OPINION OF ADVOCATE GENERAL LÉGER

delivered on 17 June 2003 [1]

1. Does Community law preclude a national administrative body from refusing a claim for payment based on Community law on the ground that the claim seeks to call into question a prior administrative decision which has become final, following the dismissal of an action for the annulment of the decision by a judicial decision which has the legal authority of a final judgment, although that final decision is based on an interpretation of Community law which was invalidated by the Court in a subsequent preliminary ruling?

2. That, in substance, is the question of principle raised by the College van Beroep voor het bedrijfsleven (Netherlands) in connection with a dispute concerning the tariff classification of poultrymeat and concerning the amount of export refunds arising in the exporter's favour.

I — The legal context

A — *The Community legislation*

3. Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat [2] established a system of refunds for exports to non-member countries. This system is intended to ensure the competitiveness of European products on the world market thanks to a reduction in the export price (which, being generally high within the European Community, is reduced to the level of the current world market price) and to ensure a fair standard of living for the agricultural community concerned, by the payment of certain sums (or refunds) to exporters, corresponding to the said difference in prices.

4. The amount of the refunds depends on the tariff classification of the exported

1 — Original language: French.

2 — OJ 1975 L 282, p. 77.

products. The list of products for which an export refund is granted and the amount of the refund are laid down by a Commission regulation for a period of approximately three months, taking account of developments in the markets in question. Five regulations of this type have accordingly been applied during the period relevant to the dispute in the main proceedings (from December 1986 to December 1987). [3]

B — *The national legislation*

5. Article 4:6 of the Algemene wet bestuursrecht (General Law on Administrative law) [4] includes certain provisions concerning the re-examination of an administrative decision. Paragraph 1 of the said article states that '[w]here an application has, whether entirely or partly, been the subject of a decision of refusal, a further application may be made only on condition that the applicant shows new facts or a change of circumstances'. Paragraph 2 adds that '[i]f no new fact or change of circumstances is relied on, the administrative body may refuse the application by referring to its earlier decision of refusal'.

3 — Commission Regulations (EEC) Nos 3176/86 of 17 October 1986 (OJ 1986 L 295, p. 14); 267/87 of 28 January 1987 (OJ 1987 L 26, p. 33); 1151/87 of 27 April 1987 (OJ 1987 L 111, p. 21); 2800/87 of 18 September 1987 (OJ 1987 L 268, p. 47), and 3205/87 of 27 October 1987 (OJ 1987 L 306, p. 7), fixing export refunds in the poultrymeat sector.

4 — Law of 4 June 1992 (Stbl. 1992, p. 315), amended on a number of occasions, in particular on 12 December 2001 (Stbl. 2001, p. 664).

6. In addition, under Article 8:88, paragraph 1, of the said Law, '[t]he court may, on application by one party, review a final judgment taking account of facts or circumstances which:

(a) occurred before the judgment;

(b) were not known, and could not reasonably have been known, by the applicant before the judgment was delivered and,

(c) if the court had been aware of them, could have led it to deliver a different judgment'.

II — The facts and the main proceedings

7. From December 1986 to December 1987 Kühne & Heitz NV ('Kühne & Heitz'), a company established in the Netherlands, lodged several declarations with the Netherlands customs authorities in order to obtain export refunds relating to consignments of poultrymeat. The goods had been declared as falling under tariff subheading 02.02 B II e) 3, which applies to

'legs and cuts of legs of other poultry (than turkeys)', according to the nomenclature referred to by Regulations Nos 3176/86, 267/87, 1151/87, 2800/87 and 3205/87.

8. In accordance with the tariff description of the products shown in the various declarations, the Productschap voor Pluimvee en Eieren ('the PVV') [5] paid Kühne & Heitz the amounts claimed by way of export refunds and then released the bond provided by the latter to guarantee the pre-financing of the said amount, that is to say, payment before the goods were exported ('the first decision'). [6]

9. On 1 March 1990, after the nature of the exported products had been checked, the PVV ordered the exporter to repay NLG 970 950.98 and to reinstate the bond which had been released ('the second decision'). The reason given was that a number of the export declarations lodged by the exporter had given an incorrect tariff description of the products in question, which had led to an error in determining the amount of the refunds and the payment of more than the exporter had been entitled to claim. As the chicken legs in question had included part of the back, they ought to have been shown as falling under tariff subheading 02.02 B II ex g ('other'), which was a residual subheading applying to non-deboned poultry parts not specifically covered by any other subheading. [7]

10. Kühne & Heitz lodged a complaint concerning this decision and objected to refunding the alleged over-payment of export refunds. The PVV ruled that the complaint was unfounded by a decision of 13 December 1990 ('the third decision').

11. The exporter brought an action for the annulment of the third decision before the College van Beroep. [8] By judgment of 22 November 1991 the action was dismissed on the ground that the only products which could be classified under subheading 02.02 B II e) 3 in the contested

5 — This organisation covers the joint-trade associations for the sectors of cattle, meat and eggs which have the object of defending the interests of persons working in those sectors.

