Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 18 February 2016[1]

**Case C-200/14**

**Silvia Georgiana Câmpean**
**v**
**Serviciul Fiscal Municipal Mediaş,**
**formerly Administraţia Finanţelor Publice a Municipiului Mediaş**
**and**
**Administraţia Fondului pentru Mediu**
(Request for a preliminary ruling from the Tribunalul Sibiu (Romania))
**Case C-288/14**
**Silvia Ciup**
**v**
**Administraţia Judeţeană a Finanţelor Publice Timiş — Direcţia Generală Regională a Finanţelor Publice Timişoara**

(Request for a preliminary ruling from the Tribunalul Timiş (Romania))

(Reference for a preliminary ruling — Refund of tax wrongly paid — Principles of equivalence and effectiveness — Charter of Fundamental Rights of the European Union — Articles 17, 20, 21(1) and 47 — Tax levied in breach of EU law — National legislation laying down rules on refunds — Enforcement of judicial decisions issued against a public authority — Refund payable over a period of five years — Requirement to obtain a judicial decision — Calculation of interest — Restriction of the possibility of offsetting tax against an outstanding balance — No possibility of requesting enforcement)

## Introduction

1. The problem of the tax levied on the registration of motor vehicles in Romania has been ever present in the case-law of the Court for years. As a result of a number of judgments of the Court[2] that tax, in its successive forms, has been declared incompatible with EU law. However, that has not exhausted the matter as the rules on refunding it laid down by the Romanian authorities are proving to be similarly problematic.[3]

2. The questions in the present cases, which have been referred to the Court independently by two Romanian courts, concern precisely this issue. Although the two cases have not been joined, the Court decided to organise a joint hearing since the questions referred in them overlap to a considerable degree. For that reason I have decided also to deliver a joint opinion in the two cases.

1 — Original language: Polish.

2 — See judgments in *Tatu* (C-402/09, EU:C:2011:219), *Nisipeanu* (C-263/10, EU:C:2011:466), *Manea* (C-76/14, EU:C:2015:216) and a number of orders concerning this matter.

3 — See judgments in *Irimie* (C-565/11, EU:C:2013:250), *Nicula* (C-331/13, EU:C:2014:2285) and *Târşia* (C-69/14, EU:C:2015:662).

## Legal framework

### *EU law*

3. The tax which the applicants in the two main proceedings are seeking to have refunded has been declared incompatible with Article 110 TFEU. According to the Court's case-law, EU law requires that that tax be refunded.[4] That refund must comply with the principles of equivalence and effectiveness. It is in the light of those principles that the legislation forming the subject of the questions referred for a preliminary ruling in these cases must be assessed.

4. The referring courts also cite a number of provisions of the Charter of Fundamental Rights of the European Union, in particular Articles 17, 20, 21(1) and 47.

### *Romanian law*

5. The finding, as a result of the two abovementioned judgments of the Court, that the tax levied on the registration of second-hand vehicles imported from other Member States is incompatible with EU law made it necessary for the Romanian authorities to refund considerable amounts levied by virtue of that tax. In that situation those authorities laid down specific rules on effecting that refund which are contained in Ordonanța de urgență a Guvernului nr. 8 din 26 februarie 2014 pentru modificarea și completarea unor acte normative și alte măsuri fiscal-bugetare (Government Emergency Order No 8 of 26 February 2014 amending and supplementing certain legislative acts and other fiscal and budgetary measures; 'OUG No 8/2014'). In particular, Article XV of that order states:

'1. The sums determined by judicial decision relating to the refunding of the tax on pollution by motor vehicles and the tax on pollutant emissions from motor vehicles, interest until the date of full payment and legal costs, and all other sums as may be determined by the court, which become enforceable by 31 December 2015, shall be paid over a period of five calendar years by means of an annual payment of 20% of the amount payable.

2. Applications for refunds from taxpayers provided for in paragraph 1 shall be dealt with, pursuant to Government Order No 92/2003 on the Code of Tax Procedure, republished, as subsequently amended and supplemented, within 45 days of being submitted, and the payment of annual instalments shall be made in accordance with the schedule established by the Administrația Fondului pentru Mediu (Environment Fund Office).

3. The period provided for in paragraph 1 shall run from the date on which the period referred to in paragraph 2 has elapsed.

4. During the period provided for in paragraph 1, all enforcement proceedings shall be suspended by law.

5. The sums provided for in paragraph 1, refunded pursuant to the present emergency order, shall be adjusted on the basis of the consumer price index published by the Institutul Național de Statistică (National Institute of Statistics).

