|

61986J0252

Judgment of the Court of 3 March 1988. - Gabriel Bergandi v Directeur général des impôts. - Reference for a preliminary ruling: Tribunal de grande instance de Coutances - France. - VAT - Automatic games machines. - Case 252/86.

European Court reports 1988 Page 01343

Keywords

++++

1 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - LEVYING OF OTHER NATIONAL TAXES WHICH CAN BE CHARACTERIZED AS TURNOVER TAXES ON TRANSACTIONS SUBJECT TO VALUE-ADDED TAX - NOT PERMISSIBLE

(COUNCIL DIRECTIVE 77/388/EEC, ART . 33)

2 . TAX PROVISIONS - HARMONIZATION OF LAWS - TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX - TAXES WHICH CAN BE CHARACTERIZED AS TURNOVER TAXES - FIXED-RATE TAX LEVIED ON THE MAKING AVAILABLE OF AN ARTICLE TO THE PUBLIC - CRITERIA FOR CLASSIFICATION

(COUNCIL DIRECTIVE 77/388/EEC, ART . 33)

3 . TAX PROVISIONS - INTERNAL TAXATION - ARTICLE 95 OF THE TREATY - SCOPE - TAXES ON THE USE OF IMPORTED PRODUCTS - INCLUSION - CONDITIONS

(EEC TREATY, ART . 95)

4 . TAX PROVISIONS - INTERNAL TAXATION - GRADUATED SYSTEM OF TAXATION - PERMISSIBILITY - CONDITIONS - PURSUIT OF OBJECTIVES COMPATIBLE WITH COMMUNITY LAW - NOT DISCRIMINATORY OR PROTECTIVE - PROGRESSIVE TAX ON AUTOMATIC GAMES MACHINES

(EEC TREATY, ART . 95)

5 . FREE MOVEMENT OF GOODS - QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT - ARTICLE 30 OF THE TREATY - SCOPE - MEASURES COVERED BY ARTICLE 95 - EXCLUSION

(EEC TREATY, ARTS 30 AND 95)

Summary

1 . ARTICLE 33 OF DIRECTIVE 77/388/EEC CONCERNING THE HARMONIZATION OF THE LAWS OF MEMBER STATES ON TURNOVER TAXES MUST BE INTERPRETED AS MEANING THAT AS FROM THE INTRODUCTION OF THE COMMON SYSTEM OF VALUE-ADDED TAX THE MEMBER STATES ARE NO LONGER ENTITLED TO IMPOSE ON THE SUPPLY OF GOODS, THE PROVISION OF SERVICES OR IMPORTS LIABLE TO THAT TAX, OTHER TAXES, DUTIES OR CHARGES WHICH CAN BE CHARACTERIZED AS TURNOVER TAXES .

2 . A CHARGE WHICH, ALTHOUGH PROVIDING FOR DIFFERENT AMOUNTS ACCORDING TO THE CHARACTERISTICS OF THE TAXED ARTICLE, IS ASSESSED EXCLUSIVELY ON THE BASIS OF THE PLACING THEREOF AT THE DISPOSAL OF THE PUBLIC, WITHOUT IN FACT TAKING ACCOUNT OF THE REVENUE WHICH COULD BE GENERATED THEREBY, MAY NOT BE REGARDED AS A CHARGE WHICH BE CHARACTERIZED AS A TURNOVER TAX LEVIED ON THE PRICES CHARGED FOR SERVICES . ALTHOUGH A FIXED-RATE TAX MAY, IN CERTAIN CIRCUMSTANCES, BE REGARDED AS A FLAT-RATE TAX ON RECEIPTS, CLASSIFIABLE AS A TAX ON TURNOVER, IT MAY ONLY BE SO REGARDED IF, ON THE ONE HAND, THE RATE WAS FIXED ON THE BASIS OF AN OBJECTIVE EVALUATION OF THE FORESEEABLE RECEIPTS BY REFERENCE TO THE NUMBER OF OCCASIONS ON WHICH A SERVICE WAS LIKELY TO BE PROVIDED AND THE PRICE CHARGED FOR THE SERVICE AND, ON THE OTHER, IF IT IS ESTABLISHED THAT THE TAX MAY BE PASSED ON IN THE PRICE OF THE SERVICE SO THAT IT WILL FINALLY BE BORNE BY THE CONSUMER .

3 . ARTICLE 95 OF THE TREATY MUST BE INTERPRETED WIDELY SO THAT THE PROHIBITION LAID DOWN THEREIN MUST APPLY WHENEVER A FISCAL LEVY IS LIKELY TO DISCOURAGE IMPORTS OF GOODS ORIGINATING IN OTHER MEMBER STATES, TO THE BENEFIT OF DOMESTIC PRODUCTION . IT APPLIES, THEREFORE, NOT ONLY TO TAXES DIRECTLY AFFECTING IMPORTED PRODUCTS BUT ALSO TO INTERNAL TAXATION WHICH IS IMPOSED ON THE USE OF IMPORTED PRODUCTS WHERE THOSE PRODUCTS ARE ESSENTIALLY INTENDED FOR SUCH USE AND HAVE BEEN IMPORTED SOLELY FOR THAT PURPOSE .

