20 On 16 November 1988, close to the time-limit of 31 December 1988 for the granting of aid under the third code, the competent authorities decided to grant Lucchini, on a provisional basis, a capital injection amounting to ITL 382.5 million, equivalent to 15% of the investment costs (rather than 30% as provided for in Law No 183/76) to be disbursed before 31 December 1988, as required by the third code. The interest rate subsidy, however, was refused on the ground that the total aid granted would otherwise exceed the 15% permitted by the third code. Pursuant to Article 6 of the third code, adoption of the final measure granting aid was made conditional on the Commission's approval and no payment was made by the competent authorities.

21 Having been unable immediately to assess whether the proposed aid measures were compatible with the common market owing to the competent authorities' failure to provide clarifications, the Commission initiated against them the procedure laid down in Article 6(4) of the third code and informed the authorities to that effect by letter of 13 January 1989. A communication detailing that procedure was published in the *Official Journal of the European Communities* of 23 March 1990 (OJ 1990 C 73, p. 5).

22 By telexed message of 9 August 1989, the competent authorities forwarded further information on the aid in question. By letter of 18 October 1989, the Commission notified those authorities that their answer was unsatisfactory in that a number of details were still missing. In that letter the Commission also indicated that, failing an acceptable answer within 15 working days, it would be entitled to take a final decision solely on the basis of the information at its disposal. No answer was received to that letter.

Commission Decision 90/555/ECSC

23 On 20 June 1990 the Commission stated, by way of Decision 90/555/ECSC concerning aid which the Italian authorities plan to grant to the Tirreno and

Siderpotenza steelworks (No 195/88 — No 200/88) (OJ 1990 L 314, p. 17), that all of the aid intended for Lucchini was incompatible with the common market as it took the view that it had not been demonstrated that the conditions necessary for the application of the exception provided for in Article 3 of the third code had been satisfied.

24 The competent authorities were notified of the decision on 20 July 1990 and it was published in the *Official Journal of the European Communities* of 14 November 1990. Lucchini did not challenge that decision within the one-month period laid down in the third paragraph of Article 33 of the ECSC Treaty.

Proceedings before the civil court

25 Prior to the adoption of Decision 90/955, as the aid had not been disbursed to it, Lucchini had brought proceedings against the competent authorities before the Tribunale civile e penale di Roma (Civil and Criminal Court, Rome) on 6 April 1989 to establish its right to the payment of all of the aid initially claimed (namely, a subsidy of ITL 765 million and an interest rate subsidy amounting to ITL 367 million).

26 By judgment of 24 July 1991, that is, subsequent to Decision 90/555, the Tribunale civile e penale di Roma held that Lucchini was entitled to the aid in question and ordered the competent authorities to pay the amounts claimed. That judgment was based entirely on Law No 183/1976. The parties before the Tribunale civile e penale di Roma did not refer to the ECSC Treaty, the third code, the fourth code or Decision 90/555 and nor did that court refer to any of those provisions of its own motion. The competent authorities had referred to the second code but that court disregarded it as it was no longer in force at the material time.

27 The competent authorities appealed against that judgment to the Corte d'appello di Roma (Court of Appeal, Rome). They disputed the civil courts' jurisdiction and submitted that they were under no obligation to pay the aid and, for the first time, in the alternative, argued that such an obligation would have extended only to the ceiling of 15% of investment costs under Article 3 of the third code.

28 On 6 May 1994 the Corte d'Appello di Roma dismissed that appeal and confirmed the judgment of the Tribunale civile e penale di Roma.

29 In a note of 19 January 1995, the Avvocatura Generale dello Stato (State Legal Advisory Service) examined the judgment of the Corte d'appello di Roma and concluded that it complied with the rules on reasoned decisions and the rules of law. As a consequence, the competent authorities did not lodge an appeal in cassation. Since the judgment in question was not challenged, it became final on 28 February 1995.

30 As the aid had still not been disbursed, Lucchini filed an application and on 20 November 1995 the President of the Tribunale civile e penale di Roma ordered the competent authorities to pay the sums due to Lucchini. That order was declared provisionally enforceable and, in February 1996, Lucchini had certain assets belonging to MICA seized, in particular some of its fleet of cars, on the ground that the order had not been complied with.

