REPORT FOR THE HEARING
delivered in Case 240/87 *

I — Facts and procedure

In France, prior to the adoption 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), there were two types of annual tax on motor vehicles: first, a differential tax levied on cars with a power-rating for tax purposes of 16 CV or less and, secondly, a special tax of a fixed and substantially higher amount applied to cars with a power-rating for tax purposes exceeding 16 CV.

Mr Deville, the plaintiff in the main proceedings, is the owner of a car not manufactured in France 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.

In its judgment of 9 May 1985 in Case 112/84 *Humblot* v *Directeur des services fiscaux* [1985] ECR 1367, the Court ruled that a tax with the characteristics of the French special fixed tax was contrary to Article 95 of the EEC Treaty.

In order to comply with that judgment, the French legislature adopted Article 18 of the abovementioned Law of 11 July 1985. That provision abolished the special fixed tax and replaced it with a differential tax based on a vehicle's power-rating for tax purposes. Furthermore, it 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.

The second paragraph of Article 18-V is worded as follows:

'Taxpayers who submit a claim after 9 May 1985 [that is, the date on which the Humblot judgment was given] 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.'

The debates leading to the enactment of the Law of 11 July 1985 (Assemblée nationale, second sitting of 20 June 1985, p. 1824) show that the French legislature adopted the aforesaid provision with the two-fold aim of 'limiting the financial consequences' of the *Humblot* judgment and 'giving effect to the political will to tax high-powered cars more heavily'.

Article R 196-1 of the Tax Procedure Code, to which the second paragraph of Article 18-V of the Law of 11 July 1985 refers, predates the latter provision and governs the time-limits for the submission of claims in fiscal matters.

* Language of the Case: French.

Article R 196-1 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.'

On 31 December 1985, that is to say after the date of the judgment in *Humblot*, 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.

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, by 31 December of the second year following the year in which the contested tax was paid; in this case the tax was paid on 10 December 1982).

Mr Deville challenged that decision before the tribunal de grande instance, Lille. He contended that his claim of 31 December 1985 was not out of time because it had been submitted within the time-limit laid down in Article R 196-1-c of the Tax Procedure Code, that is, before 31 December of the second year following the year in which the event giving rise to the claim occurred. That event was the judgment given in *Humblot* on 9 May 1985. 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.

The national court considered that the interpretation given by the Court to Article 95 in *Humblot* ought to apply to legal relationships which arose before that judgment was given. Nevertheless, the court was uncertain whether, in the light of the express wording of the second paragraph of Article 18-V of the Law of 11 July 1985, Mr Deville's claim should be considered to be out of time. It therefore decided, by judgment of 29 July 1987, to stay the proceedings and refer the following question to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

'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?'

The judgment of the tribunal de grande instance, Lille, was lodged at the Court Registry on 3 August 1987.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were lodged on 26 October 1987 by Christian Deville, the plaintiff in the main proceedings, represented by J. Durand, of

the Lille Bar, on 28 October 1987 by the French Government, represented by R. de Gouttes and G. de Bergues, acting as Agents, and on 29 October 1987 by the Commission of the European Communities, represented by its Legal Adviser J. F. Buhl, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. The Court did, however, decide to put one question to the French Government, to which the latter replied within the period prescribed.

By an order of 20 January 1988, the Court decided, pursuant to Article 95 (1) and (2) of the Rules of Procedure, to assign the case to the Fifth Chamber.

II — Written observations submitted to the Court

Mr Deville points out that it was with the aim of limiting the budgetary consequences of the *Humblot* judgment that the French legislature adopted the second pararaph of Article 18-V of the Law of 11 July 1985. That provision derogates from the French law on fiscal procedure inasmuch as it deprives taxpayers of the right to rely on Article R 196-1-c of the Tax Procedure Code, which states that claims submitted not later than 31 December of the second year following the year in which 'the event giving rise to the claim occurred' are admissible.

The event which gave rise to Mr Deville's claim is the judgment in *Humblot*. It is that judgment which led the French legislature to abolish the special fixed tax and introduce the new tax system. It is significant in that respect that the second paragraph of Article 18-V of the Law of 11 July 1985 makes a distinction between claims submitted before 9 May 1985 and those made after that date, which is precisely the date on which the *Humblot* judgment was given.

In ruling out the possibility of relying on Article R 196-1-c of the Tax Procedure Code, the second paragraph of Article 18-V of the aforementioned law limits the effects of the *Humblot* judgment *ratione temporis*. That provision precludes the bringing of proceedings after the date of that judgment for the repayment of taxes paid before the end of 1982.

The Court has held that only the Court itself may, exceptionally and in the same judgment as that in which it rules on the request for interpretation, set a limit in point of time to the effects of an interpretative judgment (judgment of 27 March 1980 in Joined Cases 66, 127 and 128/79 *Amministrazione delle Finanze* v *Salumi* [1980] ECR 1237).

The second paragraph of Article 18-V of the Law of 11 July 1985 is therefore contrary to Community law and should not be applied.

Accordingly, Mr Deville suggests that the answer to the question submitted for a preliminary ruling should be that the judgment of 9 May 1985 in *Humblot* imposes an obligation on the French State to refund the amounts collected by way of the special fixed tax in respect of the entire period during which the tax was levied.