4 . AT THE PRESENT STAGE OF DEVELOPMENT OF COMMUNITY LAW AND IN THE ABSENCE OF ANY UNIFICATION OR HARMONIZATION OF THE RELEVANT PROVISIONS, COMMUNITY LAW DOES NOT PROHIBIT MEMBER STATES FROM ESTABLISHING A SYSTEM OF TAXATION DIFFERENTIATED ACCORDING TO VARIOUS CATEGORIES OF PRODUCTS PROVIDED THAT THE TAX BENEFITS GRANTED SERVE LEGITIMATE ECONOMIC OR SOCIAL PURPOSES . AS REGARDS THE PROGRESSIVE NATURE OF THE TAXATION AS BETWEEN THE CATEGORIES OF PRODUCTS THUS ESTABLISHED, THE MEMBER STATES ARE IN PRINCIPLE AT LIBERTY TO SUBJECT PRODUCTS TO A SYSTEM OF TAXATION WHICH INCREASES PROGRESSIVELY IN AMOUNT ACCORDING TO AN OBJECTIVE CRITERION, PROVIDED THAT THE SYSTEM IS FREE FROM ANY DISCRIMINATORY OR PROTECTIVE EFFECT . THEREFORE, A SYSTEM OF TAXATION OF AUTOMATIC GAMES MACHINES GRADUATED ACCORDING TO THE CATEGORIES INTO

WHICH THEY ARE DIVIDED, WHICH IS INTENDED TO ACHIEVE LEGITIMATE SOCIAL OBJECTIVES AND WHICH PROCURES NO FISCAL ADVANTAGE FOR DOMESTIC PRODUCTS TO THE DETRIMENT OF SIMILAR OR COMPETING IMPORTED PRODUCTS, IS NOT INCOMPATIBLE WITH ARTICLE 95 OF THE TREATY .

5 . ARTICLE 30 OF THE TREATY COVERS IN GENERAL ALL BARRIERS TO IMPORTS WHICH ARE NOT ALREADY SPECIFICALLY COVERED BY OTHER PROVISIONS OF THE TREATY . IT DOES NOT THEREFORE APPLY TO THE TAXATION OF PRODUCTS ORIGINATING IN OTHER MEMBER STATES THE COMPATIBILITY OF WHICH WITH THE TREATY FALLS UNDER ARTICLE 95 THEREOF .

Parties

IN CASE 252/86

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE TRIBUNAL DE GRANDE INSTANCE (REGIONAL COURT), COUTANCES, FOR A PRELIMINARY RULING IN THE PROCEEDINGS PENDING BEFORE THAT COURT BETWEEN

GABRIEL BERGANDI, A TRADER, OF SAINT-LO (FRANCE)

AND

DIRECTEUR GENERAL DES IMPOTS, DIRECTION DES SERVICES FISCAUX, DEPARTEMENT DE LA MANCHE (DIRECTOR-GENERAL OF TAXES, FISCAL SERVICES DEPARTMENT FOR THE DEPARTMENT OF LA MANCHE) (FRANCE)

ON THE INTERPRETATION OF ARTICLE 33 OF THE SIXTH VAT DIRECTIVE AND ARTICLES 95 AND 30 OF THE EEC TREATY,

THE COURT

COMPOSED OF : LORD MACKENZIE STUART, PRESIDENT, G . BOSCO AND G.C . RODRIGUEZ IGLESIAS (PRESIDENTS OF CHAMBERS), T . KOOPMANS, U . EVERLING, Y . GALMOT, C . KAKOURIS, R . JOLIET AND F . SCHOCKWEILER, JUDGES,

ADVOCATE GENERAL : G . F . MANCINI

REGISTRAR : H . A . ROEHL, PRINCIPAL ADMINISTRATOR

AFTER CONSIDERING THE OBSERVATIONS SUBMITTED ON BEHALF OF :

GABRIEL BERGANDI, THE PLAINTIFF IN THE MAIN PROCEEDINGS, BY MESSRS MILCHIOR AND COLLINI,

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY, BY M . SEIDEL, IN THE WRITTEN PROCEDURE,

THE GOVERNMENT OF THE FRENCH REPUBLIC, BY M . DE GOUTTES IN THE WRITTEN PROCEDURE AND BY BERNARD BOTTE, ATTACHE D' ADMINISTRATION CENTRALE IN THE MINISTRY OF FOREIGN AFFAIRS, IN THE ORAL PROCEDURE,

THE COMMISSION OF THE EUROPEAN COMMUNITIES, BY J . BOEHL,

HAVING REGARD TO THE REPORT FOR THE HEARING AND FURTHER TO THE HEARING ON 9 JULY 1987,

AFTER HEARING THE OPINION OF THE ADVOCATE GENERAL DELIVERED AT THE SITTING ON 15 DECEMBER 1987,

GIVES THE FOLLOWING

JUDGMENT

Grounds

1 BY A JUDGMENT OF 18 SEPTEMBER 1986, WHICH WAS RECEIVED AT THE COURT ON 1 OCTOBER 1986, THE TRIBUNAL DE GRANDE INSTANCE, COUTANCES, REFERRED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY SIX QUESTIONS ON THE INTERPRETATION OF ARTICLE 33 OF THE SIXTH COUNCIL DIRECTIVE (77/388/EEC) ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX : UNIFORM BASIS OF ASSESSMENT (OFFICIAL JOURNAL 1977 L 145, P . 1) AND ARTICLES 95 AND 30 OF THE EEC TREATY .