31 As a result of Decree No 17975 of the Director General of MICA of 8 March 1996, Luccchini was granted aid in the form of a capital injection of ITL 765 million and in the form of an interest rate subsidy of ITL 367 million in implementation of the judgment of the Corte d'Appello di Roma. That decree stated that the aid would be recovered in whole or in part 'in the event of any adverse Community decisions

concerning the validity of the grant or disbursement of that aid'. On 22 March 1996 that aid, amounting to ITL 1 132 million, was disbursed and the sum of ITL 601 375 million was added to this by way of statutory interest on 16 April 1996.

The exchange of correspondence between the Commission and the Italian authorities

32 By a note dated 15 July 1996 to the Italian authorities, the Commission observed that, notwithstanding Decision 90/555:

'... following a judgment of the [Corte d'appello di Roma] of 6 May 1994, which, in disregard of the most fundamental principles of Community law, found that [Lucchini] was entitled to aid which had already been declared incompatible by the Commission, in April 1996 the [competent] authorities, deeming it inappropriate to lodge an appeal in cassation, granted that aid, which is incompatible with the common market.'

33 The competent authorities replied by a note dated 26 July 1996 stating that the aid had been granted 'subject to the right of recovery'.

34 By Note No 5259 of 16 September 1996, the Commission expressed its opinion that, by disbursing aid to Lucchini which had already been declared incompatible with the common market in Decision 90/555, the competent authorities had infringed Community law and called on those authorities to recover the aid in question within 15 days and to inform it, within one month, of the specific measures adopted to comply with that decision. If the competent authorities failed to comply with that instruction, the Commission intended to take the view that there was a failure to

fulfil obligations under Article 88 of the ECSC Treaty and would invite those authorities to submit any additional observations pursuant to the first paragraph of Article 88 of the ECSC Treaty within 10 working days.

Revocation of the aid

35 On 20 September 1996 MICA adopted Decree No 20357 revoking Decree No 17975 of 8 March 1996 and ordered Lucchini to repay the sum of ITL 1 132 million, together with interest thereon at the reference rate, and the sum of ITL 601 375 million, increased in line with the rate of monetary inflation.

Proceedings before the Consiglio di Stato

36 On 16 November 1996 Lucchini challenged Decree No 20357 before the Tribunale amministrativo regionale del Lazio (Regional Administrative Court, Lazio). That court granted Lucchini's application by judgment of 1 April 1999, finding that the public authorities' powers to revoke their own invalid acts on the ground that they are unlawful or contain substantive errors were limited in the present case by the finding in a final judgment of the Corte d'appello di Roma that there was a right to be granted aid.

37 On 2 November 1999, the Avvocatura Generale dello Stato, acting on behlf of MICA, lodged an appeal with the Consiglio di Stato relying, inter alia, on a plea that the immediately applicable Community law, namely the third code and Decision 90/555, should take precedence over a final judgment of the Corte d'appello di Roma.

38 The Consiglio di Stato found that that there was a conflict between that judgment and Decision 90/555.

39 According to the Consiglio di Stato, it is clear that the competent authorities could and should have relied in time on the existence of Decision 90/555 in the proceedings before the Corte d'appello di Roma, in the course of which, inter alia, the legality of the decision not to disburse the aid, on the ground that the grant of aid had been made subject to approval by the Commission, was in issue. Accordingly, since the competent authorities abstained from challenging the judgment of the Corte d'appello di Roma, there is no doubt that that judgment acquired the authority of *res judicata* and that that authority extends to the question whether the aid is compatible with Community law, at least in so far as Community decisions taken prior to the delivery of the judgment are concerned. The fact that the judgment was final may therefore, in principle, also be relied on against Decision 90/555, which was adopted before the proceedings were concluded.

40 In those circumstances, the Consiglio di Stato decided to stay the proceedings and to refer the following two questions to the Court for a preliminary ruling:

'(1) In the light of the principle of the primacy of immediately applicable Community law, in the form in this case of [the third code], Decision [90/555] ... and [Note] No 5259 ... , requiring the recovery of aid — which all formed the basis for the recovery measure challenged in the present proceedings (namely, Decree No 20357 ...) — is it legally possible and compulsory for the national administrative authority to recover aid from a private recipient even though a final civil judgment has been delivered confirming the unconditional obligation to pay the aid in question?

(2) Or, in view of the generally accepted principle that decisions on the recovery of aid are governed by Community law but the implementation thereof and the associated recovery procedure, in the absence of Community provisions on the matter, is governed by national law (regarding which principle, see the judgment of the Court of Justice in Joined Cases 205/82 to 215/82 *Deutsche Milchkontor [and Others]* v *Germany* [1983] ECR 2663), is the recovery procedure rendered legally impossible by virtue of a specific judicial decision that has become *res judicata* (Article 2909 of the [Italian] Civil Code), thereby being conclusive as between the private individual and the administration, and requires the administration to comply with it?'

