Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

6 October 2015*

(Reference for a preliminary ruling — Principles of equivalence and effectiveness — Res judicata — Recovery of undue payments — Recovery of taxes levied by a Member State in breach of EU law — Final decision of a court or tribunal imposing payment of a tax which is incompatible with EU law — Application for revision of such a decision — National legislation allowing the revision, in the light of later preliminary rulings given by the Court, of final decisions of a court or tribunal made exclusively in administrative proceedings)

In Case C-69/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Sibiu (Regional Court, Sibiu, Romania), made by decision of 16 January 2014, received at the Court on 10 February 2014, in the proceedings

**Dragoș Constantin Târșia**

v

**Statul român,**

**Serviciul public comunitar regim permise de conducere și înmatriculare a autovehiculelor,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, M. Ilešič (Rapporteur), L. Bay Larsen, T. von Danwitz, A. Ó Caoimh and J.-C. Bonichot, Presidents of Chambers, A. Arabadjiev, C. Toader, M. Berger, A. Prechal, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: N. Jääskinen,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 27 January 2015,

after considering the observations submitted on behalf of:

— Mr Târșia, by himself,

— the Romanian Government, by R. Radu and V. Angelescu and by D. Bulancea, acting as Agents,

— the Polish Government, by B. Majczyna and by B. Czech and K. Pawłowska, acting as Agents,

* Language of the case: Romanian.

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

after hearing the Opinion of the Advocate General at the sitting on 23 April 2015,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 110 TFEU, Article 6 TEU, Articles 17, 20, 21 and 47 of the Charter of Fundamental Rights of the European Union, and general principles of EU law.

2 The request has been made in proceedings between Mr Târşia and the Statul român (Romanian State), represented by the Ministry of Economy and Finance (Ministerul Finanțelor și Economiei), and the Serviciul public comunitar regim permise de conducere şi înmatriculare a autovehiculelor (Local administrative authorities concerned with driving licences and vehicle registrations) concerning an action for the revision of a final decision, made by a national court, obliging Mr Târşia to pay a tax subsequently found to be incompatible with EU law.

### Romanian legal context

3 Article 21 of Law No 554/2004 of 2 December 2004 on administrative proceedings (Legea contenciosului administrativ nr. 554/2004) (*Monitorul Oficial al României*, Part I, No 1154 of 7 December 2004) ('the law on administrative proceedings'), in the version in force when the application for revision was submitted, stated:

'(1) The forms of action provided for by the Code of Civil Procedure can be exercised against irrevocable and definitive decisions made by organs of administrative proceedings.

(2) In addition to those provided for by the Code of Civil Procedure, judgments that have become final and binding and that infringe the primacy of [EU] law laid down by Article 148(2) read in combination with Article 20(2) of the Romanian Constitution, as amended, shall constitute grounds for revision. The application for revision shall be lodged within 15 days of notification, by derogation from the rule set out in Article 17(3), by way of application, with detailed reasons, made by the interested parties within 15 days of the delivery of the judgment. The application for revision shall be examined as a matter of urgency and shall be given priority, within 60 days at most of being lodged.'

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

4 On 3 May 2007, Mr Târşia, a Romanian national, purchased a second-hand motor car in France. On 5 June 2007, in order to register that vehicle in Romania, he had to pay a sum of RON 6899.51 (around EUR 1 560) in respect of the special tax on motor cars payable under Articles 214a and 214b of the Romanian Tax Code, in the version in force when the vehicle in question was registered.

5 Believing that tax to be incompatible with Article 110 TFEU, Mr Târşia initiated civil proceedings before the Judecătoria Sibiu (District Court, Sibiu) in order to secure the return of the amount of that tax. That court, ruling against the Romanian State by judgment of 13 December 2007, upheld that request, on the ground that the tax in question was contrary to Article 110 TFEU.