2 THOSE QUESTIONS WERE RAISED IN PROCEEDINGS BROUGHT BY GABRIEL BERGANDI, AN OPERATOR OF AUTOMATIC GAMES MACHINES, AGAINST THE DIRECTOR-GENERAL OF TAXES, LA MANCHE, REGARDING COLLECTION OF THE ANNUAL TAX ON AUTOMATIC MACHINES OPERATED BY MR BERGANDI FOR 1985 .

3 IT APPEARS FROM THE ORDER FOR REFERENCE THAT AT THE MATERIAL TIME AUTOMATIC MACHINES INSTALLED IN PUBLIC PLACES AND PROVIDING VISUAL OR AURAL ENTERTAINMENT, A GAME OR AN AMUSEMENT WERE SUBJECT IN FRANCE TO A TAX KNOWN AS THE STATE TAX AT AN ANNUAL RATE, ACCORDING TO THE CATEGORY OF MACHINE, OF FF 500 OR FF 1 500, THE LATTER RATE BEING REDUCED TO FF 1 000 FOR MACHINES FIRST BROUGHT INTO SERVICE MORE THAN THREE YEARS EARLIER . THE TAX BECAME DUE WHEN THE ANNUAL RETURN WAS MADE IN RESPECT OF MACHINES IN USE AND WAS TO BE PAID WITHIN SIX MONTHS THEREAFTER BUT NO LATER THAN 31 DECEMBER OF THE RELEVANT YEAR . SINCE THE OPERATION OF SUCH MACHINES BECAME SUBJECT TO VAT AS FROM 1 JULY 1985, MR BERGANDI BROUGHT PROCEEDINGS AGAINST THE DIRECTOR OF FISCAL SERVICES OF LA MANCHE SEEKING A REDUCTION IN THE AMOUNT OF TAX ASSESSED AS DUE FROM HIM FOR THAT YEAR .

4 CONSIDERING THAT THE DISPUTE INVOLVED THE INTERPRETATION OF CERTAIN PROVISIONS OF COMMUNITY LAW, THE TRIBUNAL DE GRANDE INSTANCE, COUTANCES, STAYED THE PROCEEDINGS AND REFERRED THE FOLLOWING SIX QUESTIONS TO THE COURT OF JUSTICE FOR A PRELIMINARY RULING :

"(1) MUST ARTICLE 33 OF DIRECTIVE 77/388/EEC (THE SIXTH VAT DIRECTIVE) BE INTERPRETED AS PROHIBITING MEMBER STATES FROM CONTINUING TO LEVY TURNOVER TAXES ON THE SUPPLY OF GOODS OR THE PROVISION OF SERVICES ONCE SUCH ACTIVITIES BECOME LIABLE TO VAT?

(2) MUST THE CONCEPT OF TURNOVER TAXES OR ANY TAXES, DUTIES OR CHARGES WHICH MAY BE CHARACTERIZED AS TURNOVER TAXES REFERRED TO IN ARTICLE 33 OF THE SIXTH VAT DIRECTIVE BE INTERPRETED AS APPLYING TO TAXES LEVIED ON OPERATING RECEIPTS, REGARDLESS OF WHETHER TAX IS CHARGED ON THE BASIS OF

ACTUAL REVENUE OR ON AN APPROXIMATE BASIS WHERE IT IS DIFFICULT TO ARRIVE AT AN EXACT DETERMINATION OF ACTUAL REVENUE?

(3) MORE PARTICULARLY, DOES THE CONCEPT OF TURNOVER TAXES OR ANY TAXES, DUTIES OR CHARGES WHICH MAY BE CHARACTERIZED AS TURNOVER TAXES REFERRED TO IN ARTICLE 33 OF THE SIXTH VAT DIRECTIVE INCLUDE AN ANNUAL, FLAT-RATE FISCAL CHARGE LEVIED ON ALL AUTOMATIC MACHINES INSTALLED IN PUBLIC PLACES AND PROVIDING VISUAL OR AURAL ENTERTAINMENT, A GAME OR AN AMUSEMENT, INTRODUCED FOR THE PURPOSE OF REPLACING A TAX ON THE TURNOVER OF THE OPERATOR ON THE MACHINE AND WHICH IS BROADLY ADJUSTED TO TAKE ACCOUNT OF THE PROFITABILITY OF EACH TYPE OF MACHINE AND, INDIRECTLY, OF THE OPERATOR' S RECEIPTS?

(4) IF THE REPLIES TO QUESTIONS 1 AND 3 ARE IN THE AFFIRMATIVE, DOES THE PROHIBITION OF THE CUMULATIVE LEVYING OF VAT AND OTHER TURNOVER TAXES ON THE SAME REVENUE OR TURNOVER MEAN THAT WHERE VAT IS APPLIED FOR THE FIRST TIME AT THE BEGINNING OF THE SECOND HALF OF A YEAR AND THE TURNOVER TAXES LEVIED IN ADDITION TO VAT MUST BE PAID IN A SINGLE INSTALMENT AT THE BEGINNING OF THE CALENDAR YEAR (UNLESS DEFERRED PAYMENT HAS BEEN PERMITTED), ONE HALF OF THE SUMS DUE IN RESPECT OF THE TAXES IN THE NATURE OF TURNOVER TAXES FOR THE YEAR IN WHICH VAT WAS FIRST APPLIED MUST, IN CONSEQUENCE OF THE INTRODUCTION OF VAT, BE REIMBURSED OR NOT DEMANDED?