Whether the Court has jurisdiction

41 By way of preliminary point, it should be noted that the Court retains jurisdiction to deliver preliminary rulings on questions referred to it concerning the interpretation and application of the ECSC Treaty and on measures adopted under that Treaty, even if those questions are referred to it after the expiry of the ECSC Treaty. Although Article 41 of the ECSC Treaty may no longer be applied in those circumstances to confer jurisdiction on the Court, it would be contrary to the objectives and the coherence of the Treaties and irreconcilable with the continuity of the Community legal order if the Court did not have jurisdiction to ensure uniform interpretation of the rules deriving from the ECSC Treaty, which continue to produce effects even after the expiry of that Treaty (see, to that effect, Case C-221/88 *Busseni* [1990] ECR I-495, paragraph 16). None of the parties which submitted observations has, moreover, disputed the Court's jurisdiction in that regard.

42 However, Lucchini challenges the admissibility of the order for reference on other grounds. Its pleas of inadmissibility are based on submissions that there is no Community rule to be interpreted, that the Court does not have jurisdiction to interpret a judgment of a national court or Article 2909 of the Italian Civil Code, and that the questions are of a hypothetical nature.

43 In this regard, it must be recalled that, in proceedings under Article 234 EC, which are based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. Similarly, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, inter alia, Case C-326/00 *IKA* [2003] ECR I-1703, paragraph 27; Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 33; and Case C-419/04 *Conseil général de la Vienne* [2006] ECR I-5645, paragraph 19).

44 Nevertheless, the Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to confirm its own jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the 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 (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39; Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 19; and *Conseil général de la Vienne*, paragraph 20).

45 That is not the case here.

46 It is clear that this reference for a preliminary ruling concerns rules of Community law. In the present case, the Court is not called upon to interpret national law or a

judgment of a national court but to make clear the extent to which national courts are required under Community law to exclude the application of national law. The questions submitted therefore appear to relate to the subject-matter of the main proceedings, as defined by the Consiglio di Stato, and the answers to the questions submitted may be useful to that court in enabling it to rule on the annulment of the measures taken to recover the aid in question.

47 The Court therefore has jurisdiciton to rule on the present reference for a preliminary ruling.

The questions referred for a preliminary ruling

48 By its questions, which it is appropriate to consider together, the national court asks essentially whether Community law precludes the application of a provision of national law, such as Article 2909 of the Italian Civil Code, which seeks to lay down the principle of *res judicata* in so far as the application of that provision prevents the recovery of State aid granted in breach of Community law which has been found to be incompatible with the common market in a Commission decision which has become final.

49 Against that background, it should be noted as a preliminary point that, within the Community legal order, the jurisdiction of national courts is limited both in the field of State aid and as regards jurisdiction to declare Community acts invalid.

The jurisdiction of national courts in regard to State aid

50 Proceedings concerning State aid may be commenced before national courts requiring those courts to interpret and apply the concept of aid contained in Article 87(1) EC, in particular in order to determine whether State aid introduced without observance of the preliminary examination procedure provided for in Article 88(3) EC ought to have been subject to this procedure (Case 78/76 *Steinike & Weinlig* [1977] ECR 595, paragraph 14, and Case C-354/90 *Fédération nationale du commerce extérieur des produits alimentaires and Syndicat national des négociants et transformateurs de saumon* [1991] ECR I-5505, paragraph 10). Similarly, in order to be able to determine whether a State measure established without taking account of the preliminary examination procedure laid down by Article 6 of the third code should or should not be made subject to that procedure, a national court may have occasion to interpret the concept of aid referred to in Article 4(c) of the ECSC Treaty and Article 1 of the third code (see, by analogy, Case C-390/98 *Banks* [2001] ECR I-6117, paragraph 71).

51 On the other hand, national courts do not have jurisdiction to give a decision on whether State aid is compatible with the common market.

52 It is settled case-law that the assessment of the compatibility of aid measures or of an aid scheme with the common market falls within the exclusive competence of the Commission, subject to review by the Community Courts (see *Steinike & Weinlig*, paragraph 9; *Fédération nationale du commerce extérieur des produits alimentaires and Syndicat national des négociants et transformateurs de saumon*, paragraph 14; and Case C-39/94 *SFEI and Others* [1996] ECR I-3547, paragraph 42).

