Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

30 June 2016*

(Reference for a preliminary ruling — Principle of sincere cooperation — Principles of equivalence and effectiveness — National legislation laying down the detailed rules for the repayment of taxes improperly levied with interest — Enforcement of judicial decisions relating to such rights to repayment stemming from the legal order of the Union — Refund payable over a period of five years — Repayment contingent on the existence of funds received from a tax — No possibility of enforcement)

In Case C-200/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Sibiu (Regional Court, Sibiu, Romania), made by decision of 20 March 2014, received at the Court on 22 April 2014, in the proceedings

Silvia Georgiana Câmpean

v

Administrația Finanțelor Publice a Municipiului Mediaș, now **Serviciul Fiscal Municipal Mediaș**,

Administrația Fondului pentru Mediu,

THE COURT (Second Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, C. Toader, A. Rosas, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: M. Szpunar,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 22 October 2015,

after considering the observations submitted on behalf of:

— Ms Câmpean, by D. Târşia, avocat,

— the Romanian Government, by R.H. Radu, acting as Agent, and V. Angelescu and D.M. Bulancea, advisers,

— the European Commission, by R. Lyal, G.-D. Balan and M. Wasmeier, acting as Agents,

* Language of the case: Romanian.

after hearing the Opinion of the Advocate General at the sitting on 18 February 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6 TEU, of the principles for the repayment of charges levied contrary to EU law, and of Articles 17, 20, 21(1) and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request was made in the context of proceedings between (i) Silvia Georgiana Câmpean and (ii) Administrația Finanțelor Publice a Municipiului Mediaș (Public Finance Administration for the Municipality of Medias, Romania) and Administrația Fondului pentru Mediu (Environment Fund Office, Romania) concerning repayment of a tax levied contrary to EU law that Ms Câmpean had to pay on the registration in Romania of a motor vehicle from another Member State and also the payment of interest thereon.

Romanian legal context

3 Law No 9 on the tax on polluting emissions from motor vehicles (Legea nr. 9 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') imposed a pollution tax on vehicles in categories M1 to M3 and N1 to N3. Under Article 4(1) of Law No 9/2012, the obligation to pay that tax arose, inter alia, at the time of the first registration of a motor vehicle in Romania.

4 Article XV of Emergency Order No 8 amending and supplementing certain legislative acts and other fiscal and budgetary measures (Ordonanța de urgență a Guvernului nr. 8 pentru modificarea și completarea unor acte normative și alte măsuri fiscal-bugetare), of 26 February 2014 (*Monitorul Oficial al României*, Part I, No 151, of 28 February 2014, 'OUG No 8/2014'), provides:

'1. The payment of the sums determined by judicial decision relating to the restitution of the tax on pollution for motor vehicles and the tax on polluting emissions from motor vehicles, the interest calculated until the date of full payment and legal costs, and all other sums as may be determined by the court, which became 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. The applications for restitution from taxpayers provided for in paragraph 1 shall be dealt with, pursuant to [Government Order No 92 on the Code of Tax Procedure (Ordonanța Guvernului nr. 92 privind Codul de procedură fiscal) of 24 December 2003 (*Monitorul Oficial al României*, Part I, No 941 of 29 December 2003, 'OUG No 92/2003')], 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 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, paid pursuant to the present emergency order, shall be adjusted on the basis of the consumer price index published by the National Institute of Statistics.

6. The procedure to be followed for payment by way of enforcement instrument shall be established jointly by the Ministry of the Environment and Climate Change and the Ministry of Public Finances, within the period referred to in paragraph 1.

7. The balance of the sum 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.'

5 According to the Explanatory Memorandum for OUG No 8/2014, the adoption of that order was justified, in particular, by 'the difficulties encountered to that date in the enforcement of the judicial decisions concerning the payment of the amount of the tax on pollution by motor vehicles and the tax on polluting emissions from motor vehicles, given the negative impact of the enforcement instruments under the conditions of general law, both on the budget of the Environmental Fund Office and on the consolidated general budget, [and] having regard to the need to establish specific rules, applicable for a limited period of time, in terms of the enforcement of judicial decisions ordering the payment of the amount of pollution tax for motor vehicles and the tax on polluting emissions from motor vehicles. The absence of such provisions would result in the inability to maintain a balanced budget and, implicitly, in non-compliance with internal commitments made by the administration of the Environmental Fund Office and the obligations of Romania in the field of environmental protection in its capacity as a Member State of the European Union.'

