

VALORIS: LIMITATION PERIODS AND THE EU PRINCIPLE OF EQUIVALENCE

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Part I

Introduction

The *Valoris* case² concerned the repayment of Romanian environmental taxes that were imposed in breach of EU law. The taxpayer, SC Valoris SRL, a Romanian company, sought repayment of environmental stamp duty that was charged on motor vehicles. This tax was found to be in breach of EU law after it was imposed. Romania subsequently adopted legislation that gave taxpayers the right to obtain reimbursement of such taxes, together with statutory interest from the date they were levied to the date they were repaid. However, the legislation provided that such requests for reimbursement had to be lodged with the tax authorities by the 31st August 2018, failing which they were time-barred. This time-frame was a little over a year.

The taxpayer, SC Valoris SRL, lodged its application for reimbursement of the taxes on the 6 December 2018, and consequently, was denied reimbursement because the application was made out of time. Subsequently, the matter was brought before the Tribunalul Vâlcea (Regional Court, Vâlcea, Romania), where a preliminary ruling was made to the Court of Justice.

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2 *SC Valoris SRL v Direcția Generală Regională a Finanțelor Publice Craiova – Administrația Județeană a Finanțelor Publice Vâlcea and Administrația Fondului pentru Mediu ("Valoris")*, C-677/19, ECLI:EU:C:2020:825.

The Principle of Sincere Cooperation

The Court noted, in paragraph 21, that –

“under the principle of sincere cooperation laid down in Article 4(3) TEU, Member States are required to nullify the unlawful consequences of an infringement of EU law and to lay down detailed procedural rules, in respect of actions for safeguarding rights which individuals derive from EU law, which are no less favourable than those governing similar domestic actions (principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) ...

More specifically, in the absence of EU rules on the recovery of national taxes levied though not due, it is for each Member State to lay down the detailed procedural rules governing actions for safeguarding rights derived from EU law, provided, however, that those rules comply with both the principle of equivalence and the principle of effectiveness ... *inter alia* as regards the setting of time limits or limitation periods applicable to such actions”.

The Principle of Effectiveness

The Court stressed, in paragraph 24, that –

“in the absence of harmonised rules governing the reimbursement of taxes imposed in breach of EU law, the Member States retain the right to apply procedural rules provided for under their national legal system, in particular concerning limitation periods or time limits, provided, however, that, in accordance with the principle of effectiveness, those rules are not arranged in such a way as to make the exercise of rights conferred by EU law practically impossible or excessively difficult”.

In this case, there was a one-year time limit, whereas there was a five-year limitation period for purely domestic situations. The Court explained, in paragraph 25, that –

“the setting of reasonable time limits in principle satisfies the requirement of effectiveness since it constitutes an application of the fundamental principle of legal certainty which protects both the person and the administration concerned, even though the passing of such time limits is, by its nature, liable to prevent the persons concerned from asserting their rights in whole or in part”.

The Court recalled that in previous cases, three-year limitation periods had been considered acceptable. However, in this case, a one-year limitation period was at stake. The Court pointed out, in paragraph 27, that –

“a time limit of one year imposed for lodging applications or bringing actions based on an infringement of EU law does not in itself appear unreasonable, provided, however, that the starting point of that time limit is not fixed in such a way as to make it impossible in practice or excessively difficult for the person concerned to exercise rights conferred by EU law”.

Therefore, the Court concluded that the principle of effectiveness did not preclude the Romanian legislation in question.

Principle of Equivalence

Turning next to the principle of equivalence, the Court explained, in paragraph 29, 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 the rules applicable to similar actions for infringement of domestic law, given their purpose, their cause of action and their essential characteristics. It is solely 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 those rules comply with the principle of equivalence”.

The principle of equivalence, thus, ensures the principle of national treatment in the Member State where the tax reimbursement is taking place. Since there are no harmonised EU rules, it is a matter for each Member State to ensure that the procedures for recovery of taxes under EU law are no less favourable than domestic procedures for recovery for taxes domestically.

