JUDGMENT OF THE COURT (Sixth Chamber)
24 September 2002 *

In Case C-255/00,

REFERENCE to the Court under Article 234 EC by the Tribunale di Trento (Italy) for a preliminary ruling in the proceedings pending before that court between

Grundig Italiana SpA

and

Minstero delle Finanze,

on the interpretation of the principles of Community law relating to the recovery of sums paid but not due,

* Language of the case: Italian.

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, C. Gulmann, J.-P. Puissochet (Rapporteur), R. Schintgen and J.N. Cunha Rodrigues, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Grundig Italiana SpA, by E. Giammarco, avvocato,

— the Italian Government, by U. Leanza, acting as Agent, assisted by G. De Bellis, avvocato dello Stato,

— the Commission of the European Communities, by E. Traversa, acting as Agent,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2002,

gives the following

Judgment

1 By order of 6 June 2000, received at the Court on 26 June 2000, the Tribunale di Trento (District Court, Trento) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of the principles of Community law relating to the recovery of sums paid but not due.

2 That question arose in proceedings between Grundig Italiana SpA (hereinafter 'Grundig Italiana') and the Ministero delle Finanze (Finance Ministry) concerning the reimbursement of sums paid by way of a consumption tax on audiovisual and photo-optic goods (hereinafter 'the consumption tax') introduced by Article 4 of Decree-Law No 953 of 30 December 1982 (Official Gazette of the Italian Republic (GURI) No 359 of 31 December 1982, p. 9570), converted into Law No 53 of 28 February 1983 (GURI, ordinary supplement No 58 of 1 March 1983, published in consolidated form in GURI No 65 of 8 March 1983, p. 1798) (hereinafter 'Law No 53/1983'.)

Factual and legal background to the dispute in the main proceedings and the question referred for a preliminary ruling

3 The consumption tax was levied from 1 January 1983 to 31 December 1992. By summons served on 22 July 1993, Grundig Italiana claimed repayment of the consumption tax which it had paid throughout that period in respect of audiovisual goods coming from Member States other than the Italian Republic, and in the main from the Federal Republic of Germany.

4 The dispute in the main proceedings has already led the Tribunale di Trento to refer one question to the Court of Justice for a preliminary ruling. That reference resulted in the Court's judgment of 17 June 1998 in Case C-68/96 *Grundig Italiana* [1998] ECR I-3775.

5 The Tribunale di Trento's question in that reference was:

'Must Article 95 of the EC Treaty be interpreted as prohibiting a Member State from introducing and collecting a national consumption tax of the kind provided for by Article 4 of the Decree-Law of 30 December 1982, converted into law by Law No 53 of 28 February 1983, and further governed by the Decree of the Ministry of Finance of 23 March 1983, in so far as different taxable amounts are determined for domestic products and for those imported from other Member States and different procedures are laid down for collection of the tax on the same products?'

6 In answer to that question the Court ruled as follows:

'Article 95 of the EC Treaty must be interpreted as precluding a Member State from introducing and levying a consumption tax in so far as the taxable amount and the procedure for collecting the tax are different for domestic products and for products imported from other Member States.'

7 Following that reply from the Court, Grundig Italiana applied to the Tribunale di Trento for the proceedings to be continued.

8 The Ministry of Finance, however, objected that Grundig Italiana had applied for reimbursement out of time in so far as concerned some of the payments.

9 Article 2033 of the Italian Civil Code provides that '[a]ny person making an undue payment shall be entitled to recover the sum paid...'. Article 2946 of the code provides that, '[e]xcept where otherwise provided by law, rights of action shall lapse on expiry of a period of 10 years'.

10 The last paragraph of Article 4 of Law No 53/1983 provides:

'The right to reimbursement of tax paid but not due shall lapse after five years from the date of payment.'

