JUDGMENT OF THE COURT (First Chamber)

28 November 2000 *

In Case C-88/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal de Grande Instance de Béthune, France, for a preliminary ruling in the proceedings pending before that court between

Roquette Frères SA

and

Direction des Services Fiscaux du Pas-de-Calais,

to ascertain whether Community law prohibits national tax legislation which provides that an action for recovery of a sum paid but not due, based on a judicial decision declaring a rule of law incompatible with a higher-ranking rule, may relate only to the period following 1 January of the fourth year preceding that of the judgment establishing such incompatibility,

* Language of the case: French.

THE COURT (First Chamber),

composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and L. Sevón, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Roquette Frères SA, by J. Dutat, of the Lille Bar,

— the French Government, by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and S. Seam, Secretary for Foreign Affairs in the same directorate, acting as Agents,

— the Italian Government, by U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by G. De Bellis, Avvocato dello Stato,

— the Commission of the European Communities, by E. Mennens, Principal Legal Adviser, and H. Michard, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Roquette Frères SA, the French and Italian Governments and the Commission at the hearing on 6 April 2000,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2000,

gives the following

Judgment

1 By judgment of 24 March 1998, received at the Court on 15 March 1999, the Tribunal de Grande Instance de Béthune referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question in order to ascertain whether Community law prohibits national tax legislation which provides that an action for recovery of a sum paid but not due, based on a judicial decision declaring a rule of law incompatible with a higher-ranking rule, may relate only to the period following 1 January of the fourth year preceding that of the judgment establishing such incompatibility.

2 That question was raised in the context of a dispute between Roquette Frères SA ('Roquette') and the tax authorities concerning the registration duty on contributions of movable assets made by that company in 1987, following a merger, pursuant to national tax legislation subsequently adjudged to be contrary to Community law.

National legislation

3 Article R196-1 of the Livre des Procédures Fiscales lays down the conditions governing time-limits for submitting tax claims. It provides:

'In order to be admissible, claims relating to taxes other than direct local taxes and ancillary charges must be submitted to the [Tax] Authority no later than 31 December of the second year following, as appropriate:

(a) recovery of the tax assessed or service of a notice of recovery of the tax;

(b) payment of the contested tax where that tax has not given rise to assessment or to service of a notice of recovery of the tax;

(c) the event giving rise to the claim.

However, in the following circumstances, claims must be submitted no later than 31 December of the year following, as appropriate:

(a) receipt by the taxpayer of a new tax notice amending the errors contained in an earlier notice sent to him;

(b) the year in which tax has been withheld at source and charges levied where the dispute concerns the amounts thus withheld;

(c) the year in which the taxpayer has become aware that direct tax contributions have been wrongly assessed or assessed twice.'

4 Article L190 of the Livre des Procédures Fiscales, the second and third paragraphs of which were introduced by Article 36.I of the Amending Finance Law for 1989 (Law No 89-936 of 29 December 1989), provides as follows:

'Claims relating to taxes, contributions, dues, charges, royalties, indemnities, penalties of any kind, assessed or recovered by officers of the [Tax] Authority, fall within the jurisdiction of the courts where they seek compensation for errors committed in the assessment or calculation of the charges, or an entitlement due under a provision laid down by law or regulation.

All actions seeking remission or reduction of a charge, or to exercise a right to deduct, on the ground that the rule applied is incompatible with a higher-ranking rule are to be heard and determined in accordance with the rules laid down in the present chapter.

Where such incompatibility has been established by a judicial decision, an action for the recovery of sums paid, for payment of unclaimed deduction rights or for compensation for damage may only relate to the period following 1 January of the fourth year preceding that of the judgment establishing the incompatibility.'

Dispute in the main proceedings and the question referred

5 Following a merger operation in June 1987, Roquette paid on 8 July 1987 into the tax revenue office for Béthune the sum of FRF 757 926 by way of proportional registration duty payable at the rate of 1.20% on contributions of movable assets made in the context of that operation, as provided for in the second subparagraph of Article 816-1 I of the Code Général des Impôts then in force.

6 In Joined Cases C-197/94 and C-252/94 *Bautiaa and Société Française Maritime* [1996] ECR I-505, the Court held that that charge, which was provided for at the time in the second subparagraph of Article 816-I of the Code Général des Impôts, constituted a capital duty within the meaning of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412).

7 In the same judgment, the Court ruled that Article 7(1) of Directive 69/335, as amended by Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23), which entered into force on 1 January 1986, placed an obligation on the Member States to exempt from all capital duties increases of capital effected by means of the contribution by one company of the whole of its assets to another, thus precluding the application of national laws maintaining at 1.20% the rate of registration duty on contributions of movable assets made in the context of a merger.

8 The registration duty of 1.20% was abolished by the Finance Law for 1994 (Law No 93-1352 of 30 December 1993), which entered into force on 1 January 1994.

