Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

30 June 2016*

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Article 47 — Right of access to a court — Principle of equality of arms — Principles of equivalence and effectiveness — Proceedings for the enforcement of a judicial decision ordering the repayment of a tax levied in breach of EU law — Exemption of public authorities from certain legal costs — Jurisdiction of the Court)

In Case C-205/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Judecătoria Sibiu (Sibiu District Court, Romania), made by decision of 17 February 2015, received at the Court on 30 April 2015, in the proceedings

Direcția Generală Regională a Finanțelor Publice Brașov

v

Vasile Toma,

Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci,

THE COURT (Second Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, C. Toader, A. Rosas, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— Mr Toma, by D. Târşia, avocat,

— the Romanian Government, by R.H. Radu and by R. Mangu and M. Bejenar, acting as Agents,

— the Spanish Government, by M. García-Valdecasas Dorrego, acting as Agent,

— the French Government, by G. de Bergues, F.-X. Bréchot and D. Colas, acting as Agents,

— the Polish Government, by B. Majczyna, acting as Agent,

* Language of the case: Romanian.

— the European Commission, by L. Nicolae and H. Krämer, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 20, 21 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and of Article 4(3) TEU.

2 The request has been made in proceedings between the Direcția Generală Regională a Finanțelor Publice Brașov (the Regional Directorate-General of Public Finances of Brașov, Romania), represented by the Administrația Județeană a Finanțelor Publice Sibiu (Regional Public Finance Administration of Sibiu, Romania) ('the Office of Public Finances'), and Mr Vasile Toma and the Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci (office of the judicial officer Horațiu-Vasile Cruduleci) regarding the enforcement of a judicial decision ordering the repayment of a tax levied at the time of the first registration of a vehicle in Romania.

Romanian law

3 Article 16 of the Constituția României (Romanian Constitution), entitled 'Equality before the law', provides in paragraph 1:

'Citizens are equal before the law and public authorities, without privilege or discrimination.'

4 The Ordonanța de urgență a Guvernului nr. 50 pentru instituirea taxei pe poluare pentru autovehicule (Government Emergency Order No 50 introducing a pollution tax for motor vehicles) of 21 April 2008 (*Monitorul Oficial al României*, Part I, No 327 of 25 April 2008, 'OUG No 50/2008'), which entered into force on 1 July 2008, established a pollution tax for vehicles of categories M1 to M3 and N1 to N3. That tax was payable, in particular, at the time of the first registration of a motor vehicle in Romania.

5 Article 1 of the Ordonanța de urgență a Guvernului nr. 80 privind taxele judiciare de timbru (Government Emergency Order No 80 relating to judicial stamp duties) of 26 June 2013 (*Monitorul Oficial al României*, Part I, No 392 of 29 June 2013, 'OUG No 80/2013') provides:

'1. Actions and applications brought before the courts and applications submitted to the Ministry of Justice and the Prosecutor's Office attached to the High Court of Cassation and Justice shall be subject to payment of court stamping fees provided for in this Emergency Order.

2. Court stamping fees shall be payable, subject to the conditions laid down in this Emergency Order, by all legal and natural persons, and constitutes payment for the services provided by the courts, by the Ministry of Justice and by the Prosecutor's Office attached to the High Court of Cassation and Justice.

3. Where expressly provided for by law, actions and applications brought before the courts and applications submitted to the Ministry of Justice and the Prosecutor's Office attached to the High Court of Cassation and Justice shall be exempt from court stamping fees.'

6 Article 2 of that order provides:

‘Court stamping fees shall be applied on a variable basis, depending on whether or not the subject-matter [of the application] can be assessed in monetary terms, subject to the exceptions provided for by law.’