6. The procedure to be followed for payment by way of enforcement instrument shall be established jointly by the Ministrului Mediului şi Schimbărilor Climatice (Ministry of the Environment and Climate Change) and the Ministrului Finanțelor Publice (Ministry of Public Finances), within the period referred to in paragraph 1.

4 — See inter alia the judgment in *Târșia* (C-69/14, EU:C:2015:662, paragraph 24).

7. The balance of the sums relating to enforcement instruments issued by the date on which the present emergency order enters into force and for which no enforcement proceedings have been initiated shall be paid in accordance with paragraphs 1 to 6.'

6. The implementing provisions for OUG No 8/2014 were laid down in Decree of the Minister for Finance and the Minister for the Environment and Climate Change No 365/741/2014[5] ('Decree No 365/741/2014'). Annex I to that decree set out the tax refund procedure. According to the information in the order for reference, that procedure provides, inter alia, that a refund is to be made only in accordance with a request by the taxable person, to which he is required to append inter alia a certified copy of the judicial decision confirming the refund obligation (paragraphs 1 to 3, 7 and 8); the refund request is to be adjudicated within a period of 45 days, which is a derogation from the period of 30 days normally laid down in such cases (paragraph 5); and the amounts due by way of refund can be offset against other tax liabilities of the person concerned, but only up to the amount of the annual instalments (20%) laid down in OUG No 8/2014 (paragraph 19).

7. Under Articles 1 to 3 of Ordonanța nr. 22 din 30 ianuarie 2002 privind executarea obligațiilor de plată ale instituțiilor publice, stabilite prin titluri executorii (Order No 22 of 30 January 2002 on the execution of payment obligations of public institutions, declared enforceable, as amended; 'OG No 22/2002'):

'Article 1

1. Claims declared enforceable against public authorities or institutions shall be settled by using the amounts approved for that purpose in their budgets, or, as the case may be, the expenditure titles within which the debt concerned falls.

2. Claims declared enforceable against public authorities or institutions may not be settled by using amounts intended, under the approved budget, to cover organisational and operational expenditure, including staff costs, the purpose of which is to enable the authority or institution to fulfil the statutory tasks and objectives for which it has been established.

*Article 2*

Where the execution of claims declared enforceable does not begin or does not continue owing to lack of funds, the debtor institution is required to take, within 6 months, the necessary steps to comply with its payment obligation. That period shall run from the date on which the debtor has received the order to pay from the competent enforcing body, at the claimant's request.

*Article 3*

Where the public institutions fail to comply with their payment obligation within the period provided for in Article 2, the creditor may seek enforcement pursuant to the Code of Civil Procedure and/or pursuant to other relevant statutory obligations.'

5 — Ordinul nr. 365/741/2014 privind aprobarea Procedurii de efectuare a plăților sumelor prevăzute prin hotărâri judecătorești având ca obiect restituirea taxei pe poluare pentru autovehicule și a taxei pentru emisiile poluante provenite de la autovehicule și a modelului și conținutului unor formulare și pentru modificarea anexei nr. 4 la Ordinul ministrului mediului și schimbărilor climatice și al viceprim-ministrului, ministrul finanțelor publice, nr. 490/407/2013 pentru aprobarea Procedurii de restituire a sumelor prevăzute la art. 7, 9 și 12 din Ordonanța de urgență a Guvernului nr. 9/2013 privind timbrul de mediu pentru autovehicule, precum și a sumelor stabilite de instanțele de judecată prin hotărâri definitive și irevocabile.

8. Finally, under Article 10[1](1) of Ordinul Ministerului Finanţelor Publice nr. 2336 din 19 iulie 2011 pentru aprobarea Procedurii de punere în aplicare a titlurilor executorii în baza cărora se solicită înfiinţarea popririi conturilor autorităţilor şi instituţiilor publice deschise la nivelul unităţilor Trezoreriei Statului (Decree No 2336 of the Minister for Public Finances of 19 July 2011 approving the procedures implementing enforceable instruments on the basis of which an attachment is sought to be placed over accounts held by the public authorities or institutions with the State Treasury; 'Decree No 2336/2011'):

'If the court has validated the attachment, the execution shall relate solely to the sums held by the debtor or owed to the debtor by third parties which may be used to settle claims declared enforceable against public authorities or institutions, without prejudice to the limits put in place by Article 1(2) of [OG No 22/2002], confirmed and supplemented by Law No 288/2002, as subsequently amended and supplemented'.