6 — The sequence of the various administrative decisions which are called into question in this case is highlighted for the sake of easy reference and to facilitate understanding of the facts and the main proceedings.

7 — It appears from Regulations Nos 3176/86, 267/87, 1151/87, 2800/87 and 3205/87, which were applicable during the material period, that the refunds in respect of subheading 02.02 B II ex g are one half to one third of those for subheading 02.02 B II e) shown in the contested declarations.

8 — This court, known as the Administrative Court for Trade and Industry, is the only court with jurisdiction for disputes concerning the legality of decisions made by joint-trade associations such as the PVV. Although it is not of a higher degree than any other court in this field, it acts as a supreme court because no judicial appeal lies against its judgments.

declarations were products which were strictly in accordance with the wording in the annexes to the relevant regulations, namely those limited to 'legs and cuts of legs', excluding any other part. Chicken legs to which a part of the back remained attached did not meet those exact conditions and should have been classified under the residual subheading 02.02 B II ex g, not the heading used in the contested declarations.

12. On this point the College van Beroep took the view that, in the light of their wording, the interpretation of the tariff subheadings left no reasonable doubt which would justify a reference for a preliminary ruling. It observed that the situation in question differed from that in an earlier case before it concerning the interpretation of Commission Regulation (EEC) No 2787/81 of 25 September 1981 fixing the export refunds on beef and veal. [9] As the College van Beroep considered that, in view of their wording, there was reasonable doubt as to the meaning and scope of certain subheadings, it had decided on that occasion to request a preliminary ruling from the Court. [10]

13. In the judgment in Case C-151/93 *Voogd Vleesimport en -export* [1994] ECR I-4915, [11] the Court held that 'a [chicken] leg to which a piece of back remains attached must... be described as a leg, within the meaning of tariff subheadings 02.02 B II e) 3 of the old nomenclature and 0207 41 51 000 of the new, if that piece of back is not sufficiently large to give the product its essential character'. [12] The Court added that '[t]o determine whether that is so, in the absence of Community rules at the material time, it is for the national court to take into account national commercial practices and traditional cutting methods'. [13]

14. Relying on this judgment, on 13 December 1994 and 3 January 1995 Kühne & Heitz sent the PVV a claim for the payment of certain sums corresponding to the export refunds which arose from December 1986 to December 1987 and the repayment of which had allegedly been wrongly claimed from it, together with the statutory interest on those amounts ('the first head of claim'). It also claimed a sum corresponding to the refunds arising after December 1987 to which allegedly it would have been entitled if the poultrymeat pieces

9 — OJ 1981 L 271, p. 44.

10 — The Court replied to that question in the judgment in Case 327/82 *Ekro* [1984] ECR 107.

11 — This judgment was delivered in reply to a question referred for a preliminary ruling from a Netherlands criminal appeal court, following the conviction at first instance of a company for entering allegedly inaccurate tariff headings on a number of export forms in order to obtain funds when exporting poultrymeat to non-member States.

12 — Paragraph 20. The old nomenclature in question is that annexed to Regulations Nos 267/87, 1151/87 and 2800/87 (also applicable in the main proceedings).

13 — Paragraph 21.

had been correctly classified under tariff subheading 02.02 B II e) 3, in accordance with the Court's interpretation of the nomenclature in the *Voogd Vleesimport en -export* judgment cited above ('the second head of claim').

15. The PVV rejected the entire claim by a decision of 11 May 1995 ('the fourth decision'). The exporter lodged a complaint with the PVV in respect of this decision, which was also dismissed by a decision of 21 July 1997 ('the fifth decision' or 'the contested decision').

16. The contested decision is based on the following reasoning so far as the first head of claim is concerned. First of all, in general the judgments of the Court of Justice took effect only for the future. There are direct effects only in cases where a national court has not already given a decision. Furthermore, whether and, if so, to what extent a decision of the College van Beroep (such as the judgment of 22 November 1991) is still open to review falls within the exclusive jurisdiction of that national court. Finally, with regard to the second head of claim, it is stated that the refunds in question were granted on the basis of the exporter's own declarations and that the exporter had not complained in respect of the corresponding decisions.

17. Kühne & Heitz brought an action for the annulment of this decision before the College van Beroep.

18. According to the applicant company, the first head of claim sought only a new administrative decision following a re-examination of the substance of the situation in question in the light of the new fact or change of circumstances constituted by the *Voogd Vleesimport en -export* judgment cited above, in accordance with the procedure laid down in Article 4:6, paragraph 1, of the Algemene wet bestuursrecht. It was not a request for a review of the judicial decision in question. In the alternative, the applicant contends that, in view of the judgments cited above, *Ekro* and *Voogd Vleesimport en -export*, the PVV and the College van Beroep were in serious breach of Community law, which entitled the applicant to redress for the damage it had suffered, in the form of recovery of the refunds which it had wrongly repaid. The applicant also claims a right to redress in support of the second head of claim for the recovery of the additional refunds which it was entitled to claim for exports after December 1987.