6 Order No 365/741 approving the procedure for payment of amounts under the judicial decisions concerning the restitution of the pollution tax for motor vehicles and the tax on polluting emissions from motor vehicles, covering also the approval of the model and content of certain forms and amending Annex 4 of Order No 490/407/2013 of the Minister for the Environment and Climate Change and the Minister of Public Finances, approving the restitution procedure for the amounts referred to in Articles 7, 9 and 12 of Government Emergency Order No 9/2013 establishing an environmental stamp duty for motor vehicles, and the amounts fixed by the judicial bodies in final and irrevocable decisions (Ordinul nr. 365/741/2014 ministrului mediului şi schimbărilor climatice şi al ministrului finanţelor publice privind aprobarea Procedurii de efectuare a plăţilor sumelor prevăzute prin hotărâri judecătoreşti având ca obiect restituirea taxei pe poluare pentru autovehicule şi a taxei pentru emisiile poluante provenite de la autovehicule şi a modelului şi conţinutului unor formulare şi pentru modificarea anexei nr. 4 la Ordinul ministrului mediului şi schimbărilor climatice şi al viceprim-ministrului, ministrul finanţelor publice, nr. 490/407/2013 pentru aprobarea Procedurii de restituire a sumelor prevăzute la art. 7, 9 şi 12 din Ordonanţa de urgenţă a Guvernului nr. 9/2013 privind timbrul de mediu pentru autovehicule, precum şi a sumelor stabilite de instanţele de judecată prin hotărâri definitive şi irevocabile), of 19 March 2014 ('Order No 365/741/2014'), was adopted pursuant to Article XV(6) of OUG No 8/2014 and sets out the implementing rules for Article XV thereof.

7 Article 1(2) and (3) of that order provides:

'2. The payment of the sums determined by judicial decision relating to the restitution of the tax on pollution by motor vehicles and the tax on polluting emissions from motor vehicles, the interest calculated 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, in accordance with Article XV of [Government Emergency Order No 8/2014].

3. The applications by the taxpayers for restitution of the sums provided for in paragraph 2, shall be dealt with, pursuant to [OG No 92/2003] within 45 days of being submitted, and the payment of annual instalments shall be made in accordance with the schedule of the annual instalments of the refunds approved to that end, …'

8 Article 3 of that order provides:

‘The sums referred to in Article 1(2), including any corrective amount to them resulting from their updating carried out at the date of payment, are to be covered by the sums levied, as [environmental] stamp duty, on the budget of the Environmental Fund.’

9 Annex 1 of Order No 365/741/2014 establishes, in Chapter I thereof, the procedure applicable to the payment of the sums referred to in Article XV(1) of OUG No 8/2014, provided for by the judicial decisions relating to the refunding of the tax on pollution by motor vehicles and the tax on polluting emissions from motor vehicles.

10 According to points 7 and 19 of Chapter I of that Annex 1:

‘7. The application for refund shall be accompanied, for verification purposes, by the following documents:

(a) a certified copy of the judgment to be enforced;

(b) the identity document of the natural person or representative of the legal person, along with a copy of the power granted to that representative;

...

19. For the payment of each annual instalment, according to the schedule of the updated amounts and interest established in paragraph 11, the competent tax authority shall process and pay out any compensation taking into account any tax liabilities on behalf of the payer on the date for the payment of each instalment ...’

11 Government Order No 22 on the execution of payment obligations of public institutions, declared enforceable (Ordonanța Guvernului nr. 22/2002 privind executarea obligațiilor de plată ale instituțiilor publice, stabilite prin titluri executorii), of 30 January 2002, (*Monitorul Oficial al României*, Part I, No 81 of 1 February 2002) in the version applicable to the facts at issue in the main proceedings (‘OG No 22/2002’), provides, at Article 1 thereof:

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

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

12 Article 2 of OUG No 22/2002 provides:

‘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 implementing body, at the claimant’s request.’

13 In accordance with Article 3 of OG No 22/2002:

‘If the public institutions fail to comply with their payment obligation as referred to in Article 2, the claimant may seek enforcement pursuant to the Code of Civil Procedure and/or pursuant to other relevant statutory obligations.’