## Facts, procedure and questions referred

### *Case C-200/14*

9. On 9 December 2011 Silvia Georgiana Câmpean, the applicant in the main proceedings, purchased a second-hand vehicle registered for the first time in another Member State. On registration of that vehicle in Romania the applicant in the main proceedings paid the sum of RON 2 737 as pollutant emissions tax.

10. On 21 February 2012 the applicant brought an action before the referring court requesting refund of that amount, plus interest, on the ground that that tax is not compatible with EU law.

11. On 5 November 2012 that court referred to the Court of Justice for a preliminary ruling a question concerning the compatibility of the pollutant emissions tax with EU law. It replied that Article 110 TFEU must be interpreted as precluding the application of taxes such as the Romanian pollutant emissions tax.[6]

12. However, the referring court was uncertain whether the finding that that tax must be refunded will be effective as a result of the entry into force of OUG No 8/2014. In that situation that court referred to the Court of Justice a further question, which for the sake of good order I shall refer to as Question 1:

'(1) May Article 6 [TEU], Articles 17, 20, 21(1) and 47 of the Charter of Fundamental Rights of the European Union, the principle laid down in the case-law of the Court of Justice that taxes prohibited by EU law must be refunded, Recommendation Rec (2003)16 of the Committee of Ministers of the Council of Europe and Resolution 1787 (2011) of the Parliamentary Assembly of the Council of Europe be interpreted as precluding a provision such as Article XV of OUG No 8/2014?'

6 — Order in *Câmpean and Ciocoiu* (C-97/13 and C-214/13, EU:C:2014:229).

13. The order for reference was received by the Court on 22 April 2014. After that question had been referred to the Court the applicant in the main proceedings requested leave to supplement the question referred as a result of the entry into force of Decree No 365/741/2014, and also its uncertainties over the effectiveness of the judgment ordering refund of tax in the light of other provisions of Romanian law. In that situation the referring court supplemented the request with the following questions, which I shall refer to as Questions 2 to 6:

‘(2) May the EU law referred to in the order for reference in Case C-200/14 and Recommendation Rec 2003(16) of the Committee of Ministers of the Council of Europe, Resolution 1787 (2011) of the Parliamentary Assembly of the Council of Europe and Recommendation No R (80)2 of the Committee of Ministers be interpreted as precluding legislation such as [Decree No 365/741/2014], Articles 1, 2 and 3 of [OG No 22/2002] and [Decree No 2336/2011]?

(3) May the above-mentioned EU law and the case-law of the Court (judgment in [*Costanzo*, 103/88, EU:C:1989:256]) be interpreted as meaning that domestic administrative authorities (in the present case, the tax and environmental authorities) must automatically and immediately execute judicial decisions in administrative fiscal matters without the person entitled to the refund being obliged to seek enforcement or to meet other procedural requirements imposed by the defendant debtor?

(4) How “immediately” for the purposes of EU law must the domestic administrative authorities execute judicial decisions in administrative fiscal matters, or offset the claims of persons entitled to refunds against other reciprocal obligations owed to the State?

(5) May EU law be interpreted as meaning that penalties such as those provided for in Chapter II(b) of Recommendation Rec 2003(16) of the Committee of Ministers of the Council of Europe (specifically, the fine provided for in Article 24(3) of Law No 554/2004) may also be applied in cases of the non-execution of financial obligations incumbent on the administrative authorities pursuant to a judicial decision?

(6) In the event of the enforcement of a judicial decision against the public administrative authorities, which assets may be seized under Chapter II(2)(d) of Recommendation Rec 2003(16) of the Committee of Ministers of the Council of Europe?’

14. The additional questions were received by the Court on 18 December 2014.

*Case C-288/14*

15. Silvia Ciup, the applicant in the main proceedings, purchased a second-hand vehicle registered for the first time in another Member State. On registration of that vehicle in Romania the applicant in the main proceedings paid the sum of RON 1 774 as pollutant emissions tax.

16. On 12 July 2012 she requested a tax refund from the defendant in the main proceedings. That request was not granted and consequently the applicant brought an action before the referring court. That court allowed the action and ordered repayment of the tax, plus interest from the expiry of a 45-day period calculated from the date on which the refund request was submitted (that period expired on 27 August 2012) to the date on which it was actually paid.

