

Joined Cases C-10/97 to C-22/97

Ministero delle Finanze

v

IN. CO. GE.'90 Srl and Others

(References for a preliminary ruling
from the Pretura Circondariale, Rome)

(Recovery of sums paid but not due — Treatment of a
national charge incompatible with Community law)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 14 May 1998	I - 6309
Judgment of the Court, 22 October 1998	I - 6324

Summary of the Judgment

- 1. Preliminary rulings — Power of the Court — Limits — Problem of jurisdiction within the national judicial system — Resolution depending on the classification of a legal situation in the light of Community law — Purpose served by a preliminary ruling (EC Treaty, Art. 177)*
- 2. Community law — Primacy — Contrary national law — Rules automatically inapplicable, without being rendered non-existent*

3. *Community law — Direct effect — National charges incompatible with Community law — Repayment — Arrangements — Application of national law — Classification of the legal relationship between the tax authorities and taxable persons*

1. It is for the legal system of each Member State to determine which court or tribunal has jurisdiction to hear disputes involving individual rights derived from Community law. However, it is the Member States' responsibility to ensure that those rights are effectively protected in each case. Subject to that reservation, it is not for the Court to involve itself in the resolution of questions of jurisdiction to which the classification of particular legal situations based on Community law may give rise in the national judicial system.

The Court does, however, have the power, in a reference for a preliminary ruling, to explain to the national court points of Community law which may help to solve the problem of jurisdiction with which that court is faced.

2. The incompatibility with Community law of a subsequently adopted rule of national law does not have the effect of rendering that rule of national law non-existent. Faced with such a situation, a national

court is obliged to disapply that rule, provided always that this obligation does not restrict the power of the competent national courts to apply, from among the various procedures available under national law, those which are appropriate for protecting the individual rights conferred by Community law.

3. The obligation on a national court to disapply national legislation introducing a charge contrary to Community law must lead that court, in principle, to uphold claims for repayment of that charge. Such repayment must be ensured in accordance with the provisions of its national law, on condition that those provisions are not less favourable than those governing similar domestic actions and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law. Any reclassification of the legal relationship established between the tax authorities of a Member State and certain companies in that State when a domestic charge subsequently found to be contrary to Community law was levied is therefore a matter for national law.