JUDGMENT OF THE COURT (Sixth Chamber)

6 December 2001 *

In Case C-472/99,

REFERENCE to the Court under Article 234 EC by the Landesgericht für Zivilrechtssachen Wien (Austria) for a preliminary ruling in the proceedings pending before that court between

Clean Car Autoservice GmbH

and

Stadt Wien,

Republik Österreich,

on the interpretation of the first subparagraph of Article 104(5) of the Rules of Procedure of the Court of Justice, in codified version 1999/C 65/01 of 6 March 1999 (OJ 1999 C 65, p. 1),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: N. Colneric, President of the Second Chamber, acting as President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, R. Schintgen (Rapporteur) and V. Skouris, Judges,

Advocate General: L.A. Geelhoed,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Clean Car Autoservice GmbH, by C. Kerres, Rechtsanwalt,

— the Stadt Wien, by A.P. Musil, Rechtsanwalt,

— the Republik Österreich, by H. Tuma, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Commission of the European Communities, by U. Wölker, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Clean Car Autoservice GmbH, represented by W.L. Weh and S. Harg, Rechtsanwälte; of the Republik Österreich, represented by H. Tuma; and of the Commission, represented by U. Wölker, at the hearing on 10 May 2001,

after hearing the Opinion of the Advocate General at the sitting on 12 July 2001,

gives the following

Judgment

1 By order of 9 September 1999, received at the Court on 9 December 1999, the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of the first subparagraph of Article 104(5) of the Rules of Procedure of the Court of Justice, in codified version 1999/C 65/01 of 6 March 1999 (OJ 1999 C 65, p. 1).

2 The question has been raised in proceedings between Clean Car Autoservice GmbH ('Clean Car'), established in Vienna, Austria, and the Stadt Wien and the Republik Österreich concerning the recovery of the costs which it incurred in the reference proceedings in Case C-350/96 *Clean Car Autoservice* [1998] ECR I-2521, in which judgment was given on 7 May 1998.

3 In *Clean Car Autoservice*, the Court answered two questions which had been referred to it by the Verwaltungsgerichtshof (Administrative Court), Austria, in proceedings between Clean Car and the Landeshauptmann von Wien (Prime Minister of Vienna *Land*) concerning the latter's rejection of a declaration which it had made with a view to exercising a trade, on the ground that the manager appointed for that purpose did not reside in Austria.

4 In paragraph 2 of the operative part of the judgment in *Clean Car Autoservice*, the Court ruled:

'Article 48 of the [EC] Treaty precludes a Member State from providing that the owner of an undertaking exercising a trade on the territory of that State may not appoint as manager a person not resident there.'

5 On the question of costs, the Court held in paragraph 44 of the judgment in *Clean Car Autoservice*:

'... Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.'

6 Following the *Clean Car Autoservice* judgment, the Verwaltungsgerichtshof granted Clean Car's application and awarded it, as the successful party, the sum of ATS 12 860 by way of costs.

7 It is apparent from the file that that decision on costs was based on Articles 47 to 60 of the Verwaltungsgerichtshofgesetz (Law on the Verwaltungsgerichtshof) of 1985 ('the 1985 Law', BGBl. No 10/1985), and on the Verordnung des Bundeskanzlers über die Pauschalierung der Aufwandersätze im Verfahren vor dem Verwaltungsgerichtshof (Regulation of the Federal Chancellor on the flat-rate reimbursement of costs in proceedings before the Verwaltungsgerichtshof of 1994 (BGBl. No 416/1994, 'the 1994 Regulation').

8 Under Article 58 of the 1985 Law, save as otherwise provided in Articles 47 to 56 of that Law, each party is to bear its own costs. According to the national court, that is the case with the costs incurred in proceedings for a preliminary ruling, since neither the 1985 Law nor the 1994 Regulation contains any special provisions in that regard.

9 By application lodged on 18 February 1999, Clean Car brought proceedings against the Stadt Wien and the Republik Österreich before the Landesgericht für Zivilrechtssachen Wien for an order that they pay it the sum of ATS 60 000, plus interest at 5% per annum from 8 May 1998, in respect of the costs which it had incurred in the proceedings to obtain the preliminary ruling in *Clean Car Autoservice*. In further pleadings of 17 May 1999, Clean Car based its claim on 'any legal ground whatsoever' and, in particular, on the liability of both defendants as public authorities.

