OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 31 May 1988

My Lords,

Until 1985 there were two types of annual tax on motor vehicles in France: first, a differential, progressive tax charged on vehicles rated for tax purposes at 16 CV (fiscal horsepower) or less and, secondly, a special tax charged at a single rate on vehicles rated at more than 16 CV. The special tax was introduced in 1956 and repeatedly amended in subsequent years, both as to its structure and as to its amount, but its amount was at all times considerably higher than the highest rate of differential tax. In 1985 it was apparently almost five times higher.

No French-made car was rated for tax purposes at more than 16 CV. Accordingly the special tax was borne only by imported cars, including cars imported from other Member States, whilst all French-made cars remained taxed at the lower rates under the differential tax. In its judgment of 9 May 1985 in Case 112/84 *Humblot* v *Directeur des services fiscaux* [1985] ECR 1367, the Court ruled that such a system of taxation was discriminatory and prohibited by Article 95 of the EEC Treaty.

By Article 18 of French Law No 85-695 of 11 July 1985 the special tax was abolished and the vehicles which had been subject to it were brought within the differential tax, the rates of which were adjusted to cover those more powerful cars. (The method of calculation of the differential tax on those cars was in its turn found to be discriminatory and was ruled contrary to Article 95 by the Court in its judgment of 17 September 1987 in Case 433/85 *Feldain* v *Directeur des services fiscaux* [1987] ECR 3521, but that tax is not in issue in these proceedings.) Article 18 of Law No 85-695 also made provision for the recovery of the difference between the old special tax and the new differential tax. The first paragraph of Article 18-V lays down the conditions for the settlement of pending claims and no reference is made to any time limitation. As to claims made after the date of the *Humblot* judgment the second paragraph of Article 18-V provides:

'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 Tax Procedure Code (livre des procédures fiscales), which begins to run from the date on which the special tax was paid.'

Article R 196-1 of the Tax Procedure Code provides so far as relevant:

'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 which gave rise to the claim occurred.'

On 10 December 1982, Mr Christian Deville of Bachy, France, paid the special tax to the French tax authorities in respect of a Ferrari motor car made in another Member State and rated for tax purposes in France at more than 16 CV. On 31 December 1985, some seven months after the judgment in *Humblot*, he claimed reimbursement of the difference between that special tax and the differential tax. By a decision of 6 June 1986 the authorities rejected his claim on the ground that it was out of time, on the basis that under Article R 196-1-b of the Tax Procedure Code the claim should have been submitted by 31 December 1984 at the latest.

On 21 August 1986 Mr Deville challenged that decision by an action brought before the tribunal de grande instance, Lille. Mr Deville argued that he was entitled to rely on Article R 196-1-c of the Tax Procedure Code, whereby the period starts to run from the occurrence of the event which gave rise to the claim, that the Court's judgment in *Humblot* constituted an event within the meaning of that provision, and that his claim having been made within less than two years of *Humblot* was in time. The time-limit laid down in the second paragraph of Article 18-V of Law No 85-695 by reference to Article R 196-1-b of the Tax Procedure Code took away his rights under Community law and deprived the *Humblot* judgment of its effect in his case. The French tax authorities contended that Article 18-V was valid and applicable in his case. The tribunal de grande instance accordingly has referred the following question to the Court for a preliminary ruling:

'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 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?'

Mr Deville argues that a preliminary ruling by the Court of Justice on a rule of Community law establishes the effect of the rule from the time of its entry into force on both past and future legal relationships and that Member States are not entitled to limit such effect in time as was done by the second paragraph of Article 18-V. Accordingly he submits that the answer to the question referred should be that the Court's judgment in *Humblot* imposes an obligation on the French State to refund the amount of the special tax for the entire period of its application.

The French Government relies on the Court's case law whereby, in the absence of harmonizing measures by the Community legislator, the procedural rules governing actions for the recovery of national charges levied in breach of Community law have to

be determined by the domestic legal system of each Member State. It submits that the answer to the question referred should be that Community law does not preclude a time-limit being imposed in respect of 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 Irish Government contends that the question referred should be answered in the affirmative, i. e. to the effect that the imposition of a time-limit, such as that in the second paragraph of Article 18-V, is in conformity with Community law given that the Council has not adopted any relevant harmonizing measures, and that on the basis of Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989 there is no requirement under Community law to reopen or extend limitation periods for reclaiming tax which have expired under national law.

The Commission stresses that, although in the present state of Community law the procedure for the recovery of national taxes charged in breach of Community law is governed by national law, the national rules must not make it impossible in practice to exercise rights derived from Community law. French Law No 85-695 infringes that rule because the two-year limit it imposes deprives the Court's judgment in *Humblot*, which did not limit the scope of its application, of its effectiveness.

