OPINION OF ADVOCATE GENERAL

TIZZANO

delivered on 16 December 2004 (1)

Case C-376/02

Stichting ‘Goed Wonen’

v

Staatssecretaris van Financiën

(Reference for a preliminary ruling by the Hoge Raad der Nederlanden (Netherlands))

(VAT – Sixth Directive 77/388/EEC – Legal certainty – Legitimate expectations – Amendment of national law – Grant of a usufructuary right – Transaction previously subject to tax – Exemption – Application with retroactive effect – Compatibility)

1. By judgment of 18 October 2002 the Hoge Raad der Nederlanden referred to the Court for a preliminary ruling under Article 234 EC a question as to whether the Sixth Directive 77/388/EEC and the principles of legal certainty and the protection of legitimate expectations preclude the adoption of national legislation exempting from VAT with retroactive effect certain transactions previously subject to tax, thus depriving those who had already concluded them of an acquired right to an adjustment of the initial deduction.

I – **Legal background**

A – *The Community legislation*

2. The present case involves, as well as the principles of legal certainty and protection of legitimate expectations, which are general principles of Community law, Articles 17 and 20 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover tax – Common system of value added tax: uniform basis of assessment (the ‘Sixth Directive’). (2)

3. Article 17 concerning the origin and scope of the right to deduct states:

‘1. The right to deduct shall arise at the time when the deductible tax becomes chargeable.

2. In so far as the goods and services are used for the purposes of his taxable transactions, the taxable person shall be entitled to deduct from the tax which he is liable to pay:

(a) value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person;

…’

4. Article 20, which concerns adjustments of deductions, provides:

‘1. The initial deduction shall be adjusted according to the procedures laid down by the Member States, in particular:

(a) where that deduction was higher or lower than that to which the taxable person was entitled;

(b) where, after the return is made, some change occurs in the factors used to determine the amount to be deducted, in particular where purchases are cancelled or price reductions are obtained; however, adjustment shall not be made in cases of transactions remaining totally or partially unpaid and of destruction, loss or theft of property duly proved or confirmed, nor in the case of applications for the purpose of making gifts of small value and giving samples specified in Article 5(6). However, Member States may require adjustment in cases of transactions remaining totally or partially unpaid or of theft.

2. In the case of capital goods, adjustment shall be spread over five years including that in which the goods were acquired or manufactured. The annual adjustment shall be made only in respect of one fifth of the tax imposed on the goods. The adjustment shall be made on the basis of the variations in the deduction entitlement in subsequent years in relation to that for the year in which the goods were acquired or manufactured.

By way of derogation from the preceding paragraph, Member States may base the adjustment on a period of five full years starting from the time at which the goods are first used.

In the case of immovable property acquired as capital goods the adjustment period may be extended up to 10 years.

…’

B – *The national legislation*

5. In a press release dated 31 March 1995 the Staatssecretaris van Financiën (Netherlands State Secretary for Finance) announced that the Council of Ministers’ intended laying before Parliament a draft law amending the VAT Law of 28 June 1968 (3) (‘the VAT Law’). The press release explained the essential points of the legislative amendment and gave notice that, once the law had been approved, it would take full effect from the date of the press release itself.

6. On 29 December 1995 the law announced earlier (4) (‘the amending law’) did in fact come into force. In order to discourage ‘the unintended and improper use of the legislation concerning immovable property’, (5) the amending law provided that where the consideration agreed for the grant of a right in rem over immovable property was less than the economic value of that right, the transaction should not be considered as a supply of goods subject to VAT but should be treated as a letting exempt from such tax (see Articles 3(2) and 11(1)(b)(5) which are intended to transpose Articles 5(3)(b) and 13B(b) and C(a) of the Sixth Directive).

7. Although it is not of particular importance in this case, it should be observed at this point that the amending law also revoked the alternative available to the parties to a lease to opt for the letting to be taxed. In respect of leases signed before 31 March 1995, the removal of that option

was made subject to transitional rules.

8. As announced in the press release, the amending law provided that it would enter into force as from 6.00 p.m. on 31 March 1995 (Article V).