17. In the main proceedings in this case the applicant requests payment of interest in the amount of RON 485 for the period from the date on which the tax at issue was paid (that is to say 15 October 2010) to 27 August 2012. In addition, she also requests that that interest be paid forthwith and not by instalments.

18. Since it found that the granting of those requests is precluded by OUG No 8/2014, the referring court decided to stay the proceedings and refer the following question to the Court of a preliminary ruling:

‘May the principles of equivalence and effectiveness of remedies for infringements of EU law, laid down by the case-law of the Court, and the right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union be interpreted as precluding provisions of national law that defer, on the basis of instalments payable over a period of five years, the reimbursement of taxes levied in breach of Community law and the payment of interest thereon, as directed by judgments that become enforceable by 31 December 2015?’

19. The order for reference was received by the Court on 12 June 2014.

*Procedure before the Court*

20. Written observations were submitted by the applicant in the main proceedings in Case C-200/14, the Romanian Government and the European Commission. The applicant in the main proceedings in Case C-200/14 and the Commission were represented at the joint hearing for both cases, which took place on 22 October 2015.

## Analysis

21. The obligation to refund, with interest, taxes levied in a manner incompatible with rules of EU law is a complement of the rights conferred on individuals by the provisions of EU law from which that incompatibility arises.[7] In the absence of relevant provisions of EU law on that matter, it is for the national law of the Member States to lay down the rules and procedure for refunds. In that respect the Member States are bound by the principles of equivalence and effectiveness. It is primarily in the light of those principles that the provisions of Romanian law concerned by these references must be assessed.[8] The referring courts also raise the issue of the compatibility of those provisions with certain provisions of the Charter. I shall address that matter in the final part of my Opinion. To begin with, however, it is necessary to consider the issue of the admissibility of the questions referred for a preliminary ruling in Case C-200/14, which was raised by the Romanian Government.

*Admissibility of the questions referred in Case C-200/14*

22. Firstly, it is necessary to consider the plea raised by the Romanian Government alleging that the Court does not have jurisdiction to interpret acts adopted in the Council of Europe, so that the questions referred are not admissible in so far as they concern those acts.[9]

23. I have to agree with that view. Acts of the Council of Europe do not in fact fall within the remit of the Court and therefore it has no jurisdiction to rule on their interpretation. In this case the Court will not therefore have jurisdiction to reply to the questions referred in as far as they concern acts of the Council of Europe.

7 — Judgment in *Nicula* (C-331/13, EU:C:2014:2285, paragraphs 27 and 28 and the case-law cited).

8 — Unlike the referring court in Case C-288/14, the referring court in Case C-200/14 did not, in its questions, refer to those principles as the subject-matter of the interpretation sought. However, it did mention the principle of refunding taxes levied in breach of EU law in which compliance with the principles of equivalence and effectiveness is inherent (see, inter alia, judgment in *Târșia*, C-69/14, EU:C:2015:662, paragraphs 26 and 27). Therefore, the considerations on those two principles also apply to Case C-200/14.

9 — That is to say, Recommendation Rec (2003)16 of the Committee of Ministers of the Council of Europe, Resolution 1787 (2011) of the Parliamentary Assembly of the Council of Europe and Recommendation No R (80)2 of the Committee of Ministers (see questions referred in Case C-200/14).

24. Secondly, it is necessary to address the plea which the Romanian Government raised alleging that the questions referred are inadmissible in their entirety since they concern issues relating to enforcement of a possible judgment on the obligation to refund the tax at issue, while the main proceedings only concern the finding that such an obligation exists on the part of the Romanian authorities. In the light of the foregoing, the Romanian Government considers that referring those questions at the present stage of these proceedings renders them purely hypothetical.

25. However, according to settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining enjoy a presumption of relevance. The Court may refuse to rule on a question referred 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 object, 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.[10]

26. In the present case the incompatibility of the tax at issue with EU law, and therefore also the obligation to refund it, is in principle a foregone conclusion, as is clear from the Court's answer to the first reference made by the referring court in the main proceedings.[11] The questions referred by that court in the present case are therefore certainly not hypothetical and do not bear no relation to the dispute under consideration by the referring court in the main proceedings. However, the degree to which the referring court is subsequently able to make use of the reply given by the Court in its judgment is a matter of interpretation of national procedural law, which does not fall within the jurisdiction of the Court. The referring court alone can make that assessment. Since, therefore, that court has ruled that obtaining an answer to its question is necessary to give judgment, the Court of Justice cannot question that view.

