



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

15 October 2014*

(Reference for a preliminary ruling — Repayment of taxes levied by a Member State in breach of EU law)

In Case C-331/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Sibiu (Romania), made by decision of 30 May 2013, received at the Court on 18 June 2013, in the proceedings

Ilie Nicolae Nicula

v

Administrația Finanțelor Publice a Municipiului Sibiu,

Administrația Fondului pentru Mediu,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, M. Ilešič (Rapporteur), L. Bay Larsen, A. Ó Caoimh, C. Vajda and S. Rodin, Presidents of Chambers, A. Borg Barthet, J. Malenovský, E. Levits, E. Jarašiūnas, C.G. Fernlund and J.L. da Cruz Vilaça, Judges,

Advocate General: M. Wathelet,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 25 March 2014,

after considering the observations submitted on behalf of:

- I.N. Nicula, by D. Târșia, avocat,
- the Romanian Government, by R. Radu, V. Angelescu and A.-L. Crișan, acting as Agents,
- the European Commission, by R. Lyal and G.-D. Bălan, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2014,

gives the following

* Language of the case: Romanian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 6 TEU, Article 110 TFEU, Articles 17, 20 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter'), the principle of legal certainty and the principle prohibiting *reformatio in peius*.
- 2 The request has been made in proceedings between Mr Nicula on the one hand, and the Administrația Finanțelor Publice a Municipiului Sibiu (Office of Public Finances, Sibiu) and the Administrația Fondului pentru Mediu (Environment Fund Office) on the other, concerning the refusal of those authorities to grant his application for the repayment of the motor vehicle pollution tax ('the pollution tax') levied in breach of EU law ('EU law').

Legal context

- 3 Government Emergency Order No 50/2008 introducing the motor vehicle pollution tax (Ordonanță de Urgență a Guvernului nr. 50/2008 pentru instituirea taxei pe poluare pentru autovehicule) of 21 April 2008 (*Monitorul Oficial al României*, Part I, No 327 of 25 April 2008) ('OUG No 50/2008'), which entered into force on 1 July 2008, imposed a pollution tax on vehicles in categories M1 to M3 and N1 to N3. That tax was payable in particular on the first registration of a motor vehicle in Romania.
- 4 OUG No 50/2008 was amended several times, before being repealed by Law No 9/2012 concerning a tax on pollutant emissions from motor vehicles (Legea nr. 9/2012 privind taxa pentru emisiile poluante provenite de la autovehicule) of 6 January 2012 (*Monitorul Oficial al României*, Part I, No 17 of 10 January 2012) ('Law No 9/2012'), which entered into force on 13 January 2012.
- 5 Pursuant to Article 4 of Law No 9/2012, the tax on pollutant emissions from motor vehicles was payable not only on the first registration of a motor vehicle in Romania, but also, under certain conditions, on the first registered transfer in Romania of ownership of a second-hand motor vehicle.
- 6 However, as a result of Government Emergency Order No 1/2012 relating to the suspension of the application of certain provisions of Law No 9/2012 concerning a tax on pollutant emissions from motor vehicles and to the repayment of the tax paid pursuant to Article 4(2) of that law (Ordonanță de Urgență a Guvernului nr. 1/2012 pentru suspendarea aplicării unor dispoziții ale Legii nr. 9/2012 privind taxa pentru emisiile poluante provenite de la autovehicule, precum și pentru restituirea taxei achitate în conformitate cu prevederile art. 4 alin. 2 din lege) of 30 January 2012 (*Monitorul Oficial al României*, Part I, No 79 of 31 January 2012), which entered into force on 31 January 2012, the application of the tax on pollutant emissions from motor vehicles at the time of the first registered transfer in Romania of ownership of a second-hand motor vehicle was suspended until 1 January 2013.
- 7 Government Emergency Order No 9/2013 concerning environmental stamp duty in respect of motor vehicles (Ordonanța de urgență nr. 9/2013 privind timbrul de mediu pentru autovehicule) of 19 February 2013 (*Monitorul Oficial al României*, Part I, No 119 of 4 March 2013) ('OUG No 9/2013'), repealing Law No 9/2012, entered into force on 15 March 2013.
- 8 In accordance with Article 4 of OUG No 9/2013:

