OPINION OF ADVOCATE GENERAL STIX-HACKL delivered on 27 April 2006 [1]

I — Introduction

1. This case concerns the interpretation of a provision in the Protocol on the Privileges and Immunities of the European Communities [2] — namely Article 3 on exemption from direct and indirect taxes — which the European Court of Justice has, as yet, considered on only a few occasions. [3]

2. The questions referred to the Court by the Cour d'appel de Bruxelles (Court of Appeal, Brussels) derive from litigation between the European Community, represented by the Commission, and the Belgian State concerning the scope and content of the exemption under Article 3 of the Protocol. In the opinion of the Commission this provision precludes the imposition of a duty such as that in the main proceedings, which is levied in the event of an order to pay money or liquidate securities, the amount of the duty being determined by the sum in question.

II — Legal framework

A — *Community law*

3. Under Article 291 EC the Community enjoys in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol.

4. Article 3 of the Protocol reads:

'The Communities, their assets, revenues and other property shall be exempt from all direct taxes.

1 — Original language: German.

2 — Protocol of 8 April 1965 (J0 1967 152, p. 13) ('the Protocol').

3 — Case C-191/94 *AGF Belgium* [1996] ECR I-1859. The judgment in Case C-220/03 *ECB* v *Germany* [2005] ECR I-10595 concerned Article 3 of the Protocol only indirectly. See finally Case C-437/04 *Commission* v *Belgium*, which is still pending before the Court.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Communities make, for their official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Communities.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.'

B — *National legislation*

5. Article 142 of the Code des droits d'enregistrement (Code of Registration Duties) reads:

'Duty shall be set at 3% in respect of decisions of courts and tribunals, given in all matters, ordering payment of money or liquidation of securities, whether final, provisional, principal, subsidiary or conditional, including court decisions determining priority for creditors in respect of such money and securities. In the case of decisions ordering payment of money or liquidation of securities, duty shall be calculated on the cumulative principal amount arising from those judgments payable by the same person, with no account taken of interest not calculated by the court, and costs. In the case of a decision determining priority for creditors, duty shall be calculated on the total amount distributed to the creditors.'

6. Article 35(3) (as amended by the Law of 22 December 1989) provides:

'The obligation to pay duties arising from decisions of courts and tribunals ... lies with:

1. defendants, in the proportion determined by the decision ordering payment or liquidation or determining priority for creditors made or established against them, and defendants jointly and severally in the event that they are ordered to pay jointly and severally;

2. plaintiffs, in the proportion determined by the decision ordering payment or liquidation or determining priority for creditors obtained by each of them; however that amount shall not exceed half of the amounts of money or securities that each of them receives in payment.

...

Duties and any fines shall be paid within one month from the date of dispatch by registered post of the demand for payment by the collector.'

III — Facts, pre-litigation procedure and questions referred for a preliminary ruling

7. The performance of a contract concluded between the Commission and SA MCFE in 1993 was the subject of litigation in the Tribunal de première instance de Bruxelles (Court of First Instance, Brussels; 'the Tribunal'). By a judgment delivered by that court on 25 January 1994 the Commission was ordered to pay SA MCFE a provisional sum of ECU 269 589 or BEF 10 845 935, together with interest thereon and costs.

8. The collector (9th Office) submitted a payment request to the Commission by registered post on 24 February 1994 regarding the registration duties due in the sum of BEF 325 470 (3% of BEF 10 849 000). On 2 August 1995 the Commission was again asked to pay the aforementioned sum plus a fine for late payment of BEF 32 500. That fine was later increased to BEF 38 000.

9. On 15 January 1996 the collector issued a payment order against the Commission. By that payment order the collector is pursuing recovery of the *droit de condamnation* (a duty payable by the party against whom judgment is given) in the amount of BEF 325 470 as well as a fine for late payment of BEF 70 500 together with interest thereon at the statutory rate and legal costs.

10. In a letter sent by registered post on 19 January 1996 the Commission made it known through its lawyer that it was refusing to pay the said duties, claiming that it was entitled to exemption from the *droit de condamnation*, as with any indirect tax generally, in accordance with Article 3 of the Protocol. On 25 January 1996 the higher national authority dealing with this matter replied that the *droit de condamnation* was not a tax on the purchase of consumer goods but a charge for public utility services.