27. In the light of the foregoing, I consider that there are no grounds to question the admissibility of the questions referred in Case C-200/14.

*Preliminary observation on the principle of sincere cooperation*

28. Some of the acts of Romanian law about whose compatibility with EU law the referring court is uncertain, in particularly OUG No 8/2014 and Decree No 365/741/2014, were adopted after the delivery of the Court's judgments finding that the vehicle registration taxes applicable in Romania were incompatible with EU law.[12] The purpose of those acts is in fact to lay down the rules and procedures for refunding those taxes. Thus, the question may arise as to whether or not laying down rules on refunding the tax after it has been declared to be contrary to EU law infringes the principle of sincere cooperation between the Union and the Member States under Article 4(3) TEU.

29. None the less, in my view the fact that such specific rules are laid down does not, per se, infringe the principle of sincere cooperation. Where the Member States are faced with the need to carry out a mass refund of taxes to a considerable number of taxpayers, laying down specific rules on that refund may prove to be not only essential from the point of view of that State but also favourable to the taxable persons concerned. However, those specific rules must be no less favourable than the general rules and cannot render it excessively difficult or practically impossible to obtain a tax refund. In other words, they must be compatible with the principles of equivalence and effectiveness.

10 — Judgment in *Melki and Abdeli* (C-188/10 and C-189/10, EU:C:2010:363, paragraph 27 and the case-law cited).

11 — Order in *Câmpean and Ciocoiu* (C-97/13 and C-214/13, EU:C:2014:229).

12 — That is to say, in particular, the judgments in *Tatu* (C-402/09, EU:C:2011:219) and *Nisipeanu* (C-263/10, EU:C:2011:466).

30. It is true that the Court ruled, in relation to the former Article 10 EC (now Article 4(3) TEU), that in that situation a Member State cannot lay down rules reducing the possibilities of bringing proceedings for recovery of taxes which were levied in a manner inconsistent with EU law.[13] However, the Court derived that finding from the principles of equivalence and effectiveness.[14] Therefore, in my view it must be concluded that the principle of sincere cooperation does not preclude the Member States from laying down specific rules on the refunding of taxes declared incompatible with EU law, provided that they comply with the principles of equivalence and effectiveness.

*The principle of equivalence*

31. According to the Court's settled case-law, the principle of equivalence means that procedural rules governing actions for safeguarding taxpayers' rights under EU law must be no less favourable than those governing similar domestic actions.[15] That principle is particularly relevant to the rules laid down in the national law of a Member State especially for the purposes of refunding tax declared incompatible with EU law, such as OUG No 8/2014 and Decree No 365/741/2014.

32. The referring courts do not provide the information necessary to assess the compatibility of the provisions of Romanian law at issue in the main proceedings with the principle of equivalence. The Romanian Government, however, states that that principle has not been infringed, since similar rules, like the payment by instalments of amounts owed by the Treasury, are applied in other situations, for example in relation to outstanding State liabilities by virtue of employment relationships.

33. However, in this regard it should be pointed out that to assess provisions of national law from the point of view of compatibility with the principle of equivalence it is necessary to compare them with the rules governing protection of similar rights under national law. The Court has expressed this very clearly in its case-law, stating that compliance with that principle requires that the national rule in question apply without distinction to actions based on infringement of EU law and those based on infringement of national law *having a similar purpose and cause of action*.[16]

34. In order to assess the compatibility with that principle of the rules on refunding tax declared incompatible with EU law it is therefore necessary to compare them with rules in national law concerning the refund of a tax which is declared — for example in a review of constitutionality — to have been levied in breach of national law. National rules on the refund or payment by the Treasury of outstanding claims of a different nature from the refund of tax wrongly paid, for example wage arrears, are therefore completely irrelevant and do not determine whether the rules on refunding tax declared incompatible with EU law are either compatible or incompatible with the principle of equivalence.

35. Thus, in order to make that assessment the referring courts will have to identify the rules on refunding tax levied in breach of national law and compare them with the rules on refunding the tax at dispute in the main proceedings which was declared incompatible with EU law.[17] If the referring courts find that the latter rules are less favourable, they must refuse to apply them, so that the taxpayers concerned can obtain a refund pursuant to rules no less favourable than if they had sought the refund of tax levied in breach of national law.

13 — Judgment in *Weber's Wine World and Others* (C-147/01, EU:C:2003:533, paragraph 86).