'[Environmental] stamp duty [in respect of motor vehicles ('the environmental stamp duty')] shall be payable only once, as below:

- (a) on registration with the competent authority of the acquisition of ownership of a motor vehicle by its first owner in Romania and upon the issue of a registration certificate and registration number;

- (b) on the return of a motor vehicle to the national stock of motor vehicles where, at the time of its removal from the national stock of motor vehicles, the residual value of the [environmental stamp duty] was repaid to the owner ...;
- (c) on the registered transfer of the ownership of a second-hand motor vehicle in respect of which the special tax for passenger cars and motor vehicles, the [pollution tax], or the tax on pollutant emissions from motor vehicles has not been paid, in accordance with the legislation in force at the time of the vehicle's registration;
- (d) on the registered transfer of the ownership of a second-hand motor vehicle in respect of which a court has ordered a tax repayment or has permitted its registration without payment of the special tax for passenger cars and motor vehicles, of the [pollution tax], or of the tax on pollutant emissions from motor vehicles.'

9 Article 12(1) and (2) of OUG No 9/2013 states:

'1. Where the special tax for passenger cars and motor vehicles, the [pollution tax] or the tax on pollutant emissions from motor vehicles which has been paid is greater than the stamp duty resulting from the application of the present provisions on environmental stamp duty, calculated in [Romanian lei (RON)] at the exchange rate applicable at the time of registration or registered transfer of ownership of a second-hand motor vehicle, a sum equal to the difference may be repaid only to the person who was liable to pay the tax in accordance with the procedure laid down in the implementing regulations for the present emergency order. The calculation of the difference to be repaid shall be made on the basis of the calculation formula laid down in the present emergency order using information relating to the date of registration or registered transfer of ownership of the second-hand vehicle.

2. The sum equal to the difference between, on the one hand, the amount paid by the taxpayer by way of special tax for passenger cars and motor vehicles, [pollution tax] or tax on pollutant emissions from motor vehicles and, on the other, the amount resulting from imposition of the stamp duty shall be repaid within the period provided for under the re-published Government Order [No 92 on the Tax Procedure Code (Ordonanța Guvernului nr. 92 privind Codul de procedură fiscală) of 24 December 2003 (*Monitorul Oficial al României*, Part I, No 941 of 29 December 2003)], as subsequently amended and supplemented, in accordance with the procedure laid down in the implementing regulations for the present emergency order.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 10 During 2009 Mr Nicula, a Romanian national residing in Romania, bought a second-hand motor vehicle which was registered for the first time in Germany. In order to register the vehicle in Romania, he was required to pay the sum of RON 5 153 by way of pollution tax, pursuant to Article 4 of OUG No 50/2008.
- 11 By judgment of 3 May 2012, the Tribunalul Sibiu upheld the action brought before it by Mr Nicula against the Administrația Fondului pentru Mediu, which is the recipient of the pollution tax, and ordered that authority to repay that tax on the ground that it had been introduced in breach of Article 110 TFEU, as interpreted by the Court in its judgment in *Tatu* (C-402/09, EU:C:2011:219). However, the Tribunalul Sibiu dismissed the action in so far as it was brought against the Administrația Finanțelor Publice a Municipiului Sibiu, the collector of the tax.

