JUDGMENT OF THE COURT (Fifth Chamber)
29 June 1988 *

In Case 240/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal de grande instance (Regional Court), Lille, for a preliminary ruling in the proceedings pending before that court between

Christian Deville, residing in Bachy (France),

and

Administration des impôts (Tax Administration), in the person of the directeur des services fiscaux (Chief Tax Inspector) for the département du Nord, Lille (France),

on the interpretation of the general principles of Community law governing the repayment of national taxes levied in breach of Community law,

THE COURT (Fifth Chamber),

composed of G. Bosco, President of Chamber, U. Everling, Y. Galmot, R. Joliet and F. Schockweiler, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Christian Deville, the plaintiff in the main proceedings, by J. Durand, avocat, in the written procedure and by M. Desurmont, avocat, in the oral procedure,

the French Government by R. de Gouttes and G. de Bergues, acting as Agents, in the written procedure and by G. de Bergues, acting as Agent, and P. Nachbauer, expert, in the oral procedure,

* Language of the Case: French.

the Irish Government by A. Plunkett, acting as Agent, in the oral procedure

the Commission of the European Communities by J. F. Buhl, acting as Agent, in the written and oral procedure,

having regard to the Report for the Hearing and further to the hearing on 19 April 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 31 May 1988,

gives the following

Judgment

1 By a judgment of 29 July 1987, which was received at the Court on 3 August 1987, the tribunal de grande instance (Regional Court), Lille, referred a question to the Court for a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of the general principles of Community law governing the repayment of national taxes levied in breach of Community law.

2 The question was raised in proceedings between Mr Deville and the Tax Administration concerning reimbursement of the special fixed tax that he had paid in respect of his car in 1982, a tax which the Court subsequently declared to be contrary to Article 95 of the EEC Treaty in its judgment of 9 May 1985 Case 112/84 *Humblot* v *Directeur des services fiscaux* [1985] ECR 1367.

3 In order to comply with that judgment the French legislature adopted Article 18 of Law No 85-695 of 11 July 1985 laying down various provisions of an economic and financial nature (*Journal officiel de la République française* of 12 July 1985, p. 7855). That provision abolished the special fixed tax and replaced it with a differential tax based on a vehicle's power-rating for tax purposes. It also enables taxpayers to obtain a refund of the difference between the amount of special tax paid and that of the new differential tax corresponding to the power-rating for tax purposes of their car.

4 The second paragraph of Article 18-V specified the time-limit for submitting claims after the abovementioned judgment as follows: 'Taxpayers who submit a claim after 9 May 1985 may obtain a tax refund determined under the same conditions if the claim is made within the time-limit laid down in Article R 196-1-b of the livre des procédures fiscales (Tax Procedure Code), which begins to run on the date on which the special tax was paid.'

5 Article R 196-1 of the Tax Procedure Code is worded as follows: 'To be admissible, claims (. . .) must be submitted to the administration not later than 31 December of the second year following the year, as the case may be, (a) (. . .); (b) in which the contested tax was paid; (c) in which the event giving rise to the claim occurred.'

6 Mr Deville is the owner of a car of Italian manufacture which has a power-rating for tax purposes exceeding 16 CV. On 10 December 1982 he paid the special fixed tax in respect of that vehicle. On 31 December 1985, that is to say after the judgment which held that the special tax was incompatible with Article 95 of the Treaty, Mr Deville lodged a claim for a refund of the difference between the amount of the special tax paid and the amount of the maximum differential tax levied on cars manufactured in France.

7 The Tax Administration dismissed the claim on the ground that it was out of time because, under the combined provisions of the second paragraph of Article 18-V of the Law of 11 July 1985 and Article R 196-1-b of the Tax Procedure Code, the claim ought to have been submitted by 31 December 1984 at the latest (that is to say by 31 December of the second year following the year in which the contested tax was paid).

8 Mr Deville challenged that decision before the tribunal de grande instance, Lille. He contended that his claim was not out of time because it had been submitted with the time-limit laid down in Article R 196-1-c, that is to say not later than 31 December of the second year following the year in which the event giving rise to the claim occurred. That event was the delivery of the judgment of 9 May 1985 (*Humblot*, cited above). Mr Deville further maintained that if his claim was declared to be out of time, the effects *ratione temporis* of the *Humblot* judgment, which was applicable even to situations which arose before it was given, would be adversely affected.