(5) MUST ARTICLE 95 OF THE EEC TREATY BE INTERPRETED AS PROHIBITING THE LEVYING ON OPERATING RECEIPTS OF TAX AT A RATE THREE TIMES HIGHER ON PRODUCTS THAT ARE PRINCIPALLY OF FOREIGN ORIGIN THAN ON SIMILAR PRODUCTS THAT ARE PRINCIPALLY OF DOMESTIC MANUFACTURE? MUST THAT DISCRIMINATION BE REGARDED AS EVEN MORE SERIOUS WHEN THE OPERATING RECEIPTS CONCERNED ARE LIABLE BOTH TO VAT AND TO INDIRECT TAXATION OF ANOTHER KIND?

(6) MUST ARTICLE 30 OF THE EEC TREATY BE INTERPRETED AS MEANING THAT IT IS AN INFRINGEMENT THEREOF TO MAKE REVENUE FROM THE OPERATION OF CERTAIN PRODUCTS LIABLE TO VAT PURSUANT TO COMMUNITY LEGISLATION WITHOUT ABOLISHING EXISTING TAXES ON SUCH REVENUE EVEN THOUGH CERTAIN OF THE PRODUCTS OPERATED ARE NO LONGER MANUFACTURED IN THE MEMBER STATE LEVYING THE VARIOUS TAXES CONCERNED AND WHERE, IN ANY EVENT, THE CUMULATIVE LEVYING OF SUCH TAXES MAY RESULT IN A REDUCTION IN IMPORTS OF SUCH PRODUCTS FROM THE REST OF THE COMMUNITY?"

5 REFERENCE IS MADE TO THE REPORT FOR THE HEARING FOR A FULLER ACCOUNT OF THE FACTS OF THE CASE, THE COURSE OF THE PROCEDURE AND THE OBSERVATIONS SUBMITTED UNDER ARTICLE 20 OF THE PROTOCOL ON THE STATUTE OF THE COURT OF JUSTICE OF THE EEC, WHICH ARE MENTIONED OR DISCUSSED HEREINAFTER ONLY IN SO FAR AS IS NECESSARY FOR THE REASONING OF THE COURT .

6 IN ORDER TO ANSWER THE FIRST QUESTION, IT IS NECESSARY TO CONSIDER ARTICLE 33 OF THE SIXTH DIRECTIVE IN THE LIGHT OF THE OBJECTIVES PURSUED BY THE INTRODUCTION OF A COMMON SYSTEM OF VAT .

7 ACCORDING TO THE PREAMBLE TO THE FIRST COUNCIL DIRECTIVE (67/227/EEC) OF 11 APRIL 1967 ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES (OFFICIAL JOURNAL, ENGLISH SPECIAL EDITION 1967, P . 14), THE PURPOSE OF HARMONIZATION OF THE LEGISLATION CONCERNING TURNOVER TAXES IS TO ESTABLISH A COMMON MARKET WITHIN WHICH THERE IS HEALTHY COMPETITION AND WHOSE CHARACTERISTICS ARE SIMILAR TO THOSE OF A

DOMESTIC MARKET BY ELIMINATING TAX DIFFERENCES LIABLE TO DISTORT COMPETITION AND HINDER TRADE .

8 A COMMON SYSTEM OF VAT WAS INTRODUCED BY THE SECOND COUNCIL DIRECTIVE (67/228/EEC) ON THE HARMONIZATION OF LEGISLATION OF MEMBER STATES CONCERNING TURNOVER TAXES - STRUCTURE AND PROCEDURES FOR APPLICATION OF THE COMMON SYSTEM OF VALUE-ADDED TAX (OFFICIAL JOURNAL, ENGLISH SPECIAL EDITION 1967, P . 16) AND BY THE SIXTH DIRECTIVE . THAT SYSTEM WAS TO CONTRIBUTE TO THAT OBJECTIVE BY INTRODUCING, ON A BASIS COMMON TO ALL THE MEMBER STATES, A GENERAL TAX ON CONSUMPTION LEVIED ON THE SUPPLY OF GOODS, THE PROVISION OF SERVICES, AND IMPORTS IN PROPORTION TO THEIR PRICE, REGARDLESS OF THE NUMBER OF TRANSACTIONS TAKING PLACE AS FAR AS THE FINAL CONSUMER, THE TAX BEING IMPOSED ONLY ON THE VALUE ADDED AT EACH STAGE AND BEING DEFINITIVELY BORNE BY THE FINAL CONSUMER .

9 TO ACHIEVE EQUALITY OF TAX CONDITIONS FOR A GIVEN TRANSACTION REGARDLESS OF THE MEMBER STATE IN WHICH IT TAKES PLACE, THE COMMON SYSTEM OF VAT WAS INTENDED, ACCORDING TO THE PREAMBLE TO THE SECOND DIRECTIVE, TO REPLACE THE TURNOVER TAXES IN FORCE IN THE MEMBER STATES .

10 ACCORDINGLY, ARTICLE 33 OF THE SIXTH DIRECTIVE PERMITS A MEMBER STATE TO MAINTAIN OR INTRODUCE TAXES, DUTIES OR CHARGES ONLY IF THEY CANNOT BE CHARACTERIZED AS TURNOVER TAXES .