9 On 24 December 1996, Roquette disputed its liability to pay the sum paid in 1987 by way of registration duty and applied to the Direction des Services Fiscaux, Pas-de-Calais, for a refund.

10 Roquette's application was held to be admissible since it had been made before the expiry of the time-limit for bringing proceedings provided for in subparagraph 1(c) of Article R196-1 of the Livre des Procédures Fiscales, as the 'event' upon which the application was based, within the meaning of that provision, was the judgment in *Bautiaa* cited above.

11 By decision of 3 April 1997, the tax authority none the less rejected Roquette's request on the ground that, pursuant to the third paragraph of Article L190 of the Livre des Procédures Fiscales, the claim could only relate to taxes paid after 1 January of the fourth year preceding that of the judgment establishing incompatibility, that is to say after 1 January 1992.

12 On 5 June 1997, Roquette Frères brought proceedings against the Director of the Tax Department, Pas-de-Calais, before the Tribunal de Grande Instance de Béthune seeking remission of the disputed tax and repayment of the sum paid on 8 July 1987 together with interest at the statutory rate.

13 Before that court, Roquette argued that the third paragraph of Article L190 of the Livre des Procédures Fiscales was contrary to Community law with respect to repayment of sums overpaid inasmuch as it laid down procedural rules which were less favourable for actions seeking to safeguard rights conferred on individuals by the direct effect of Community law than for similar actions under domestic law and which rendered more difficult, or even impossible, and at least severely restricted, the exercise of rights conferred by Community law. In its view, the third paragraph of Article L190 of the Livre des Procédures Fiscales set up a special procedure for actions alleging infringement of a provision of Community law, which derogated from the provisions governing actions for recovery of a sum paid but not due alleging infringement of provisions of national law.

14 Roquette also claimed that it could not be contended that its application for repayment was time-barred since, in Case C-208/90 *Emmott* v *Minister for Social*

Welfare and the Attorney General [1991] ECR I-4269, the Court laid down the principle that a Member State could not rely on national procedural rules relating to time-limits for bringing proceedings to defeat an action brought against it by a taxpayer seeking to safeguard rights directly conferred on him by a directive, so long as that Member State has not transposed the directive into national law. Roquette pointed out that as far as the 1.20% capital duty provided for by Article 816-1 of the Code Général des Impôts was concerned, Directive 69/335 had not been transposed into French law until the Finance Law for 1994 came into force.

15 Taking the view that the dispute required an interpretation of Community law, the Tribunal de Grande Instance de Béthune decided to stay the proceedings and to refer to the Court of Justice for a preliminary ruling a question as to:

'the legality of Article 190 of the Livre des Procédures Fiscales (Book of Tax Procedures) and, in particular, whether the French Government was entitled, under Community law, to make a distinction between the date on which an action became time-barred and the date on which recovery became time-barred, entailing a difference in the treatment of actions under national law and actions commenced on the basis of a decision of the Community judicature finding a provision of national law unlawful.'

The question

16 Before the substance of the question is addressed, it must be noted that the national court based itself on the premiss that the national provision at issue in the main proceedings draws a distinction between actions arising from a finding by a national court that a provision of domestic law is unlawful in the light of a

superior rule of national law and those arising from a finding by the Community judicature that a provision of domestic law is unlawful in the light of Community law.

17 However, as observed in the written and oral observations submitted by the French and Italian Governments and the Commission, the wording of the second and third paragraphs of Article L190 of the Livre des Procédures Fiscales draws no such distinction since it refers in general to all judicial decisions indicating that the rule of law applied in levying a charge is incompatible with a superior rule of law, without being directed specifically at decisions emanating from the Community judicature or cases of incompatibility with Community law. Moreover, it is clear from the information submitted to the Court by the French Government that the French Cour de Cassation has consistently held that the restriction in time of the period to which the repayment of sums wrongly paid may relate, according to the third paragraph of Article L190 of the Livre des Procédures Fiscales, also applies to actions for the recovery of sums paid but not due arising from a finding by a national court that a provision of domestic law is unlawful in the light of a superior rule of national law.

18 It is established case-law that, in the procedure laid down by Article 177 of the Treaty providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it (Case C-334/95 *Krüger* v *Hauptzollamt Hamburg-Jonas* [1997] ECR I-4517, paragraph 22). To that end the Court of Justice may have to reformulate the question referred to it (*Krüger*, cited above, paragraph 23).

19 The question referred to the Court must therefore be understood as asking essentially whether Community law precludes legislation of a Member State laying down that, in tax matters, an action for recovery of a sum paid but not due based on a finding by a national or Community court that a national rule is not

compatible with a superior rule of national law or with a Community rule of law may only relate to the period following 1 January of the fourth year preceding that of the judgment establishing such incompatibility.