19. The PVV resists the exporter's claims. Regarding the first head of claim, it contends that the College van Beroep judgment of 22 November 1991 has acquired the

legal force of a judicial decision and cannot, under Netherlands law, be reviewed by reason of a subsequent judgment of the Court of Justice and that, in any case, it cannot be said that there is a sufficiently serious breach of Community law within the meaning of the *Brasserie du Pêcheur*, *Factortame* [14] and *Hedley Lomas* [15] case-law.

III — The question referred

20. In view of the parties' submissions, the College van Beroep decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Under Community law, in particular under the principle of Community solidarity contained in Article 10 EC, and in the circumstances described in the grounds of this decision, is an administrative body required to reopen a decision which has become final in order to ensure the full operation of Community law, as it is to be interpreted in the light of a subsequent preliminary ruling?'

21. This question relates to the applicant company's first head of claim. The circumstances of the case to which reference is made are as follows. [16] First, the said company had exhausted the remedies available to it. Secondly, the College van Beroep judgment of 22 November 1991 had adopted an interpretation of Community law which had been found contrary to that subsequently given by the Court of Justice in the *Voogd Vleesimport en -export* judgment, cited above. Thirdly, the College van Beroep had refrained from requesting a preliminary ruling from the Court on that occasion, taking the view at the time (wrongly, in its view) that it was entitled to refrain from doing so in the light of the Court's existing case-law on the subject. [17] Fourth, the applicant company is said to have made representations to the authorities immediately after learning of the *Voogd Vleesimport en -export* judgment.

22. It follows that the national court's question seeks to establish whether Community law requires the reconsideration and, if necessary, the withdrawal of a national administrative decision by the body making that decision if, when the decision has become final after domestic remedies have been exhausted, it is found to be contrary to Community law as interpreted by the Court in a later preliminary ruling.

14 — Joined Cases C-46/93 and C-48/93 [1996] ECR I-1029.
15 — Case C-5/94 [1996] ECR I-2553.
16 — See point 6.4, 10th paragraph, of the order for reference.
17 — See in particular the *Ekro* judgment, cited above.

23. The order for reference shows that the College van Beroep is, in a general way, concerned with the question whether the reconsideration or withdrawal of an administrative decision, traditionally regarded as a mere possibility in Netherlands law, may be mandatory under Community law. [18]

24. On this point the national court observes that the contested decision may be annulled only on the ground that it is based on a misinterpretation of national law because, contrary to the impression given by the decision, there is no rule of Netherlands law which, in principle, prevents an administrative body from reconsidering a decision which it has taken, even where the decision has become final when the remedies against it have been exhausted and even where there are no new facts or changed circumstances.

25. That being so, the national court considers that annulment of the contested decision would be useful and appropriate only if it were certain that the PVV had not only the *power* to reconsider its earlier decision but also the *duty* to reexamine whether there was a right to a refund for all the goods exported and, if so, the amount of such refund. If, under Community law, the PVV had an obligation to reconsider the decision, there would be all the more reason for annulling the contested decision. [19]

26. In this connection, the facts of the case and the main proceedings show that the contested decision is based on the assumption that judgments giving preliminary rulings can have direct effects only in cases where a national court has not yet given a (final) judgment. Respect for the legal authority of a judicial decision is said to prevent a national authority from granting a new application seeking to call into question an earlier administrative decision which has become final following the dismissal by a court of the proceedings against that decision.

27. The reference in the contested decision to the question whether and, if so, to what extent, the judgment of the College van Beroep of 22 November 1991 is still open to review under domestic law must be understood in the light of that assumption. In the framework of the main proceedings the PVV asserts that the exceptional remedy of review is excluded because, under Article 8:88 of the Algemene Wet Bestuursrecht, it would require a fact which came to light before the College van Beroep delivered judgment, whereas the *Voogd Vleesimport en -export* judgment was

18 — See point 6.4, third paragraph, of the order for reference.

19 — See point 6.4, second and third paragraphs, of the order for reference.

delivered by the Court of Justice after that date. [20] According to the PVV, it follows that the College van Beroep judgment has acquired 'the force of a judicial decision' and therefore cannot be called into question. [21] In those circumstances, there was no reason to grant the exporter's new application even if the poultry parts in question now had to be classified differently [22] in accordance with the *Voogd Vleesimport en -export* judgment.

28. Consequently I think the question from the national court should be understood as seeking to establish whether, in substance, Community law, and in particular Article 10 EC, prevents a national administrative body from refusing to grant a claim for payment based on Community law on the ground that the claim seeks to call into question a prior administrative decision which has become final, following the dismissal of an action for the annulment of the decision by a decision which has the legal authority of a final judicial decision, although that final decision is based on an interpretation of Community law which was invalidated by the Court in a subsequent preliminary ruling.