10 Before the national court, the defendants disputed the very principle of Clean Car's application. They claimed that under Article 104(5) of the Rules of Procedure, it is for the national court to decide as to the costs solely in accordance with the provisions of its national procedural law, which the Verwaltungsgerichtshof did by awarding Clean Car the sum of ATS 12 860 on the basis of the 1985 Law and the 1994 Regulation.

11 Being of the view that in those circumstances the outcome of the proceedings before it depended on the interpretation of a provision of Community law, the Landesgericht für Zivilrechtssachen Wien decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'How is Article 104(5) of the Rules of Procedure of the Court of Justice to be interpreted? Where, as in the present case, a Member State (Austria) has not prescribed any national rules enabling national courts to decide on costs of a reference for a preliminary ruling, and to award them to one of the parties or to apportion them between the parties?'

Admissibility

12 The Stadt Wien and the Republik Österreich contend that the reference for a preliminary ruling is inadmissible. They claim, in essence, first, that the interpretation of Community law sought bears no relation to the actual facts of

the main action or its purpose, since Article 104(5) of the Rules of Procedure is merely a rule on jurisdiction and does not concern either the principle or the amount of any right to recover the costs incurred in proceedings for a preliminary ruling. Second, the Verwaltungsgerichtshof has already awarded Clean Car the costs recoverable under the applicable Austrian law so that the reference ruling is devoid of purpose.

13 It is settled case-law that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, *inter alia*, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38, and Case C-340/99 *TNT Traco* [2001] ECR I-4109, paragraph 30).

14 Nevertheless, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, *PreussenElektra*, paragraph 39, and *TNT Traco*, paragraph 31).

15 In the present case, it should be remembered that the main action brought by Clean Car seeks to recover the costs which it claims that it incurred in the proceedings which led to the preliminary ruling in the *Clean Car Autoservice* case.

16 Article 104(5) of the Rules of Procedure, which provides in the first paragraph that '[i]t shall be for the national court or tribunal to decide as to the costs of the reference', specifically concerns the payment of costs incurred in such proceedings.

17 It follows that the question referred by the national court, which expressly relates to the interpretation of that provision of the Rules of Procedure, unquestionably bears a relation to the purpose of the main action.

18 The argument that Article 104(5) of the Rules of Procedure is merely a rule on jurisdiction and does not govern either the principle of, or the conditions governing, the right to recover costs incurred in proceedings for a preliminary ruling goes to the substance of the question referred and is without relevance as regards its admissibility.

19 The same applies to the argument that the question has become devoid of purpose owing to the fact that, in the proceedings giving rise to the reference on which the

Court ruled in the *Clean Car Autoservice* judgment, Clean Car, as the successful party, has already been awarded the sum of ATS 12 860 for costs incurred in that case.

20 As is clear from paragraphs 7 and 8 above, those costs were awarded on the basis of the national provisions applicable to proceedings before the Verwaltungsgerichtshof, under which costs incurred in reference proceedings by the parties to the main action are not recoverable, but must be borne by the party that incurred them, irrespective of the outcome of the main proceedings.

21 The question referred by the national court is specifically intended to ascertain whether, if the national law applicable does not contain any provisions specifically governing the recovery of costs incurred by the parties to the main proceedings in proceedings for obtaining a preliminary ruling, the right to recover those costs may be founded on Article 104(5) of the Rules of Procedure.

22 It follows from the foregoing considerations that the question referred to the Court is admissible and that it must be answered.

The question referred to the Court for a preliminary ruling

23 In that regard, it should be observed that, according to its wording, Article 104(5) of the Rules of Procedure simply leaves it to the national court

which requested the preliminary ruling to rule on the costs incurred in connection with the reference; that provision, which was introduced into the Rules of Procedure with effect from 6 October 1979 (see amendments to the Rules of Procedure of the Court of Justice of the European Communities of 12 September 1979, OJ 1979 L 238, p. 1), necessarily implies, as Community law now stands, that the national court is to rule on the basis of the applicable provisions of its own domestic law.