11. By a letter of 28 April 1997 the Commission's lawyer was informed that the payment order had been upheld by a ministerial decision of 18 April 1997.

12. On 15 July 1997 the European Community, represented by the Commission, lodged an objection with the Tribunal opposing the payment order issued against it by the collector of registry fees and stamp duties on 15 January 1996, declared enforceable on 19 January 1996 and notified on 30 January 1996.

13. The Tribunal declared the opposition admissible but unfounded. It ruled that the *droit de condamnation* was an indirect tax (which was not disputed) and concluded that it was not covered by the first paragraph of Article 3 of the Protocol, which provides for a general exemption from direct taxes, and that it also did not fall within the immunity provided for in the second paragraph relating to indirect taxation, which is made subject to the express condition that indirect taxes and sales taxes are included in the purchase price. According to the court of first instance, in the present case, the *droit de condamnation* is not an element of the price to be paid for the services of SA MCFE since the *droit de condamnation* had not been provided for by an agreement but derived from the judgment ordering payment. The Tribunal also declared that the reference to the Court of Justice sought in relation to the interpretation of the second paragraph of Article 3 of the Protocol was unnecessary.

14. The European Community appealed against that judgment on 14 September 2001.

15. The referring court explains at the outset that the European Community and the Belgian State disagree on the manner in which the second and third paragraphs of Article 3 of the Protocol should be interpreted.

16. Contrary to the view taken by Belgium, that according to the interpretation of the Protocol 'there is no reasonable doubt that the *droit de condamnation* does not fall within the second paragraph of Article 3 of the Protocol ...', so that it is unnecessary to refer a question for a preliminary ruling, the referring court finds that, as regards treaties and international agreements, even that which is clear can require interpretation.

17. The Cour d'appel went on to say that in the *AGF Belgium* case the Court of Justice had given a broad interpretation of the conditions under which indirect taxes and duties may be remitted, without insisting on a literal reading of the wording of the second paragraph of Article 3. The referring court also considers this to be covered by Article 31(1) of the Vienna Convention on [the Law of] Treaties, according to which 'a treaty shall be interpreted ... in the light of its object and purpose'.

18. In the light of the foregoing the Cour d'appel de Bruxelles has submitted the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the second paragraph of Article 3 of the Protocol on the Privileges and Immunities of the European Communities, which provides that the governments of the Member States are to take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes, to be interpreted as meaning that a proportional duty levied in respect of decisions of courts and

tribunals, given in all matters, ordering payment of money or liquidation of securities falls within its scope?

(2) Is the third paragraph of Article 3 of the Protocol on the Privileges and Immunities of the European Communities, which provides that no exemption is to be granted in respect of a mere charge for a public utility service, to be interpreted as meaning that the charge made at the outcome of proceedings to the losing party ordered to pay a specified amount constitutes merely a charge for a public utility service?'

IV — Examination of the questions referred for a preliminary ruling

19. In the first question submitted for a preliminary ruling the referring court asks whether the *droit de condamnation* at issue falls within the scope of application of the second paragraph of Article 3 of the Protocol inasmuch as it is an indirect tax. The second question concerns the possible classification of the *droit de condamnation* as a charge for public utility services within the meaning of the third paragraph of Article 3 of the Protocol.

20. If a duty such as the one at issue here fell within the scope of the third paragraph of Article 3 of the Protocol it would, in any event, be precluded from the exemption provided for in the second paragraph of Article 3 of the Protocol, so that an interpretation of that provision would not then be required. It therefore follows that the second question referred for a preliminary ruling should be dealt with first of all.

A — *The second question submitted for a preliminary ruling*

1. Essential arguments of the parties

21. In the opinion of *Belgium* the *droit de condamnation* is a charge for a public utility service, so that under the third paragraph of Article 3 of the Protocol it is precluded from the immunity. The *Commission* — like the court of first instance — takes the opposite view, as it considers that this is a tax intended to contribute to the general expenses of public authorities.