20 In that context, it must be remembered that, in the absence of Community rules concerning the refunding of domestic 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 legal proceedings seeking to safeguard 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 (Case 33/76 *REWE* v *Landwirtschaftskammer für das Saarland* [1976] ECR 1989, paragraph 5; Case 45/76 *Comet* v *Produktschap voor Siergewassen* [1976] ECR 2043, paragraphs 13 and 16; Case 61/79 *Amministrazione delle Finanze dello Stato* v *Denkavit Italiana* [1980] ECR 1205, paragraph 25; and Case 240/87 *Deville* v *Administration des impôts* [1988] ECR 3513, paragraph 12).

21 The Court has held, in particular, that for reparation of loss or damage the conditions relating to time-limits laid down by national law must not be less favourable than those relating to similar domestic claims (principle of equivalence) and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation (principle of effectiveness) (Case C-261/95 *Palmisani* v *INPS* [1997] ECR I-4025, paragraph 27). Such a rule also applies to recovery of sums paid but not due.

22 As regards, first, the compatibility of a time-limit of the kind provided for in the third paragraph of Article L190 of the Livre des Procédures Fiscales with the principle of the effectiveness of Community law, it must be stated that the setting of reasonable limitation periods for bringing proceedings satisfies that requirement in principle, inasmuch as it constitutes an application of the fundamental principle of legal certainty (see, in particular, *REWE*, paragraph 5; *Comet*, paragraphs 17 and 18; and *Palmisani*, paragraph 28, all cited above).

23 In that regard, the Court has held that such limitation periods cannot be regarded as rendering virtually impossible or excessively difficult the exercise of rights conferred by Community law, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought (Case C-188/95 *Fantask and Others* v *Industriministeriet* [1997] ECR I-6783, paragraph 48).

24 In that respect, a national limitation period of up to a minimum of 4 years and a maximum of 5 years preceding the year of the judicial decision finding the rule of national law establishing the tax to be incompatible with a superior rule of law must be considered reasonable.

25 As the Advocate General pointed out in point 33 of his Opinion, the restriction of the period to which the claim may relate to the four or five years preceding the judgment may mean that, in some cases, the action is dismissed in its entirety, but it does not render it virtually impossible or excessively difficult for individuals to exercise rights conferred on them by Community law.

26 Secondly, as to whether a limitation period such as that provided for in the third paragraph of Article L190 of the Livre des Procédures Fiscales complies with the principle of equivalence, Roquette claims that, until 1989, the national rules governing actions for reimbursement of dues paid contrary to a superior rule of law was subject to the general law, the 30-year limitation period laid down in Article 2262 of the Civil Code being applicable in such a case. In Roquette's view, the third paragraph of Article L190 of the Livre des Procédures Fiscales established, in respect of actions alleging infringement of a provision of Community law by a rule of national law, a special procedure different from that which applies where the action for recovery of a sum paid but not due is based on a rule of national law.

27 Roquette points out in that connection that the second and third paragraphs of Article L190 were introduced by the Amending Finance Law for 1989, which was approved following the judgment of the French Conseil d'État of 3 February 1989 in *Alitalia*, in which that court declared that certain restrictions on the right to deductions of value added tax were contrary to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145 p. 1), and 17 judgments delivered on 7 November 1989 by the French Cour de Cassation, which held that an action for recovery of sums paid but not due, seeking the refund of a tax previously declared contrary to Community law, was subject to the 30-year limitation period under general law.

28 By doing so, the French legislature sought to introduce a special limitation period which could reasonably be applied to actions for recovery of a tax unduly paid, with respect to actions based on a judicial decision that the provision introducing the tax was incompatible with a higher-ranking rule. In fact, the limitation period provided for by the third paragraph of Article L190 of the Livre des Procédures Fiscales was intended to apply only to disputes arising from a breach of Community law found by the Court of Justice. Accordingly, in the case of actions based on a judgment of the Court of Justice, the period covered by a claim relating to tax matters lodged within the time-limit laid down in Article R196-1, is limited to the four or five years preceding the judicial finding of incompatibility whereas that period would be 30 years in respect of similar actions under domestic law.

29 In that connection, it should be recalled that, according to the case-law of the Court of Justice, observance of the principle of equivalence implies that the national procedure applies without distinction to actions alleging infringement of Community law and to those alleging infringement of national law, with respect to the same kind of charges or dues. That principle cannot, however, be interpreted as obliging a Member State to extend its most favourable rules of limitation to all actions for repayment of charges or dues levied in breach of Community law (see Case C-231/96 *Edis* v *Ministero delle Finanze* [1998]

ECR I-4951, paragraph 36; Case C-260/96 *SPAC* v *Ministero delle Finanze* [1998] ECR I-4997, paragraph 20; and Case C-228/96 *Aprile* v *Administrazione delle Finanze dello Stato* [1998] ECR I-7141, paragraph 20).