20 — See point 5, third paragraph, of the order for reference.
21 — Ibid.
22 — Ibid.

29. Finally, to dispose of any doubt as to the meaning and scope of the question referred, it must be borne in mind that it does not relate to the liability, if any, of the Member State concerned by reason of an alleged breach of Community law. That is a different question which has not been asked by the national court. Furthermore, as the Netherlands Government pointed out at the hearing, the College van Beroep has no jurisdiction to give a ruling on that point because the civil courts have exclusive jurisdiction for disputes concerning liability.

IV — The parties' observations

30. Kühne & Heitz submits that the second decision (ordering the repayment of the refunds in question), which was not criticised by the College, failed to take account of the Court's existing case-law at the time (in particular the *Ekro* judgment, cited above) which was subsequently confirmed by the *Voogd Vleesimport en -export* judgment. The exporter's main argument is that the PVV has an obligation to reconsider the second decision because that is the only legal means available (after the exhaustion of domestic remedies) or at least the most effective for giving full effect to Community law (being shorter and less costly than an action for redress on the basis of the liability of the Netherlands State). Alternatively, the exporter contends that the Member State concerned is liable for a

serious breach of Community law by reason primarily of the acts of the court (the College van Beroep) and, secondarily, the acts of the administrative body (the PVV).

31. The PVV argues that an obligation to reconsider administrative decisions, particularly in the circumstances of the present case, would lead to an unacceptable situation for administrative bodies with regard to the principles of legal certainty and the legal authority of a judicial decision. Furthermore, the question of a possible re-examination is largely theoretical in the present case because it is no longer possible to draw the full conclusions from the *Voogd Vleesimport en -export* judgment in the absence of current information on the size of the pieces of back in question.

32. Like the PVV, the Netherlands Government objects to the argument that the Member States have a general obligation to reconsider administrative decisions. Relying on the principles of procedural autonomy and legal certainty, the PVV contends that the fact that judgments which have acquired the force of *res judicata* and administrative decisions which have not been contested or invalidated are final in principle, as laid down in Netherlands law, is consistent with the principles of equivalence and effectiveness developed by the Court. In addition, the circumstances of the present case cannot justify an exception to the principle that the decisions in question were unalterable.

33. According to the French Government, the principle of legal certainty, and also respect for the authority of a final judicial decision (which is an expression of that principle), must take precedence over the principle of legality. This conclusion also has to be accepted in cases where the administrative decision in question has not been appealed against in the ordinary courts or an appeal has been lodged, but is dismissed as out of time. Furthermore, the existence in Community law of an obligation to reconsider a final administrative decision amounts to casting doubt on the principle of procedural autonomy. Consequently the reply to the present question from the national court should be in the negative, subject to observance of the principle of equivalence to which the Member States remain subject in the framework of procedural autonomy.

34. Like the Netherlands and the French Governments, the Commission of the European Communities considers that the reply should be in the negative, either on the basis of legal certainty or that of procedural autonomy, although a slight preference was expressed for the former.

35. So far as the European Free Trade Association is concerned, it also submits that the reply should be in the negative on the ground of procedural autonomy.

V — Discussion

36. A judgment of the Court giving a preliminary ruling concerning interpretation has, in principle, retroactive effect, like a judgment in proceedings for a preliminary ruling declaring a Community act invalid. [23]

37. It has consistently been held that 'the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177 of the Treaty [now Article 234 EC], the Court of Justice gives to a rule of Community law clarifies and defines... the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force'. [24]

38. As a judgment giving a preliminary ruling is purely declaratory and does not establish a new legal situation, it 'takes effect [in principle] from the date on which the rule interpreted entered into force'. [25] As the Court has previously held in the cases cited above, 'it follows that the rule as so interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction, are satisfied'. [26]

39. This principle makes it possible to avoid divergences in the interpretation of Community law over time, to the detriment of its uniform application and full effect. It is necessarily in keeping with the objective of the preliminary ruling procedure, which is to ensure, by means of cooperation between courts, the uniform application of Community law by all the Member States. [27]

40. Only exceptionally, and for the first time in the judgment in the *Defrenne* case, has the Court reserved the right (going

23 — See the judgment in Case C-228/92 *Roquette Frères* [1994] ECR I-1445, paragraph 17.