The jurisdiction of national courts to declare Community acts invalid.

53 While national courts may, in principle, have occasion to consider whether a Community act is valid, they nonetheless have no jurisdiction themselves to declare acts of Community institutions invalid (Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 20). The Court of Justice alone therefore has jurisdiction to determine that a Community act is invalid (Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraph 17, and Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 27). That exclusive jurisdiction is also expressly set out in Article 41 of the ECSC Treaty.

54 Moreover, it is settled case-law that a decision adopted by a Community institution which has not been challenged by its addressee within the time-limit laid down by the fifth paragraph of Article 230 EC becomes definitive as against that person (see, inter alia, Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833, paragraph 13, and Case C-241/01 *National Farmers' Union* [2002] ECR I-9079, paragraph 34).

55 The Court has also held that it is not possible for a recipient of State aid forming the subject-matter of a Commission decision addressed directly solely to the Member State of that beneficiary, who could undoubtedly have challenged that decision and who allowed the mandatory time-limit laid down in this regard by the fifth paragraph of Article 230 EC to pass, effectively to call in question the lawfulness of that decision before the national courts in an action brought against the measures taken by the national authorities in implementation of that decision (*TWD Textilwerke Deggendorf*, paragraphs 17 and 20, and *National Farmers' Union*, paragraph 35). The same principles necessarily apply *mutatis mutandis* within the scope of application of the ECSC Treaty.

56 It must therefore be held that the Consiglio di Stato was right to refuse to refer to the Court a question concerning the validity of Decision 90/555, a decision which Lucchini could have challenged, but failed to do so, within the period of one month following publication of that decision by virtue of Article 33 of the ECSC Treaty. For those same reasons, Lucchini's request asking the Court in the alternative to determine of its own motion whether that decision is valid cannot be accepted.

The jurisdiction of the national courts in the main proceedings

57 It is apparent from the foregoing considerations that neither the Tribunale civile e penale di Roma not the Corte d'appello di Roma had jurisdiction to determine whether the State aid sought by Lucchini was compatible with the common market and that neither of those courts could have invalidated Decision 90/555 declaring that aid incompatible with the common market.

58 It may also be noted that the judgment of the Corte d'appello di Roma, the authority of which as a final judgment is invoked, does not, to any greater extent than the judgment of the Tribunale civile e penale di Roma, expressly rule on the compatibility of the State aid sought by Lucchini with Community law or the lawfulness Decision 90/555.

The application of Article 2909 of the Italian Civil Code

59 According to the national court, Article 2909 of the Italian Civil Code precludes not only the reopening, in a second set of proceedings, of pleas in law which have

already been expressly and definitively determined but also precludes the examination of matters which could have been raised in earlier proceedings but were not. One of the consequences of such an interpretation of that provision may be that effects are attributed to a decision of a national court which exceed the limits of the jurisdiction of the court in question as laid down in Community law. It is clear, as the Consiglio di Stato has observed, that the effect of applying that provision, interpreted in such a manner, in the present case would be to frustrate the application of Community law in so far as it would make it impossible to recover State aid that was granted in breach of Community law.

60 In that context, it should be noted that it is for the national courts to interpret, as far as it is possible, the provisions of national law in such a way that they can be applied in a manner which contributes to the implementation of Community law.

61 It also follows from settled case-law that a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation (see, inter alia, Case 106/77 *Simmenthal* [1978] ECR 629, paragraphs 21 to 24; Case 130/78 *Salumificio di Cornuda* [1979] ECR 867, paragraphs 23 to 27; and Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraphs 19 to 21).

62 As stated at paragraph 52 above, the assessment of the compatibility of aid measures or of an aid scheme with the common market falls within the exclusive competence of the Commission, subject to review by the Community Courts. That rule applies within the national legal order as a result of the principle of the primacy of Community law.

63 The answer to the questions referred must therefore be that Community law precludes the application of a provision of national law, such as Article 2909 of the Italian Civil Code, which seeks to lay down the principle of *res judicata* in so far as the application of that provision prevents the recovery of State aid granted in breach of Community law which has been found to be incompatible with the common market in a decision of the Commission which has become final.

Costs

64 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 (Grand Chamber) hereby rules:

Community law precludes the application of a provision of national law, such as Article 2909 of the Italian Codice Civile (Civil Code), which seeks to lay down the principle of *res judicata* in so far as the application of that provision prevents the recovery of State aid granted in breach of Community law which has been found to be incompatible with the common market in a decision of the Commission of the European Communities which has become final.

[Signatures]