2. Legal appraisal

22. The Court of Justice first had occasion to consider the term 'charges' used in the third

paragraph of Article 3 of the Protocol in *AGF Belgium*. [4] It noted, first of all, that the third paragraph of Article 3 of the Protocol reflects the distinction –recognised in the national laws of various Member States — between a tax intended to provide for the general expenses of public authorities and a due constituting consideration for a given service.

23. The Court of Justice then went on to say:

'On that point it should be noted that the very concept of consideration for a specific service presupposes that that service is provided, or at least may be provided, to those paying the charge. A contribution cannot therefore constitute mere remuneration for public utility services, within the meaning of the third paragraph of Article 3 of the Protocol, unless such services are provided, or at least are capable of being provided, to those who have to pay the contribution.' [5]

24. As regards the *droit de condamnation* at issue it should be noted that the duty was levied in the course of obtaining the services of the Belgian judicial authorities — that is to say, on or after pronouncement of judgment — so that there appears to be no doubt that a supply of services was obtained, unlike the situation in *AGF Belgium*.

25. Logically speaking, however, a charge for services within the meaning of the exception provided for in the third paragraph of Article 3 of the Protocol presupposes not only the obtaining of a supply of services or the possibility thereof, but also the earmarked use of the funds raised. The Court of Justice did not concern itself with the question of the use of funds in *AGF Belgium* because it was not a problem there: that case concerned an additional levy on insurance premiums intended to contribute to the financing of public interest institutions where payment of the additional levy would not have been grounds for obtaining the supply of a service.

26. In the present case, however, the use to which revenue deriving from the *droit de condamnation* is put must be crucial, as already recognised by the court of first instance.

27. Advocate General Jacobs stated in his Opinion in *AGF Belgium* [6] that the crucial difference between a tax and a charge for a public utility service is that 'a tax [is] a payment to the State out of which general

4 — Cited in footnote 3.

5 — Loc. cit., paragraph 26.

6 — Opinion in *AGF Belgium* (judgment cited in footnote 3), point 31.

public expenditure is intended to be financed' so that 'the benefits that individual taxpayers receive as a result of such expenditure ... [are] not proportionate to the sums paid by them' whereas 'a charge ... [is] the price paid for a specific service. There is a direct link between the charge and the benefit received.'

28. This criterion of a direct link between the service provided and the funding thereof has been applied by the Court of Justice in another context, namely in relation to interpretation of the provision which was the precursor to Article 13 of the Protocol on the Immunity of Officials — Article 12 of the Protocol on the Privileges and Immunities of the European Communities. [7] In that case regarding a Community official the question was whether the imposition of a school levy under the law of the Netherlands came within the immunity provided for in respect of national taxation. The Court ruled that a charge or due representing the consideration for a given service rendered by the public authorities, such as the school levy in question, is not a tax within the meaning of the said provision, especially as it was payable only in respect of non-compulsory education.

29. Advocate General Jacobs pointed out in his Opinion in *AGF Belgium* [8] that enlisting the criterion of a direct relationship is in accordance with the Court's case-law in other areas, 'particularly with its decisions on the interpretation of Community directives on value added tax'. [9]

30. The case-law of the Court of Justice regarding Directive 69/335/EEC [10] also supports this view: Directive 69/335 introduced a capital duty, with Articles 10 and 11 prohibiting the charging of any other taxes on the transactions and capital companies covered by the directive — with the exception of 'duties paid by way of fees or dues' (Article 12(1)(e) of Directive 69/335). Extensive case-law [11] exists on whether duties are 'paid by way of fees or dues', i.e. in relation to charges that allegedly reflect the cost of the service rendered, with the Court of Justice developing a whole range of criteria to distinguish between prohibited charges and permissible duties paid by way of fees or dues. According to that case-law, however, 'charges with no upper limit which increase directly in proportion to the nominal value of the capital raised cannot, by their very

7 — Case 32/67 *Van Leeuwen* [1968] ECR 43.

8 — Opinion cited in footnote 6, point 33.

9 — He made reference there to the judgment in Case 102/86 *Apple and Pear Development Council* [1988] ECR 1443 regarding compulsory membership — subject to a charge — of an organisation for the promotion and improvement of product quality of apples and pears grown in England and Wales. The Court of Justice ruled that these activities did not constitute the 'supply of services ... effected for consideration' within the meaning of Article 2 of the Sixth VAT Directive because there was no direct relationship between the amount of the charge and the benefits to the individual growers.