14 — See judgment in *Deville* (240/87, EU:C:1988:349, paragraphs 12 and 13).

15 — See, inter alia, judgments in *Rewe-Zentralfinanz and Rewe-Zentral* (33/76, EU:C:1976:188, paragraph 5); *Littlewoods Retail and Others* (C-591/10, EU:C:2012:478, paragraph 27); and *Târșia* (C-69/14, EU:C:2015:662, paragraph 27).

16 — Judgment in *Littlewoods Retail and Others* (C-591/10, EU:C:2012:478, paragraph 31) (emphasis added).

17 — Ibid.

36. Consequently, the answer to the questions referred in both cases must be that the principle of equivalence in the defence of rights under EU law and rights under national law precludes the application in Member States' national law of rules on refunding tax declared incompatible with EU law which are less favourable than the rules on refunding tax levied in breach of national law. It is for the national courts to make that assessment.

*The principle of effectiveness*

37. Irrespective of whether or not they satisfy the condition relating to equivalence, the provisions of national law protecting rights under EU law must still satisfy the criterion relating to effectiveness. That lack of dependence between the two principles is extremely relevant, since it means that the requirements arising from them must be satisfied cumulatively. In other words, the requirements in terms of the provisions of national law are not satisfied if the rights under EU law are not protected effectively, even where similar rights under national law are protected to a similar or equivalent degree.

38. According to the wording used in the case-law, the principle of effectiveness requires that the provisions of national law must not be framed in such a way as to render impossible in practice or excessively difficult the exercise of rights conferred by the legal order of the European Union.[18] As regards the refunding of tax levied in breach of EU law, this means not only that the taxpayer has the right to obtain the full amount of the tax, plus the interest due, but also that the rules governing that refund cannot render the exercise of that right difficult to an excessive degree, that is to say in a manner which goes beyond what is necessary.

39. The individual rules on refunding the vehicle registration tax mentioned in the individual questions referred must be assessed in the light of those principles.

Refunding the tax by instalments over five years

40. Levying tax in breach of the law gives rise to a state of unlawfulness. Refunding that tax is intended primarily to remedy that state of unlawfulness. The state persists for as long as the tax has not been refunded to the taxpayer. Consequently, the tax must be refunded without delay, that is to say, immediately after the necessary procedures to establish the refund obligation, and to fulfil it, have been carried out.

41. Any unjustified delay prolongs the state of unlawfulness arising from the levying of a tax incompatible with the law and therefore runs counter to attaining the objective pursued by the obligation to refund that tax. That is the case in particular where the Member State provides for refund of the tax by instalments and thus knowingly and intentionally prolongs that state of unlawfulness. Such action is therefore contrary to the principle of effectiveness.

42. The second objective pursued by the obligation to refund, together with interest, tax that is incompatible with EU law is to compensate for the damage caused by the unavailability of sums of money as a result of a tax being levied in error.[19] Delayed payment or payment by instalments of the interest due in that respect means that the damage will not be compensated for during that time.

18 — See inter alia judgments in *Les Fils de Jules Bianco and Girard* (331/85, 376/85 and 378/85, EU:C:1988:97, paragraph 12); *Metallgesellschaft and Others* (C-397/98 and C-410/98, EU:C:2001:134, paragraph 85); and *Târșia* (C-69/14, EU:C:2015:662, paragraph 27).

19 — See inter alia judgments in *Metallgesellschaft and Others* (C-397/98 and C-410/98, EU:C:2001:134, paragraph 87); *Littlewoods Retail and Others* (C-591/10, EU:C:2012:478, paragraphs 25 and 29); and *Irimie* (C-565/11, EU:C:2013:250, paragraphs 21 and 26).

That is therefore contrary to the principle of effectiveness. In that regard it is worth adding that that damage arises when the tax is levied. Therefore, to compensate for it interest must be paid for the entire period from the date on which the tax was wrongly levied to the date on which it is actually refunded to the taxpayer concerned.

43. One way of refunding tax wrongly levied may be to offset it against other liabilities which the taxpayer in question has towards the Treasury. In that case, however, the abovementioned principles apply in full (points 41 and 42). Consequently, restricting the possibility of such offsetting each year to 20% of the total amount of the refund is also contrary to the principle of effectiveness. Such offsetting must be possible immediately in relation to the entire amount of the tax wrongly levied, together with the interest due, and if the amount of the refund exceeds the liabilities of the taxpayer, the balance must be refunded immediately in the form of a pecuniary payment.

