

## **Joined cases C-392/04 and C-422/04 i-21 Germany and Arcor AG [2006]**

**Facts:** A Directive provided that fees imposed as part of authorisations procedures shall be proportionate to the administrative costs incurred in their issue. Arcor and i-21 paid fees for telecommunications licenses based on the anticipated administrative costs of the regulatory authority over a period of 30 years. Following a non-related judgment in which it was held that these fees were not compatible with higher-ranking legal rules, i-21 and Arcor sought repayment of their fees, dismissed on the ground that their fee notices had become final. The German national court stated that the appeals could not succeed on the basis of national law alone, but referred for a preliminary ruling whether the abovementioned Directive precluded legislation such as that at issue and, in the affirmative, whether the principle of cooperation might give rise to an obligation to reopen the fee assessments at issue under national law.

**Held:** The Directive precluded the application of such a fee, as its calculation included expenditure that was not in line with its provisions and such a long period estimation raised reliability problems. The question then relates to the relationship between the Directive and the German Law on Administrative Procedure, according to which, upon expiry of a given period, the fee assessment become final and the addressees no longer have a legal remedy to assert a right which they derive from the Directive, and the competent authority should only withdraw an unlawful administrative act if it would be “downright intolerable” to uphold it. In the absence of Community rules, the procedural rules designed to ensure the protection of Community rights are a matter for the domestic legal orders, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible or excessively difficult to exercise these rights (principle of effectiveness). The concept of manifest unlawfulness has to be applied in an equivalent manner, therefore where, pursuant to rules of national law, the authorities are required to withdraw an administrative decision which has become final if that decision is manifestly incompatible with domestic law, that same obligation must exist if that decision is manifestly incompatible with Community law. However, the national court examined whether the fee assessments were based on legislation that was manifestly unlawful with regard to national laws, but did not conduct that examination with regard to Community Law. Therefore the national court has to ascertain whether the legislation incompatible with Community law on which the fee assessments were based constitute manifest unlawfulness within the meaning of the national law concerned.