10 — Council Directive of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412).

11 — See, for example, Joined Cases C-71/91 and C-178/91 *Ponente Carni and Cispadana Costruzioni* [1993] ECR I-1915; Case C-188/95 *Fantask and Others* [1997] ECR I-6783; Case C-56/98 *Modelo I* [1999] ECR I-6427; Case C-19/99 *Modelo II* [2000] ECR I-7213; Case C-206/99 *SONAE* [2001] ECR I-4679; and Joined Cases C-216/99 and C-222/99 *Prisco and CASER* [2002] ECR I-6761.

nature, amount to duties paid by way of fees or dues within the meaning of the directive. Even if there may be a link in some cases between the complexity of a registration and the amount of capital raised, the amount of such charges will generally bear no relation to the costs actually incurred by the authority on the registration formalities.' [12]

31. That principle would seem to be applicable in this case: according to the national provision in question, the *droit de condamnation* is calculated — proportionately — on the basis of the amount of the payment ordered in the judgment. Admittedly, this figure can, in certain circumstances, [13] be the same as the amount claimed but it does not give any indication of the real complexity of the legal issues involved in the judgment concerned, especially as the charge in question is apparently not payable if no judgment ordering payment is pronounced — for instance, if the applicant's claims should be dismissed, even though in that case the judicial authorities have still provided a service. According to the case-law cited above on Article 12 of Directive 69/335 this would mean here that the very manner in which the charge is calculated — on a proportional basis according to the amount of the payment ordered in the judgment — precludes the existence of a charge for the supply of a service.

12 — Case C-134/99 *IGI* [2000] ECR I-7717, paragraph 31, referring to the judgment in *Fantask and Others* (cited in footnote 11), paragraph 31. See also the orders of 24 January 2002 in Case C-45/00 *SONAE Turismo*, OJ 2002 C 109, p. 15, and 21 March 2002 in Case C-264/00 *Gründerzentrum* [2002] ECR I-3333.

13 — ... if the applications are allowed in full.

32. It must nevertheless be concluded that in this case, in any event, the necessary relationship between the service called upon and the funding of that service does not exist because the revenue from the *droit de condamnation* in question is not earmarked for a particular purpose. The revenue from the duty at issue is paid into the general State budget and is therefore not used to finance a specific service on the part of the Belgian judicial authorities.

33. The answer to the second question referred for a preliminary ruling must therefore be that the third paragraph of Article 3 of the Protocol is to be interpreted as meaning that the charge at the outcome of proceedings to the losing party ordered to pay a specified amount does not constitute a charge for a public utility service.

B — *The first question submitted for a preliminary ruling*

1. Essential arguments of the parties

34. The *Commission* takes the view that Article 142 of the Code des droits d'enregistrement introduces a tax which is contrary to the immunity provided for under the second paragraph of Article 3 of the Protocol.

35. In the opinion of the Commission it follows from the Vienna Convention that the Protocol is to be interpreted in the light of its object and purpose. In the present case, the second paragraph of Article 3 of the Protocol refers expressly to the purchase of movable or immovable property made by the Communities, and the Court of Justice has decided that any type of purchase is covered by the remission, including obtaining a supply of services: that excludes a literal interpretation.

36. The intention of the authors of the Protocol was to guarantee the Communities and their assets, revenues and other property exemption from all national taxation or charges, whether they constitute direct or indirect taxes, duties or customs duties.

37. The Commission bases its view on the economic aspect, and goes on to argue that the *droit de condamnation* is thus an element which is added to the price charged by SA MCFE for services rendered, so that it is clearly an indirect tax (which is in reality included in the price to be paid by the Community) within the meaning of the second paragraph of Article 3 of the Protocol. The Commission also considers this to be demonstrated by the fact that a judgment against the Community ordering payment of an amount can be given only in connection with the performance of a contract relating to the purchase of property or the supply of services; judgment cannot be given against the Community in another matter by a national court, since only the Court of Justice has jurisdiction in such cases.