14 Decree No 2336 of the Minister for Public Finances 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 (Ordinul ministrului finanțelor publice nr. 2336 pentru aprobarea Procedurii de punere în aplicare a titlurilor executorii în baza cărora se solicită înființarea popririi conturilor autorităților și instituțiilor publice deschise la nivelul unităților Trezoreriei Statului), of 19 July 2011, as subsequently amended and supplemented (‘Decree No 2336/2011’), provides, in paragraph 10a thereof:

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

2. In the cases referred to in paragraph 1, the implementing procedure for the enforcement instruments covered by Articles 1 to 10 shall apply mutatis mutandis.’

15 The tax procedure was established by OG No 92/2003.

16 Article 116 of OUG No 92/2003, entitled ‘Compensation’, provides, at paragraphs 1, 2, 4 and 6 thereof:

‘1. The claims of the State, or administrative and territorial divisions or their subdivisions, comprising the taxes, charges, contributions and all other sums due to the general consolidated budget shall be offset against the claims of the debtor comprising the sums to be reimbursed, repaid or paid by the budget, up to the smallest sums, where the two parties are both creditors and debtors, the one in relation to the other, provided that the claims at issue are administered by the same public authorities, or their subordinate entities.

2. The tax claims of the debtor shall be offset against the obligations falling under the same budget, and the outstanding balance offset against obligations falling under other budgets, proportionally, without prejudice to the conditions laid down in paragraph 1.

...

4. Save where otherwise provided by law, the offset shall occur automatically on the date on which the claims exist simultaneously and are certain, of fixed amount and due.

...

6. The offset shall be certified by the competent tax authority, on its own initiative or on the application of the debtor …’

17 Article 24 of the Law on Administrative Proceedings No 554 (Legea contenciosului administrativ nr. 554), of 2 December 2004 (*Monitorul Oficial al României*, Part I, No 1154, 7 December 2004), as amended, entitled 'Obligation to execute', provides, at paragraph 1 thereof:

'Where, upon an action being upheld, a public authority is obliged to adopt, replace or amend an administrative measure or to adopt another measure or to carry out certain other administrative operations, execution of the final judgment shall be effected voluntarily within the time-limits fixed in that judgment or, where no such time-limits have been fixed, at the latest within 30 days of the date on which the judgment becomes final.'

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

18 Ms Câmpean registered in Romania a second-hand motor vehicle purchased in Germany. For the purposes of that registration, Mrs Câmpean paid, on 18 January 2012, the sum of RON 2 737 (Romanian lei, approximately EUR 615) as a tax on polluting emissions from motor vehicles under Law No 9/2012.

19 By application lodged on 21 February 2012 before the Tribunalul Sibiu (Regional Court, Sibiu, Romania), Ms Câmpean sought repayment of that amount and payment of interest thereon, calculated until the date of actual repayment, on the grounds that that tax is incompatible with EU law.

20 The referring court, since it harboured doubts as to the compatibility of that tax with EU law, by decision of 15 November 2012, decided to stay proceedings and to request a preliminary ruling from the Court.

21 By order of 3 February 2014 in *Câmpean and Ciocoiu* (C-97/13 and C-214/13, not published, EU:C:2014:229), the Court ruled that Article 110 TFEU must be interpreted as precluding a tax such as a tax on polluting emissions from motor vehicles provided for by Law No 9/2012. The Court did not limit the temporal effects of its decision.

22 The referring court, in the same dispute, also harboured doubts about the compatibility with EU law and with some instruments adopted by the Council of Europe of the national legislation adopted after delivery of that order by the Court concerning the details of the repayment of unduly paid taxes, in particular, Article XV of the OUG No 8/2014.

23 That legislation provides, inter alia, for the repayment in instalments of the sum unduly paid, over a period of five years with annual instalments of 20% of the total amount claimed, plus interest and legal costs. According to the referring court, such legislation, in so far as it does not allow the enforcement of judicial decisions within a reasonable time, infringes, inter alia, the right to an effective repayment of taxes improperly levied, the right to property and the right to a fair trial.

24 In those circumstances, the Tribunalul Sibiu (Regional Court, Sibiu) decided, on 22 April 2014, to stay the proceedings and to refer a first question to the Court of Justice for a preliminary ruling.