24 — This principle was laid down by the judgments in Case 61/79 *Denkavit Italiana* [1980] ECR 1205, paragraph 16, and Joined Cases 66/79, 127/79 and 128/79 *Salumi and Others* [1980] ECR 1237, paragraph 9, and has been reaffirmed on many occasions, in particular by the judgments in Case 811/79 *Ariete* [1980] ECR 2545, paragraph 6; Case 826/79 *Mireco* [1980] ECR 2559, paragraph 7; Case 309/85 *Barra and Others* [1988] ECR 355, paragraph 11; Case 24/86 *Blaizot and Others* [1988] ECR 379, paragraph 27; Case C-62/93 *BP Soupergaz* [1995] ECR I-1883, paragraph 39; Joined Cases C-367/93 to C-377/93 *Roders and Others* [1995] ECR I-2229, paragraph 42; Case C-137/94 *Richardson* [1995] ECR I-3407, paragraph 31; Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 141; Joined Cases C-197/94 and C-252/94 *Bautiaa and Société Française Maritime* [1996] ECR I-505, paragraph 47; Case C-188/95 *Fantask and Others* [1997] ECR I-6783, paragraph 36; Case C-231/96 *Edis* [1998] ECR I-4951, paragraph 15; Case C-262/96 *Sürül* [1999] ECR I-2685, paragraph 107; Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 50, and Case C-347/00 *Barreira Pérez* [2002] ECR I-8191, paragraph 44.

25 — See the *Richardson* judgment, cited above, paragraph 33.

26 — See the cases cited in footnote 24 above.

27 — See in particular the judgments in Case 166/73 *Rheinmühlen* [1974] ECR 33, paragraph 2, and Case 283/81 *Cilfit and Others* [1982] ECR 3415, paragraph 7. The requirement of uniformity in the application of Community law is particularly imperative where the validity of a Community act, and not merely its interpretation, is in question. See, to that effect, the judgment in Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 15.

beyond the wording of Article 234 EC)[28] to limit the retroactive effect of judgments giving preliminary rulings on questions of interpretation, having regard to important considerations of legal certainty affecting all the interests involved, both public and private.[29]

41. As was later emphasised in the judgments cited above, *Roders and Others* and *Bautiaa and Société Française Maritime*, 'the Court has taken such a step only in certain specific circumstances',[30] adding that these arose 'where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force, and where it appeared that both individuals and national authorities had been led into adopting practices which did not comply with Community law by reason of objective, significant uncertainty regarding the implications of Community provisions, to which the conduct of other Member States or the Commission may even have contributed'.[31] Only in such circumstances may the Court 'be moved to restrict for any person concerned the opportunity of relying upon the provision as thus interpreted with a view to calling in question those legal relationships'.[32]

42. It has consistently been held that 'such a restriction may... be allowed only in the actual judgment ruling upon the interpretation sought'.[33] The reason for this is that 'the fundamental need for a general and uniform application of Community law implies that it is for the Court of Justice alone to decide upon the temporal restrictions to be placed on the interpretation which it lays down'.[34]

43. In the present case, it must be observed that the Court did not limit the temporal effect of its *Voogd Vleesimport en -export* judgment, cited above. It follows that it necessarily has retroactive effect, so that it may be applied to legal relations arising and established before the judgment, in

28 — Article 231 EC provides that the Court may, if it considers this necessary, state which of the effects of a regulation which it has declared void are to be considered as definitive. There are no comparable provisions in the Treaty with regard to preliminary rulings concerning validity or interpretation.

29 — Case 43/75 [1976] ECR 455, paragraphs 69 to 75.

30 — *Roders and Others*, paragraph 43, and *Bautiaa and Société Française Maritime*, paragraph 48.

31 — Ibid.

32 — Since the *Defrenne* judgment, cited above, the Court has been moved to impose such a restriction in only a few cases. See, to that effect, the judgments in Case C-262/88 *Barber* [1990] ECR I-1889; Case C-163/90 *Legros and Others* [1992] ECR I-4625; Case C-126/94 *Cadi Surgelés and Others* [1996] ECR I-5647; Case C-437/97 *EKW and Wein & Co.* [2000] ECR I-1157, and the *Blaizot and Others*, *Bosman* and *Süzül* judgments, cited above. In such cases the Court generally takes care not to exclude the retroactive effect of its judgments giving preliminary rulings in relation to the parties to the main proceedings and persons who, before the date when such judgments were given, institute legal proceedings or raise an equivalent claim.

33 — See the judgments cited above: *Denkavit Italiana* (paragraph 18), *Ariete* (paragraph 8), *Mireco* (paragraph 9), *Blaizot and Others* (paragraph 28), *Legros and Others* (paragraph 30), *Bosman* (paragraph 42) and *EKW and Wein & Co.* (paragraph 57).

34 — Ibid.

particular the legal relations established between Kühne & Heitz and the PVV in connection with the exports referred to by the contested declarations (from December 1986 to December 1987).

