

In Case 283/81

REFERENCE to the Court under [Article 267 TFEU] by the First Civil Division of the Corte Suprema di Cassazione [Supreme Court of Cassation] for a preliminary ruling in the proceedings pending before that court

SRL CILFIT -in liquidation -and 54 Others, Rome,

v

MINISTRY OF HEALTH, in the person of the Minister, Rome,
and
LANIFICIO DI GAVARDO SrA, Milan,

v

MINISTRY OF HEALTH, in the person of the Minister, Rome,

on the interpretation of the third paragraph of [Article 267 TFEU],

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, O'Keefe, T. Koopmans, U. Everling, A. Chloros and F. Grevisse, Judges,

Advocate General: F. Capotorti
Registrar: P. Heim

gives the following

JUDGMENT

Decision

- 1 By order of 27 March 1981, which was received at the Court on 31 October 1981, the Corte Suprema di Cassazione [Supreme Court of Cassation] referred to the Court of Justice for a preliminary ruling under [Article 267 TFEU] a question on the interpretation of the third paragraph of [Article 267 TFEU].
- 2 That question was raised in connection with a dispute between wool importers and the Italian Ministry of Health concerning the payment of a fixed health inspection levy in respect of wool imported from outside the [Union]. The firms concerned relied on Regulation (EEC) No 827/68 of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (Official Journal, English Special Edition 1968 (I) p. 209). Article 2 (2) of that regulation prohibits Member States from levying any charge having an effect equivalent to a customs duty on imported "animal products", not specified or included elsewhere, classified under heading 05.15 of the Common Customs Tariff. Against that argument the Ministry for Health contended that wool is not included in Annex II to the Treaty and is therefore not subject to a common organization of agricultural markets.

3 The Ministry of Health infers from those circumstances that the answer to the question concerning the interpretation of the measure adopted by the [Union] institutions is so obvious as to rule out the possibility of there being any interpretative doubt and thus obviates the need to refer the matter to the Court of Justice for a preliminary ruling. However, the companies concerned maintain that since a question concerning the interpretation of a regulation has been raised before the Corte Suprema di Cassazione, against whose decisions there is no judicial remedy under national law, that court cannot, according to the terms of the third paragraph of [Article 267 TFEU], escape the obligation to bring the matter before the Court of Justice.

4 Faced with those conflicting arguments, the *Corte Suprema di Cassazione* referred to the Court the following question for a preliminary ruling:

"Does the third paragraph of [Article 267 TFEU], which provides that where any question of the same kind as those listed in the first paragraph of that article is raised in a case pending before a national court or tribunal against whose decisions there is no judicial remedy under national law that court or tribunal must bring the matter before the Court of Justice, lay down an obligation so to submit the case which precludes the national court from determining whether the question raised is justified or does it, and if so within what limits, make that obligation conditional on the prior finding of a reasonable interpretative doubt?"

5 In order to answer that question it is necessary to take account of the system established by [Article 267 TFEU], which confers jurisdiction on the Court of Justice to give preliminary rulings on, *inter alia*, the interpretation of the Treaty and the measures adopted by the institutions of the [Union].

6 The second paragraph of that article provides that any court or tribunal of a Member State *may*, if it considers that a decision on a question of interpretation is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon. The third paragraph of that article provides that, where a question of interpretation is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal *shall*

bring the matter before the Court of Justice.

- 7 That obligation to refer a matter to the Court of Justice is based on cooperation, established with a view to ensuring the proper application and uniform interpretation of [Union] law in all the Member States, between national courts, in their capacity as courts responsible for the application of [Union] law, and the Court of Justice. More particularly, the third paragraph of [Article 267 TFEU] seeks to prevent the occurrence within the [Union] of divergences in judicial decisions on questions of [Union] law. The scope of that obligation must therefore be assessed, in view of those objectives, by reference to the powers of the national courts, on the one hand, and those of the Court of Justice, on the other, where such a question of interpretation is raised within the meaning of [Article 267 TFEU].
- 8 In this connection, it is necessary to define the meaning for the purposes of [Union] law of the expression "where any such question is raised" in order to determine the circumstances in which a national court or tribunal against whose decisions there is no judicial remedy under national law is obliged to bring a matter before the Court of Justice.
- 9 In this regard, it must in the first place be pointed out that [Article 267 TFEU] does not constitute a means of redress available to the parties to a case pending before a national court or tribunal. Therefore the mere fact that a party contends that the dispute gives rise to a question concerning the interpretation of [Union] law does not mean that the court or tribunal concerned is compelled to consider that a question has been raised within the meaning of [Article 267 TFEU]. On the other hand, a national court or tribunal may, in an appropriate case, refer a matter to the Court of Justice of its own motion.
- 10 Secondly, it follows from the relationship between the second and third paragraphs of [Article 267 TFEU] that the courts or tribunals referred to in the third paragraph have the same discretion as any other national court or tribunal to ascertain whether a decision on a question of [Union] law is necessary to enable them to give judgment. Accordingly, those courts or tribunals are not obliged to refer to the Court of Justice a question concerning the interpretation of [Union] law raised before them if that question is not relevant, that is to say, if the answer to that question, regardless of what it may be, can in no way affect the outcome of the case.