25 Subsequently, the court reopened the oral procedure in the dispute before it. On that occasion, the applicant in the main proceedings argued that, in view, first, of the entry into force of the acts implementing Article XV of OUG No 8/2014 and, second, of the measures applicable to the enforcement proceedings against the State in the absence of Article XV, the referring court would have to supplement its request for a preliminary ruling. Considering that those measures will result in a delay in the repayment to individuals of the unduly paid taxes, without enabling those individuals, in return, to request the enforcement of decisions establishing their claims, the referring court supplemented its first question with five other questions.

26 As a result of the foregoing, the Tribunalul Sibiu (Regional Court, Sibiu) asks the Court the following questions:

‘(1) On a proper construction of Article 6 of the Treaty on European Union, Articles 17, 20, 21(1) and 47 of the [Charter], 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, is a provision such as Article XV of [OUG] No 8/2014 thereby precluded?

(2) On a proper construction of the EU law referred to in the [first question] and of 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, is legislation such as [Decree No 365/741/2014], Articles 1 to 3 of [OG No 22/2002] and Decree No 2336/2011 thereby precluded?

(3) Must the abovementioned EU law and the case-law of the Court [(judgment of 22 June 1989 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 on administrative and fiscal matters without the recipient of the refund being obliged to seek enforcement or to meet other procedural requirements imposed by the defendant debtor?

(4) In order to comply with EU law, how ‘immediately’ must domestic administrative authorities execute a judicial decision on administrative or tax matters, or offset the claims of the recipients of refunds against other reciprocal obligations owed to the State?

(5) Must EU law be interpreted as meaning that penalties such as those provided for in Chapter II(1)(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 on Administrative Proceedings]) 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?’

The jurisdiction of the Court and the admissibility of the request for a preliminary ruling

27 The Romanian Government contends that the request for a preliminary ruling is inadmissible in its entirety, in so far as the answer to the questions posed would be of no use for resolving the dispute in the main proceedings. It contends that those questions relate to the rules on the execution of a judicial decision that the referring court will give in this dispute, the subject matter of which relates exclusively to an individual’s application for repayment of a tax improperly levied by the State. Since the litigation phase is not yet complete and since it has not been shown that Ms Câmpean asked the national court to adopt interim measures relating to the execution of the judgment which it will deliver, there is no need for that court to question the rules on the execution of that decision.

28 In the alternative, the Romanian Government claims that the request for a preliminary ruling is inadmissible in part, in so far as certain questions relate to the instruments of the Council of Europe, which do not form part of EU law.

29 First, it must be borne in mind that, according to the settled case-law of the Court, a presumption of relevance is enjoyed by 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, the accuracy of which is not a matter for the Court to determine. In particular, it is not for the Court of Justice, in the context of the judicial cooperation established by Article 267 TFEU, to call into question or to verify the accuracy of the national court's interpretation of national law, as such interpretation falls within the exclusive jurisdiction of that court. Thus, the Court, when a question is referred to it by a national court, must not go beyond the interpretation of national law as described to it by that court (see, inter alia, judgment of 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraphs 12 and 13 and the case-law cited).

30 Moreover, the refusal by the Court to rule on a question referred by a national court is possible only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 21 May 2015 in *Verder LabTec*, C-657/13, EU:C:2015:331, paragraph 29, and 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraph 14 and the case-law cited).

31 In the present case, accepting the argument of the Romanian Government that the referring court could not, in the main proceedings, decide on the rules on the execution of the decision which it will make in respect of the application for reimbursement made by Ms Câmpean, would amount to giving an interpretation of national law, which falls within the jurisdiction of the referring court alone.

32 It is clear from the order for reference and its supplement that the referring court considers itself competent to apply the legislation on the rules on the execution of the decision on the merits which it will make, at the stage when the procedure in the case before it has reached. Furthermore, Ms Câmpean argued in her submissions that she requested that that court make its decision on the merits immediately and unconditionally enforceable and that Article XV of the OUG No 8/2014 does not apply to the execution of that decision.

33 In those circumstances and in the absence of other evidence from which it may be inferred that the answers of the Court to the questions will not be helpful for resolving the dispute in the main proceedings, the presumption of the relevance of those questions, as noted in paragraph 29 above, cannot be reversed in the present case.