The Court noted that the reason, provided by the Romanian authorities, for the one-year time period, was to prevent Romania's budget from being burdened by the payment of interest. Subject to verification by the national court, the Court of Justice determined that the reimbursement of national taxes and the reimbursement of taxes imposed contrary to EU law were similar procedures with similar objectives.

Next, the Court investigated whether the Romanian legislation at issue constituted less favourable treatment of the cross-border situation compared with a purely domestic one. The Court highlighted, in paragraph 34, that –

“applications for reimbursement of the taxes ... based on an infringement of EU law, are subject to a procedural time limit of approximately one year, which is considerably shorter and therefore less advantageous than the five-year time limit which applies to applications for the reimbursement of tax debts based on an infringement of national law”.

The Court explained, in paragraph 36, that –

“Even though the adoption of OUG No 52/2017, imposing 31 August 2018 as the deadline for applying for reimbursement of the Romanian pollution taxes unduly paid in the light of EU law, had the beneficial effect of extending the time limit for reimbursement applicable to some of the taxable persons who had paid those taxes, it is common ground that the adoption of that order also had the disadvantageous effect of reducing the time limit for reimbursement applicable to other taxable persons, who lost the full benefit of the five-year period ... a provision which, however, remained fully operative in respect of tax debts unduly paid under national law. However, the principle of equivalence does not allow a disadvantage suffered by one group of taxable persons to be offset by an advantage granted to another group in a similar situation”.

Accordingly, the Court concluded that the principle of equivalence, read in conjunction with the principle of sincere cooperation, precluded the Romanian legislation in question which imposed a one-year time limit to bring a claim for reimbursement of taxes imposed in breach of EU law while allowing claims for breaches of national law to occur within a five-year period.

Part II

Analysis

The *Valoris* case raises the question of remedies for breach of EU law, an area which is often overlooked in the Court’s direct tax jurisprudence. The *Valoris* situation concerned the imposition of environmental taxes on vehicles which, in earlier cases, the Court determined that were incompatible with EU law. Accordingly, *Valoris* concerned an application for repayment of these taxes, plus statutory interest. The problem occurred with the time-limit allowed by the Romanian legislation for bringing these repayment claims. This was fixed at the 31 August 2018, which was a little over a year from the introduction of the legislation. *Valoris* made its claim after that date and consequently, it was rejected by the Romanian tax authorities as time-barred.

Valoris raises a number of important questions: first, whether a one-year limitation period was sufficient for bringing these repayment claims; and second, whether Romania’s legislation met the principles of sincere cooperation, effectiveness and equivalence.

One-Year Limitation Period

The Court has ruled that the right to a refund of taxes levied by a Member State in breach of EU law is the consequence and complement of the rights conferred on individuals by provisions of EU law prohibiting such taxes.³ The Member States are, therefore, obliged to repay such taxes. However, the Court has also accepted, in the interests of legal certainty, that Member States can adopt reasonable limitation periods for bringing repayment claims or actions for breach of EU law.⁴ Since this area of law has not been harmonised, the matter is left to the Member States to deal with, subject to compliance with EU law, in particular, the general principles of sincere cooperation, equivalence and effectiveness.

Case law

In *Comet*,⁵ the Court explained, in paragraph 13, that –

“in the absence of any relevant Community rules, it is for the national legal order of each Member State to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of Community law, provided that such rules are not less favourable than those governing the same right of action on an internal matter”.

The Court stressed that the national procedural rules cannot make it impossible in practice to exercise (Community) EU law rules which the national courts are under an obligation to protect. However, the Court also accepted that Member States could maintain reasonable periods of limitation within which an action must be brought. The Court highlighted, in paragraph 18, that –

“The fixing, as regards fiscal proceedings, of such a period is in fact an application of a fundamental principle of legal certainty which protects both the authority concerned and the party from whom payment is claimed”.