The starting point, as I see it, is that when the Court gives a ruling under Article 177 as to the interpretation and scope of a rule of Community law, the Court's judgment governs all national measures and individual transactions subject to that rule, whether taking place before or after the date of the judgment: e. g. Case 61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit italiana* [1980] ECR 1205, recently confirmed at paragraph 11 of the judgment of 2 February 1988 in Case 309/85 *Barra* v *Belgian State* [1988] ECR 355. Exceptionally, the Court, and only the Court, may limit the temporal effect of its ruling so that it should apply only for the future: Case 43/75 *Defrenne* v *Sabena* [1976] ECR 455; *Denkavit*; *Barra*, paragraphs 12 and 13 of the judgment. The *Humblot* ruling has not been limited in that way. Accordingly, it applies to legal relationships arising and established before it was delivered. Thus in principle it applies to payments of the special tax on motor vehicles rated at more than 16 CV made before 9 May 1985. Such payments are contrary to Article 95 of the EEC Treaty even though made before the date of the *Humblot* judgment.

It is, however, also well established that the procedural conditions governing actions for recovery of national taxes charged contrary to Community law are determined by the domestic legal system of each Member State in the absence of Community rules on the matter, subject to two provisos. First, the procedural conditions imposed by national law on actions for the recovery of national taxes charged in breach of Community law may not be less favourable than those relating to similar actions of a domestic nature and, secondly, the conditions must not make it impossible in practice to exercise the Community law rights which the national courts are obliged to protect: see Case 33/76 *Rewe*, cited above.

Where either of those provisos are infringed, the national procedural rules are not consistent with Community law. Thus the Court has ruled incompatible with Community law national rules of evidence which are arranged in such a way as to make impossible or excessively difficult the pursuit of an action for the recovery of national taxes charged in breach of Community law: see Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595; confirmed by the judgment of 25 February 1988 in Joined Cases 331, 376 and 378/85 *Les fils de Jules Bianco* v *Directeur général des douânes* [1988] ECR 1099, and by the judgment of 24 March 1988 in Case 104/86 *Commission* v *Italy* [1988] ECR 1799. Similarly, a time-limit under national legislation which deprives individuals of the right to obtain reimbursement of sums paid contrary to Community law is inconsistent with Community law and cannot be relied on against claimants: *Barra*, where the Court found (at paragraph 19) that a legislative provision which limited reimbursement solely to claimants who had brought an action for reimbursement prior to the delivery of the *Gravier* judgment of 13 February 1985 ([1985] ECR 593) deprived individuals who had not brought such actions of the right to obtain repayment of sums paid which were not due to be paid and made it impossible for them to exercise the rights conferred by the EEC Treaty. Accordingly the Court ruled that the national court, which was obliged to apply Community law fully and to protect the rights which that law conferred upon individuals, was precluded from applying such a provision of national law.

Article 18-V of Law No 85-695 does not, as did the legislative provision referred to in *Barra*, limit claims to those already made at the date of the Court's judgment in *Humblot*. It does, however, limit such claims to those made within the period prescribed in Article R 196-1-b and it does not seem to me to matter whether Article 18-V is seen as the imposition of a new limitation period or, as I consider, as a limitation to one of the pre-existing general limitation periods.

It seems to me that, if a national court finds that under national law existing at the date of the *Humblot* judgment the provision in Article R 196-1-b was the only relevant limitation period, then such a provision as that adopted by Article 18-V of Law No 85-695 is not incompatible with Community law. As the Court held in Case 33/76 *Rewe*, the fixing of reasonable periods of limitation does not make it impossible in practice to exercise Community law rights which the national courts are obliged to respect.

A limitation period is justified in the interests of legal certainty: the period prescribed by Article R 196-1-b cannot in my view be said to be unreasonable. If that was the only relevant period then Article 18-V has not taken away any existing rights.

On the other hand, I consider that national legislation, adopted subsequent to a ruling of the Court, which affects pre-existing limitation periods and cuts down the effect of the Court's judgment is incompatible with Community law.

It seems to me here that there may have been an intention on the part of the legislature to limit the effect of the judgment in *Humblot*. The 'amendment' introduced by Article 18 was specifically explained in the Assemblée Nationale as being introduced to limit the eventual financial consequences of *Humblot* (2nd session of 20 June 1985).

The relevant question is, however, whether Article 18-V had that effect. If, as Mr Deville contends, but for Article 18-V he could have relied on Article R 196-1-c of the Tax Procedure Code, as part of the general law, or if, as appears to have been held by the tribunal de grande instance of Chambéry on 11 June 1987 in *Gorlier* v *Services fiscaux* (*Gazette du Palais*, 17 and 19 January 1988, pp. 12 and 13), he could have relied on the 30-year limitation period prescribed by the Civil Code, then Article 18-V has purported to cut down his rights and to limit the effect of the *Humblot* judgment. Put another way, it makes it impossible for him in practice to exercise rights under Community law which national courts are bound to protect. In either eventuality the purported restriction is invalid as being contrary to Community law, and cannot be relied on in national courts against claims for the reimbursement of national charges levied contrary to Article 95 of the Treaty.

Accordingly, in my opinion, the question referred for a preliminary ruling should be answered along the following lines:

'It is not 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, subsequent to a preliminary ruling of the Court of Justice establishing that a national tax is contrary to the Treaty if that time-limit is shorter than the time-limit which would otherwise apply under the law of the Member State concerned as it stood at the time of the Court's ruling.'

The costs of the French Government, the Irish Government and the Commission are not recoverable. Mr Deville's costs fall to be dealt with by the national court.