11 Under the first paragraph of Article 91 of the Consolidated Customs Law, approved by Decree No 43 of the President of the Republic of 23 January 1973:

'Taxpayers shall be entitled to reimbursement of overpayments attributable to calculation errors made in computing the tax or resulting from the levying of a duty in the course of tax assessment other than that fixed by the customs code for the goods described, provided that application for reimbursement is made within the mandatory time-limit of five years from the date of payment and provided that the application is accompanied by the original receipt proving payment.'

12 Law No 428 of 29 December 1990 laying down provisions for compliance with the obligations arising from Italy's membership of the European Communities (the Community law for the year 1990) (GURI, ordinary supplement No 10 of 12 January 1991, p. 5) (hereinafter 'Law No 428/1990') entered into force on 27 January 1991. Article 29(1) of that law provides:

'The five-year time-limit laid down in Article 91 of the Consolidated Customs Law, approved by Decree No 43 of the President of the Republic of 23 January 1973, shall be deemed to apply to all claims and actions brought for the refund of sums paid in connection with customs operations. That period [shall be reduced] to three years as from the 90th day after the entry into force of this Law.'

13 It is on the basis of that provision, Article 29(1) of Law No 428/1990, that the Ministry of Finance seeks a declaration that the action in the main proceedings is time-barred in so far as it relates to taxes paid more than three years before the action was brought, that is to say, payments made before 22 July 1990. The Ministry of Finance also pleaded, in the alternative, the five-year limitation period laid down in the last paragraph of Article 4 of Law No 53/1983. The Tribunale di Trento has already ruled in the Ministry's favour on the latter point.

14 The national court does, however, entertain doubt as to whether the three-year time-limit laid down in Article 29(1) of Law No 428/1990 is consistent with the principles of Community law relating to the recovery of payments made but not due, in that it has been pleaded in opposition to a claim for reimbursement of sums paid before its entry into force.

15 It should be borne in mind that Article 29(1) of Law No 428/1990 has already given rise to questions referred to the Court for a preliminary ruling. Those questions led to the judgments in Case C-228/96 *Aprile* [1998] ECR I-7141 and Case C-343/96 *Dilexport* [1999] ECR I-579.

16 In the first paragraph of the operative part of the judgment in *Aprile* the Court ruled that:

'Community law does not preclude the application of a national provision which, for all actions for repayment of customs charges, imposes a special time-limit of five, and subsequently three, years, instead of the ordinary limitation period of 10 years for actions for the recovery of sums paid but not due, provided that that time-limit, which is similar to that imposed for certain taxes, applies in the same way to actions based on Community law for repayment of such charges as to those based on national law.'

17 The Court also ruled in the first paragraph of the operative part of its judgment in *Dilexport* that:

'Community law does not preclude national provisions from making repayment of customs duties or taxes contrary to Community law subject to less favourable time-limits and procedural conditions than those laid down for actions between private individuals for recovery of sums paid but not due, provided that those conditions apply in the same way to actions for repayment which are based on Community law and to those based on national law and do not make it impossible or excessively difficult to exercise the right to repayment.'

18 The Court nevertheless gave those answers on the premiss that Italian courts interpreted Article 29(1) of Law No 428/1990 as still allowing actions to be brought within three years of the entry into force of the new time-limit for reimbursement of sums paid before that time-limit came into force.

19 In paragraph 42 of its judgment in *Dilexport*, cited above, which is drafted in similar terms to paragraph 28 of the judgment in *Aprile*, the Court stated as follows:

'... the provision at issue sets a time-limit which is sufficient to guarantee the effectiveness of the right to reimbursement. It is clear from the written observations and oral argument presented to the Court that the Italian courts, including the Corte suprema di cassazione itself, have interpreted that provision as allowing proceedings to be instituted within the three years following its entry into force. In those circumstances, that provision cannot be regarded as having retroactive effect.'