In *Edis*, the Court confirmed this reasoning, in paragraph 20, pointing out that –

“it is compatible with Community law to lay down reasonable limitation periods for bringing proceedings in the interests of legal certainty which protects both the taxpayer and the administration concerned”.

3 *Oana Mădălina Călin v Direcția Regională a Finanțelor Publice Ploiești – Administrația Județeană a Finanțelor Publice Dâmbovița and Others (“Călin”)*, C-676/17, ECLI:EU:C:2019:700, para. 25.

4 *Edilizia Industriale Siderurgica Srl (Edis) v Ministero delle Finanze (“Edis”)*, C-231/96, ECLI:EU:C:1998:401, para. 20.

5 *Comet BV v Produktschap voor Siergewassen (“Comet”)*, Case 45/76, ECLI:EU:C:1976:191.

In *Marks & Spencer* (C-62/00),⁶ the Court indicated that in order to serve their purpose of ensuring legal certainty, limitation periods must be fixed in advance.

Interestingly, the Court has held in the past that one-year periods are reasonable. Thus, in *Visciano*,⁷ the Court accepted that a one-year period for bringing an action seeking compensation for damage sustained because a Directive had been transposed late into national law was reasonable. The problem in that case was that even though the limitation period was fixed in the national legislation, it was not clear when the limitation period started to run.

In *Palmisani*,⁸ the Court also accepted that a one-year limitation period was reasonable but stressed this was subject to the proviso, that –

“that procedural requirement is no less favourable than procedural requirements in respect of similar actions of a domestic nature”.

This is the principle of equivalence, which is discussed in more detail below.

The Court has also held, in *Caterpillar Financial Services*,⁹ that-

“As regards the principle of sincere cooperation, set out in Article 4(3) TEU, it must be noted that, where a limitation rule provided for in a national tax code is consistent with the principles of equivalence and effectiveness, it cannot be considered to infringe the principle of sincere cooperation. In those circumstances, it cannot be claimed that the Member State concerned, by applying that limitation rule, undermines the achievement of the Union’s aims ...

EU law precludes a national authority from relying on the expiry of a reasonable limitation period only if the conduct of the national authorities combined with the existence of a limitation period result in depriving a person of the opportunity to enforce his rights before the national courts”.

Consequently, in *Valoris*, the Court found that the one-year time period to bring an action for repayment of the taxes imposed in breach of EU law was not, as such, unreasonable, even though the time-limit for bringing claims involving repayment of national taxes was a five-year period. The Court explained, in paragraph 28, that –

6 *Marks & Spencer plc v Commissioners of Customs & Excise* (“*Marks & Spencer*”), C-62/00, ECLI:EU:C:2002:435, para. 39.

7 *Raffaello Visciano v Istituto nazionale della previdenza sociale (INPS)* (“*Visciano*”), C-69/08, ECLI:EU:C:2009:468. Para. 45.

8 *Rosalba Palmisani v Istituto nazionale della previdenza sociale (INPS)* (“*Palmisani*”), C-261/95, ECLI:EU:C:1997:351.

9 *Caterpillar Financial Services sp. z o.o. v Dyrektor Izby Skarbowej w Warszawie* (“*Caterpillar Financial Services*”), C-500/16, ECLI:EU:C:2017:996, paras. 44 and 45.

“the principle of effectiveness, read in conjunction with the principle of sincere cooperation, does not preclude legislation of a Member State from setting a time limit of approximately one year running from the entry into force of that legislation, which aims to remedy the infringement of EU law, in which applications for the reimbursement of taxes held to be incompatible with EU law must be lodged, failing which such applications will be time-barred”.

Principle of Equivalence

The outcome of the *Valoris* case turned on the issue concerning the principle of equivalence: whether Romania could maintain a rule which imposed a one-year time limit on bringing repayment claims for taxes imposed in breach of EU law, but allowed a five-year period for bringing claims involving repayment of national taxes. The Court stressed, in its previous jurisprudence, that it was a matter for the national court to determine equivalence between these two rules. Thus, in *Raiffeisen Bank*,¹⁰ the Court indicated that –

“it is solely for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics”.