7 Under Article 30 of that order:

‘1. The following shall be exempt from court stamping fees: actions and applications, whatever the cause of action, including applications for review, brought in accordance with the law by the Senate, the Chamber of Deputies, the Office of the President of Romania, the Romanian Government, the Constitutional Court, the Romanian Court of Auditors, the Legislative Council, the Ombudsman, the Public Prosecutor’s Office and the Ministry of Finance, as well as those brought by other public institutions, in any procedural capacity, where they are concerned with public revenues.

2. For the purposes of this Emergency Order, “public revenues” shall include revenues accruing to the State budget, the State social security budget, local budgets, the budgets of special funds, including that of the health insurance fund, the budget of the Public Treasury, revenues from the reimbursement of external loans and also interest and commission associated with the Public Treasury, revenues accruing to the budgets of public institutions totally or partially funded by the State budget, local budgets, the State social security budget and the budgets of special funds, where appropriate, revenues accruing to the budget of funds from external loans arranged or guaranteed by the State, where reimbursement, interest and other costs are paid from public funds and revenues accruing to the budget of non-repayable external funds.’

8 The Ordonanța Guvernului nr. 92 privind Codul de procedură fiscală (Government Order No 92 on the Code of Fiscal Procedure) of 24 December 2003 (*Monitorul Oficial al României*, Part I, No 941 of 29 December 2003, republished in the *Monitorul Oficial al României*, Part I, No 513 of 31 July 2007), in the version applicable to the main proceedings (‘the Code of Fiscal Procedure’), provides in Article 21, entitled ‘Tax claims’:

‘1. Tax claims constitute property rights which, in accordance with the law, arise from relationships governed by substantive tax law.

2. The legal relationships described in paragraph (1) determine both the content and the amount of tax claims, representing specific rights consisting in:

(a) ... the right to the refund of taxes, duties, contributions and other sums constituting the revenues of the consolidated general budget in accordance with paragraph (4), known as “principal tax claims”;

(b) the right to charge interest and to impose penalties or additional charges for arrears, as appropriate, subject to the conditions laid down by law, known as “ancillary tax claims”.

...

4. Where it is found that sums representing taxes, duties and contributions and other revenues accruing to the consolidated general budget have been paid with no valid basis in law, the person who made the payment under such circumstances shall be entitled to reimbursement of the sum in question.’

9 Article 229 of the Code of Fiscal Procedure, entitled 'Exemption of fiscal authorities from payment of duties and charges', provides:

'The fiscal authorities shall be exempt from payment of duties, charges, commission or securities in respect of applications, actions or any other measures initiated by them for the purpose of managing tax claims, with the exception of measures relating to notification of fiscal administrative acts.'

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

10 It is apparent from the order for reference that, at the time of the registration in Romania of a vehicle registered previously in another Member State, Mr Vasile Toma paid a sum of 4 121 Romanian lei (RON) (around EUR 900) in respect of pollution tax for motor vehicles, pursuant to OUG No 50/2008. By a judgment of 16 October 2012, the Tribunalul Sibiu (Regional Court, Sibiu, Romania) ordered the Administrația Finanțelor Publice Avrig (Avrig Office of Public Finances, Romania) and the Administrația Fondului pentru Mediu (Environment Fund Administration, Romania) to return that sum to Mr Toma, to pay statutory interest relating to that sum and to reimburse the costs.

11 That judgment became final on 22 October 2013 following the rejection by the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania) of the appeal brought by the Serviciul Fiscal Orășenesc Avrig (tax office of the town of Avrig, Romania), which succeeded the Avrig Office of Public Finances.

12 In response to the application for enforcement brought by Mr Toma against the tax office of the town of Avrig and the Environment Fund Administration, the Judecătoria Sibiu (Sibiu District Court) ordered, on 24 March 2014, the enforcement of the obligation resulting from the judgment of the Tribunalul Sibiu (Regional Court, Sibiu) of 16 October 2012, that enforcement being coupled with the award of statutory interest calculated as from 22 March 2012 and until the actual return of the sums due to Mr Toma.