Refund at the request of the taxpayer and the obligation to attach specific documents

44. As regards the provision pursuant to which a tax inconsistent with EU law is to be refunded at the request of the taxpayer concerned, I do not think that it infringes the principle of effectiveness. That is because, in my view, a taxpayer can be required to take active steps to enforce his rights. That requirement does not render the exercise of those rights excessively difficult or practically impossible. I consider that the principle of effectiveness cannot be interpreted as requiring the Member States automatically to refund taxes levied in breach of EU law.

45. Similarly, I do not think that the requirement to submit documents certifying the identity of the applicant and his right to a tax refund must be regarded as excessive.

46. However, if the relevant provision of Annex I to Decree No 365/741/2014 is to be construed as meaning that a refund will be made on condition that the taxpayer obtains beforehand a judicial decision declaring an obligation to refund, then that condition is, in my view, certainly contrary to the principle of effectiveness. In judgments of the Court an interpretation has been placed on EU law, in this case Article 110 TFEU, which demonstrates the incompatibility with that law of the Romanian tax levied on the registration of vehicles. Those judgments are binding not only on the courts which have referred questions in that respect for a preliminary ruling, but also on all other Romanian courts and, as the Commission correctly states in its observations, on the administrative authorities. Consequently, the need to initiate court proceedings, the outcome of which is a foregone conclusion, constitutes rendering excessively difficult the exercise of the right to a tax refund.

Restriction of the amount of funds assigned for the tax refund

47. Restricting the amount of funds which can be assigned to refund the tax to the amounts allocated for that purpose in the budget of the relevant budgetary entity may render the refund of the tax practically impossible if those amounts prove to be insufficient. I consider that that restriction is therefore clearly contrary to the principle of effectiveness, particularly since it makes refund of the tax contingent on a situation which lies entirely in the hands of the person required to refund it, that is to say the State. Therefore, that essentially makes it possible to avoid making a refund on the pretext that there are insufficient funds in the budget assigned for that purpose. The obligation to refund tax levied in breach of EU law is an obligation to achieve a particular result which a Member State cannot evade.

Restrictions on enforcement

48. It is true that fulfilment of the obligation to refund tax levied in breach of EU law can be at the request of the person concerned, but it must be voluntary, which means that a taxpayer cannot be forced to initiate enforcement proceedings. However, if the Member State does not fulfil that obligation in full or in part, the taxpayer must have the right to initiate enforcement proceedings. In that case, for the reasons stated in point 47 above, national law cannot restrict the assets on which that enforcement is carried out to amounts expressly assigned for tax refunds. In this case the debtor is the Treasury and therefore enforcement must be carried out in accordance with the general principles governing enforcement of monetary obligations as against the Treasury which are in force in the law of the Member State concerned.

49. However, as regards the time from which it is possible to enforce refund of tax levied in breach of the law, the principle of effectiveness does not, in my view, preclude a Member State which has laid down a special procedure for refunding tax levied in breach of EU law from preventing enforcement of that refund until that procedure has been completed. None the less, for this to be the case that procedure itself must be consistent with the principles of equivalence and effectiveness. If that procedure does infringe those principles, for example because it unjustifiably delays actual and full refund of the tax plus interest, the taxpayer must have the possibility of instituting enforcement proceedings if he does not obtain a refund within a reasonable time.

Time-limit for considering a refund request

50. Under the provisions of national law at issue in the main proceedings, requests for a refund of the taxes at issue are to be considered within 45 days. That time-limit does not appear to me to be excessively long and falls within the bounds of what is normally accepted in the Member States in relation to consideration of administrative cases, and therefore I do not think that it is contrary to the principle of effectiveness.

51. However, according to the information provided by the referring courts, that time limit is longer than that normally applicable in Romanian law in this type of case, which is 30 days. This may pose a problem from the point of view of the principle of equivalence. It is for the national courts to make the assessment in that regard.

Answer to the questions referred in relation to the principle of effectiveness

52. In summary, I propose that the following answer be given to the questions referred for a preliminary ruling:

(1) The principle of the effectiveness of the protection of taxpayers' rights under EU law must be interpreted as precluding provisions of national law which provide for:

- payment by annual instalments spread over five years of a refund of tax levied in breach of EU law and the interest payable in that respect, and also a restriction to the amount of those instalments of the possibility of offsetting the amounts payable to the taxpayer in that respect against other tax liabilities of the taxpayer;

- a requirement for the taxpayer to obtain a judicial decision declaring his right to a refund of tax levied in breach of EU law, where the unlawfulness of the tax is undoubtedly clear from the case-law of the Court;

- a restriction of the amount of funds assigned for the refund of tax to the amounts allocated for that purpose in the budget of the relevant budget entity;

— a restriction of the possibility of the taxpayer initiating an enforcement procedure where the State unjustifiably delays refund of the tax, or the possibility of carrying out enforcement solely on the amounts assigned in the budget for refund of the tax.