The French Government recalls that, as the Court has consistently held, it is for the

domestic legal system of each Member State to determine the procedural conditions under which national taxes which have been levied in breach of Community law are to be refunded, subject to the twofold requirement that those conditions may be neither less favourable than those relating to similar actions of a domestic nature nor so adapted as to make it impossible in practice to exercise the rights which the national courts have a duty to protect (judgment of 27 February 1980 in Case 68/79 *Just* v *Ministry for Fiscal Affairs* [1980] ECR 501; judgment of 27 March 1980 in Case 61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit italiana* [1980] ECR 1205; judgment of 10 July 1980 in Case 811/79 *Amministrazione delle Finanze dello Stato* v *Ariete* [1980] ECR 2545).

The second pragraph of Article 18-V of the Law of 11 July 1985 satisfies those two requirements.

First, the procedural conditions laid down in that provision are no less favourable than those governing similar actions of a domestic nature. The time-limit provided for in Article R 196-1-b of the Tax Procedure Code, to which the aforesaid provision refers, is the time-limit generally applicable under national law. As regards the fact that the application of Article R 196-1-c of the Tax Procedure Code is excluded, the French Government states that the *Humblot* judgment cannot in any case constitute for Mr Deville an event within the meaning of that provision. In the first place, that judgment was given in fiscal proceedings concerning another taxpayer and cannot therefore confer a personal right on Mr Deville. Furthermore, that judgment did not give rise to any new right because the rights on which Mr Deville is relying arise from Article 95 itself.

Secondly, the procedural conditions laid down in the second paragraph of Article 18-V do not make it impossible in practice to exercise the right to bring proceedings for recovery. In that regard the French Government refers to the 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, in which the Court held that the fixing under national law of reasonable time-limits within which actions must be brought does not make it impossible in practice to exercise rights which the national courts have a duty to protect. Moreover, in its judgments of 8 April 1976 in Case 43/75 *Defrenne* v *Sabena* [1976] ECR 455 and of 15 January 1986 in Case 41/84 *Pinna* v *Caisse d'allocations familiales de la Savoie* [1986] ECR 1, the Court itself made the right to bring proceedings for the refund of sums relating to periods prior to the date of those judgments subject to the requirement that the persons concerned had instituted legal proceedings before that date.

The French Government therefore proposes that the answer to the question submitted for a preliminary ruling should be that Community law does not preclude the imposition of a time-limit on the right to bring proceedings for a refund since it is for each Member State to fix the conditions under which reimbursement of taxes which have been declared incompatible with Community law may be sought.

The Commission states that although, in the present state of Community law, it is for the domestic legal system of each Member State to determine the procedural conditions under which proceedings may be brought for the recovery of national taxes levied in breach of Community law, the Court has laid down certain requirements in that respect with which those legal systems must comply. In particular, the procedural conditions under which proceedings for recovery may be brought may not be so adapted as to make it impossible in practice to exercise the right to bring such proceedings.

The second paragraph of Article 18-V of the Law of 11 July 1985 is contrary to that requirement inasmuch as it imposes a

time-limit on the right to lodge a claim for the recovery of special taxes unduly paid. To that extent the provision deprives the *Humblot* judgment of its practical effect.

In the Commission's view, the answer to the question submitted for a preliminary ruling should therefore be that the limitation of the effects *ratione temporis* of the retroactive abolition of the special fixed tax declared to be contrary to Article 95 of the EEC Treaty by the *Humblot* judgment is contrary to the general principles of Community law inasmuch as such a limitation deprives the *Humblot* judgment of its practical effect.

III — Reply to a question from the Court

The Court put the following question to the French Government:

'The French Government maintains, on pages 9 and 10 of its observations, that the second paragraph of Article 18-V of the Law of 11 July 1985 does not have the effect of precluding the application of Article R 196-1-c of the Tax Procedure Code because in any event the judgment of the Court of 9 May 1985 in Case 112/84 *Humblot* v *Directeur des services fiscaux* [1985] ECR 1367 does not constitute an event for the purposes of that provision. If that interpretation were accepted, what practical effect would the reference made in the second paragraph of Article 18-V to the time-limit laid down in Article R 196-1-b of the Tax Procedure Code have?'

The French Government replied that the reason for the reference to the time-limit laid down in Article R 196-1-b of the Tax Procedure Code is a concern not to give an advantage to taxpayers who submit a claim after the date of the *Humblot* judgment over those who had taken action before that judgment was given.

The reference to the time-limit in Article R 196-1-b does not prevent the exercise of the rights arising out of the EEC Treaty. Taxpayers who submitted a claim after the date of the *Humblot* judgment were able to rely on the general time-limit for claims laid down in Article R 196-1-b, which began to run from the date of payment of the special tax.

The practical effect of the reference made in the second paragraph of Article 18-V of the Law of 11 July 1985 to the time-limit provided for in Article R 196-1-b of the Tax Procedure Code is to specify the conditions for settling disputes which had not yet arisen at the date of the *Humblot* judgment. It was desirable to specify those conditions for reasons of legal certainty.

R. Joliet
Judge-Rapporteur