44. In my opinion, the PVV ought to have drawn the appropriate conclusions from that judgment. It should not have rejected the applicant's claim based on the interpretation of the relevant regulations, given by the Court on that occasion, merely on the ground that this was precluded by respect for the legal authority of a judicial decision, because the claim sought to call into question a prior administrative decision which had become definitive following the dismissal of an application for its annulment by a decision of the ordinary courts which had the legal authority of a judicial decision. [35]

45. It must be observed that the Court has emphatically stated that 'any provision of a national legal system and any legislative, administrative or judicial practice which might impair the effectiveness of Community law by withholding from the national court having jurisdiction to apply such law the power to do everything necessary at the moment of its application to set aside national legislative provisions which might prevent Community rules from having full force and effect are incompatible with those requirements, which are the very essence of Community law'. [36]

46. This vigorous affirmation is based on the principles of direct applicability [37] and the primacy of Community law. [38]

47. It is also based on certain provisions of the Treaty, in particular Article 10 EC. In the *Factortame and Others* judgment the Court observed that 'it is for the national courts, in application of the principle of cooperation laid down in Article 5 of the EEC Treaty [now Article 10 EC], to ensure the legal protection which persons derive from the direct effect of provisions of Community law'. [39] This reference to the provisions of Article 10 EC occurs again in the judgment in *Francovich and Others* [40] to justify the obligation of Member States to make good damage caused to individuals as a result of breaches of Community law for which the State can be held responsible. In this connection the Court observed that, under Article 10 EC, 'the Member States

35 — To be precise, we should speak of the legal authority of a (final) judicial decision rather than the legal authority of a judicial decision. No appeal lies against decisions of the College van Beroep (save for a special application to reopen the proceedings). For the distinction between the two concepts, see paragraph 96 of my Opinion of 8 April 2003 in Case C-224/01 *Köbler*, pending before the Court.

36 — See the judgments in Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 22, and Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 20.

37 — See the *Simmenthal* (paragraphs 14 to 16) and *Factortame and Others* (paragraph 18) judgments, cited above.

38 — See the *Simmenthal* (paragraphs 17 and 18) and *Factortame and Others* (paragraph 18) judgments, cited above.

39 — Paragraph 19.

40 — Joined Cases C-6/90 and C-9/90 [1991] ECR I-5357.

are required to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations under Community law.' [41] The Court added that 'among these is the obligation to nullify the unlawful consequences of a breach of Community law.' [42]

48. As we know, the *Simmenthal* and *Factortame* judgments concerned the connection between the national court and national law. It is interesting to note that the national rules at issue in those two cases were far from insignificant. One was a principle of the constitution, the other was deeply rooted in the internal legal system in question.

49. The *Simmenthal* case involved an Italian rule to the effect that any conflict between a national law and a provision of Community law had to be resolved by the Corte Costituzioniale (Constitutional Court) (Italy) and not by the national courts, whose role was limited to raising the question whether the law at issue was unconstitutional.

50. It must be observed that the conflict in that case had been revealed by an earlier judgment giving a preliminary ruling in reply to a question from the same national court in the context of an action for the recovery of money unlawfully paid. In that connection the Court pointed out that the effectiveness of Article 234 EC 'would be impaired if the national court were prevented from forthwith applying Community law in accordance with the decision or the case-law of the Court'. [43]

51. On the basis of the principles of direct applicability and the primacy of Community law, as well as Articles 10 EC and 234 EC, the Court observed that 'a national court which is called upon, within the limits 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, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provision by legislative or other constitutional means'. [44]

52. The *Factortame* case was concerned with a traditional common-law rule that the English courts had no power to order interim relief suspending the application of statutes, even where there was reasonable

41 — See the *Francovich and Others* judgment, cited above, paragraph 36.

42 — Ibid.

43 — See the *Simmenthal* judgment, paragraph 20.

44 — Ibid., paragraph 24.

doubt as to whether they were consistent with Community law, with the result that the national court requested a preliminary ruling on a question of interpretation.

53. In the continuation of the *Simmenthal* case the Court observed that the effectiveness of the system established by Article 234 EC 'would be impaired if a national court, having stayed proceedings pending the reply by the Court of Justice to the question referred to it for a preliminary ruling, were not able to grant interim relief until it delivered its judgment following the reply given by the Court of Justice'. [45] Likewise the Court held that 'a national court which, in a case before it concerning Community law, considers that the sole obstacle which precludes it from granting interim relief is a rule of national law must set aside that rule'. [46]

54. It is not only the national courts, but also administrative bodies which are under a duty to set aside any national rule which is an obstacle to the full effectiveness of Community law.

55. Even before the *Simmenthal* judgment the Court had held, in the case of *Commission* v *Italy*, [47] that the effect of Community law, as found by a previous judgment concerning failure to fulfil Treaty obligations, 'is a prohibition having the full force of law on the competent national authorities against applying a national rule recognised as incompatible with the Treaty and, if the circumstances so require, an obligation on them to take all appropriate measures to enable Community law to be fully applied'. [48]

56. In that case the Italian authorities were alleged to have continued to collect a statutory national tax although the Court had already had occasion to find that the tax was unlawful in the context of a previous judgment concerning failure to fulfil Treaty obligations.

57. It must be observed that the Court pointed out that the argument that the infringement of a directly applicable Community rule can be terminated only by the adoption of measures constitutionally appropriate to repeal the legislative provision establishing the tax 'would amount to saying that the application of the Community rule is subject to the law of each Member State and more precisely that this application is impossible where it is contrary to a national law'. [49] The Court added that 'the attainment of the objectives of the Community requires that the rules of

45 — See the *Factortame* judgment, paragraph 22.

