

In Case 106/77

REFERENCE to the Court under [Article 267 TFEU] by the Pretore di Susa (Italy) for a preliminary ruling in the action pending before that Court between

AMMINISTRAZIONE DELLE FINANZE DELLO STATO (Italian Finance Administration)

and

SIMMENTHAL S.P.A., having its registered office at Monza,

on the interpretation of [Article 288 TFEU] and, in particular, on the effects of the direct applicability of [Union] law if it is inconsistent with any provisions of national law which may conflict with it.

THE COURT

composed of: H. Kutscher, President, M. Sorensen and G. Bosco (Presidents of Chambers), A. M. Donner, P. Pescatore, Lord Mackenzie Swan and A. O'Keefe, Judges,

Advocate General: G. Reischl

Registrar: A. Van Houtte

gives the following

JUDGMENT

Decision

- 1 By an order of 28 July 1977, received at the Court on 29 August 1977, the Pretore di Susa referred to the Court for a ruling pursuant to [Article 267 TFEU], two questions relating to the principle of the direct applicability of [Union] law as set out in [Article 288 TFEU] for the purpose of determining the effects of that principle when a rule of [Union] law conflicts with a subsequent provision of national law.
- 2 It is appropriate to draw attention to the fact that at a previous stage of the proceedings the Pretore referred to the Court for a preliminary ruling questions designed to enable him to determine whether veterinary and public health fees levied on imports of beef and veal under the consolidated text of the Italian veterinary and public health laws, the rate of which was last fixed by the scale annexed to Law No 1239 of 30 December 1970 (*Gazzeta Ufficiale* No 26 of 1 February 1971), were compatible with the Treaty and with certain regulations - in particular Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (*Official Journal*, English Special Edition 1968 (I), p. 187).
- 3 Having regard to the answers given by the Court in its judgment of 15 December 1976 in Case 35/76 (*Simmenthal S.p.A. v Italian Minister for Finance* [1976] ECR 1871) the Pretore held that the levying of the fees in question was incompatible with the provisions of [Union] law and ordered the Amministrazione delle Finanze dello Stato (Italian Finance Administration) to repay the fees unlawfully charged, together with interest.
- 4 The Amministrazione appealed against that order.

- 5 The Pretore, taking into account the arguments put forward by the parties during the proceedings arising out of this appeal, held that the issue before him involved a conflict between certain rules of [Union] law and a subsequent national law, namely the said Law No 1239/70.
- 6 He pointed out that to resolve an issue of this kind, according to recently decided cases of the Italian Constitutional Court (Judgments No 232/75 and No 205/76 and Order No 206/76), the question whether the law in question was unconstitutional under Article 11 of the Constitution must be referred to the Constitutional Court itself.
- 7 The Pretore, having regard, on the one hand, to the well-established case-law of the Court of Justice relating to the applicability of [Union] law in the legal systems of the Member States and, on the other hand, to the disadvantages which might arise if the national court, instead of declaring of its own motion that a law impeding the full force and effect of [Union] law was inapplicable, were required to raise the issue of constitutionality, referred to the Court two questions framed as follows:
- (a) Since, in accordance with [Article 288 TFEU] and the established case-law of the Court of Justice of the European [Union], directly applicable [Union] provisions must, notwithstanding any internal rule or practice whatsoever of the Member States, have full, complete and uniform effect in their legal systems in order to protect subjective legal rights created in favour of individuals, is the scope of the said provisions to be interpreted to the effect that any subsequent national measures which conflict with those provisions must be forthwith disregarded without waiting until those measures have been eliminated by action on the part of the national legislature concerned (repeal) or of other Constitutional authorities (declaration that they are unconstitutional) especially, in the case of the latter alternative, where, since the national law continues to be fully effective pending such declaration, it is impossible to apply the [Union] provisions and, in consequence, to ensure that they are fully, completely and uniformly applied and to protect the legal rights created in favour of individuals?
 - (b) Arising out of the previous question, in circumstances where [Union] law recognizes that the protection of subjective legal rights created as a result of "directly applicable" [Union] provisions may be suspended until any conflicting national measures are actually repealed by the competent national authorities, is

such repeal in all cases to have a wholly retroactive effect so as to avoid any adverse effects on those subjective legal rights?