34 As regards, second, the Romanian Government's argument that the request for a preliminary ruling is inadmissible in so far as it relates to the interpretation of the instruments of the Council of Europe covered by the questions referred, it should be recalled that the power of the Court to provide interpretations by way of preliminary rulings, as follows from Article 267 TFEU, extends only to rules which are part of EU law (judgment of 4 May 2010 in *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraph 59 and the case-law cited), which is not the case for the instruments of the Council of Europe referred to by the referring court in its first, second, fifth and sixth questions. The Court is thus not competent to rule on those questions in so far as they relate directly to the interpretation of such instruments.

35 Subject to the proviso in the previous paragraph, the Court must declare that it is competent to answer the questions referred for preliminary ruling and the request for a preliminary ruling is admissible.

The questions to be referred for a preliminary ruling

36 By its questions, which should be considered together, the referring court asks, essentially, whether EU law must be interpreted as precluding a system for the repayment with interest of taxes levied in breach of EU law, the amount of which has been established by enforceable judicial decisions, such as the system provided for in Article XV of the OUG No. 8/2014 and Decree No 365/741/2014 or, alternatively, with Articles 1 to 3 of OG No 22/2002 and Article 10a of Decree No 2336/2011.

37 In that regard, it is settled case-law 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. The Member States are therefore in principle required to repay taxes levied in breach of EU law with the related interest (see judgment of 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraphs 24 and 25 and the case-law cited).

38 In the absence of EU legislation on the recovery of national taxes unduly levied, it is for each Member State, in accordance with the principle of procedural autonomy, to designate the courts and tribunals with jurisdiction and to lay down the detailed procedural rules governing actions at law for safeguarding the rights which taxpayers derive from EU law (see, inter alia, judgment of 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraph 26 and the case-law cited).

39 However, the detailed procedural rules governing actions for safeguarding the rights which taxpayers derive from EU law must not be any less favourable than those governing similar domestic actions (principle of equivalence) and 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 (principle of effectiveness) (see, inter alia, judgment of 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraph 27 and the case-law cited).

40 Moreover, it must be recalled that the Court has already held that, in accordance with the principle of sincere cooperation, a Member State may not adopt provisions making repayment of a tax held to be contrary to EU law by a judgment of the Court, or whose incompatibility with EU law is apparent from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those which would otherwise be applied to that repayment of the tax (see, to that effect, judgments of 10 September 2002 in *Prisco and CASER*, C-216/99, C-222/99, EU:C:2002:472, paragraph 77 and the case-law cited, and 2 October 2003 in *Weber's Wine World and Others*, C-147/01, EU:C:2003:533, paragraph 87).

41 The referring court's questions must be examined in the light of those principles.

The principle of sincere cooperation

42 It is clear from the order for reference that Article XV of OUG No 8/2014 and Decree No 365/741/2014, the latter laying down the implementing rules for Article XV, were adopted after the order of 3 February 2014 in *Câmpean and Ciocoiu* (C-97/13 and C-214/13, not published, EU:C:2014:229), in which the Court ruled that Article 110 TFEU precludes a tax such as the tax on polluting emissions from motor vehicles, and that that legislation was adopted, in particular, because of the difficulties encountered in the execution of judicial decisions concerning the repayment of improperly levied taxes. That legislation's purpose, in that regard, is to establish procedural rules specifically applicable to the execution of the judicial decisions concerning such repayments.

43 In those circumstances, and in the light of the case-law cited in paragraph 40 above, it is for the referring court to determine whether those procedural rules are less favourable than those which would be applied, in their absence, to a repayment such as the one at issue in the main proceedings.

44 The principle of sincere cooperation must therefore be interpreted as meaning that it precludes a Member State from adopting provisions making repayment of a tax held to be contrary to EU law by a judgment of the Court, or whose incompatibility with EU law results from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those that would have applied, in their absence, to such a repayment; it is for the referring court to determine whether that principle has been complied with in the present case.

The principle of equivalence

45 It is settled case-law that compliance with the principle of equivalence implies that Member States are not to provide less favourable procedural rules for claims for reimbursement of a tax based on an infringement of EU law than those applicable to similar actions for infringement of domestic law, given their purpose, their cause of action and their essential characteristics, (see, to that effect, judgment of 19 July 2012 in *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478, paragraph 31 and the case-law cited).

46 It is in principle for the national court, which has direct knowledge of the procedural rules intended to ensure that the rights derived by individuals from EU law are safeguarded under domestic law, to verify that they comply with the principle of equivalence. However, the Court may, for the purposes of the assessment which the national court will carry out, provide certain information to it relating to the interpretation of EU law (see judgments of 1 December 1998 in *Levez*, C-326/96, EU:C:1998:577, paragraphs 39 and 40, and 19 July 2012 in *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478, paragraph 31).