- 11 If, however, those courts or tribunals consider that recourse to [Union] law is necessary to enable them to decide a case, [Article 267 TFEU] imposes an obligation on them to refer to the Court of Justice any question of interpretation which may arise.
- 12 The question submitted by the Corte di Cassazione seeks to ascertain whether, in certain circumstances, the obligation laid down by the third paragraph of [Article 267 TFEU] might none the less be subject to certain restrictions.
- 13 It must be remembered in this connection that in its judgment of 27 March 1963 in Joined Cases 28 to 30/62 (*Da Costa v Nederlandse Belastingadministratie* [1963] ECR 31) the Court ruled that: "Although the third paragraph of [Article 267 TFEU] unreservedly requires courts or tribunals of a Member State against whose decisions there is no judicial remedy under national law ... to refer to the Court every question of interpretation raised before them, the authority of an interpretation under [Article 267 TFEU] already given by the Court may deprive the obligation of its purpose and thus empty it of its substance. Such is the case especially when the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case."
- 14 The same effect, as regards the limits set to the obligation laid down by the third paragraph of [Article 267 TFEU], may be produced where previous decisions of the Court have already dealt with the point of law in question, irrespective of the nature of the proceedings which led to those decisions, even though the questions at issue are not strictly identical.
- 15 However, it must not be forgotten that in all such circumstances national courts and tribunals, including those referred to in the third paragraph of [Article 267 TFEU], remain entirely at liberty to bring a matter before the Court of Justice if they consider it appropriate to do so.

- 16 Finally, the correct application of [Union] law may be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved. Before it comes to the conclusion that such is the case, the national court or tribunal must be convinced that the matter is equally obvious to the courts of the other Member States and to the Court of Justice. Only if those conditions are satisfied, may the national court or tribunal refrain from submitting the question to the Court of Justice and take upon itself the responsibility for resolving it.
- 17 However, the existence of such a possibility must be assessed on the basis of the characteristic features of [Union] law and the particular difficulties to which its interpretation gives rise.
- 18 To begin with, it must be borne in mind that [Union] legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of [Union] law thus involves a comparison of the different language versions.
- 19 It must also be borne in mind, even where the different language versions are entirely in accord with one another, that [Union] law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in [Union] law and in the law of the various Member States.
- 20 Finally, every provision of [Union] law must be placed in its context and interpreted in the light of the provisions of [Union] law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.
- 21 In the light of all those considerations, the answer to the question submitted by the Corte Suprema di Cassazione must be that the third paragraph of [Article 267 TFEU] is to be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of [Union] law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the [Union] provision in question has already been interpreted by the Court or that the

correct application of [Union] law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of [Union] law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the [Union].

Costs

- 22 The costs incurred by the Italian Government, the Danish Government and the Commission of the European [Union], which have submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Corte Suprema di Cassazione, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question submitted to it by the Corte Suprema di Cassazione by order of 27 March 1981, hereby rules:

The third paragraph of [Article 267 TFEU] must be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of [Union] law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the [Union] provision in question has already been interpreted by the Court of Justice or that the correct application of [Union] law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in

the light of the specific characteristics of [Union] law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the [Union].

	Mertens de Wilmars	Bosco	Touffait
Due	Pescatore	Mackenzie Stuart	O'Keeffe
Koopmans	Everling	Chloros	Grevisse

Delivered in open court in Luxembourg on 6 October 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President

Robert Schütze European Union Law Librarisied Cases