11 CONSEQUENTLY, IT MUST BE STATED IN REPLY TO THE FIRST QUESTION THAT ARTICLE 33 OF THE SIXTH DIRECTIVE MUST BE INTERPRETED AS MEANING THAT AS FROM THE INTRODUCTION OF THE COMMON SYSTEM OF VAT THE MEMBER STATES ARE NO LONGER ENTITLED TO IMPOSE ON THE SUPPLY OF GOODS, THE PROVISION OF SERVICES OR IMPORTS LIABLE TO VAT, TAXES, DUTIES OR CHARGES WHICH CAN BE CHARACTERIZED AS TURNOVER TAXES .

12 IN ITS SECOND AND THIRD QUESTIONS, THE NATIONAL COURT ASKS ESSENTIALLY WHETHER THE CONCEPT OF A TAX WHICH CAN BE CHARACTERIZED AS A TURNOVER TAX WITHIN THE MEANING OF ARTICLE 33 OF THE SIXTH DIRECTIVE MUST BE INTERPRETED AS INCLUDING A TAX LEVIED ANNUALLY ON AUTOMATIC GAMES MACHINES INSTALLED IN PUBLIC PLACES AT A FIXED RATE DETERMINED ACCORDING TO THE CATEGORY OF THE MACHINE .

13 ALTHOUGH IT IS NOT FOR THE COURT, IN THE PRESENT PROCEEDINGS, TO EXAMINE THE CHARACTERISTICS OF A NATIONAL LAW IN THE LIGHT OF COMMUNITY LAW (JUDGMENT OF 21 OCTOBER 1970 IN CASE 20/70 TRANSPORTS LESAGE & CIE V HAUPTZOLLAMT FREIBURG ((1970)) ECR 861), IT IS NEVERTHELESS COMPETENT TO INTERPRET THE CONCEPT OF TAX WHICH CAN BE CHARACTERIZED AS A TURNOVER TAX IN ORDER TO ENABLE THE NATIONAL COURT TO APPLY IT CORRECTLY TO THE TAX AT ISSUE . IN FACT, IT IS A COMMUNITY CONCEPT IN SO FAR AS IT IS RELIED UPON WITH A VIEW TO THE ATTAINMENT OF THE OBJECTIVE PURSUED BY ARTICLE 33, WHICH IS TO ENSURE THAT THE COMMON SYSTEM OF VAT IS FULLY EFFECTIVE .

14 IN ORDER TO DECIDE WHETHER A TAX CAN BE CHARACTERIZED AS A TURNOVER TAX IT IS NECESSARY, IN PARTICULAR, TO DETERMINE, AS THE COURT STATED IN ITS JUDGMENT OF 27 NOVEMBER 1985 IN CASE 295/84 (ROUSSEAU WILMOT SA V ORGANIC ((1985)) ECR 3759), WHETHER IT HAS THE EFFECT OF COMPROMISING THE FUNCTIONING OF THE COMMON SYSTEM OF VAT BY LEVYING A CHARGE ON THE MOVEMENT OF GOODS AND SERVICES AND ON COMMERCIAL TRANSACTIONS IN A WAY COMPARABLE TO VAT .

15 AS THE COURT EMPHASIZED IN ITS JUDGMENT OF 1 APRIL 1982 IN CASE 89/81 (STAATSSECRETARIS VAN FINANCIEN V HONG KONG TRADE DEVELOPMENT COUNCIL ((1982)) ECR 1277), THE PRINCIPLE OF THE COMMON SYSTEM OF VAT CONSISTS, ACCORDING TO THE FIRST PARAGRAPH OF ARTICLE 2 OF THE FIRST DIRECTIVE, IN THE APPLICATION TO GOODS AND SERVICES OF A GENERAL TAX ON CONSUMPTION EXACTLY PROPORTIONAL TO THE PRICE OF THE GOODS AND SERVICES, WHATEVER THE NUMBER OF TRANSACTIONS WHICH TAKE PLACE IN THE PRODUCTION AND DISTRIBUTION PROCESS BEFORE THE FINAL STAGE AT WHICH TAX IS CHARGED .

16 THEREFORE, A TAX WHICH IS LEVIED SOLELY ON THE BASIS THAT AN ARTICLE IS PLACED AT THE DISPOSAL OF THE PUBLIC, REGARDLESS OF WHETHER IT IS ACTUALLY USED, AND WHICH IS NOT RELATED TO THE REVENUE ARISING THEREFROM, DOES NOT DISPLAY THE CHARACTERISTICS OF A GENERAL TAX ON CONSUMPTION LEVIED ON THE PRICE CHARGED FOR THE PROVISION OF SERVICES . THAT IS SO IN PARTICULAR WHERE THE TAX IS PAYABLE EVEN IF THE ARTICLE IN QUESTION IS MADE AVAILABLE TO THE PUBLIC FREE OF CHARGE .