47 It is apparent from Article XV(1) of OUG No 8/2014 that that provision aims to regulate the procedure for payment of the amounts fixed by judicial decisions which concern the repayment of improperly levied taxes, the interest calculated until the date of full payment of such sums, the related legal fees, and any other amount determined by judicial bodies. Article XV provides in paragraphs 1 to 4 thereof, that the payment of those sums is to be made by instalments over a five-year period with an annual payment of 20% of their total amount, that repayment requests are to be processed within 45 days of their submission and that any enforcement procedure is suspended for the period of five years referred to in paragraph 1 of that provision.

48 Article 3 of Decree No 365/741/2014 states that the sums due are covered by the sums levied as environmental stamp duty in the budget of the Environmental Fund. Moreover, according to paragraph 7 of Annex 1 of Decree No 365/741/2014, any application for restitution is to be accompanied, for verification purposes, by certain documents, such as a certified copy of the judgment to be executed and the natural person's identity document. Point 19 of Annex 1 provides that the competent tax authority is to process and pay out any compensation for the payment of each annual instalment, taking into account any tax liabilities on behalf of the payer on the date for the payment of each instalment.

49 In order to demonstrate that those procedural rules are analogous to those applicable to similar actions, alleging infringement of national law, the Romanian Government cited, in its written observations, the mechanism whereby payment is made by instalment over a period of five years for the salary rights owed under domestic law by the public administration to individuals.

50 That government also argued that the 45-day period, in which an application for the execution of a court decision on the repayment of improperly levied tax must be processed, is equivalent to the 45-day period generally applicable to the processing of applications for repayment of the sums levied pursuant to the national budget.

51 Thus, in order to determine whether the requirements of the principle equivalence are complied with in the main proceedings, the referring court must establish, in the first place, whether the actions which are subject to the procedural rules which the Romanian Government considers to be similar to those actions provided for by Article XV of OUG No 8/2014 and by Decree No 365/741/2014 are, from the point of view of their cause of action, their object and their essential elements, similar to an action based on infringement of EU law, such as that at issue in the main proceedings.

52 That does not appear to be the case, as the Advocate General also observed in point 34 of his Opinion, with regard to the action for the reimbursement of salary arrears owed by the public administration; that is, however, for the referring court to verify.

53 Once the referring court has identified the national action or actions which are similar to the action at issue in the main proceedings, which is based on EU law, it will have to determine, in the second place, whether or not the procedural rules applicable to such national actions are, in fact, more favourable than those applicable to the case in the main proceedings, under Article XV of OUG No 8/2014 and Decree No 365/741/2014.

54 Finally, as regards the national legislation which would, according to the referring court, be applicable in the case pending before it were that court to find that the principle of equivalence precludes Article XV of OUG No 8/2014 and Decree No 365/741/2014, namely Articles 1 to 3 of OG No 22/2002 and Article 10a of Decree No 2336/2011, nothing in the file before the Court permits the inference that that legislation would apply differently to disputes based on EU law and similar disputes based on national law, since that legislation appears to be legislation which is generally applicable to administrative litigation, which was also confirmed by the applicant in the main proceedings at the hearing.

55 Moreover, having regard to certain arguments raised by the applicant in the main proceedings in her written submissions, which could be interpreted as meaning that the rules on the execution of judicial decisions concerning the rights derived from the legal order of the EU must be identical regardless of the nature of the dispute, it must be pointed out that compliance with the principle of equivalence requires that actions based on an infringement of national law and similar actions based on an infringement of EU law be treated equally and not that there be equal treatment of national procedural rules applicable to proceedings of a different nature or applicable to proceedings falling within two different branches of law (see, to that effect, judgments of 6 October 2015 in *Orizzonte Salute*, C-61/14, EU:C:2015:655, paragraph 67, and 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraph 34 and the case-law cited).

56 The principle of equivalence must therefore be interpreted as precluding a Member State from providing procedural rules which are less favourable for applications for the repayment of a tax based on an infringement of EU law than those applicable to similar actions based on an infringement of domestic law. It is for the referring court to make the necessary checks to ensure compliance with that principle so far as concerns the legislation applicable to the dispute pending before it.