13 By an order of 10 April 2014, the office of the judicial officer Horațiu-Vasile Cruduleci set the enforcement fees at RON 765 (around EUR 170).

14 The Office of Public Finances lodged a statement of opposition against that enforcement, also seeking the annulment of the implementing acts already adopted and a stay of the enforcement proceedings, without having to pay the court stamping fees relating to that opposition or lodge the appropriate security in respect of its application for a stay of those enforcement proceedings.

15 The Office of Public Finances asserted before the referring court that Mr Toma was required, pursuant to the national legislation in force, to submit a request beforehand to the debtor tax authorities seeking repayment of the tax unduly paid, with that request having to be dealt with within a period of 45 days. In a situation where that repayment does not take effect because of a lack of funds, the competent authorities have an additional period of six months to carry out the steps necessary for the fulfilment of its obligation to pay. It is only if the case is not dealt with within those periods that Mr Toma is be entitled to bring the matter before the courts with competence in matters of enforcement.

16 Having regard to the risk of seeing that repayment take effect in a procedure which, according to the Office of Public Finances, is also unlawful owing to the existence of special provisions laying down a procedure for the repayment of taxes improperly levied by means of a payment in instalments over a period of five years, with any enforcement having to be stayed automatically during that period, those authorities sought the suspension of the enforcement proceedings brought.

17 Mr Toma takes the view that the opposition directed against the enforcement ordered must be dismissed and that, in any event, the Office of Public Finances must pay the court stamping fees relating to its objection to that enforcement and lodge the appropriate security in respect of its application for a stay of the enforcement proceedings. Since the rules concerned lead to discrimination between persons governed by private law, who are required to pay those court costs, and persons governed by public law who, like the Office of Public Finances, are exempted therefrom, they are not compatible with EU law.

18 The referring court, which takes the view that there is indeed unequal treatment of persons governed by private law and persons governed by public law concerning the payment of certain court costs in enforcement proceedings relating to public revenues, raises the question of the compatibility of that difference in treatment with EU law, in so far as it facilitates access to justice by persons governed by public law in relation to persons governed by private law.

19 In those circumstances, the Judecătoria Sibiu (Sibiu District Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘On a proper construction of Article 4(3) TEU and Articles 20, 21 and 47 of the Charter, do those provisions preclude legislation such as Article 16 of the [Romanian] Constitution and Article 30 of [OUG No 80/2013], which enshrines the principle of equality before the law only as between citizens as natural persons and not between citizens as natural persons and legal persons governed by public law, and which, *a priori*, exempts legal persons governed by public law from the requirement to pay stamping fees and to lodge a security in order to gain access to justice, whilst making access to justice by natural persons conditional upon payment of stamping fees and the lodging of a security?’

Consideration of the question referred

The jurisdiction of the Court of Justice

20 The Romanian, Spanish, French and Polish Governments claim that the Court of Justice does not have jurisdiction to answer the question referred due to the fact that the legal situation giving rise to the case in the main proceedings does not fall within the scope of EU law. Moreover, the Spanish Government points out that it is for the referring court to state the link existing between the provisions of EU law whose interpretation is sought and the situation at issue in the main proceedings.

21 In that regard, it should be observed that the question referred relates to Article 4(3) TEU, which establishes the principle of sincere cooperation, under which the Member States are to take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the European Union (judgment of 12 April 2011 in *DHL Express France*, C-235/09, EU:C:2011:238, paragraph 58, and Opinion 2/13 of 18 December 2014, EU:C:2014:2454, paragraph 173), and to several provisions of the Charter.

22 As for the provisions of the Charter, it should be recalled that, in the context of a request for a preliminary ruling under Article 267 TFEU, the Court may interpret Union law only within the limits of the powers conferred upon it (judgment of 27 March 2014 in *Torralbo Marcos*, C-265/13, EU:C:2014:187, paragraph 27 and the case-law cited).