- 12 Following the appeal against that judgment brought before the Curtea de Apel de Alba-Iulia (Court of Appeal of Alba-Iulia, Romania), on 25 January 2013 that court quashed the judgment and referred the case back to the court of first instance, stating, for the purposes of the fresh procedure, that in disputes of this kind, the persons against whom proceedings for repayment of a tax levied in breach of EU law may be brought include not only the recipient of the tax but also the collector of the tax.
- 13 OUG No 9/2013 entered into force on 15 March 2013, which is after this case had been re-entered on the roll at the Tribunalul Sibiu. The Tribunalul Sibiu states that, pursuant to that order, pollution tax already paid may be repaid only where the amount of that tax is greater than the amount of the environmental stamp duty, repayment being provided for in strictly defined circumstances and limited to any possible difference in amount.
- 14 In Mr Nicula's specific case, the amount of environmental stamp duty calculated in accordance with OUG No 9/2013 for the vehicle concerned amounts to RON 8 126,44, while the pollution tax paid previously amounted to RON 5 153. According to the Tribunalul Sibiu, the applicant in the main proceedings incorrectly claims that the equivalent amount of the environmental stamp duty for his vehicle is only RON 3 779,74, since, pursuant to the second sentence of Article 12(1) of OUG No 9/2013, the difference to be repaid is calculated on the basis of the formula laid down in that order, using information relating to the date of registration of the vehicle in Romania rather than information relating to the present.
- 15 According to that court, by virtue of OUG No 9/2013, Mr Nicula is not entitled to recover the pollution tax and any interest thereon because the corresponding amount is withheld by the tax and environmental authorities in lieu of environmental stamp duty, since the amount of the environmental stamp duty is greater than the pollution tax paid by Mr Nicula on the registration of his vehicle.
- 16 Accordingly, the Tribunalul Sibiu decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:
- 'Are the provisions of Article [6 TEU], Articles 17, 20 and 21 of the Charter of Fundamental Rights of the European Union and Article 110 TFEU, the principle of legal certainty and the principle prohibiting *reformatio in peius*, both affirmed in [European Union] law and in the case-law of the Court of Justice [judgments in *Belbouab*, 10/78, EU:C:1978:181, and *Belgocodex*, C-381/97, EU:C:1998:589], to be interpreted as precluding legislation such as [OUG No 9/2013?]
- 17 The Romanian Government, under the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, has requested that the Court sit in a Grand Chamber.

Consideration of the question referred for a preliminary ruling

Admissibility of the request for a preliminary ruling

- 18 The Romanian Government submits that the present request for a preliminary ruling is not admissible. In that regard, it maintains, first, that the provision of national law mentioned by the referring court, namely Article 12 of OUG No 9/2013, governs an out-of-court administrative procedure for the repayment of taxes, so that the regulation does not place any interpretative limits on the courts before which proceedings are brought for repayment of a tax levied in breach of EU law, such as that at issue in the main proceedings. Consequently, according to the Romanian Government, the referring court is wrong to find that that provision prevents it from ordering the repayment of the whole of the amount paid by Mr Nicula by way of the pollution tax.