The reference to the Court

- 8 The Agent of the Italian Government in his oral observations drew the attention of the Court to a judgment of the Italian Constitutional Court No 163/77 of 22 December 1977 delivered in answer to questions of constitutionality raised by the Courts of Milan and Rome, which declared that certain of the provisions of Law No 1239 of 30 December 1970 including those at issue in the action pending before the Pretore di Susa, were unconstitutional.
- 9 It was suggested that since the disputed provisions have been set aside by the declaration that they are unconstitutional, the questions raised by the Pretore no longer have relevance so that it is no longer necessary to answer them.
- 10 On this issue it should be borne in mind that in accordance with its unvarying practice the Court of Justice considers a reference for a preliminary ruling, pursuant to [Article 267 TFEU], as having been validly brought before it so long as the reference has not been withdrawn by the Court from which it emanates or has not been quashed on appeal by a superior Court.
- 11 The judgment referred to, which was delivered in proceedings in no way connected with the action giving rise to the reference to this Court, cannot have such a result and the Court cannot determine its effect on third parties.
- 12 The preliminary objection raised by the Italian Government must therefore be overruled.

The substance of the case

- 13 The main purpose of the *first question* is to ascertain what consequences flow from the direct applicability of a provision of [Union] law in the event of incompatibility with a subsequent legislative provision of a Member State.
- 14 Direct applicability in such circumstances means that rules of [Union] law must be fully and uniformly applied in all the Member States from the date of their entry into force and for so long as they continue in force.
- 15 These provisions are therefore a direct source of rights and duties for all those affected thereby, whether Member States or individuals, who are parties to legal relationships under [Union] law.
- 16 This consequence also concerns any national court whose task it is as an organ of a Member State to protect, in a case within its jurisdiction, the rights conferred upon individuals by [Union] law.
- 17 Furthermore, in accordance with the principle of the precedence of [Union] law, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures not only by their entry into force render automatically inapplicable any conflicting provision of current national law but -in so far as they are an integral part of, and take precedence in, the legal order applicable in the territory of each of the Member States -also preclude the valid adoption of new national legislative measures to the extent to which they would be incompatible with [Union] provisions.
- 18 Indeed any recognition that national legislative measures which encroach upon the field within which the [Union] exercises its legislative power or which are otherwise incompatible with the provisions of [Union] law had any legal effect would amount to a corresponding denial of the effectiveness of obligations undertaken unconditionally and irrevocably by Member States pursuant to the Treaty and would thus imperil the very foundations of the [Union].

- 19 The same conclusion emerges from the structure of [Article 267 TFEU] which provides that any court or tribunal of a Member State is entitled to make a reference to the Court whenever it considers that a preliminary ruling on a question of interpretation or validity relating to [Union] law is necessary to enable it to give judgment.
- 20 The effectiveness of that provision would be impaired if the national Court were prevented from forthwith applying [Union] law in accordance with the decision or the case-law of the Court.
- 21 It follows from the foregoing that every national Court must, in a case within its jurisdiction, apply [Union] law in its entirety and protect rights which the latter confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the [Union] rule.
- 22 Accordingly any provision of a national legal system and any legislative, administrative or judicial practice which might impair the effectiveness of [Union] law by withholding from the national Court having jurisdiction to apply such law the power to do everything necessary at the moment of its application to set aside national legislative provisions which might prevent [Union] rules from having full force and effect are incompatible with those requirements which are the very essence of [Union] law.
- 23 This would be the case in the event of a conflict between a provision of [Union] law and a subsequent national law if the solution of the conflict were to be reserved for an authority with a discretion of its own, other than the Court called upon to apply [Union] law, even if such an impediment to the full effectiveness of [Union] law were only temporary.
- 24 The first question should therefore be answered to the effect that a national Court which is called upon, within the limits of its jurisdiction, to apply provisions of [Union] law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provision by legislative or other constitutional

means.

- 25 The essential point of the *second question* is whether - assuming it to be accepted that the protection of rights conferred by provisions of [Union] law can be suspended until any national provisions which might conflict with them have been in fact set aside by the competent national authorities - such setting aside must in every case have unrestricted retroactive effect so as to prevent the rights in question from being in any way adversely affected.
- 26 It follows from the answer to the first question that national Courts must protect rights conferred by provisions of the [Union] legal order and that it is not necessary for such courts to request or await the actual setting aside by the national authorities empowered so to act of any national measures which might impede the direct and immediate application of [Union] rules.
- 27 The second question therefore appears to have no purpose.

Costs

- 28 The costs incurred by the Government of the Italian Republic and by the Commission of the European [Union] which have submitted observations to the Court are not recoverable.
- 29 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Pretore di Susa, the decision on costs is a matter for that Court.

On those grounds

THE COURT,

in answer to the questions referred to it by the Pretore di Susa by order of 28 July 1977, hereby rules:

A national court which is called upon, within the limits of its jurisdiction, to apply provisions of [Union] law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means.

Kutscher	Sorensen	Bosco	
Donner	Pescatore	Mackenzie Stuart	O'Keefe

Delivered in open Court in Luxembourg on March 1978.

A. Van Houtte
Registrar

H. Kutscher
President