20 The Tribunale di Trento is aware of the judgments in *Aprile* and *Dilexport*. However, like the Ministry of Finance, it takes the view that application of Italian law leads to an outcome different from that taken as a premiss by the Court in the judgments mentioned in so far as concerns actions brought from 27 April 1991 onwards, that is to say, after the entry into force of the three-year time-limit, an event determined as taking place 90 days after the entry into force of Law No 428/1990. Referring to the judgment of the Corte suprema di cassazione No 414 of 15 January 1992, the Tribunale di Trento holds that, under Italian law, whilst the new three-year time-limit cannot be applied to actions already commenced when it came into force, it must, on the other hand, apply to actions not yet commenced by that date, even if such actions relate to sums paid prior thereto, and must be calculated from the date when the sums were paid.

21 The national court thus wonders whether there is any conflict with the principle of effectiveness in, first, reducing to three years the period allowed for bringing an action to assert rights which have already accrued, second, the change in nature of that period from limitation period (*prescrizione*), which can be interrupted and cannot be raised by the court of its own motion, to time-limit (*decadenza*), which cannot be interrupted and can be raised by the court of its own motion, and, third, limiting to 90 days the transitional period during which actions relating to such rights could still be brought within the old limitation period. The national court states that the principle of effectiveness must apply to the procedural rules for bringing an action to protect rights which individuals enjoy under Community law, and that, consequently, such rules must not make it virtually impossible or excessively difficult to exercise such rights.

22 The national court emphasises that the Court of Justice has itself held time-limits of three years and even one year to be reasonable, but that, in view of the 90-day transitional period preceding the shortening of the time-limit in the present case, it finds it necessary to refer the following question for a preliminary ruling:

'Is a national provision, namely the last part of Article 29(1) of Law No 428 of 29 December 1990, compatible with Community law and in particular with the often stated principle of effectiveness (*inter alia*, Case C-343/96 *Dilexport*, Case C-260/96 *Spac*, Case C-231/96 *Edis*, Case C-228/96 *Aprile*, Case C-261/95 *Palmisani*) where it lays down a period of grace of 90 days within which, in order to avoid the three-year time-limit [*decadenza triennale*] introduced retroactively in place of a previous five-year limitation period [*prescrizione quinquennale*], a party enjoying a right under Community law to recover a sum paid but not due resulting from a payment made prior to the entry into force of the said provision must bring a legal action?'

Observations submitted to the Court

23 Grundig Italiana espouses the interpretation given to the national provisions in question in the main proceedings by the Ministry of Finance and the Tribunale di Trento. The Commission also bases its point of view of that interpretation.

24 Grundig Italiana thus takes the view that, given the retroactive effect of the three-year time-limit upon rights accruing before that time-limit was enacted, the fact that its entry into force was suspended for only 90 days amounts to a 'confiscation' of rights to recover sums paid but not due corresponding to the period by which the time allowed for bringing an action was shortened. Article 29(1) of Law No 428/1990 consequently disregards the principle of effectiveness in that it makes it extremely difficult to bring an action to recover sums paid in accordance with national legislation incompatible with Community law. That is not affected by the fact that Article 29(1) complies with the principle of equivalence, in that it applies without distinction to actions for recovery based on Community law and like actions based on national law.

25 According to Grundig Italiana, the 90-day grace period during which claimants could still avoid application of the retroactive three-year time-limit was too brief to enable them to become aware of the innovative and retroactive effect of Article 29(1) of Law No 428/1990 and understand that that provision affected rights to recover sums unduly paid in accordance with national legislation incompatible with Community law, given that there had not yet been any judicial decision or any academic legal discussion on that incompatibility. A period of 90 days was also too short to enable parties to commence legal proceedings, which requires, amongst other things, the necessary documents to be assembled and

decision-making processes, which, within companies, and especially international companies, are often complex, to be completed. That view is, according to Grundig Italiana, entirely consistent with the finding of the Court in *Aprile* and *Dilexport*, cited above, that the introduction of a non-retroactive time-limit of three years was consistent with the principle of effectiveness.