- 19 Secondly, the Romanian Government submits that OUG No 9/2013 cannot, in any event, be applicable to the dispute in the main proceedings, since it was not in force on the date on which Mr Nicula paid the pollution tax.
- 20 For those reasons, the Romanian Government submits that the answer to the question submitted by the referring court is not relevant to the decision to be made in the main proceedings and that, accordingly, the request for a preliminary ruling should be dismissed as being inadmissible.
- 21 In that regard, it should be noted that the Court has consistently held that, in proceedings under Article 267 TFEU, 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 concern the interpretation of EU law, the Court is in principle bound to give a ruling (see, in that regard, judgments in *Government of the French Community and Walloon Government*, C-212/06, EU:C:2008:178, paragraph 28; *Zurita García and Choque Cabrera*, C-261/08 and C-348/08, EU:C:2009:648, paragraph 34; and *Filipiak*, C-314/08, EU:C:2009:719, paragraph 40).
- 22 Nevertheless, the Court has also held that, in exceptional circumstances, it may examine the conditions in which the case was referred to it by the national court, in order to confirm its own jurisdiction (see, to that effect, judgment in *Filipiak*, EU:C:2009:719, paragraph 41 and the case-law cited).
- 23 It should be noted in that regard that 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 EU 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 (judgment in *Zurita García and Choque Cabrera*, EU:C:2009:648, paragraph 35).
- 24 In the present case, under Article 101(1) of its Rules of Procedure, the Court asked the referring court to state whether, taking account of the nature of the pending proceedings before it, Article 12 of OUG No 9/2013 is applicable to the dispute in the main proceedings. By its response, lodged at the Registry of the Court on 13 March 2014, the referring court confirmed that that provision is the substantive law applicable to the dispute in the main proceedings for the purposes of the re-examination of the case which has been referred back to it. According to the referring court, the rule set out in Article 12(1) is unambiguous and restricts the repayment of taxes paid prior to the introduction of the environmental stamp duty solely to cases where the amount of those taxes is greater than that of the stamp duty imposed by OUG No 9/2013.
- 25 In those circumstances, it is clear that the Court's response to the interpretation requested by the referring court is necessary for that court to be able to give a ruling on the compatibility with EU law of the national legislation at issue in the main proceedings, and consequently the Romanian Government's argument with respect to the purported inadmissibility of the request for a preliminary ruling must be rejected and accordingly, an answer should be given to the request.

Substance

- 26 By its question, the referring court is essentially asking whether EU law must be interpreted as meaning that it precludes a system for repaying a tax levied in breach of EU law such as that at issue in the main proceedings.

- 27 It is apparent from the settled case-law of the Court that the right to a refund of taxes levied by a Member State in breach of rules of EU law is the consequence and complement of the rights conferred on individuals by provisions of EU law prohibiting such taxes, as interpreted by the Court. A Member State is therefore in principle required to repay charges levied in breach of EU law (judgments in *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478, paragraph 24, and *Irimie*, C-565/11, EU:C:2013:250, paragraph 20).
- 28 Furthermore, the Court has previously held that, where a Member State has levied taxes in breach of the rules of EU law, individuals are entitled to reimbursement not only of the tax unduly levied but also of the amounts paid to that State or retained by it which relate directly to that tax (see, to that effect, judgments in *Littlewoods Retail and Others*, EU:C:2012:478, paragraph 25, and *Irimie*, EU:C:2013:250, paragraph 21).
- 29 The principle of the obligation of Member States to repay with interest amounts of tax levied in breach of EU law follows from that law (judgments in *Littlewoods Retail and Others*, EU:C:2012:478, paragraph 26, and *Irimie*, EU:C:2013:250, paragraph 22).
- 30 Here, it should be noted as a preliminary point that it is not clear from the order for reference on the basis of which version of the OUG the pollution tax was levied on Mr Nicula on the date of the registration of his vehicle in Romania. However, the Court has previously held that Article 110 TFEU precludes a tax such as the pollution tax introduced by OUG No 50/2008 both in its original version and as amended (see, to that effect, judgments in *Tatu*, EU:C:2011:219, paragraphs 58 and 61, and *Nisipeanu*, C-263/10, EU:C:2011:466, paragraphs 27 and 29).
- 31 The Court has held that the application of the provisions of OUG No 50/2008, regardless of the version of that legislation, had the effect that imported second-hand vehicles of considerable age and wear were subject to a tax which could approach 30% of their market value, while similar vehicles offered for sale on the domestic second-hand vehicle market, which constituted similar domestic products within the meaning of Article 110 TFEU, were not burdened by such a tax charge. The Court concluded that such a measure discouraged the placing in circulation in that Member State of second-hand vehicles purchased in other Member States without discouraging buyers from purchasing second-hand vehicles of the same age and condition on the domestic market (see, to that effect, judgments in *Tatu*, EU:C:2011:219, paragraphs 55, 58 and 61, and *Nisipeanu*, EU:C:2011:466, paragraphs 26, 27 and 29).
- 32 Following the judgments in *Tatu* (EU:C:2011:219) and *Nisipeanu* (EU:C:2011:466), Romania adopted OUG No 9/2013 which introduces a new tax on motor vehicles, namely the environmental stamp duty. Under Article 4 of that order, the environmental stamp duty is payable on the first registration of a motor vehicle in Romania, on the return of a motor vehicle to the national stock of motor vehicles, or on the registered transfer of ownership of a second-hand motor vehicle in respect of which none of the vehicle taxes previously in force has been paid or in respect of which a court has ordered those taxes to be repaid or has permitted registration without payment of those taxes.
- 33 As is apparent from the order for reference and the response of the referring court to the Court's request for clarification, OUG No 9/2013 also introduces, in Article 12 thereof, a system for repaying the tax paid, in particular, under OUG No 50/2008 or amended versions thereof, allowing individuals to obtain repayment of the tax paid previously provided that the amount of that tax exceeds that of the environmental stamp duty. That court submits that it is not open to it under that provision to order that, first, the amount which Mr Nicula had to pay by way of pollution tax and, secondly, the interest relating thereto, be repaid to him.
- 34 Accordingly, it is appropriate to examine whether such a system of repayment by offsetting makes it possible for individuals effectively to exercise the right available to them under EU law to seek a repayment of the tax improperly paid.