17 ALTHOUGH A FIXED-RATE TAX MAY, IN CERTAIN CIRCUMSTANCES, BE REGARDED AS A FLAT-RATE TAX ON RECEIPTS, IT MAY ONLY BE SO REGARDED IF, ON THE ONE HAND, THE RATE WAS FIXED ON THE BASIS OF AN OBJECTIVE EVALUATION OF THE FORESEEABLE RECEIPTS BY REFERENCE TO THE NUMBER OF OCCASIONS ON WHICH A SERVICE WAS LIKELY TO BE PROVIDED AND TO THE PRICE CHARGED FOR THE SERVICE, AND, ON THE OTHER, IF IT IS ESTABLISHED THAT THE TAX MAY BE PASSED ON IN THE PRICE FOR THE SERVICE SO THAT IT WILL FINALLY BE BORNE BY THE CONSUMER .

18 THE IMPOSITION OF RATES WHICH DIFFER ACCORDING TO THE CATEGORY OF THE ARTICLES IS LIKEWISE NOT OF ITSELF SUFFICIENT TO ENDOW THE TAX WITH THE CHARACTER OF A FLAT-RATE LEVY ON ANTICIPATED RECEIPTS WHERE THE TAX IS JUSTIFIED BY OTHER LAWFUL CONSIDERATIONS OF AN OBJECTIVE NATURE .

19 THE FACT THAT, AFTER THE INTRODUCTION OF THE TAX, THE MACHINES WHOSE USE WAS MOST HEAVILY TAXED WERE THE SUBJECT OF A GENERAL PROHIBITION OF MANUFACTURE AND POSSESSION SHOWS THAT CONSIDERATIONS OF A SOCIAL CHARACTER, REFLECTING A DESIRE TO DISCOURAGE THE USE OF CERTAIN TYPES OF MACHINE, PROMPTED THE ADOPTION OF SEVERAL DIFFERENT RATES FOR THE TAX .

20 CONSEQUENTLY, IT MUST BE STATED IN REPLY TO THE SECOND AND THIRD QUESTIONS THAT A CHARGE WHICH, ALTHOUGH PROVIDING FOR DIFFERENT AMOUNTS ACCORDING TO THE CHARACTERISTICS OF THE TAXED ARTICLE, IS ASSESSED EXCLUSIVELY ON THE BASIS OF THE PLACING THEREOF AT THE DISPOSAL OF THE PUBLIC, WITHOUT IN FACT TAKING ACCOUNT OF THE REVENUE WHICH COULD BE GENERATED THEREBY, MAY NOT BE REGARDED AS A CHARGE WHICH CAN BE CHARACTERIZED AS A TURNOVER TAX .

21 IN VIEW OF THE ANSWER GIVEN TO THE SECOND AND THIRD QUESTIONS, THE FOURTH QUESTION IS DEVOID OF PURPOSE .

22 THE FIFTH QUESTION SUBMITTED BY THE NATIONAL COURT RAISES TWO POINTS : THE FIRST IS WHETHER ARTICLE 95 OF THE EEC TREATY APPLIES ONLY TO LEVIES ON IMPORTED PRODUCTS OR WHETHER IT MAY ALSO COVER TAXES ON THE USE OF THE PRODUCTS AND, IF SO, THE SECOND POINT ARISING IS WHETHER A MEMBER STATE IS PROHIBITED BY ARTICLE 95 OF THE EEC TREATY FROM IMPOSING ON THE PLACING AT THE DISPOSAL OF THE PUBLIC OF AUTOMATIC GAMES MACHINES THAT ARE PRINCIPALLY OF FOREIGN ORIGIN A TAX THREE TIMES HIGHER THAN THAT IMPOSED ON MACHINES THAT ARE PRINCIPALLY OF DOMESTIC MANUFACTURE .

23 ARTICLE 95 EXPRESSLY PROHIBITS THE IMPOSITION OF THE PRODUCTS OF OTHER MEMBER STATES OF ANY INTERNAL TAXATION OF ANY KIND IN EXCESS OF THAT IMPOSED DIRECTLY OR INDIRECTLY ON SIMILAR DOMESTIC PRODUCTS OR ANY INTERNAL TAXATION OF SUCH A NATURE AS TO AFFORD INDIRECT PROTECTION TO OTHER PRODUCTS .

24 AS THE COURT HELD IN ITS JUDGMENTS OF 27 FEBRUARY 1980 (CASE 168/78 COMMISSION V FRANCE ((1980)) ECR 347; CASE 169/78 COMMISSION V ITALY ((1980)) ECR 385 AND CASE 171/78 COMMISSION V DENMARK ((1980)) ECR 447), WITHIN THE SYSTEM OF THE EEC TREATY, ARTICLE 95 SUPPLEMENTS THE PROVISIONS ON THE ABOLITION OF CUSTOMS DUTIES AND CHARGES HAVING EQUIVALENT EFFECT . ITS AIM IS TO ENSURE FREE MOVEMENT OF GOODS BETWEEN THE MEMBER STATES IN NORMAL CONDITIONS OF COMPETITION BY THE ELIMINATION OF ALL FORMS OF PROTECTION WHICH MAY RESULT FROM THE APPLICATION OF INTERNAL TAXATION THAT DISCRIMINATES AGAINST PRODUCTS FROM OTHER MEMBER STATES . THUS ARTICLE 95 MUST GUARANTEE THE COMPLETE NEUTRALITY OF INTERNAL TAXATION AS REGARDS COMPETITION BETWEEN DOMESTIC PRODUCTS AND IMPORTED PRODUCTS .