II – **Facts and procedure**

9. It appears from the order for reference that, during the second quarter of 1995, three housing complexes intended for letting were transferred to the Woningbouwvereniging ‘Goed Wonen’ (‘Goed Wonen Housing Association’, which was succeeded by the Stichting ‘Goed Wonen’, hereinafter ‘the GW Association’). The order states that during the construction of those dwellings, the Association, taking advantage of an option available under national law, did not deduct the VAT paid on goods and services received for the purpose.

10. On 28 April 1995, the GW Association created the foundation ‘De Goede Woning’ (‘the GW Foundation’) to which, on the same day, it granted a usufruct for a term of 10 years in respect of the dwellings. In return for that grant, it received consideration lower than the cost price of the dwellings and, under the VAT law which was still in force at that time, it collected the value added tax due.

11. After that transaction, the Association decided to request, under Article 20(1)(a) of the Sixth Directive, adjustment of the tax on construction costs not previously deducted. Consequently, in its VAT return for the period from 1 April to 30 June 1995, it indicated, first, the VAT charged to the GW Foundation for the grant of the usufruct, in the amount of NLG 645 067, and, second, the amount of the VAT which it had been charged for the construction of the dwellings, namely NLG 1 285 059, which was deducted as input tax.

12. On the basis on that return, the tax inspector refunded NLG 639 992 to the GW Association.

13. Following the entry into force of the amending law and in implementation of it, the tax inspector revised his decision and characterised the grant by the GW Association as a transaction exempt from tax. As a result, he denied the association the previously acquired right to deduction and at the same time required repayment of the sum of NGL 1 285 059, which he then reduced on his own initiative to NGL 639 992, that is, the VAT actually reimbursed.

14. Since the complaint it then lodged was rejected, the GW Association brought an action before the Gerechtshof, , which, by judgment of 20 May 1998, confirmed the additional assessment, as reduced by the tax authorities.

15. The GW Association then brought an appeal in cassation before the Hoge Raad, which, entertaining doubts as to the compatibility with the Sixth Directive of Articles 3(2) and 11(1)(b)(5) of the VAT law, as amended by the amending law, referred a first question to the Court for a preliminary ruling.

16. The Court, however, dispelled those doubts, ruling in its judgment in Case C-326/99 *Goed Wonen* [2001] ECR I-6831 that the Sixth Council Directive does not preclude the adoption of a national provision, such as Article 3(2) ‘whereby classification as a “supply of goods” of the grant, transfer, modification, waiver or termination of rights in rem over immovable property is made subject to the condition that the total consideration, plus turnover tax, must amount to at the least the economic value of the immovable property to which those rights in rem relate’, nor does it preclude a national provision, such as Article 11(1)(b)(5), ‘which, for the purposes of the application of the exemption from value added tax, allows the grant, for an agreed period and for payment, of a right in rem entitling the holder to use immovable property, such as the usufructary

right in question in the present case, to be treated as the leasing or letting of immovable property'.

17. Nevertheless, following that ruling, the Hoge Raad reconsidered the compatibility of the amending law with Community law but this time from another point of view. In particular, it was uncertain as to whether that law, although substantively lawful, could be applied with retroactive effect, so as to deprive a taxable person of an acquired right to adjustment of the deduction.

18. The Hoge Raad made a further reference to the Court, this time asking:

'Do Articles 17 and 20 the Sixth Directive or the European law principles of the protection of legitimate expectations and of legal certainty preclude – in a case not involving fraud or abuse or any question of a change in planned use [of the capital goods] – the adjustment of VAT not deducted by a taxable person which he paid in respect of (immovable) property which is supplied to him and which he originally intended for letting (which is not subject to VAT), but subsequently used for a transaction subject to VAT (in the present case, the grant of a usufructary right in rem), being revoked on the sole ground that, as a result of a legislative amendment which had not yet taken effect at the time at which the abovementioned transaction was carried out, that transaction is regarded with retroactive effect as an exempt transaction establishing no right to deduct?'

19. In the proceedings to which that question gave rise, written observations were submitted by the GW Association, the Netherlands Government and the Commission, all of which, together with the Swedish Government, presented oral argument at the hearing on 26 October 2004.

III – **Legal appraisal**

20. Before the question on which the parties are at odds in the present case is considered, it is necessary to dispose of several uncontroversial questions.