23 However, the scope of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing Union law. That provision confirms the Court’s settled case-law, which states that the fundamental rights guaranteed in the legal order of the

European Union are applicable in all situations governed by EU law, but not outside such situations (judgments of 27 March 2014 in *Torralbo Marcos*, C-265/13, EU:C:2014:187, paragraphs 28 and 29, and 6 October 2015 in *Delvigne*, C-650/13, EU:C:2015:648, paragraphs 25 and 26).

24 Thus, where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (see judgments of 26 February 2013 in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 22; 27 March 2014 in *Torralbo Marcos*, C-265/13, EU:C:2014:187, paragraph 30 and the case-law cited; and 6 October 2015 in *Delvigne*, C-650/13, EU:C:2015:648, paragraph 27).

25 In consequence, it is necessary to examine whether the legal situation which gave rise to the main proceedings falls within the scope of EU law.

26 In that regard, it is apparent from the information provided by the referring court that the purpose of the main proceedings concerns the enforcement of a judicial decision ordering the repayment of a pollution tax for motor vehicles improperly levied by public authorities at the time of the first registration, in Romania, of a vehicle belonging to Mr Toma and previously registered in another Member State.

27 In that context, it should be recalled that, by judgments of 7 April 2011 in *Tatu* (C-402/09, EU:C:2011:219) and 7 July 2011 in *Nisipeanu*, (C-263/10, unpublished, EU:C:2011:466), the Court declared a tax such as the pollution tax for motor vehicles payable pursuant to OUG No 50/2008 to be incompatible with Article 110 TFEU in all its forms.

28 Thus, since the purpose of the main proceedings concerns the repayment of a tax levied in breach of Article 110 TFEU and the Member States are required, pursuant to the principle of sincere cooperation, to repay such a tax and the corresponding interest while ensuring effective protection of the individual's right to repayment (see, by analogy, judgments of 27 June 2013 in *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraphs 35 and 36, and 12 December 2013 in *Test Claimants in the Franked Investment Income Group Litigation*, C-362/12, EU:C:2013:834, paragraph 31), it must be held that the legal situation at issue in the main proceedings constitutes an implementation of EU law and falls within the scope of EU law.

29 In those circumstances, the Court has jurisdiction to answer the question referred.

Substance

30 As a preliminary point, it should be noted that, in the context of the procedure established by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. With this in mind, the Court may have to reformulate the questions referred to it (judgment of 17 December 2015 in *Viamar*, C-402/14, EU:C:2015:830, paragraph 29 and the case-law cited).

31 In that regard, it should be observed that the referring court has doubts, within the context of proceedings for the enforcement of a judicial decision relating to the repayment of a tax levied in breach of EU law, as to the compatibility with EU law of provisions such as Article 30 of OUG No 80/2013 and Article 229 of the Code of Fiscal Procedure, which, according to that court, constitute a concrete expression of the principle of equality laid down in Article 16 of the Romanian Constitution, and which provide for exemptions from the payment of court stamping fees and the lodging of a security applicable to the requests made by the public authorities, whereas applications which are submitted by natural persons are not, in principle, exempted therefrom.

32 It should be recalled in that context, in the first place, that the right to a refund of taxes levied by a Member State in breach of rules of EU law is the consequence and complement of the rights conferred on individuals by provisions of EU law prohibiting such taxes, as interpreted by the Court. The Member States are therefore required in principle to repay charges levied in breach of EU law, together with interest (see, to that effect, judgments of 14 April 2015 in *Manea*, C-76/14, EU:C:2015:216, paragraph 45, and 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraphs 24 and 25).

33 In the absence of EU rules on the recovery of national taxes unduly levied, it is for each Member State, in accordance with the principle of procedural autonomy, to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions at law for safeguarding the rights which taxpayers derive from EU law (see, inter alia, judgment of 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraph 26 and the case-law cited).

34 The detailed procedural rules governing actions for safeguarding an individual's rights under EU law must thus be no less favourable than those governing similar domestic actions (the principle of equivalence) and must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by EU law (the principle of effectiveness) (see, inter alia, judgment of 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraph 27 and the case-law cited).

