Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

15 October 2024*

(Reference for a preliminary ruling – Article 267 TFEU – Scope of the obligation on national courts or tribunals of last instance to make a reference for a preliminary ruling – Proceedings relating to the grant of leave to appeal on a point of law to the supreme court of a Member State – Request by the party seeking leave to appeal on a point of law that a question concerning the interpretation of EU law be referred to the Court of Justice – National legislation under which leave to appeal on a point of law is to be granted if the appeal raises a question of law that is important for ensuring legal certainty, the uniform application of the law or its development – Obligation for the national supreme court to consider, in proceedings relating to the grant of leave to appeal on a point of law, whether a reference for a preliminary ruling should be made – Statement of reasons for the decision refusing leave to appeal on a point of law)

In Case C-144/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Vrhovno sodišče (Supreme Court, Slovenia), made by decision of 7 March 2023, received at the Court on 9 March 2023, in the proceedings

KUBERA, trgovanje s hrano in pijačo, d.o.o.

v

Republika Slovenija,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, T. von Danwitz, Vice-President, F. Biltgen, K. Jürimäe, C. Lycourgos, M.L. Arastey Sahún, S. Rodin, D. Gratsias, M. Gavalec, Presidents of Chambers, A. Arabadjiev (Rapporteur), J. Passer, Z. Csehi and O. Spineanu-Matei, Judges,

Advocate General: N. Emiliou,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 5 March 2024,

after considering the observations submitted on behalf of:

– KUBERA, trgovanje s hrano in pijačo, d.o.o., by A. Velkaverh, odvetnik,

* Language of the case: Slovenian.

– the Slovenian Government, by B. Jovin Hrastnik and N. Pintar Gosenca, acting as Agents,

– the German Government, by J. Möller, acting as Agent,

– the Latvian Government, by K. Pommere and S. Zābele, acting as Agents,

– the Netherlands Government, by P.P. Huurnink, acting as Agent,

– the Finnish Government, by A. Laine, acting as Agent,

– the European Commission, by F. Erlbacher, B. Rous Demiri and C. Urraca Caviedes, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 June 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the third paragraph of Article 267 TFEU and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between KUBERA, trgovanje s hrano in pijačo, d.o.o. ('KUBERA') and Republika Slovenija (Republic of Slovenia), represented by the Ministrstvo za finance (Ministry of Finance, Slovenia), concerning a customs measure for the enforcement of intellectual property rights.

Legal context

European Union law

3 Article 17(1) of Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ 2013 L 181, p. 15) provides:

'Where the customs authorities identify goods suspected of infringing an intellectual property right covered by a decision granting [a request made to the competent customs department for customs authorities to take action], they shall suspend the release of the goods or detain them.'

Slovenian law

4 Article 22 of the Slovenian Constitution is worded as follows:

'Everyone shall be guaranteed equal protection of rights in any proceeding before a court and before other State authorities, local community authorities, and bearers of public authority that decide on his or her rights, duties, or legal interests.'

5 Article 22(1) of the Zakon o upravnem sporu (Law on administrative proceedings) (Uradni list RS, No 105/06), in the version applicable to the dispute in the main proceedings, provides:

'In administrative proceedings, the provisions of the law governing civil procedure shall apply in so far as the present law does not provide otherwise.'

6 Article 367(1) of the Zakon o pravdnem postopku (Code of civil procedure) (Uradni list RS, No 73/07), in the version applicable to the dispute in the main proceedings ('the ZPP'), provides:

'The parties may lodge an appeal on a point of law against a final judgment delivered at second instance within 15 days of notification of the decision of the [Vrhovno sodišče (Supreme Court, Slovenia)] to grant leave to appeal [on a point of law].'

7 Under Article 367a of the ZPP:

'(1) The court shall grant leave to appeal on a point of law if the decision of the [Vrhovno sodišče (Supreme Court)] can be expected to decide a question of law that is important for ensuring legal certainty, the uniform application of the law or the development of the law through case-law. In particular, the court shall grant leave to appeal [on a point of law] in the following cases:

– if it is a question of law on which the decision of the court of second instance departs from the case-law of the [Vrhovno sodišče (Supreme Court)]; or

– if it is a question of law on which there is no case-law of the [Vrhovno sodišče (Supreme Court)], in particular if the case-law of higher courts is not uniform; or

– if it is a question of law on which the case-law of the [Vrhovno sodišče (Supreme Court)] is not uniform.

(2) The [Vrhovno sodišče (Supreme Court)] shall decide on the grant of leave to appeal [on a point of law] on the basis of a party's application for leave to appeal [on a point of law].'

8 Article 367b of the ZPP is worded as follows:

'(1) An application for leave to appeal [on a point of law] shall be filed by a party within 30 days of service of the final judgment of the court of second instance.