46 — Ibid., paragraph 23.

47 — Case 48/71 [1972] ECR 529.

48 — See the judgment in *Commission* v *Italy*, cited above, paragraph 7.

49 — Ibid., paragraph 6.

Community law... are fully applicable at the same time and with identical effects over the whole territory of the Community without the Member States being able to place any obstacles in the way'. [50] Similarly, the Court stated that 'the grant made by Member States to the Community of rights and powers in accordance with the provisions of the Treaty involves a definitive limitation on their sovereign rights and no provisions whatsoever of national law may be invoked to override this limitation'. [51]

58. It follows from this case-law that administrative bodies must refrain from applying any national rule, even of a constitutional nature, if it creates an obstacle to the effective application of Community law. The Court has on numerous occasions reaffirmed this obligation on the part of administrative bodies and has drawn a parallel with that of the national courts. [52]

59. In this connection the *Larsy* judgment, cited above, merits special attention because it addresses the question of the application by national administrative bodies of the rule concerning the legal authority of a judicial decision. That question is very similar to the question arising in the present case.

60. Although it is somewhat tiresome to set out the facts of the case and the main proceedings, it is useful to mention them so as to have a clear understanding of the meaning and scope of the Court's reply on that point.

61. The question arose in the context of proceedings brought by an individual against a Belgian social security authority concerning his entitlement to a retirement pension. After granting him a full pension, the administrative authority reduced his entitlement because the French authorities had already granted him a retirement pension. He then challenged the administrative decision in question before the Tribunal de Travail de Tournai (Labour Tribunal, Tournai), Belgium, which dismissed the action. As the judgment was not served, it did not become final.

62. A short time later, a similar action was brought before the same court by the brother of the person concerned, who was in a comparable situation. The court decided to request a preliminary ruling from the Court of Justice on a number of questions relating to overlapping benefits and their calculation by the competent institutions of the Member States. In accordance with the judgment given by the Court on that occasion, the national court granted the application by the brother of the person concerned.

63. Relying on the judgment giving the preliminary ruling, the person concerned asked the competent authority to put his

50 — Ibid., paragraph 8.

51 — Ibid., paragraph 9.

52 — See the judgments in Case 103/88 *Fratelli Costanzo* [1989] ECR 1839, paragraph 33; Case C-101/91 *Commission v Italy* [1993] ECR I-191, paragraph 24, and Case C-118/00 *Larsy* [2001] ECR I-5063, paragraph 52.

situation in order. He was given partial satisfaction in that his entitlement was reviewed so that he received a full pension, but it was made only partly, and not fully, retrospective (pursuant to certain provisions of a Community regulation on social security which should not have been applied). The person concerned appealed against the judgment of the Tribunal de Travail, claiming damages from the Belgian State on the ground that it was liable by reason of the alleged breach of Community law by the administrative body.

64. In that context the body in question contended that the alleged breach of Community law was justified by the fact that a national rule requiring respect for the legal authority of a judicial decision prohibits the body from amending the administrative decision in question by giving it retrospective affect.

65. On that point the Court observed that this argument was undermined by the fact that the body in question had reviewed his rights with partly retroactive effect. [53] That being so, the Court did not leave the matter there. It took care to point out that 'to the extent that national procedural rules [concerning respect for the legal authority of a judicial decision] precluded effective protection of Mr Larsy's [the person concerned] rights derived under the direct effect of Community law, Inasti [the authority in question] should have disapplied those provisions'. [54] The Court based this statement on the primacy of Community law, placing it in the context of the continued development of the settled case-law cited above concerning the functions of the national courts and authorities, those judgments having been given by virtue of the same principle. [55]

66. In my opinion, the Court's reply in the *Larsy* case can be transposed fully to the situation in the main proceedings here, even if the national judicial decision on which the administrative body relied (in the *Larsy* case) was not final when that body made the contested decision, so that it merely had the legal authority of *res judicata*, and not the authority of a final judgment, as is the case here. I consider that this difference concerning the effect of a judicial decision is not decisive. The primacy of Community law is a principle which must be obeyed with the same force by administrative authorities, regardless of whether they are concerned with a decision having the authority of *res judicata* or a decision having the authority of a final judgment. [56] The primacy principle prevents a national administrative body from refusing an individual's claim for payment

53 — See the *Larsy* judgment, cited above, paragraph 54.

54 — Ibid., paragraph 53.

55 — Ibid., paragraphs 51 and 52.

56 — In my Opinion on the *Köbler* case, cited above, paragraph 106, I had occasion to observe that, by virtue of the principle of the primacy of Community law, a national rule, such as that of respect for *res judicata*, cannot be enforced against an individual in order to defeat an action for redress based on Community law, where loss or damage is caused by a decision of a supreme court in breach of Community law.

based on Community law on the ground that the claim seeks to call into question a prior administrative decision which has not been criticised by a judicial decision, irrespective of whether it has the legal authority of *res judicata* or that of a final judgment.