38. Consequently, the *droit de condamnation* is always included in the price of property and services that the Community may acquire for its official use and qualifies for the remission provided for in the second paragraph of Article 3 of the Protocol.

39. The *Belgian Government,* however, considers that the *droit de condamnation* under Article 142 of the Code des droits d'enregistrement is not a tax included in the price of property and services such as would be a requisite for immunity but — as the court of first instance rightly held — a charge deriving from the judgment ordering payment. The reference in the second paragraph of Article 3 of the Protocol to 'substantial purchases' demonstrates that the immunity provided for in this provision is not of a general nature. It is clear, in any event, that the *droit de condamnation* is payable not where the Community makes purchases for its official use, but where a judgment is given ordering payment for non-fulfilment or breach of a contractual obligation.

40. The *Italian Government* essentially agrees with the Belgian Government's view and argues against extending the wording, meaning and purpose of what it considers to be the clear immunity from indirect taxation provided for by the second paragraph of Article 3 of the Protocol.

2. Legal appraisal

41. I should begin by observing that the classification of the *droit de condamnation* as an indirect tax is not disputed in this case and that the parties are at odds in the main proceedings as to the interpretation of the second paragraph of Article 3 of the Protocol. That classification is none the less worthy of mention inasmuch as a direct tax is to be defined as a tax collected directly from the person who bears the economic burden of it. [14]

42. There is no need to go into this question of classification of the *droit de condamnation* any further, however, as it is for the national court to determine 'both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court'. [15]

43. The second paragraph of Article 3 of the Protocol does not, in any event, relate simply to indirect taxes, but to 'indirect taxes or sales taxes included in the price of movable or immovable property'.

44. Unlike the unconditional immunity from direct taxation given by the first paragraph of Article 3 of the Protocol, immunity from indirect taxation under the second paragraph of Article 3 of the Protocol is worded in much more restrictive fashion: firstly, no general immunity from all indirect taxes is granted, but merely a remission or refund of the same; secondly, measures of that kind are made subject to conditions — that is to say, a general feasibility proviso (... '[The governments of the Member States] shall, wherever possible,') and a prohibition on the distortion of competition within the Community.

45. Furthermore, the second paragraph of Article 3 of the Protocol only refers to prices of movable or immovable property — and then only in relation to substantial purchases by the Community for official use where the taxes or levies in question are included in the price.

46. It is in this context that the parties' focus on the question of whether the *droit de condamnation* should be deemed a part of the price is to be understood. The legal classification of the contract between the Commission and SA MCFE is just not relevant, since the Court of Justice has ruled

14 — See my Opinion in Case C-475/03 *Banca popolare di Cremona*, point 48 et seq., which is still pending before the Court. See also A.S. Muller, *International Organisations and their Host States, Aspects of their Legal Relationship*, Kluwer, 1995, p. 240: 'Within the classification of taxes, direct taxes are those taxes which are demanded directly from the person or entity expected to pay it, without making use of an intermediary.'

15 — See Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 33.

in *AGF Belgium* that — notwithstanding the wording of the second paragraph of Article 3 of the Protocol — the price of services is to be equated with the price of property for the purposes of that provision.

47. The Belgian Government is right to say in that context that the (wide) interpretation of the second paragraph of Article 3 of the Protocol favoured by the Commission would not appear to be borne out by its wording, inasmuch as the *droit de condamnation* does not form part of the consideration agreed in the contract. Indeed, it is only payable once there is litigation on the performance of the contract at issue.

48. The *droit de condamnation* does, however, bear a close relationship to the fulfilment of the disputed obligation, especially in those cases where court action is necessary to resolve a dispute. The very manner in which that charge is calculated — namely, on a percentage basis according to the amount ordered in the judgment, indicates that when judgment is given ordering payment the *droit de condamnation* is tantamount to a 'surcharge'. Hence it would appear that the Commission's argument is not a priori entirely without foundation.

49. As demonstrated by the *AGF Belgium* case, however, the second paragraph of Article 3 of the Protocol is not to be interpreted exclusively by reference to its wording; its spirit and purpose are the deciding factors. The Commission rightly makes reference here to the general rule of interpretation in Article 31(1) of the Vienna Convention. [16] [17]

50. It is not contested that the privileges and immunities afforded to the Communities are not an end in themselves but are intended to facilitate the tasks assigned to them by the Treaties. [18] Their main purpose is to ensure that 'the functioning and independence of the Community' are not jeopardised. [19] This includes ensuring that Member States do not gain undue financial advantage by diverting funds that have been contributed to the Community budget into their national treasuries. [20]

16 — Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations, adopted on 23 May 1969.