21. To that end, it should be observed that, under Article 17 of the Sixth Directive, a taxable person is authorised to deduct 'value added tax due or paid in respect of goods or services supplied or to be supplied to him by another taxable person' from the tax which he is liable to pay, in so far as '[the said] goods and services are used for the purposes of his taxable transactions'.

22. Furthermore, under Article 20(1)(a), the initial deduction is adjusted where it is 'lower than that to which the taxable person (was) entitled'.

23. In this case, the referring court and all those participating in the proceedings are essentially agreed that, prior to the approval of the amending law on 29 December 1995, the GW Association had acquired the right to deduct the VAT charged to it on the construction costs incurred. Indeed, that tax had been paid, in accordance with Article 17, for the supply of goods and services necessary for the completion of the dwellings, which were then employed in a transaction (the grant of the usufructuary right) which, when it took place, was subject to tax.

24. Nor is there any dispute that, not having deducted VAT during the construction of the dwellings, the GW Association subsequently had the right, under Article 20(1)(a), to an adjustment with regard to the initial deduction.

25. However, what is in doubt is whether the deduction entitlement (or, more specifically, the right to an adjustment of the deduction) thus acquired could be retroactively withdrawn by a national law such as the amending law, which – with retroactive effect – exempted from VAT a transaction (the grant of limited rights in rem against consideration worth less than their economic value) previously subject to tax.

26. Let me say at once that I agree with the views of the GW Association and the Commission,

which consider that in a case such as this one, in which individuals' legitimate expectations have not been duly protected, the principle of legal certainty precludes the application with retroactive effect of national fiscal provisions such as Articles 3(2) and 11(1)(b)(5) of the law under discussion.

27. Such a solution is in my opinion in conformity with the Court's settled case-law, according to which the principle of legal certainty is an integral part of the Community legal order and must therefore be respected not only by the Community institutions (6) but also by the Member States 'when they exercise the powers conferred on them by Community directives'. (7) This therefore also applies to a national law, such as the amending law, which amends various provisions of the VAT law intended to implement the Sixth Directive (see point 6 above).

28. As the GW Association has rightly observed, the principle in question precludes 'a [Community] act from taking effect as from a date prior to its publication'. (8) When applied to the matter of VAT, that principle, therefore, precludes 'a legislative amendment retroactively depriving a taxable person of a deduction entitlement he has derived from the Sixth Directive'. (9)

29. That said, account must still be taken of the fact that the Court's case?law also states that 'it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected'. (10)

30. Thus, for example, in *Racke* and *Decker,* the Court, having regard amongst other things 'to the extraordinary situation prevailing at the time', allowed the retroactive application of a rule which established compensatory amounts for the wine trade in the face of serious fluctuations in national exchange rates caused by a major change in the international monetary situation. (11) Again, in *Amylum,* a rule which retroactively reintroduced a regime of quotas and levies for the production of isoglucose was considered lawful following the annulment by the Court, for infringement of an essential procedural requirement, of a first regulation which had already introduced those measures. (12)

31. Finally, to mention a last but very important example, in *Zuckerfabrik,* the Court upheld a regulation which imposed a levy on sugar producers for a previous marketing year in which, because of the abrupt fall in the value of the dollar and the collapse of world sugar prices, the common organisation for that product had sustained heavy losses. (13) In its judgment, the Court consequently first recognised the existence of the exceptional situation and next verified the continued existence of the two conditions (necessity and protection of legitimate expectations) indicated above.

32. In the present case, it appears to me first of all that, as the GW Association rightly submits, there are no 'exceptional circumstances' here comparable to those mentioned above.

33. Indeed, when it decided to amend the VAT law with retroactive effect, the legislature was not confronted by a sudden financial crisis or by unforeseeable budgetary difficulties. It simply found that, for a number of years, certain categories of operators had 'increasingly' used 'the legislation on turnover tax applicable to immovable property ... in a manner not intended by the legislature'. They had been employing various legal devices which were, moreover, *lawful*, (14) to ensure that 'immovable property [attracted] a lower burden of tax – in some cases, much lower – than was envisaged'. (15)

34. That was undoubtedly a delicate situation, given the progressive reduction in revenue from VAT on immovable property. But I do not see how it can be regarded as *exceptional* in the sense, outlined above, of a situation caused by sudden, unforeseen and unforeseeable events.