6 The Romanian State, represented by the Ministry of Economy and Finance, brought an appeal in cassation against that judgment. By Decision No 401/2008, the civil section of the Tribunalul Sibiu (Regional Court, Sibiu) limited the repayment of the special tax on motor cars paid by Mr Târşia to a

sum equal to the difference between that tax and the later pollution tax payable by virtue of Government Emergency Order No 50/2008 of 21 April 2008 introducing a pollution tax for motor cars (Ordonanță de urgență a Guvernului nr. 50/2008 pentru instituirea taxei pe poluare pentru autovehicule) (*Monitorul Oficial al României*, Part I, No 327 of 25 April 2008).

7 That decision was the subject of an action for revision brought before the Tribunalul Sibiu ('the referring court') by Mr Târșia on 29 September 2011. On the basis of Article 21(2) of the law on administrative proceedings, Mr Târșia requested that Decision No 401/2008 be annulled and that a new decision be made, on the ground that the Court of Justice had ruled, in its judgment in *Tatu* (C-402/09, EU:C:2011:219), that Article 110 TFEU precludes the introduction of a tax such as the pollution tax imposed by Government Emergency Order No 50/2008. Consequently, Mr Târșia considers that the Romanian State's appeal was allowed in breach of the principle of the primacy of EU law, and that the special tax on motor cars paid by him should be repaid to him in its entirety.

8 The referring court notes in that regard that the procedural rules applicable to civil proceedings do not offer any opportunity to bring an action for revision of a final judicial decision for a breach of EU law, although such an action may be brought pursuant to the procedural rules governing administrative proceedings.

9 In those circumstances, the Tribunalul Sibiu (Regional Court, Sibiu) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Can Articles 17, 20, 21 and 47 of the Charter of Fundamental Rights of the European Union, Article 6 of the Treaty on the European Union, Article 110 of the Treaty on the Functioning of the European Union and the principle of legal certainty laid down in EU law and in the case-law of the Court of Justice be interpreted as precluding a rule such as that found in Article 21(2) of [the law on administrative proceedings] which allows for revision of decisions of a national court or tribunal when there is an infringement of the principle of the primacy of [European Union] law exclusively in administrative proceedings and which does not allow for revision of national decisions of a court or tribunal delivered in proceedings other than administrative proceedings (civil or criminal proceedings) when there is an infringement of the same principle of primacy of [European Union] law at issue in those decisions?'

## Consideration of the question referred

### *Admissibility of the request for a preliminary ruling*

10 The Romanian Government contends that the present request for a preliminary ruling is not admissible. In that regard, that government maintains, first, that the legal relationship between Mr Târșia and the Romanian State falls within the area of tax law. Consequently, the procedural law applicable to Mr Târșia's application would be procedural tax law, which falls under the law relating to administrative proceedings. In those circumstances, even though the action for revision of Decision No 401/2008 has been brought before the formation of the referring court which has jurisdiction in civil matters, that formation also having made the decision in question, the referring court would be required to apply the procedural law relating to administrative proceedings, including the provisions of that procedural law which concern the grounds for bringing an action for revision referred to in Article 21(2) of the law on administrative proceedings.

11 Secondly, the Romanian Government contends that Mr Târșia could have brought an extraordinary action for annulment of that decision. That remedy would have allowed the case under consideration to be referred to the formation responsible for administrative proceedings, which could have applied

Article 21(2) of the law on administrative proceedings. As the Romanian legal system guarantees an effective remedy ensuring Mr Târşia's situation is compatible with EU law, an answer to the question referred would not be useful for the resolution of the dispute pending before the referring court.

12 In that regard, it should be noted that, according to settled case-law, 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, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (judgments in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 30, and *Verder LabTec*, C-657/13, EU:C:2015:331, paragraph 29).