35 In the second place, as regards Articles 20, 21 and 47 of the Charter, to which the referring court refers in its question, it should be observed that those provisions enshrine, respectively, the principles of equality before the law, non-discrimination and effective judicial protection.

36 The Court has already stated that Article 47 of the Charter includes, as a component of the principle of effective judicial protection, the principle of equality of arms or procedural equality (see, to that effect, judgment of 17 July 2014 in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 48). Since the latter principle constitutes a specific expression of the general principle of equality before the law found in Article 20 of the Charter, it is appropriate to examine the questions of the referring court set out in paragraph 31 of the present judgment from, in particular, the perspective of Article 47.

37 Concerning Article 21 of the Charter, it should be observed that the referring court does not state the reasons which led it to raise the question of the interpretation of that provision separately from that of Article 20 of the Charter or the link which it establishes between Article 21 and the national legislation applicable to the dispute in the main proceedings, and thus does not explain why it has doubts as to the compatibility of legislation such as that at issue in the main proceedings with Article 21 of the Charter.

38 In the light of those preliminary considerations, the question referred must be understood as meaning that the referring court is essentially asking whether Article 47 of the Charter and the principles of equivalence and effectiveness must be interpreted as precluding legislation such as that at issue in the main proceedings which exempts legal persons governed by public law from judicial stamping fees when they lodge an objection to the enforcement of a judicial decision relating to the repayment of taxes levied in breach of EU law and exempts those persons from the obligation to lodge the security provided for at the time of the bringing of the application for a stay of such enforcement proceedings, while the applications submitted by legal and natural persons governed by private law in the context of such procedures remain, in principle, subject to court costs.

39 Given that the question referred for a preliminary ruling falls within the context, inter alia, of effective judicial protection, in so far as it concerns national legislation laying down exemptions from certain court costs in favour of certain categories of persons, it is necessary to examine, in the first place, the

compatibility of legislation such as that at issue in the main proceedings with Article 47 of the Charter, which enshrines the right to such protection (see, to that effect, judgment of 22 December 2010 in *DEB*, C-279/09, EU:C:2010:811, paragraph 29).

40 In that connection, according to the explanations relating to Article 47 of the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the interpretation of the Charter, the first and second paragraphs of Article 47 of the Charter correspond to Article 6(1) and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ('the ECHR').

41 Article 52(3) of the Charter states that, in so far as it contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights is to be the same as those laid down by that convention. According to the explanations relating to that provision, the meaning and scope of the guaranteed rights are determined not only by the text of the ECHR, but also, in particular, by the case-law of the European Court of Human Rights, in the light of which Article 47 of the Charter should therefore be interpreted (see, to that effect, judgment of 22 December 2010 in *DEB*, C-279/09, EU:C:2010:811, paragraphs 35 and 37 and the case-law cited).

42 So far as concerns the content of Article 47, the Court has already held that the principle of effective judicial protection laid down in that provision comprises various elements: in particular, the principle of equality of arms and the right of access to a court (see, to that effect, judgment of 6 November 2012 in *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 48).

43 As regards the right of access to a court, the European Court of Human Rights has already held that that right, within the meaning of Article 6 of the ECHR, would be illusory if a Contracting State's legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party; the execution of a judgment must therefore be regarded as an integral part of the 'trial' for the purposes of Article 6 (ECtHR, 7 May 2002, *Bourdov* v. *Russia*, CE:ECHR:2002:0507JUD005949800, § 34, and ECtHR, 6 September 2005, *Săcăleanu* v. *Romania*, CE:ECHR:2005:0906JUD007397001, § 55).