35. But that is not all. It seems to me that in the present case serious doubts should be raised as

to the fulfilment of the two conditions to which the possibility of adopting provisions with retroactive effect is subject by virtue of the Court's aforementioned case-law (see point 29 above), namely (i) the *necessity* for the measure to be retroactive in order to attain the legislature's aim, and (ii) protection of the interested parties' legitimate expectations.

36. With regard to the first condition, I agree with the GW Association's view that the retroactive effect of the amending law was not 'necessary' to achieve the aim, stated by the Netherlands Government, of combating an 'unintended use' of the tax legislation, which caused a reduction in VAT levied on immovable property. Indeed, it is difficult to argue that, in a situation such as the present one, the aim of putting a stop to actions which were in themselves lawful and had been continuing for some years could be usefully pursued only by means of a law having retroactive effect. Indeed, given that in this case there was no sudden discovery of an unforeseen and unforeseeable situation, a law prohibiting 'undesirable' devices for the future alone would have made it possible to put a stop to them, whilst causing only slight economic damage (being limited in time and in any event linked to behaviour that had long been tolerated) and without seriously undermining the principle of legal certainty.

37. Next, as regards the second of the requirements set out above, it likewise cannot be argued that, in the present case, the interested parties' legitimate expectations were duly protected because of the publication of a press release giving notice that, from 31 March 1995, grants of limited rights in rem over immovable property would be treated as lettings exempt from tax.

38. It is true that, as the Swedish Government observes, the practice in some Member States is to give forewarning of legislative measures by means of press releases intended to apprise those affected by the legislation in due time. It appears to me, all other considerations aside, that such a practice cannot be extended to the context of a common market encompassing all European economic operators, in which the practice normally followed is inspired by the principle that the behaviour of citizens is guided and regulated by laws rather than by press releases. Indeed, as the Commission has rightly pointed out, the existence of a particular practice in a must not lead to a situation throughout the Community in which citizens in general and taxpayers in particular are called on to rely more on announcements in the press than on the law in force.

39. It must also be remembered that, as in the present case, the actual scope and precise content of laws of which notice in general terms is given in a press release are only fully appreciated once the relevant draft law has been laid before Parliament, and that they may, furthermore, as indeed happened in this case, undergo numerous amendments during the passage of the bill through Parliament.

40. In the present case, therefore, it was not possible to claim that the GW Association, which, moreover – the position is not clear – may or may not have been under a legal obligation to take note of the content of the press release dated 31 March 1995, should by the following 28 April have complied with the uncertain requirements of such a press release rather than with the clear provisions of the VAT law that had been in force since 1968. That conclusion is borne out by the fact that it was precisely on that law that the GW Association had from the outset relied in order to choose the most fiscally advantageous type of transaction (the grant of a usufructuary right) from amongst the possible options. What is more, if that association had been able to ascertain the detailed content of the heralded amendments rather than the general terms of a press release, it would have been able to arrange that transaction in a different but nonetheless lawful manner, by making choices which would have allowed it, in the new legislative context, to safeguard the deduction entitlement at least in part (by agreeing, for example, to consideration slightly higher than the economic value of the right granted).

41. Neither would it serve any purpose to object that in the *Gemeente Leusden and Holin Groep*

judgment of 29 April 2004 (16) the Court, ruling on the same legislation as that under discussion here, has apparently already recognised that it does not '[breach] a legitimate expectation of taxable persons'.

42. In that case, which in any event concerned other provisions of the amending law (in particular those relating to removal of the right to opt for the letting of immovable property to be taxed – see point 7 above), the Netherlands legislature protected the legitimate expectations of the interested parties not only through the press release which 'reported the planned legislative amendment', but also by incorporating in the latter a transitional regime which provided for 'transition from taxed letting to exempt letting only from the entry into force of the law' and allowing, therefore, 'the parties to a lease time to confer ... on the implications of the legislative amendment'. (17)

43. However, the provisions now under consideration (those concerning the exemption of the transfer of limited rights in rem over immovable property) did not incorporate transitional rules of that kind. The protection of the legitimate expectations of individuals is therefore catered for only by the press release, which, may I repeat, cannot, in my opinion, be considered adequately to provide such protection.