25 THE COURT STATED IN THE SAME JUDGMENTS THAT ARTICLE 95 MUST BE INTERPRETED WIDELY SO AS TO COVER ALL TAXATION PROCEDURES WHICH, DIRECTLY OR INDIRECTLY, CONFLICT WITH THE PRINCIPLE OF EQUALITY OF TREATMENT OF DOMESTIC PRODUCTS AND IMPORTED PRODUCTS; THE PROHIBITION CONTAINED IN THAT ARTICLE MUST THEREFORE APPLY WHENEVER A FISCAL LEVY IS LIKELY TO DISCOURAGE IMPORTS OF GOODS ORIGINATING IN OTHER MEMBER STATES TO THE BENEFIT OF DOMESTIC PRODUCTION .

26 IF SUCH A SITUATION CAN ARISE IN THE CASE OF TAXATION LEVIED DIRECTLY ON IMPORTED PRODUCTS, THE POSSIBILITY CANNOT BE RULED OUT THAT IT MAY ALSO ARISE IN THE CASE OF INTERNAL TAXATION IMPOSED ON THE USE OF IMPORTED PRODUCTS WHERE THOSE PRODUCTS ARE ESSENTIALLY INTENDED FOR SUCH USE AND ARE IMPORTED SOLELY FOR THAT PURPOSE .

27 IT MUST THEREFORE BE STATED IN REPLY TO THE FIRST PART OF THE FIFTH QUESTION THAT ARTICLE 95 OF THE EEC TREATY ALSO APPLIES TO INTERNAL TAXATION WHICH IS IMPOSED ON THE USE OF IMPORTED PRODUCTS WHERE THOSE PRODUCTS ARE ESSENTIALLY INTENDED FOR SUCH USE AND HAVE BEEN IMPORTED SOLELY FOR THAT PURPOSE .

28 AS REGARDS THE TAX CATEGORIES ESTABLISHED BY FRENCH LAW, IT MUST BE BORNE IN MIND THAT THE COURT STATED IN ITS JUDGMENT OF 27 FEBRUARY 1980 IN CASE 171/78 (COMMISSION V DENMARK, CITED ABOVE) WITH RESPECT TO ALCOHOLIC PRODUCTS THAT A NATIONAL SYSTEM OF TAXATION, DESPITE MAKING NO FORMAL

DISTINCTION ACCORDING TO THE ORIGIN OF THE PRODUCTS, UNDENIABLY CONTAINS DISCRIMINATORY OR PROTECTIVE CHARACTERISTICS IF IT HAS BEEN ADJUSTED SO THAT THE BULK OF DOMESTIC PRODUCTION COMES WITHIN THE MOST FAVOURABLE TAX CATEGORY, WHEREAS ALMOST ALL IMPORTED PRODUCTS COME WITHIN THE MOST HEAVILY TAXED CATEGORY . THE COURT ALSO EMPHASIZED THAT THE CHARACTERISTICS OF SUCH A SYSTEM ARE NOT ALTERED BY THE FACT THAT A VERY SMALL PROPORTION OF IMPORTED PRODUCTS BENEFITS FROM THE MOST FAVOURABLE RATE OF TAX WHILST A CERTAIN PROPORTION OF DOMESTIC PRODUCTION COMES WITHIN THE SAME TAX CATEGORY AS THE IMPORTED PRODUCTS .

29 HOWEVER, IN ITS JUDGMENT OF 10 OCTOBER 1978 IN CASE 148/77 (H . HANSEN JUN . & O.C . BALLE GMBH AND CO . V HAUPTZOLLAMT FLENSBURG ((1978)) ECR 1787) THE COURT ALSO STATED THAT AT THE PRESENT STAGE OF ITS DEVELOPMENT AND IN THE ABSENCE OF ANY UNIFICATION OR HARMONIZATION OF THE RELEVANT PROVISIONS, COMMUNITY LAW DOES NOT PROHIBIT MEMBER STATES FROM ESTABLISHING A SYSTEM OF TAXATION DIFFERENTIATED ACCORDING TO VARIOUS CATEGORIES OF PRODUCTS PROVIDED THAT THE TAX BENEFITS GRANTED SERVE LEGITIMATE ECONOMIC OR SOCIAL PURPOSES .

30 A LEGITIMATE SOCIAL PURPOSE OF THAT KIND MAY, AS THE FRENCH GOVERNMENT STATES IN ITS OBSERVATIONS, CONSIST IN THE DESIRE TO ENCOURAGE THE USE, BY CERTAIN PEOPLE AND IN CERTAIN PLACES, OF PARTICULAR CATEGORIES OF MACHINES AND TO DISCOURAGE THE USE OF OTHER CATEGORIES .

31 AS REGARDS THE PROGRESSIVE NATURE OF THE TAXATION AS BETWEEN THE CATEGORIES OF PRODUCTS THUS ESTABLISHED, THE COURT HAS HELD, MOST RECENTLY IN ITS JUDGMENT OF 17 SEPTEMBER 1987 IN CASE 433/85 (FELDAIN V DIRECTEUR DES SERVICES FISCAUX ((1987)) ECR 3521), THAT AS COMMUNITY LAW STANDS AT PRESENT, THE MEMBER STATES ARE IN PRINCIPLE AT LIBERTY TO SUBJECT PRODUCTS TO A SYSTEM OF TAXATION WHICH INCREASES PROGRESSIVELY IN AMOUNT ACCORDING TO AN OBJECTIVE CRITERION, PROVIDED THAT THE SYSTEM IS FREE FROM ANY DISCRIMINATORY OR PROTECTIVE EFFECT .