44 That said, it is apparent from the case-law of the Court of Justice and from the case-law of the European Court of Human Rights that the right of access to a court is not an absolute right and that, consequently, it may involve proportionate restrictions that pursue a legitimate aim and do not adversely affect the very essence of that right, including restrictions linked to the payment of court costs (see, to that effect, judgments of 22 December 2010 in *DEB*, C-279/09, EU:C:2010:811, paragraphs 45, 52 and 60, and 6 October 2015 in *Orizzonte Salute*, C-61/14, EU:C:2015:655, paragraphs 72 and 79, and ECtHR, 8 June 2006, *V.M.* v. *Bulgaria*, CE:ECHR:2006:0608JUD004572399, § 41 and 42 and the case-law cited).

45 In the present case, it should be observed that the referring court does not provide any information to suggest that Mr Toma's access to a court, in the main proceedings, was hindered disproportionately because of the obligation to pay court costs that were too high, in relation either to the procedure in which he obtained the judicial decision recognising his right to repayment of a tax levied in breach of EU law or to the enforcement proceedings relating to that decision, or because he was improperly denied legal aid.

46 That being the case, it is necessary to examine whether legislation such as that at issue in the main proceedings, which creates, according to the referring court, an imbalance between legal persons governed by public law and legal and natural persons governed by private law in a procedure such as that at issue in the main proceedings, but does not disproportionately hinder those latter persons' access to courts, satisfies the requirements stemming from Article 47 of the Charter.

47 In that regard, it should be observed that the principle of equality of arms is a corollary of the very concept of a fair hearing, which implies that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent, the harm caused by that imbalance having as a general rule to be proved by the person who suffered it (see, to that effect, judgments of 6 November 2012 in *Otis and Others*, C-199/11, EU:C:2012:684, paragraphs 71 and 72, and 17 July 2014 in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 49).

48 It is indeed the case that legislation which exempts legal persons governed by public law from the payment of certain court costs, whereas natural persons do not qualify, *a priori*, for such an exemption, establishes a distinction between those persons so far as concerns the procedural treatment of their applications submitted in a procedure such as that in the main proceedings. That said, in accordance with the case-law recalled in paragraph 47 of this judgment, it remains necessary to determine whether such legislation places a person such as Mr Toma at a disadvantage vis-à-vis his opponent, so far as concerns the judicial protection of the rights on which he can justifiably rely under EU law and whether it thus adversely affects the fairness of such a procedure.

49 In that context, it should be observed, in the first place, that the court costs contribute, in principle, to the proper functioning of the judicial system, since such costs constitute a source of funding the judicial activities of the Member States (judgment of 6 October 2015 in *Orizzonte Salute*, C-61/14, EU:C:2015:655, paragraph 73). As is apparent from Article 1(2) of OUG No 80/2013, and as the Romanian Government confirmed in its written observations, that is the objective pursued by the court stamping fees covered by the exemption established in Article 30 of that order, since those stamping fees contribute to the financing of the services provided by the courts.

50 In the light of that objective, the Court must concur with what is said by the Romanian, Spanish, French and Polish Governments and by the European Commission, that the exemption from the court stamping fees enjoyed by legal persons governed by public law in procedures such as that at issue in the main proceedings does not secure by itself a procedural advantage for those legal persons since, as the Romanian Govenment stated, the payment of those fees by such persons is attributed to the consolidated national budget, which also finances the services provided by the courts.

51 As regards, in the second place, the exemption from lodging a security required at the time of bringing an application for a stay of enforcement proceedings concerning tax claims, such as that provided for in Article 229 of the Code of Fiscal Procedure, that security, according to the Romanian Government, constitutes a guarantee for the creditor who initiated the enforcement proceedings, since those proceedings may be interrupted by an application for a stay of proceedings submitted by a debtor who may subsequently be unable to discharge his debt owing to his insolvency or his bankruptcy.

52 As is apparent from paragraph 32 of this judgment, Member States are required under EU law to repay, with interest, taxes levied in breach of EU law. Consequently, it is inconceivable that a Member State, in its capacity as debtor in a dispute such as that in the main proceedings, may rely on a lack of funds in order to justify the impossibility of executing a judicial decision that recognises an individual's right to repayment of taxes levied in breach of EU law, together with interest.