44. For that reason I consider that in the present case, in contrast to *Gemeente Leusden and Holin Groep*, the principles of legal certainty and protection of legitimate expectations preclude legislative provisions, such as the ones under discussion, which deprive the interested parties, with retroactive effect, of a right to adjust the deduction which they derived from the Sixth Directive.

45. Before concluding, however, I must examine an alternative solution proposed in these proceedings by the Commission. It submits that, in the present case, the Netherlands authorities, although not entitled – by virtue of the aforementioned principles – to claim the full and immediate refund of the VAT reimbursed could, without infringing those principles, have effected a reduction of the deduction made by the GW Association, but only in respect of the years subsequent to the entry into force of the amending law. If I have understood correctly, according to that line of argument, since the adjustment had to be spread over 10 years under the Netherlands law applicable at that time, the national authorities would not have been able to influence the portion of VAT deducted for the year 1995, but would have been able to claim repayment of the remaining VAT, to be spread over the next nine years, all of which post-dated the entry into force of that law.

46. I do not however think I can accept the Commission's suggestion. In my opinion the principles of legal certainty and protection of legitimate expectations do not permit the Netherlands tax authorities to request the repayment of the VAT deducted, whether in full or in part, by means of an adjustment under Article 20(1)(b) of the Sixth Directive.

47. That provision states that 'the initial deduction shall be adjusted according to the procedures laid down by the Member States, *in particular* … where after the return is made some variation occurs in the factors used to determine the amount to be deducted, in particular where *purchases are* cancelled or *price reductions* are obtained; however, adjustment shall not be made in cases of transactions remaining totally or partially *unpaid* and of *destruction, loss or theft of* property duly proved or confirmed, nor in the case of *applications* for the purpose of making gifts of small value and giving *samples* …'. (18)

48. Article 20(2), concerning the arrangements for adjustments made with respect to capital goods, provides that the latter 'shall be spread over five years' (in the case of immovable property, this period may be increased 'up to 10 years'); that 'the annual adjustment shall be made only in respect of one fifth of the tax imposed on the goods'; and, finally, that it 'shall be made *on the basis of the variations in the deduction entitlement* in subsequent years in relation to that for the

year in which the goods were acquired or manufactured'. (19)

49. In my view, the most correct interpretation of the rules mentioned is the one which limits the application of the instrument of adjustment to cases of *variations in the factual situation* which rendered the initial deduction lawful. However, I have grave doubts as to whether, as the Commission suggests, it could also be extended to cases, such as the present, in which the *legal situation* on which the deduction was based has been changed.

50. It is true that Article 20(1), which lists the circumstances in which adjustment can take place, contains the words 'in particular', implying that the list is not exhaustive. It is equally true that Article 20(2) makes a general statement that the adjustment is carried out according to the 'variations in the deduction entitlement', (20) without specifying whether these are only variations of fact or also variations of law.

51. Nevertheless, the fact cannot be ignored that, in the list of examples of situations in which adjustment must take place (cancellation of purchases or price reductions) and those in which it is, on an exceptional basis, not required (transactions remaining unpaid, destruction, loss or theft of property and applications for the purpose of making gifts and samples), Article 20 always refers to variations of fact. As I have stated, this prompts me to conclude that only in such situations (even if they differ from the ones specifically listed, provided they fall into that category) is it possible to correct the deduction through adjustment.

52. In any event, even if that were not the case, and therefore if adjustment under Article 20(1)(b) were also to be allowed in the case of amendments to the legislation on which adjustment was based, it should be observed that such an approach would ultimately lead to retroactive effects analogous to a request for a refund of the deduction, in that it would retroactively deprive the taxable person, at least in part, of that deduction entitlement which he had already acquired in its entirety.

53. In the present case, that would also involve an infringement of the legitimate expectations of the interested parties and therefore of the principle of legal certainty, as the GW Association would be deprived with retroactive effect, albeit only in part, of a deduction entitlement which arose prior to the enactment of the amending law.