(2) The principle of the effectiveness of the protection of taxpayers' rights under EU law must be interpreted as not precluding provisions of national law which provide for:

— the refund of tax levied in breach of EU law at the request of the taxpayer concerned and the obligation to attach to that request documents certifying the identity of the applicant and his right to refund of the tax;

— no possibility of initiating enforcement by the taxpayer before the procedure for refunding tax levied in breach of EU law has been completed, provided that that procedure satisfies the requirements of equivalence and effectiveness.

*Interpretation of the provisions of the Charter*

53. In accordance with Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing EU law. As the Court's settled case-law on the interpretation of that provision of the Charter states, the fundamental rights guaranteed by EU law — and therefore above all the rights referred to in the Charter — must be complied with where national legislation falls within the scope of EU law. The fundamental rights guaranteed by the Charter must therefore be complied with where national legislation falls within the scope of EU law. [20]

54. The provisions of Romanian law under examination in the present cases lay down the rules on refunding tax declared inconsistent with EU law and therefore serve to protect rights under that law. Consequently, they undoubtedly fall within its scope and thus within the scope of the Charter.

55. However, I consider that the interpretation, set out above, of the principles of equivalence and effectiveness provides a sufficient basis for the referring courts to declare some provisions of Romanian law concerning the refund of tax levied on the registration of vehicles incompatible with EU law. In that respect the provisions of the Charter do have a bearing on the interpretation of the principle of effectiveness in the context of exercising rights under EU law before national authorities. None the less, an independent analysis of the provisions of Romanian law in the light of the Charter is not necessary as a consequence of the foregoing.

56. Should the Court find, however, contrary to my proposal, that the provisions of Romanian law are not inconsistent with those principles, it would be necessary to analyse them in the light of the provisions of the Charter referred to in the questions. That analysis would have to take account of any reasons which may militate in favour of a declaration that the provisions of Romanian law are consistent with EU law, in particular with the principle of effectiveness (it is primarily for the national courts to analyse their compatibility with the principle of equivalence). I, however, can see no such reasons, and am therefore unable to make that assessment.

20 — Judgment in *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraphs 19 and 21).

## Conclusion

57. In the light of the foregoing considerations, I propose that the Court give the following answer to the questions referred for a preliminary ruling by the Tribunalul Sibiu and the Tribunalul Timiş:

(1) The principle of equivalence in the defence of rights under EU law and rights under national law precludes the application in Member States' national law of rules on refunding tax declared incompatible with EU law which are less favourable than the rules on refunding tax levied in breach of national law. It is for the national courts to make that assessment.

(2) The principle of the effectiveness of the protection of taxpayers' rights under EU law must be interpreted as precluding provisions of national law which provide for:

— payment by annual instalments spread over five years of a refund of tax levied in breach of EU law and the interest payable in that respect, and also a restriction to the amount of those instalments the possibility of offsetting the amounts payable to the taxpayer in that respect against other tax liabilities of the taxpayer;

— a requirement for the taxpayer to obtain a judicial decision declaring his right to a refund of tax levied in breach of EU law, where the unlawfulness of the tax is undoubtedly clear from the case-law of the Court;

— a restriction of the amount of funds assigned for the refund of tax to the amounts allocated for that purpose in the budget of the relevant budget entity;

— a restriction of the possibility of the taxpayer initiating an enforcement procedure where the State unjustifiably delays refund of the tax, or the possibility of carrying out enforcement solely on the amounts assigned in the budget for refund of the tax.

(3) The principle of the effectiveness of the protection of taxpayers' rights under EU law must be interpreted as not precluding provisions of national law which provide for:

— the refund of tax levied in breach of EU law at the request of the taxpayer concerned and the obligation to attach to that request documents certifying the identity of the applicant and his right to refund of the tax;

— no possibility of initiating enforcement by the taxpayer before the procedure for refunding tax levied in breach of EU law has been completed, provided that that procedure satisfies the requirements of equivalence and effectiveness.