32 IT MUST THEREFORE BE STATED IN ANSWER TO THE SECOND PART OF THE FIFTH QUESTION THAT A SYSTEM OF TAXATION GRADUATED ACCORDING TO THE VARIOUS CATEGORIES OF AUTOMATIC GAMES MACHINES, WHICH IS INTENDED TO ACHIEVE LEGITIMATE SOCIAL OBJECTIVES AND WHICH PROCURES NO FISCAL ADVANTAGE FOR DOMESTIC PRODUCTS TO THE DETRIMENT OF SIMILAR OR COMPETING IMPORTED PRODUCTS, IS NOT INCOMPATIBLE WITH ARTICLE 95 .

33 AS REGARDS THE SIXTH QUESTION, IT NEED MERELY BE BORNE IN MIND THAT ARTICLE 30 OF THE EEC TREATY COVERS IN GENERAL ALL BARRIERS TO IMPORTS WHICH ARE NOT ALREADY SPECIFICALLY COVERED BY OTHER PROVISIONS OF THE TREATY . SINCE THE BARRIERS REFERRED TO IN THE QUESTIONS SUBMITTED TO THE COURT ARE OF A FISCAL NATURE, THEIR COMPATIBILITY WITH THE TREATY MUST BE ASSESSED ONLY BY REFERENCE TO ARTICLE 95 OF THE TREATY .

34 CONSEQUENTLY, IT MUST BE STATED IN REPLY TO THE SIXTH QUESTION THAT ARTICLE 30 OF THE TREATY DOES NOT APPLY TO THE TAXATION OF PRODUCTS ORIGINATING IN OTHER MEMBER STATES THE COMPATIBILITY OF WHICH WITH THE TREATY FALLS UNDER ARTICLE 95 THEREOF .

Decision on costs

COSTS

35 THE COSTS INCURRED BY THE GOVERNMENT OF THE FRENCH REPUBLIC, THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY AND THE COMMISSION OF THE EUROPEAN COMMUNITIES, WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT, ARE NOT RECOVERABLE . SINCE THESE PROCEEDINGS ARE, IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED, IN THE NATURE OF A STEP IN THE ACTION PENDING BEFORE THE NATIONAL COURT, THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS,

THE COURT

IN ANSWER TO THE QUESTIONS SUBMITTED TO IT BY THE TRIBUNAL DE GRANDE INSTANCE, COUTANCES, BY JUDGMENT OF 18 SEPTEMBER 1986, HEREBY RULES :

(1) ARTICLE 33 OF THE SIXTH COUNCIL DIRECTIVE ON THE HARMONIZATION OF THE LAWS OF THE MEMBER STATES RELATING TO TURNOVER TAXES - COMMON SYSTEM OF VALUE-ADDED TAX (VAT) MUST BE INTERPRETED AS MEANING THAT AS FROM THE INTRODUCTION OF THE COMMON SYSTEM OF VAT THE MEMBER STATES ARE NO LONGER ENTITLED TO IMPOSE ON THE SUPPLY OF GOODS, THE PROVISION OF SERVICES OR IMPORTS LIABLE TO VAT, TAXES, DUTIES OR CHARGES WHICH CAN BE CHARACTERIZED AS TURNOVER TAXES .

(2) A CHARGE WHICH, ALTHOUGH PROVIDING FOR DIFFERENT AMOUNTS ACCORDING TO THE CHARACTERISTICS OF THE TAXED ARTICLE, IS ASSESSED EXCLUSIVELY ON THE BASIS OF THE PLACING THEREOF AT THE DISPOSAL OF THE PUBLIC, WITHOUT IN FACT TAKING ACCOUNT OF THE REVENUE WHICH COULD BE GENERATED THEREBY, MAY NOT BE REGARDED AS A CHARGE WHICH CAN BE CHARACTERIZED AS A TURNOVER TAX .

(3) ARTICLE 95 OF THE EEC TREATY ALSO APPLIES TO INTERNAL TAXATION WHICH IS IMPOSED ON THE USE OF IMPORTED PRODUCTS WHERE THOSE PRODUCTS ARE ESSENTIALLY INTENDED FOR SUCH USE AND HAVE BEEN IMPORTED SOLELY FOR THAT PURPOSE .

(4) A SYSTEM OF TAXATION GRADUATED ACCORDING TO THE VARIOUS CATEGORIES OF AUTOMATIC GAMES MACHINES, WHICH IS INTENDED TO ACHIEVE LEGITIMATE SOCIAL OBJECTIVES AND WHICH PROCURES NO FISCAL ADVANTAGE FOR DOMESTIC PRODUCTS TO THE DETRIMENT OF SIMILAR OR COMPETING IMPORTED PRODUCTS, IS NOT INCOMPATIBLE WITH ARTICLE 95 .

(5) ARTICLE 30 OF THE EEC TREATY DOES NOT APPLY TO THE TAXATION OF PRODUCTS ORIGINATING IN OTHER MEMBER STATES THE COMPATIBILITY OF WHICH WITH THE TREATY FALLS UNDER ARTICLE 95 THEREOF .