- 35 In that regard, it follows from Article 12(1) of OUG No 9/2013, according to the referring court's interpretation thereof, that, in relation to second-hand vehicles imported from other Member States, the pollution tax levied in breach of EU law is to be repaid to the individual only to the extent that it is greater than the amount due by way of environmental stamp duty, calculated on the basis of information taken into account on the date that the imported vehicle was registered in Romania.
- 36 As stated by the European Commission, it follows that a system of repayment such as that at issue in the main proceedings has the effect, in the case of a second hand vehicle imported from another Member State, of restricting or, as in the main proceedings, completely eliminating the requirement to repay the pollution tax levied in breach of EU law, which perpetuates the discrimination established by the Court in the judgments in *Tatu* (EU:C:2011:219) and *Nisipeanu* (EU:C:2011:466).
- 37 In addition, the effect of that system is to exempt the national authorities from the requirement to take account of the interest payable to the taxpayer for the period between the date of the undue levying of the pollution tax and the repayment thereof, and, accordingly, does not satisfy the requirement set out in paragraph 29 of the present judgment.
- 38 In those circumstances, it is clear that a system of repayment such as that at issue in the main proceedings does not make it possible for individuals effectively to exercise their right under EU law to seek repayment of a tax levied in breach of EU law.
- 39 In the light of the foregoing, it must be concluded that EU law must be interpreted as precluding a system of repayment of a tax levied in breach of EU law, such as the system at issue in the main proceedings.

Limitation of the temporal effects of the judgment of the Court

- 40 In the event that the Court finds that EU law precludes a tax such as the environmental stamp duty introduced by OUG No 9/2013, the Romanian Government, in its written observations, has asked the Court to limit the temporal effects of the present judgment.
- 41 In that regard, it should be noted that, by the interpretation of EU law requested, the referring court is not asking the Court whether EU law precludes a tax such as the environmental stamp duty, but only whether it precludes a system such as that introduced by OUG No 9/2013 which provides for repayment of the tax unduly levied under OUG No 50/2008.
- 42 In those circumstances, suffice it to state that the arguments relied on by the Romanian Government in favour of a limitation of the temporal effects of the judgment of the Court relate to circumstances other than those in the main proceedings and, accordingly, that it is not necessary to rule on that Government's request for the temporal effects of the present judgment to be limited.

Costs

- 43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

EU law must be interpreted as precluding a system of repayment of a tax levied in breach of EU law such as the system at issue in the main proceedings.

[Signatures]