26 The Commission, on the other hand, argues that the introduction of a three-year time-limit in the circumstances specified in Article 29(1) of Law No 428/1990 does not infringe the principle of effectiveness.

27 It points out that in paragraph 35 of its judgment in Case C-221/88 *Busseni* [1990] ECR I-495 the Court held that the principle of the protection of legitimate expectations does not prevent new rules from applying to the future effects of situations which arose under the earlier rules. It also considers that, from the point of view of Community law, the legislation at issue in the main proceedings is not to be regarded as having retroactive effect. The Italian legislature should, of course, take care when reducing the period for initiating proceedings to ensure that the taxpayers concerned are not brusquely deprived of the right to recover taxes contrary to Community law. It follows that, when determining the manner in which that period is to be reduced, the legislature should provide for a reasonable transitional period so that the taxpayers concerned can, provided that they display the necessary diligence, safeguard the possibility of recovering debts owing to them which arose when the tax in question was unlawfully levied.

28 As far as the Commission is concerned, the criteria for determining whether the duration of a transitional period for the passage from one time-limit to another, shorter one is reasonable must not be the same as those for determining whether or not the time allowed for initiating proceedings is itself in conformity with the principle of effectiveness. In the present case, the Commission regards the 90-day transitional period introduced by Article 29(1) of Law No 428/1990 as sufficient and consistent with the principle of effectiveness.

29 The Italian Government, for its part, maintains that the proper interpretation of the national provisions at issue in the main proceedings is that adopted by the Court of Justice in *Aprile* and *Dilexport*, cited above and that, in the present case, the national court has sought a ruling from the Court of Justice on the basis of an incorrect interpretation of the relevant national law. Admittedly, the finding of the Corte suprema di cassazione that retroactive application of the time-limit laid down in Article 29(1) of law No 428/1990 was not permissible related only to actions commenced before the entry into force of that time-limit but there is no reason to treat claimants bringing actions after that date to enforce rights accruing before it any differently. Inasmuch as the national court's question is based on an incorrect analysis of national law, the Court of Justice cannot, according to the Italian Government, answer it.

Admissibility

30 With respect to the objection raised by the Italian Government and set out in the preceding paragraph, it should be pointed out that, according to settled case-law, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case 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. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, *inter alia*, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59).

31 Admittedly, in exceptional circumstances, the Court must examine the circumstances in which the case was referred to it by the national court, in order to determine whether it has jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious

that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39).

32 That is not the situation in the present case. First, the parties to the main proceedings, and the Ministry of Finance in particular, are agreed that Article 29(1) of Law No 428/1990 in itself entails application of the three-year time-limit to actions commenced after the entry into force of that time-limit, even where they relate to sums paid before that date, and also the calculation of that time-limit from the date of payment of the sums in question. The question referred to the Court of Justice is thus in no way hypothetical. Secondly, to the Court's knowledge, the views expressed by the Italian Government in the observations which it has lodged have failed to persuade the Ministry of Finance to desist from its contrary interpretation of Article 29(1) of Law No 428/1990, with which it opposes Grundig Italiana in the proceedings before the Tribunale di Trento, and which is keeping those proceedings afoot.

The question referred to the Court

33 In the absence of Community rules on the recovery of national charges levied though not due, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, secondly, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see, *inter alia*, *Aprile*, cited above, paragraph 18).

34 As regards the latter principle, the Court has held that it is compatible with Community law to lay down reasonable time-limits for bringing proceedings in the interests of legal certainty which protects both the taxpayer and the administration concerned. Such time-limits are not liable to render virtually impossible or excessively difficult the exercise of rights conferred by Community law. In that regard, a time-limit of three years under national law, reckoned from the date of the contested payment, appears reasonable (see *Aprile*, paragraph 19).

35 Nor does the principle of effectiveness present an absolute bar to the retroactive application of a new period for initiating proceedings that is shorter and, as the case may be, more restrictive for the taxpayer than the period previously applicable, and that is so where such application concerns actions for the recovery of internal taxes contrary to Community law which have not not yet been commenced by the time the new period comes into force and which relate to sums paid whilst the old period was still applicable.