24 As the Court held in the very first case referred to it for a preliminary ruling (Case 13/61 *De Geus* [1962] ECR 45, at p. 54), with regard to the parties, the reference proceedings are a step in the action pending before the national court.

25 The Rules of Procedure do not themselves lay down any rules applicable to payment of the costs incurred in reference proceedings. On the contrary, they expressly provide, in Article 103(1), that, in the matter of preliminary rulings, the procedure is to be governed by their provisions, subject to adaptations necessitated by the nature of the reference for a preliminary ruling.

26 As the Court has already held, there is an essential difference between proceedings under Article 177 of the EC Treaty (now Article 234 EC) and contentious proceedings and for that reason the rules on costs laid down for the latter proceedings in Articles 69 to 75 of the Rules of Procedure cannot, without express provision, be extended to the former proceedings. It follows that, in the absence of Community rules, payment of costs and the recoverability of expenses necessarily incurred by the parties to the main proceedings for the purpose of an application for a preliminary ruling are governed by the provisions of national law applicable to the main proceedings (see, in that regard, Case 62/72 *Bollmann* [1973] ECR 269, paragraphs 5 and 6).

27 It follows from the foregoing that, as Community law at present stands, it is in principle for the internal legal order of each Member State to determine the rules applicable to payment of costs incurred by the parties to the main proceedings when a reference is made for a preliminary ruling and, in particular, the conditions and detailed rules according to which those costs may be awarded against one of the parties or apportioned between them or, on the other hand, must be borne by each of the parties which incurred them.

28 However, as the Advocate General observes in point 26 of his Opinion, although in the absence of Community legislation governing the matter it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing court actions for safeguarding rights which individuals derive from Community law, such rules must not be less favourable than those governing similar domestic actions (principle of equivalence) and must not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (in that regard, see, in particular, Joined Cases C-279/96 to C-281/96 *Ansaldo Energia and Others* [1998] ECR I-5025, paragraphs 16 and 27, and Case C-326/96 *Levez* [1998] I-7835, paragraph 18).

29 With more particular regard to the principle of effectiveness, national rules which, like the 1985 Law and the 1994 Regulation, provide that the successful party in proceedings before a national court is entitled to recover certain of the costs incurred, but which contains no particular provisions as regards the costs occasioned in those proceedings by a procedural step, such as a reference for a preliminary ruling under Article 234 EC, do not appear to be of such a kind as to render virtually impossible or excessively difficult the exercise of rights conferred by Community law.

30 As regards the principle of equivalence, suffice it to observe that it means that the national rules in question must apply without distinction to the Article 234 EC

procedure and similar procedural steps which may be taken in the main proceedings in accordance with national law.

31 It is for the national court, which alone has direct knowledge of the procedural rules governing actions in domestic law, to examine whether that is the case (see, in that regard, in particular, *Levez*, cited above, paragraphs 39, 50 and 53, and Case C-78/98 *Preston and Others* [2000] ECR I-3201, paragraphs 49 and 56).

32 In view of the foregoing considerations, the answer to the question referred to the Court must be that Article 104(5) of the Rules of Procedure is to be interpreted as meaning that payment of the costs incurred by the parties to the main proceedings for the purposes of the procedure under Article 234 EC for obtaining a preliminary ruling is governed by the domestic law rules applicable to the proceedings before the national court, provided that those rules are not less favourable than those applicable to similar procedural steps which may be taken in such proceedings in accordance with national law.

Costs

33 The costs incurred by the Austrian Government and by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Landesgericht für Zivilrechtssachen Wien by order of 9 September 1999, hereby rules:

Article 104(5) of the Rules of Procedure of the Court of Justice, in codified version 1999/C 65/01 of 6 March 1999, is to be interpreted as meaning that payment of the costs incurred by the parties to the main proceedings for the purposes of the procedure under Article 234 EC for obtaining a preliminary ruling is governed by the domestic law rules applicable to the proceedings before the national court, provided that those rules are not less favourable than those applicable to similar procedural steps which may be taken in such proceedings in accordance with national law.

Colneric Gulmann

Puissochet Schintgen Skouris

Delivered in open court in Luxembourg on 6 December 2001.

R. Grass F. Macken

Registrar President of the Sixth Chamber