13 In particular, it is not for the Court of Justice, in the context of the judicial cooperation established by Article 267 TFEU, to call back into question or to verify the accuracy of the interpretation of national law made by the national court, as such interpretation falls within the exclusive jurisdiction of that court. In addition, when hearing a reference for a preliminary ruling from a national court, the Court of Justice must base its reasoning on the interpretation of national law as described to it by that court (see, to that effect, judgments in *Winner Wetten*, C-409/06, EU:C:2010:503, paragraph 35; *Padawan*, C-467/08, EU:C:2010:620, paragraph 22; and *Logstor ROR Polska*, C-212/10, EU:C:2011:404, paragraph 30).

14 Furthermore, the Court may refuse to rule on questions 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 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 in *Nicula*, C-331/13, EU:C:2014:2285, paragraph 23, and *Verder LabTec*, C-657/13, EU:C:2015:331, paragraph 29).

15 In the present case, accepting the Romanian Government's argument that the referring court would be obliged to apply the procedural rules relating to administrative proceedings even though the case pending before it concerns an application for revision of a decision given in the course of civil proceedings would amount to interpreting national law, which falls within the exclusive jurisdiction of the referring court.

16 According to that court, Article 21(2) of the law on administrative proceedings, which offers the opportunity to revise final judicial decisions given in the course of administrative proceedings, is not applicable to the dispute in the main proceedings, which is a civil dispute.

17 Moreover, it follows from the case-law of the Court that the classification, for the purposes of determining the applicable detailed rules for repayment of a national tax levied in breach of EU law, of the legal relationship established when that tax was levied between the tax authorities of a Member State and taxable persons is a matter which falls to be determined under national law (see, to that effect, judgment in *IN. CO. GE.'90 and Others*, C-10/97 to C-22/97, EU:C:1998:498, paragraph 26).

18 The first plea of inadmissibility raised by the Romanian Government must, therefore, be rejected.

19 Regarding the plea of inadmissibility based on the purported existence, in the national legal system, of effective remedies which, in any event, would permit Mr Târşia to seek redress, it is sufficient to note that it is solely for the national court, which, in the dispute in the main proceedings, is asking whether it is possible for it to revise a final judicial decision made in the course of civil proceedings, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to deliver its judgment and the relevance of the questions which it submits to the Court. Where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (see, to that effect, judgments in *Transportes Urbanos y Servicios Generales*, C-118/08, EU:C:2010:39, paragraph 25, and *Nicula*, C-331/13, EU:C:2014:2285, paragraph 21).

20 As nothing in the case-file made available to the Court permits a conclusion that the interpretation of EU law that is sought would not be of use to the referring court, the Romanian Government's second plea of inadmissibility cannot succeed.

21 Nevertheless, according to the case-law cited in paragraph 14 of the present judgment, the interpretation of EU law that is sought must have some bearing on the purpose of the dispute in the main proceedings. By its question, the referring court is asking the Court of Justice to rule on the interpretation of EU law on the basis of the national legislation which does not allow the revision of final judicial decisions given in civil and criminal proceedings which are incompatible with EU law. In so far as it is unequivocally clear from the case-file that the dispute in the main proceedings is not a criminal dispute, it must be found — as the Romanian and Polish Governments contend — that any answer from the Court in that regard would clearly have no bearing on the purpose of that dispute.

22 In the light of all of the foregoing, it must be found that the request for a preliminary ruling is admissible, except to the extent that it concerns the impossibility of revising final decisions given by courts in criminal proceedings which are incompatible with EU law.

*Substance*

23 As a preliminary point, it should be borne in mind that, according to the case-file, Mr Târşia was obliged, by a decision of a court made in the course of civil proceedings, to pay the pollution tax for motor cars which the Court of Justice, in essence, declared to be incompatible with Article 110 TFEU in its judgment in *Tatu* (C-402/09, EU:C:2011:219), delivered after the date on which the national decision mentioned above became final.

24 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 (judgments in *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478, paragraph 24; *Irimie*, C-565/11, EU:C:2013:250, paragraph 20; and *Nicula*, C-331/13, EU:C:2014:2285, paragraph 27).