30 Thus, Community law does not in principle preclude legislation of a Member State laying down, alongside a limitation period applicable under the ordinary law to actions between individuals for the recovery of sums paid but not due, special detailed rules, which are less favourable, governing claims and legal proceedings to challenge the imposition of taxes and other charges (see *Edis*, cited above, paragraph 37; *SPAC*, cited above, paragraph 21; Joined Cases C-10/97 to C-22/97 *Ministero delle Finanze* v *In.Co.Ge.'90 and Others* [1998] ECR I-6307, paragraph 27; and *Aprile*, cited above, paragraph 21). The position would be different only if those detailed rules applied solely to actions based on Community law for the repayment of such taxes or charges (judgments cited above in *Edis*, paragraph 37; *Spac*, paragraph 21; and *Aprile*, paragraph 21).

31 In the present case, it must be observed that a limitation period such as that provided for by the second and third paragraphs of Article L190 of the Livre des Procédures Fiscales cannot be considered to apply solely to actions based on Community law.

32 The wording of that provision, together with the information forwarded to the Court by the French Government, indicates that the procedural rule which it lays down is applicable to any action for repayment of a tax levy based on the incompatibility, found by a national, international or Community court, of the rule of national law giving rise to such a levy with a superior rule of national, international or Community law. A limitation period such as that provided for by the third paragraph of Article L190 of the Livre des Procédures Fiscales thus

applies without distinction to actions based on Community law and to those based on national law.

33 It is true that in paragraph 23 of *Emmott*, cited above, the Court held that, until such time as a directive has been properly transposed, a defaulting Member State may not rely on an individual's delay in initiating proceedings against it in order to protect rights conferred on him by the provisions of a directive and that a period laid down by national law within which proceedings must be initiated cannot begin to run before that time.

34 However, as was confirmed by the Court in paragraph 26 of Case C-410/92 *Johnson* v *Chief Adjudication Officer* [1994] ECR I-5483, it is clear from the judgment in Case C-338/91 *Steenhorst-Neerings* v *Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen* [1993] ECR I-5475 that the approach adopted in *Emmott* was justified by the particular circumstances of that case, in which a time-bar had the result of depriving the plaintiff in the main proceedings of any opportunity whatever to rely on her right to equal treatment under a Community directive (see also Case C-90/94 *Haahr Petroleum* v *Åbenrå Havn and Others* [1997] ECR I-4085, paragraph 52; Joined Cases C-114/95 and C-115/95 *Texaco and Olieselskabet Danmark* [1997] ECR I-4263, paragraph 48; Joined Cases C-279/96, C-280/96 and C-281/96 *Ansaldo Energia and Others* [1998] ECR I-5025, paragraph 20; *Spac*, cited above, paragraph 29; and *Fantask*, cited above, paragraph 51).

35 Roquette claims that the Court has already declared unlawful, in *Bautiaa*, cited above, the application of a limitation period such as that laid down in the third paragraph of Article L190 of the Livre des Procédures Fiscales to actions seeking repayment of capital duty levied pursuant to Article 816-1 of the Code Général des Impôts, inasmuch as it held, in paragraph 49 of that case, that there was no need to derogate from the principle that a ruling on the interpretation of

Community law takes effect from the date on which the rule interpreted entered into force, and accordingly refused to limit in time the effects of the judgment.

36 In that regard, it must be observed that the fact that the Court has given a preliminary ruling interpreting a provision of Community law without limiting the temporal effects of its judgment does not affect the right of a Member State to impose a time-limit under national law within which, on penalty of being barred, proceedings for repayment of charges levied in breach of that provision must be commenced (*Edis*, cited above, paragraph 26).

37 The answer to the question referred for a preliminary ruling must therefore be that Community law does not preclude legislation of a Member State laying down that, in tax matters, an action for recovery of a sum paid but not due based on a finding by a national or Community court that a national rule is not compatible with a superior rule of national law or with a Community rule of law may only relate to the period following 1 January of the fourth year preceding that of the judgment establishing such incompatibility.

Costs

38 The costs incurred by the French and Italian Governments and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (First Chamber)

in answer to the question referred to it by the Tribunal de Grande Instance de Béthune by judgment of 24 March 1998, hereby rules:

Community law does not preclude legislation of a Member State laying down that, in tax matters, an action for recovery of a sum paid but not due based on a finding by a national or Community court that a national rule is not compatible with a superior rule of national law or with a Community rule of law may only relate to the period following 1 January of the fourth year preceding that of the judgment establishing such incompatibility.

Wathelet Jann Sevón

Delivered in open court in Luxembourg on 28 November 2000.

R. Grass

Registrar

M. Wathelet

President of the First Chamber