The principle of effectiveness

57 As regards the requirements of the principle of effectiveness, it is necessary to consider, first, whether a system of reimbursement of a tax levied in breach of EU law, such as the system put in place by the rules provided for in Article XV of OUG No 8/2014 and Decree No 365/741/2014, makes it excessively difficult or impossible in practice to exercise rights derived from the legal order of the EU, taking into account the role of those rules in the procedure, its progress and its special features, viewed as a whole, before the various national bodies (see, to that effect, judgments of 27 June 2013 in *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 48, and 6 October 2015 in *Târșia*, C-69/14, EU:C:2015:662, paragraphs 36 and 37).

58 It should be noted in that regard that, pursuant to that legislation, an individual who, by judicial decision, is entitled to repayment of the tax at issue must apply to the competent public authority in order to lodge an application for repayment of the amount paid as that tax, together with the documents necessary for the execution of the obligations on that authority pursuant to the enforcement instrument. Contrary to what the applicant seems to claim in the main proceedings, such a requirement does not appear, in and of itself and in the absence of any indicia relative to, inter alia, the existence of possible obstacles regarding, for example, the exorbitant costs of such a procedure, to make the repayment of such taxes excessively difficult, as also noted by the Advocate General in paragraphs 44 and 45 of his Opinion.

59 It would be different where an individual, who obtained such an enforcement instrument at the end of legal proceedings and who requested its execution before the competent public authority, had, pursuant to the legislation at issue, to wait for five years in order to obtain a full repayment of the amounts due, which has the effect of preserving the situation of unlawfulness instead of remedying it as soon as possible.

60 Moreover, the repayment of amounts due is dependent, in accordance with Article 3 of Decree No 365//2014 and as the interested parties stated at the hearing, on the availability of the funds received by way of a vehicle tax, namely the environmental stamp duty. The individual does not have any means of compelling the competent public authority to fulfil its obligations if it ceases to perform them voluntarily, since the execution under the conditions of general law is, pursuant to that regulation, excluded during that period of five years.

61 In those circumstances, the Court must take the view that such a system of repayment of sums levied in breach of EU law plus the interest owed in relation to them, the amount of which has been established by an enforceable court decision, taken as a whole, puts the individual in a prolonged situation of uncertainty as to the date when he will obtain a full refund of the improperly paid tax, without any means to compel the public authority to execute its obligation if it does not do so voluntarily, either for reasons related to lack of funds or for other reasons.

62 Consequently, a system of repayment of taxes levied in breach of EU law, such as that provided by Article XV of OUG No 8/2014 and Decree No 365/741/2014, makes the exercise of rights under EU law excessively difficult and does not comply with the obligation of Member States to ensure that full effect is given to such rights.

63 The Romanian Government merely justifies the establishment of such a system in essence by the existence of economic difficulties and the institutional deadlock relating to the prompt execution of judicial decisions ordering the repayment of charges levied in breach of EU law.

64 Suffice it to recall in that regard that the Member States who have received taxes in breach of EU law are, in the light of the case-law cited in paragraph 37 above, obliged to repay those taxes with interest. In that regard, it cannot be accepted, as the Advocate General also observed, in essence, in point 47 of his Opinion, that a Member State, as the debtor in a dispute such as that in issue in the main proceedings, may rely on an insufficiency of funds to justify a failure to execute a court decision which recognises that an individual enjoys a right derived from the legal order of the EU.

65 Similarly, the procedural autonomy afforded to Member States for the adoption of procedural rules governing the repayment of taxes levied in breach of EU law with interest thereon cannot go so far as to allow them to make the exercise of such rights in practice impossible or excessively difficult, for reasons related to the difficulties of implementation or for purely economic reasons.

66 It follows that the principle of effectiveness must be interpreted as precluding a system of repayment with interest of taxes levied in breach of EU law, the amount of which was established by enforceable judicial decisions, such as the system at issue in the main proceedings, which provides for the

repayment of such taxes by instalments over five years and which makes the execution of such decisions contingent on the availability of funds received in respect of another tax, without the individual having the right to compel public authorities to fulfil their obligations if they do not do so voluntarily.

67 As regards, second, Articles 1 to 3 of OG No 22/2002 and Article 10a of Decree No 2336/2011, namely the legislation which would, according to the referring court, be applicable to the case pending before it if Article XV of OUG No 8/2014 and Decree No 365/741/2014 were not applicable, that court states without providing further details that the application of that legislation would delay or prevent the actual restitution of the sums owed by the public administration.