36 Given that the detailed rules governing the recovery of national taxes levied though not due are a matter for the national legislature, the question whether such rules may apply retroactively is equally a question of national law, provided that any such retroactive application does not contravene the principle of effectiveness.

37 In that regard, whilst national legislation reducing the period within which repayment of sums collected in breach of Community law may be sought is not incompatible with the principle of effectiveness, this is subject to the condition not only that the new limitation period is reasonable but also that the new legislation includes transitional arrangements allowing an adequate period after the enactment of the legislation for lodging claims for repayment which persons were entitled to submit under the original legislation. Such transitional

arrangements are necessary where the immediate application to those claims of a limitation period shorter than that which was previously in force would have the effect of retroactively depriving some individuals of their right to repayment, or of allowing them too short a period for asserting that right (Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 38).

38 Thus, the transitional period must be sufficient to allow taxpayers who initially thought that the old period for bringing proceedings was available to them a reasonable period of time to assert their right of recovery in the event that, under the new rules, they would already be out of time. In any event, they must not be compelled to prepare their action with the haste imposed by an obligation to act in circumstances of urgency unrelated to the time-limit on which they could initially count.

39 A transitional period of 90 days prior to the retroactive application of a period of three years for initiating proceedings in place of a ten- or five-year period is clearly insufficient. If an initial period of five years is taken as a reference, 90 days leaves taxpayers whose rights accrued approximately three years earlier in a position of having to act within three months when they had thought that almost another two years were still available.

40 Where a period of ten or five years for initiating proceedings is reduced to three years, the minimum transitional period required to ensure that rights conferred by Community law can be effectively exercised and that normally diligent taxpayers can familiarise themselves with the new regime and prepare and commence proceedings in circumstances which do not compromise their chances of success can be reasonably assessed at six months.

41 However, the fact that the national court has found that a transitional period fixed by its national legislature such as that in issue in the main proceedings is insufficient does not necessarily mean that the new period for initiating proceedings cannot be applied retroactively at all. The principle of effectiveness merely requires that such retroactive application should not go beyond what is necessary in order to ensure observance of that principle. It must, therefore, be permissible to apply the new period for initiating proceedings to actions brought after expiry of an adequate transitional period, assessed at six months in a case such as the present, even where those actions concern the recovery of sums paid before the entry into force of the legislation laying down the new period.

42 The answer to the national court must therefore be that Community law precludes the retroactive application of a time-limit that is shorter and, as the case may be, more restrictive for the claimant than the period for initiating proceedings that was previously applicable to claims for the recovery of national taxes contrary to Community law where no adequate transitional period is provided during which claims relating to sums paid before the entry into force of the legislation introducing the new time-limit may still be brought within the old period. Where a limitation period of five years is replaced by a time-limit of three years, a transitional period of 90 days must be regarded as insufficient and six months must be regarded as the minimum period required to ensure that the exercise of rights of recovery is not rendered excessively difficult.

Costs

43 The costs incurred by the Italian Government and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Tribunale di Trento by order of 6 June 2000, hereby rules:

Community law precludes the retroactive application of a time-limit that is shorter and, as the case may be, more restrictive for the claimant than the period for initiating proceedings that was previously applicable to claims for the recovery of national taxes contrary to Community law where no adequate transitional period is provided during which claims relating to sums paid before the entry into force of the legislation introducing the new time-limit may still be brought within the old period. Where a limitation period of five years is replaced with a time-limit of three years, a transitional period of 90 days must be regarded as insufficient and six months must be regarded as the minimum period required to ensure that the exercise of rights of recovery is not rendered excessively difficult.

Macken Gulmann Puissochet

Schintgen Cunha Rodrigues

Delivered in open court in Luxembourg on 24 September 2002.

R. Grass

Registrar

F. Macken

President of the Sixth Chamber