54. For the foregoing reasons, I propose therefore that the answer to be given to the question referred to the Court should be that, where a taxable person has, under Article 17 of the Sixth Directive, acquired without abuse or fraud an entitlement to deduct the VAT paid on immovable property which has been transferred to him and which, whilst originally intended for letting (a transaction not subject to tax) has subsequently been granted in usufruct (a transaction subject to tax) without there having been any subsequent change in the planned use of the said property, the principles of legal certainty and protection of legitimate expectation preclude an adjustment of the tax not deducted, as mentioned in Article 20(1)(a) of that directive, from being revoked on the sole ground that, following a legislative amendment which had not yet taken place at the time of the grant of the usufruct, that transaction is regarded with retroactive effect as an exempt transaction not giving rise to any deduction entitlement.

IV – **Conclusion**

55. In the light of the foregoing, I therefore propose that the Court respond as follows to the question referred to it by the Hoge Raad der Nederlanden:

Where a taxable person has, under Article 17 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common

system of value added tax: uniform basis of assessment, acquired without abuse or fraud an entitlement to deduct the VAT paid on immovable property which has been transferred to him and which, whilst originally intended for letting (a transaction not subject to tax) has subsequently been granted in usufruct (a transaction subject to tax) without there having been any subsequent change in the planned use of the said property, the principles of legal certainty and protection of legitimate expectation preclude an adjustment of the tax not deducted, as mentioned in Article 20(1)(a) of that directive, from being revoked on the sole ground that, following a legislative amendment which had not yet taken place at the time of the grant of the usufruct, that transaction is regarded with retroactive effect as an exempt transaction not giving rise to any deduction entitlement.

1 – Original language: Italian.

2 – OJ 1977 L 145, p. 1.

3 – Wet houndende vervanging van de bestaande omzetbelasting door een omzetbelasting volgens het stelsel van heffing over de toegevoegde waarde (Law replacing turnover tax by the system of taxing added value of 28 June 1968).

4 – Wet van 18 december 1995, *Staatsblad* 95/659, houdende wijziging van de Wet op de omzetbelasting 1968, de Wet op belastingen van rechtsverkeer en enkele andere belastingwetten in verband met de bestrijding van constructies met betrekking tot onroerende zaken (Law of 18 December 1995 amending the 1968 law on turnover tax, the law on tax on legal acts and certain other tax laws relating to combating fraud in respect of immovable property).

5 – See the explanatory memorandum to the draft amending law.

6 – Case 74/74 *CNTA* v *Commission* [1975] ECR 533.

7 – Case C-381/97 *Belgocodex* [1998] ECR I-8153, paragraph 26; Case C-396/98 *Schloßstraße* [2000] ECR I-4279, paragraph 44, and Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 44.

8 – Case C-110/97 v *Council* [2001] ECR I?8763, paragraph 151.

9 – *Schloßstraße*, paragraph 47; *Marks & Spencer*, paragraph 45, and Case C-17/01 *Sulingen* [2004] ECR I-0000, paragraph 40.

10 – Case 98/78 *Racke* [1979] ECR 69, paragraph 20; Case 99/78 Decker [1979] ECR 101, paragraph 8; Case 108/81 *Amylum* [1982] ECR 3107, paragraph 4, and Joined Cases C-143/88 and C-92/89 *Zuckerfabrik* [1991] ECR I-415, paragraph 49.

11 – *Racke*, paragraph 20, and *Decker*, paragraph 8. Compensatory amounts are special levies intended to make it possible, where exchange rates are subject to fluctuation, to neutralise the price differences in national currency, and thus to avoid the trade disruption which might follow.

12 – *Amylum*, paragraph 5.

13 – *Zuckerfabrik*, paragraph 52. See also v *Council*, paragraph 155.

14 – As the referring court pointed out, devices intended to create the conditions making it possible to benefit from the deduction of VAT levied on the construction of buildings such as the one adopted by the GW Association (see point 10 above) are not abusive or fraudulent.

15 – See the explanatory memorandum to the draft amending law.

16 – Joined Cases C-487/01 and C-7/02 *Gemeente Leusden and Holin Groep* [2004] ECR I-0000.

17 – *Gemeente Leusden and Holin Groep*, paragraphs 80 and 81.

18 – Emphasis added.

19 – Emphasis added.

20 – See *Gemeente Leusden and Holin Groep*, paragraphs 52 and 53.