68 However, it does not appear that a period of six months, such as that provided by Articles 2 and 3 of the OG No 22/2002, granted to the public authority to fulfil its obligations voluntarily by virtue of an enforcement instrument, renders, by itself, excessively difficult the exercise of the rights that individuals derive from EU law. Moreover, it is open to such individuals to initiate, after that period has lapsed, enforcement proceedings against the debtor public authority, if it does not fulfil its obligations by the deadline for voluntary compliance.

69 If, as argued by the applicant in the main proceedings, national legislation, such as Articles 1 to 3 of OG No 22/2002 and Article 10a of Decree No 2336/2011, delays the enforcement of a court decision on the rights deriving from the legal order of the EU beyond the six months provided for in Articles 2 and 3 of OG No 22/2002, simply due to the lack of funds in the budget for the restitution of such sums without the individual having the right to compel public authorities to fulfil their obligations, either by a request for measures of attachment or other means to ensure compliance by the authorities with their obligations under national law, such legislation cannot meet the requirements of the principle of effectiveness, since it would make the repayment excessively difficult or impossible in practice. It is for the national court to ascertain whether that is the case in the main proceedings.

70 Notwithstanding the applicability of the provisions of the Charter to a legal situation such as that at issue in the case in the main proceedings, which comes within the scope of EU law, inasmuch as the subject matter of the main proceedings concerns the repayment of a tax levied in breach of Article 110 TFEU and Member States are obliged, under the case-law cited in paragraph 37 above, to pay such a tax and interest thereon, there is no need to examine the questions of the referring court in so far as they concern the provisions of the Charter, since the foregoing elements enable that court to give a ruling in the main proceedings.

71 It follows from all the foregoing that:

— The principle of sincere cooperation must be interpreted as precluding a Member State from adopting provisions making repayment of a tax which has been held to be contrary to EU law by a judgment of the Court, or whose incompatibility with EU law results from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those that would have applied, in their absence, to such a repayment; it is for the referring court to determine whether that principle has been complied with in the present case.

— The principle of equivalence must be interpreted as precluding a Member State from providing procedural rules which are less favourable for applications for the repayment of a tax based on an infringement of EU law than those applicable to similar actions based on an infringement of domestic law. It is for the referring court to make the necessary checks to ensure compliance with that principle so far as concerns the legislation applicable to the dispute pending before it.

— The principle of effectiveness must be interpreted as precluding a system of repayment with interest of taxes levied in breach of EU law, the amount of which was established by enforceable judicial decisions, such as the system at issue in the main proceedings, which provides for the

repayment of such taxes by instalments over five years and which makes the execution of such decisions contingent on the availability of funds received in respect of another tax, without the individual having the right to compel public authorities to fulfil their obligations if they do not do so voluntarily. It is for the referring court to ascertain whether legislation such as that which would be applicable in the case at issue in the main proceedings in the absence of such a system of repayment meets the requirements of the principle of effectiveness.

Costs

72 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 (Second Chamber) hereby rules:

The principle of sincere cooperation must therefore be interpreted as precluding a Member State from adopting provisions making repayment of a tax which has been held to be contrary to EU law by a judgment of the Court, or whose incompatibility with EU law results from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those that would have applied, in their absence, to such a repayment; it is for the referring court to determine whether that principle has been complied with in the present case.

The principle of equivalence must be interpreted as precluding a Member State from providing procedural rules which are less favourable for applications for the repayment of a tax based on an infringement of EU law than those applicable to similar actions based on an infringement of domestic law. It is for the referring court to make the necessary checks to ensure compliance with that principle so far as concerns the legislation applicable to the dispute pending before it.

The principle of effectiveness must be interpreted as precluding a system of repayment with interest of taxes levied in breach of EU law, the amount of which was established by enforceable judicial decisions, such as the system at issue in the main proceedings, which provides for the repayment of such taxes by instalments over five years and which makes the execution of such decisions contingent on the availability of funds received in respect of another tax, without the individual having the right to compel public authorities to fulfil their obligations if they do not do so voluntarily. It is for the referring court to ascertain whether legislation such as that which would be applicable in the case at issue in the main proceedings in the absence of such a system of repayment meets the requirements of the principle of effectiveness.

[Signatures]