53 Since the risk covered by the security cannot materialise in a procedure such as that in the main proceedings, the exemption that is the subject of Article 229 of the Code of Fiscal Procedure cannot, consequently, cause the position of a person such as Mr Toma to be weaker than that of his opponent.

54 Therefore, it must be held that legislation such as that at issue in the main proceedings, in so far as it merely exempts, *a priori*, legal persons governed by public law from the payment of certain court costs in procedures relating to the enforcement of judicial decisions concerning the repayment of taxes levied in breach of EU law, while subjecting, in principle, the applications submitted by natural and

legal persons governed by private law in such procedures to the payment of those costs, does not place those persons in a clearly less advantageous position compared with their opponents and therefore does not call into question the fairness of that procedure.

55 Such an interpretation of Article 47 of the Charter is supported by the case-law of the European Court of Human Rights relating to Article 6(1) of the ECHR. Legislation such as that at issue in the main proceedings must be distinguished from legislation considered by the European Court of Human Rights to be incompatible with the requirements of Article 6(1) of the ECHR in the case which gave rise to the judgment of the European Court of Human Rights of 6 April 2006 in *Stankiewicz* v. *Poland* (CE:ECHR:2006:0406JUD004691799).

56 The legislation at issue in that case not only exempted the public prosecutor's department from the court costs — a situation which could, according to the European Court of Human Rights, be justified by the protection of public order — but also had the effect of requiring the successful private party to pay all its procedural costs, thus placing it in an unduly unfavourable situation in relation to its opponent (ECtHR, 6 April 2006, *Stankiewicz* v. *Poland*, CE:ECHR:2006:0406JUD004691799, § 68 and 69). Legislation such as that at issue in the present case in the main proceedings does not have such an effect.

57 As regards, in the second place, compliance with the principles of equivalence and effectiveness, it should be observed that there is nothing in the file available to the Court to permit a conclusion that the application of the legislation at issue in the main proceedings to disputes based on the infringement of EU law differs from its application to similar disputes based on an infringement of national law, and thus infringes the principle of equivalence (see, in respect of the content of the principle of equivalence, judgments of 12 February 2015 in *Surgicare*, C-662/13, EU:C:2015:89, paragraph 30 and the case-law cited, and 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraph 32).

58 The same applies in relation to the principle of effectiveness where national legislation such as that at issue in the main proceedings, in so far as it does not exempt individuals who derive their rights from the EU legal order from costs such as those at issue in the main proceedings, in enforcement proceedings relating to public revenues, does not seem to make, by itself, the exercise of those rights impossible in practice or excessively difficult.

59 It follows from all the foregoing that Article 47 of the Charter and the principles of equivalence and effectiveness must be interpreted as not precluding legislation such as that at issue in the main proceedings which exempts legal persons governed by public law from judicial stamping fees when they lodge an objection to the enforcement of a judicial decision relating to the repayment of taxes levied in breach of EU law and exempts those persons from the obligation to lodge a security at the time of bringing an application for a stay of such enforcement proceedings, while the applications submitted by legal and natural persons governed by private law in the context of such procedures remain, in principle, subject to court costs.

Costs

60 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) rules as follows:

Article 47 of the Charter of Fundamental Rights of the European Union and the principles of equivalence and effectiveness must be interpreted as not precluding legislation such as that at issue in the main proceedings which exempts legal persons governed by public law from judicial stamping fees when they lodge an objection to the enforcement of a judicial decision relating to the repayment of taxes levied in breach of EU law and exempts those persons from the obligation to lodge a security at the time of bringing an application for a stay of such enforcement proceedings, while the applications submitted by legal and natural persons governed by private law in the context of such procedures remain, in principle, subject to court costs.

[Signatures]