Equivalence, in this sense, means that the rules governing the repayment of taxes imposed in breach of EU law must not be less favourable than those governing the same right of action in relation to repayment of domestic taxes. In the absence of EU law rules, this is merely an application of the equal treatment principle in relation to such matters.

The Court applied this thinking in *Târșia*,¹¹ highlighting, in paragraph 34, that –

“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”.

10 *SC Raiffeisen Bank SA and BRD Groupe Societ  Generale SA v JB and KC (“Raiffeisen Bank”)*, Joined Cases C-698/18 and C-699/18, ECLI:EU:C:2020:537, para. 77.

11 *Dragoș Constantin Târșia v Statul român and Serviciul Public Comunitar Regim Permisi de Conducere si Inmatriculare a Autovehiculelor (“Târșia”)*, C-69/14, ECLI:EU:C:2015:662.

In *Câmpean*,¹² the Court 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”.

In the later *Câlin* judgment, mentioned above, the Court summarised its interpretation of the law in this area, in paragraph 30, where it pointed out that –

“In accordance with the principle of sincere cooperation enshrined in Article 4(3) TEU, the detailed procedural rules governing actions for safeguarding an individual’s rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) ...”

Thus, the Court accepted a one-month limitation period for submission of a request for a revision of a final judicial decision handed down in breach of EU law, which ran from the date of notification of the decision in respect of which revision is sought. The Court held, however, that the principle of effectiveness, in conjunction with the principle of legal certainty, precluded such national legislation, when at the time the request for revision was made, the judgment introducing that limitation period had not been published in the national (Romanian) official journal (*“Monitorul Oficial al României”*).

In *Valoris*, the Court concluded that the one-year time limit for EU repayment claims and the five-year limitation period for claims relating to repayment of national taxes had a similar purpose and cause of action. This was a matter for the Romanian courts to verify. If that were the case, the remaining issue for the Court to deal with was whether the EU situation was treated less favourably than a purely domestic one. The one-year limitation period was clearly less than the five-year period. Consequently, the Court concluded that this amounted to less favourable tax treatment contrary to the principle of equivalence and the principle of sincere cooperation.

Final Thoughts

One final case that should be noted in this area is *Köbler*,¹³ where the Court highlighted, in paragraphs 30-35, that –

12 *Silvia Georgiana Câmpean v Serviciul Fiscal Municipal Mediaș, anciennement Administrația Finanțelor Publice a Municipiului Mediaș and Administrația Fondului pentru Mediu (“Câmpean”)*, C-200/14, ECLI:EU:C:2016:494, para. 55.

13 *Gerhard Köbler v Republik Österreich (“Köbler”)*, C-224/01, ECLI:EU:C:2003:513.

“the principle of liability on the part of a Member State for damage caused to individuals as a result of breaches of Community law for which the State is responsible is inherent in the system of the Treaty ...

that principle applies to any case in which a Member State breaches Community law, whichever is the authority of the Member State whose act or omission was responsible for the breach ...

all State authorities, including the legislature, are bound in performing their tasks to comply with the rules laid down by Community law ...

the full effectiveness of those rules would be called in question and the protection of those rights would be weakened if individuals were precluded from being able, under certain conditions, to obtain reparation when their rights are affected by an infringement of Community law attributable to a decision of a court of a Member State adjudicating at last instance ...

Since an infringement of those rights by a final decision of such a court cannot thereafter normally be corrected, individuals cannot be deprived of the possibility of rendering the State liable in order in that way to obtain legal protection of their rights”.

Thus, if a national court of final instance requires a taxpayer to pay taxes that, subsequently, are held by the Court of Justice to be imposed in breach of EU law, the taxpayer still has a remedy under EU law before the national courts to obtain legal protection of their rights.