25 In addition, where a Member State has levied taxes in breach of rules of EU law, individuals are entitled to reimbursement not only of the tax unduly levied but also of the amounts paid to that State or retained by it which relate directly to that tax. Accordingly, the principle of the obligation of Member States to repay with interest amounts of tax levied in breach of EU law follows from that law (see, to that effect, judgments in *Littlewoods Retail and Others*, C-591/10, EU:C:2012:478, paragraphs 25 and 26, and *Irimie*, C-565/11, EU:C:2013:250, paragraphs 21 and 22).

26 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 having jurisdiction and to lay down the detailed procedural rules governing actions at law for safeguarding the rights which taxpayers derive from EU law (see, to that effect, judgments in *Rewe-Zentralfinanz and Rewe-Zentral*, 33/76, EU:C:1976:188, paragraph 5; *Aprile*, C-228/96, EU:C:1998:544, paragraph 18; and *Test Claimants in the Franked Investment Income Group Litigation*, C-362/12, EU:C:2013:834, paragraph 31).

27 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, to that effect, inter alia, judgments in *Rewe-Zentralfinanz and*

*Rewe-Zentral*, 33/76, EU:C:1976:188, paragraph 5; *Transportes Urbanos y Servicios Generales*, C-118/08, EU:C:2010:39, paragraph 31; and *Test Claimants in the Franked Investment Income Group Litigation*, C-362/12, EU:C:2013:834, paragraph 32).

28 In so far as the recovery of a tax declared incompatible with EU law is, in the present case, hindered by the existence of a final decision of a court or tribunal imposing payment of that tax, attention should be drawn to the importance, both in the legal order of the European Union and in national legal systems, of the principle of *res judicata*. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that decisions of courts or tribunals which have become definitive after all rights of appeal have been exhausted or after expiry of the time-limits provided for in that connection can no longer be called into question (judgment in *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 58 and the case-law cited).

29 Therefore, EU law does not require a national court to disapply domestic rules of procedure conferring finality on a judgment, even if to do so would make it possible to remedy a domestic situation which is incompatible with EU law (judgment in *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 59 and the case-law cited).

30 Nevertheless, if the applicable domestic rules of procedure provide the possibility, under certain conditions, for a national court to go back on a decision having the authority of *res judicata* in order to render the situation compatible with national law, that possibility must prevail if those conditions are met, in accordance with the principles of equivalence and effectiveness, so that the situation at issue is brought back into line with EU law (see, to that effect, judgment in *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 62).

31 Having regard to the foregoing preliminary considerations, it must be found that the referring court is asking, in essence, whether EU law, in particular the principles of equivalence and effectiveness, is to be interpreted as precluding a situation where there is no possibility for a national court to revise a final decision of a court or tribunal made in the course of civil proceedings when that decision is found to be incompatible with an interpretation of EU law upheld by the Court after the date on which that decision became final, although such a possibility does exist as regards final decisions of a court or tribunal incompatible with EU law made in the course of administrative proceedings.

The principle of equivalence

32 It is clear from the case-law cited in paragraph 27 of the present judgment that the principle of equivalence prohibits a Member State from laying down less favourable procedural rules for claims for repayment of a tax based on a breach of EU law than those applicable to similar proceedings based on a breach of national law (see also judgment in *Weber's Wine World and Others*, C-147/01, EU:C:2003:533, paragraph 104).

33 However, by its question, the referring court is asking the Court to compare, for the purposes of applying that principle, judicial proceedings of an administrative nature based on a breach of EU law and judicial proceedings of a civil nature based on a breach of that law.

34 In that regard, as was noted by the Advocate General in point 49 of his Opinion, the principle of equivalence requires equal treatment of claims based on a breach of national law and of similar claims based on a breach of EU law, not equivalence of national procedural rules applicable to different types of proceedings such as — as in the dispute in the main proceedings — civil proceedings on the one hand and administrative proceedings on the other. Furthermore, that principle is not relevant to a situation which — as in the dispute in the main proceedings — concerns two types of actions, both of which are based on a breach of EU law (judgment in *ÖBB Personenverkehr*, C-417/13, EU:C:2015:38, paragraph 74).