67. This conclusion is also dictated in the light of the principle of direct applicability and the provisions of Article 10 EC, in the further development of the *Simmenthal* and *Factortame* judgments cited above, and in parallel with the *Francovich* judgment, also cited above.

68. In my view, the foregoing observations do not tend to call into question the principle of procedural autonomy as hitherto formulated and applied by the Court.

69. In this connection it must be observed that this principle was formulated in relation to limitation periods within which proceedings must be brought, particularly in actions for the recovery of money unduly paid.[57] The Court has also applied the principle in relation to certain conditions for State liability in cases of infringement of Community law[58] and to the role of the national courts in raising points of Community law of their own motion.[59]

70. I conclude from that case-law that the principle of procedural autonomy should be applied in the context of asserting before the courts a right based on Community law and not in an action concerning the actual existence of such a right. Moreover, it must be borne in mind that to extend the scope of the principle of procedural autonomy beyond the present context would amount to making the existence of rights based on Community law dependent on the current state of the domestic legislation of the different Member States. It would be difficult to reconcile this situation with the requirements inherent in the very nature of Community law, namely the principles of primacy and uniform application. In this connection it must be said that the Court did not take that path in order to develop a right of redress for individuals which is directly based on Community law.

71. In view of the foregoing, I consider that the principle of procedural autonomy should not be applied in connection with the possible recognition that individuals

57 — See the judgments in Case 33/76 *Rewe* [1976] ECR 1989, paragraph 6; Case 45/76 *Comet* [1976] ECR 2043, paragraph 19, and also *Fantask and Others*, paragraph 52, and *Edis*, paragraph 26, both cited above.

58 — See the *Francovich* Case, paragraphs 42 and 43, and *Brasserie du Pêcheur and Factortame*, paragraph 67, cited above.

59 — See the judgments in Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraphs 12 et seq., and Joined Cases C-430/93 and C-431/93 *Van Schijndel and Van Veen* [1995] ECR I-4705, paragraph 17 et seq.

have a right such as that consisting in obtaining the examination by an administrative body of the substance of a claim for payment based on Community law, as interpreted by the Court in a preliminary ruling, even where that claim seeks to call into question a prior administrative decision which has become final.

72. On the other hand, it must be observed that, in accordance with the Court's settled case-law concerning procedural autonomy, the Member States may, for the sake of the principle of legal certainty, require a claim for payment based on Community law, such as that which is the subject of the main proceedings, to be raised (before the competent authority) within a reasonable period. [60]

73. It follows from these observations that my assessment in no way seeks to call into question the principle of procedural autonomy.

74. Likewise I would stress that my assessment does not aim to compel administrative bodies to withdraw their decisions or courts to review their judgments which have the authority of a final judgment where such decisions or judgments are based on an interpretation of Community law which was invalidated by the Court in a subsequent preliminary ruling. I merely consider that Community law precludes a national administrative body from refusing a payment claim based on Community law, as interpreted by the Court in a judgment giving a preliminary ruling, merely on the ground that to allow the claim would be contrary to a national rule of respect for the legal authority of a final judgment. If such a claim were allowed by the administrative body, that would not necessarily entail the withdrawal of the prior administrative decision or a review of the judicial decision in question. Accordingly it is for the Member States to take measures for that purpose, if they deem it necessary.

75. Consequently the reply to the present question from the national court should be that the principles of direct applicability and the primacy of Community law, and also the provisions of Article 10 EC, preclude a national administrative body from refusing an individual's claim for payment based on Community law on the ground that the claim seeks to call into question a prior administrative decision which has become final, following the dismissal of an action for the annulment of the decision by a decision which has the legal authority of a final judgment, although that final decision is based on an interpretation of Community law which was invalidated by the Court in a subsequent preliminary ruling.

60 — Regarding time-limits for bringing legal proceedings, see the judgments cited above: *Rewe* (paragraphs 5 and 7); *Comet* (paragraphs 17 and 18); *Denkavit Italiana* (paragraph 23); *Fantask and Others* (paragraph 48); *Edis* (paragraph 20), and the judgments in Case C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 28, Case C-90/94 *Haahr Petroleum* [1997] ECR I-4085, paragraph 48, and *Roquette Frères*, cited above, paragraphs 22 and 36.

VI — Conclusion

76. In view of the foregoing assessment as a whole, I propose that the Court reply as follows to the question from the College van Beroep voor het bedrijfsleven:

77. 'The principles of direct applicability and the primacy of Community law, and also the provisions of Article 10 EC, preclude a national administrative body from refusing an individual's claim for payment based on Community law on the ground that the claim seeks to call into question a prior administrative decision which has become final, following the dismissal of an action for the annulment of the decision by a decision which has the legal authority of a final judgment, although that final decision is based on an interpretation of Community law which was invalidated by the Court in a subsequent preliminary ruling.'