17 — 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and *in the light of its object and purpose*' (emphasis added). (Original: French.)

18 — Schweitzer, in Grabitz/Hilf, *Art. 291 EC*, paragraph 13 (28. EL, Oct. 2005).

19 — So-called functional character of the privileges and immunities of the Communities: see, in relation to garnishee orders, the order of 11 April 1989 in Case 1/88 SA (*SA Générale de Banque* v *Commission* [1989] ECR 857, paragraphs 2 and 9, and in relation to sincere cooperation with national courts the order of 13 July 1990 in Case C-2/88 Imm. *Zwartveld and Others* [1990] ECR I-3365, paragraph 19 et seq.

20 — See the Opinion delivered by Advocate General Jacobs in *AGF Belgium* (judgment cited in footnote 3), point 37, and *Muller*, loc. cit., p. 234 (with further references): 'The fundamental principle of sovereign equality is another rationale. This principle precludes that funds which have been contributed to international organisations by States are diverted into the treasuries of host States by means of national taxes and duties levied on the organisation.'

51. The charge at issue affords Belgium a financial advantage that does not constitute payment for the supply of a service — in this case by the Belgian judicial system. It involves cost to the Community budget which is in fact not inconsiderable, so that it is questionable whether such a charge might not contravene the purpose of the immunity provision in the second paragraph of Article 3 of the Protocol.

52. The Commission has rightly stated that the competence of national courts to deliver judgments ordering the Community to make payment is confined to cases relating to the performance of contracts. According to the Commission the competence of the Belgian courts is accounted for by the large number of authorising officers in Community departments situated in that Member State. Accordingly, the aforementioned charge on the Community budget would appear to be unavoidable. [21]

53. It must be concluded with reference to the possible compatibility of such a charge with the second paragraph of Article 3 of the Protocol that payment of the *droit de condamnation* bears a close relationship to the performance of contracts that the Community has concluded to satisfy its needs or in the exercise of powers conferred upon it by the EC Treaty. It is not necessary to decide here whether the charge in question is to be considered, legally or economically, part of the financial consideration to be paid by the Commission.

54. However, the levying of the *droit de condamnation* secures the Belgian State a financial advantage over other Member States in the sense that funds from the Community budget are being transferred; this may tend to make it more difficult at least for the tasks assigned to the Community under the EC Treaty to be fulfilled.

55. Consequently, in the light of the objective of the provision on immunity in the second paragraph of Article 3 of the Protocol there cannot be any doubt that, inasmuch as the *droit de condamnation* at issue does not constitute a direct tax from which immunity is given by the first paragraph of Article 3 of the Protocol, it nevertheless falls within the scope of the second paragraph of Article 3 of the Protocol, contrary to the view shared by the Belgian and Italian Governments.

56. I therefore propose that the answer to the first question referred for a preliminary ruling be that the second paragraph of Article 3 of the Protocol applies to a proportional duty levied in respect of decisions of courts and tribunals, given in all matters, ordering payment of money or liquidation of securities, in so far as the duty is not to be considered to be a direct tax within the meaning of the first paragraph of Article 3 of the Protocol.

21 — Unless by agreeing another forum, for instance.

V — Conclusion

57. In my opinion the questions referred for a preliminary ruling by the Cour d'appel de Bruxelles should be answered as follows:

(1) The third paragraph of Article 3 of the Protocol on the Privileges and Immunities of the European Communities is to be interpreted as meaning that the charge at the outcome of proceedings to the losing party ordered to pay a specified amount does not constitute a charge for a public utility service;

(2) The second paragraph of Article 3 of the Protocol applies to a proportional duty levied in respect of decisions of courts and tribunals, given in all matters, ordering payment of money or liquidation of securities in so far as the duty is not to be considered to be a direct tax within the meaning of the first paragraph of Article 3 of the Protocol.