9 The tribunal de grande instance, Lille, therefore decided to put the following question to the Court:

'Is it in conformity with the general principles of Community law to impose a time-limit, as does the second paragraph of Article 18-V of Law No 85-695 of 11 July 1985, on the effects of the retroactive abolition of the special tax on vehicles with a power-rating for tax purposes exceeding 16 CV which was declared contrary to the provisions of Article 95 of the Treaty of Rome by the judgment of the Court of 9 May 1985 in Case 112/84?'

10 Reference is made to the Report for the Hearing for an account of the written observations submitted by Mr Deville, by the French Government and by the Commission.

11 It should be borne in mind that if a national tax affecting a taxpayer who cannot pass it on to others is levied in breach of the Treaty, the obligation of the Member State in question to reimburse him follows from the direct effect of the Community provision which has been infringed.

12 The Court has consistently held that in the absence of Community rules concerning the refunding of national taxes which have been wrongly levied, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which citizens derive from the direct effect of Community law, it being understood that such conditions cannot be less favourable than those relating to similar actions of a domestic nature, and may not make it impossible in practice to exercise rights which the national courts have a duty to protect (judgments of 16 December 1976 in Case 33/76 *REWE* v *Landwirtschaftskammer Saarland* [1976] ECR 1989 and Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043; judgment of 27 March 1980 in Case 61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit* [1980] ECR 1205; judgment of 9 November 1983 in Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595).

13 It follows from the foregoing that a national legislature may not, subsequent to a judgment of the Court from which it follows that certain legislation is incompatible with the Treaty, adopt a procedural rule which specifically reduces the possibilities of bringing proceedings for recovery of taxes which were wrongly levied under that legislation.

14 In this case, the issue between Mr Deville, the plaintiff in the main proceedings, and the French Government is whether the second paragraph of Article 18-V of the Law of 11 July 1985 reduces the possibilities of bringing proceedings for recovery which would otherwise have been available.

15 Mr Deville claims that in referring to the time-limit laid down in Article R 196-1-b of the Tax Procedure Code ('not later than 31 December of the second year following the year (. . .) in which the contested tax was paid') the provision in question prevents him from availing himself of the time-limit laid down in Article R 196-1-c ('not later than 31 December of the second year following the year in which the event giving rise to the claim occurred'). The event giving rise to Mr Deville's claim was the delivery of the judgment on 5 May 1985 (*Humblot*, cited above).

16 The French Government contended initially that the time-limit for claims laid down in Article R 196-1-b, to which the provision in question refers would have been applicable even in the absence of that provision. That is to say, it argued that a judgment does not constitute an event for the purposes of Article R 196-1-c, and the time-limit laid down in Article R 196-1-b was thus the sole possible time-limit. In reply to a question put by the Court, the French Government acknowledged, however, that in the absence of the provision in question the time-limit laid down in Article R 196-1-c would in fact have been applicable, since the publication of the Law of 11 July 1985 constituted an event for the purposes of Article R 196-1-c.

17 It must be borne in mind that the Court has no jurisdiction to interpret national law. It is for the national court to determine whether the second paragraph of Article 18-V of the Law of 11 July 1985 reduces the possibilities of bringing proceedings for recovery which would otherwise have been available.

18 The reply to the question referred to the Court by the tribunal de grande instance, Lille, must therefore be that a national legislature may not, subsequent to a judgment of the Court from which it follows that certain legislation is incompatible with the Treaty, adopt a procedural rule which specifically reduces the possibilities of bringing proceedings for recovery of taxes which were wrongly levied under that legislation. It is for the national court to determine whether the procedural rule at issue reduces the possibilities of bringing proceedings for recovery which would otherwise have been available.

Costs

19 The costs incurred by the French Government, the Irish Government and the Commission of the European Communities, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds

THE COURT (Fifth Chamber),

in answer to the questions submitted to it by the tribunal de grande instance, Lille, by a judgment of 29 July 1987, hereby rules:

A national legislature may not, subsequent to a judgment of the Court from which it follows that certain legislation is incompatible with the Treaty, adopt a procedural rule which specifically reduces the possibilities of bringing proceedings for recovery of taxes which were wrongly levied under that legislation. It is for the national court to determine whether the procedural rule at issue reduces the possibilities of bringing proceedings for recovery which would otherwise have been available.

Bosco Everling

Galmot Joliet Schockweiler

Delivered in open court in Luxembourg on 29 June 1988.

J.-G. Giraud
Registrar

G. Bosco
President of the Fifth Chamber