35 It follows that the principle of equivalence does not preclude a situation where there is no possibility for a national court to revise a final decision of a court or tribunal made in the course of civil proceedings when that decision is found to be incompatible with an interpretation of EU law upheld by the Court after the date on which that decision became final, even though such a possibility does exist as regards final decisions of a court or tribunal incompatible with EU law made in the course of administrative proceedings.

The principle of effectiveness

36 Regarding the principle of effectiveness, it should be borne in mind that every case in which the question arises as to whether a provision of national procedural legislation makes the exercise of rights conferred on individuals by the legal order of the European Union impossible in practice or excessively difficult must be analysed by reference to the role of the rules concerned in the proceedings as a whole, the way in which the proceedings are conducted and the special features of those rules, before the various national bodies (see, to that effect, judgment in *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 39 and the case-law cited).

37 For those purposes, account must be taken, where appropriate, of the principles which form the basis of the national judicial system concerned, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of proceedings (see, inter alia, judgments in *Fallimento Olimpiclub*, C-2/08, EU:C:2009:506, paragraph 27, and *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 48 and the case-law cited).

38 As is apparent from paragraph 28 of the present judgment, the Court has, on several occasions, emphasised the importance of the principle of *res judicata* (see also, to that effect, judgment in *Köbler*, C-224/01, EU:C:2003:513, paragraph 38). Thus, it has been held that EU law does not require a judicial body automatically to go back on a judgment having the authority of *res judicata* in order to take into account the interpretation of a relevant provision of EU law adopted by the Court after delivery of that judgment (judgment in *Impresa Pizzarotti*, C-213/13, EU:C:2014:2067, paragraph 60).

39 In the present case, no particular circumstance of the dispute in the main proceedings featured in the case-file available to the Court justifies adopting a different approach to the one accepted by the Court in the case-law cited in paragraphs 28 and 29 of the present judgment, pursuant to which EU law does not require a national court to disapply domestic rules of procedure conferring finality on a judgment, even if to do so would make it possible to remedy a domestic situation which is incompatible with EU law.

40 None the less, in so far as the final judicial decision obliging Mr Târșia to pay a tax which, in essence, was subsequently declared incompatible with EU law, was taken by a national court adjudicating at last instance, it should be borne in mind that, according to settled case-law, by reason (inter alia) of the fact that an infringement, by such a decision, of rights deriving from EU law cannot thereafter normally be corrected, individuals cannot be deprived of the possibility of rendering the State liable in order to obtain legal protection of their rights (see, to that effect, judgments in *Köbler*, C-224/01, EU:C:2003:513, paragraph 34, and *Traghetti del Mediterraneo*, C-173/03, EU:C:2006:391, paragraph 31).

41 It follows from all of the foregoing that the answer to the question referred is that EU law, in particular the principles of equivalence and effectiveness, must be interpreted as not precluding, in circumstances such as those in the dispute in the main proceedings, a situation where there is no possibility for a national court to revise a final decision of a court or tribunal made in the course of civil proceedings when that decision is found to be incompatible with an interpretation of EU law upheld by the Court

after the date on which that decision became final, even though such a possibility does exist as regards final decisions of a court or tribunal incompatible with EU law made in the course of administrative proceedings.

## Costs

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

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

**European Union law, in particular the principles of equivalence and effectiveness, must be interpreted as not precluding, in circumstances such as those in the dispute in the main proceedings, a situation where there is no possibility for a national court to revise a final decision of a court or tribunal made in the course of civil proceedings when that decision is found to be incompatible with an interpretation of EU law upheld by the Court of Justice of the European Union after the date on which that decision became final, even though such a possibility does exist as regards final decisions of a court or tribunal incompatible with EU law made in the course of administrative proceedings.**

[Signatures]