(2) An application for leave to appeal [on a point of law] shall be lodged with the [Vrhovno sodišče (Supreme Court)].

…

(4) In the application for leave to appeal [on a point of law], the party must set out in a precise and specific manner the point of law in dispute and the rule of law alleged to have been infringed, the circumstances demonstrating the importance of the issue and a brief statement of the reasons why the court of second instance unlawfully ruled on the issue; it must describe in a precise and specific manner the alleged procedural irregularities and, in the same way, demonstrate the existence of case-law of the [Vrhovno sodišče (Supreme Court)] from which the [lower court's] decision allegedly departed, or the inconsistency of the case-law.'

9 Article 367c of the ZPP provides:

‘(1) A panel of three judges of the [Vrhovno sodišče (Supreme Court)] shall decide by order on the application for leave to appeal [on a point of law].

(2) It shall be sufficient, in order to state the reasons for a decision refusing an application for leave to appeal [on a point of law], for the court to state in general terms that the conditions laid down in Article 367a of this law have not been satisfied.

(3) In the order granting leave to appeal [on a point of law], the court shall indicate the part or the specific points of law in respect of which leave to appeal [on a point of law] is to be granted.

(4) No appeal shall lie against a decision granting or refusing leave to appeal [on a point of law].’

10 Article 368 of the ZPP provides:

‘The [Vrhovno sodišče (Supreme Court)] shall rule on the appeal on a point of law.’

11 Article 370(1) of the ZPP states:

‘An appeal [on a point of law] may be brought on the ground of a material breach of provisions governing proceedings before the court of first instance on which the party relied before the court of second instance, on the ground of a material breach of provisions governing proceedings before the court of second instance or on the ground of an error of law.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 KUBERA, a food and beverages trading company, purchased, in Türkiye, 87 600 cans of Red Bull manufactured in Austria and transported them by ship to the port of Koper (Slovenia) for importation.

13 By two decisions of 5 October 2021, the financial administration of the Republic of Slovenia decided to detain those cans, pursuant to Article 17 of Regulation No 608/2013, pending the outcome of judicial proceedings initiated by Red Bull GmbH, the holder of intellectual property rights relating to those cans, in order to protect those rights.

14 Following the dismissal of the administrative appeals brought against those decisions, KUBERA brought actions against those decisions before the Upravno sodišče (Administrative Court, Slovenia), which dismissed them.

15 KUBERA submitted two applications to the Vrhovno sodišče (Supreme Court), which is the referring court, for leave to appeal on a point of law against the judgments of the Upravno sodišče (Administrative Court), in the context of which it claims that the dispute in the main proceedings raises the question whether Regulation No 608/2013 applies to a situation in which the imported goods are manufactured by the holder of intellectual property rights relating to those goods. It maintains that that is an important legal question, for the purposes of Article 367a of the ZPP, that justifies granting leave to bring appeals on points of law. Although in its view Regulation No 608/2013 does not apply to such a situation, KUBERA asks that, in the event that the referring court does not agree with that assessment, that question be referred to the Court of Justice for a preliminary ruling.

16 The referring court queries, first, whether the third paragraph of Article 267 TFEU places it under an obligation, for the purposes of deciding on KUBERA's applications for leave to appeal on a point of law, to examine KUBERA's request that a question concerning the interpretation of EU law be referred to the Court of Justice for a preliminary ruling. Secondly, it queries whether, should it consider it not necessary to submit a request for a preliminary ruling to the Court of Justice, it is required, under Article 47 of the Charter, to state the reasons for its decision even though, according to Article 367c(2) of the ZPP, a decision refusing an application for leave to appeal on a point of law requires only a summary statement of reasons to be given.

17 The referring court indicates that appeals on a point of law are an extraordinary remedy that is directed against a final judicial decision and the purpose of which is to unify the case-law and to align it, in the same way as the preliminary ruling procedure provided for in Article 267 TFEU. In so far as EU law forms part of the Slovenian legal order, it also ensures, through the procedure of appeals on a point of law, that EU law is applied correctly and uniformly.

18 The referring court explains that that procedure is divided into two stages: first, determination as to whether leave to appeal on a point of law should be granted and, secondly, if leave is granted, examination of the substance of the case concerned.

19 Leave to appeal on a point of law can be granted only if expressly applied for by one of the parties to the dispute and only if that party demonstrates the objective importance of the question of law to be determined by the Vrhovno sodišče (Supreme Court). In the stage entailing examination of the application for leave to appeal on a point of law, that court should therefore allow the broader public interest to prevail, that is, the need to ensure that the case-law is consistent and the law is applied uniformly, and not the private interests of the parties to the dispute. That stage constitutes a 'filter' for access to the Vrhovno sodišče (Supreme Court) to ensure that it performs its constitutional role fully and delivers rulings within a reasonable period.

20 According to the Vrhovno sodišče (Supreme Court), it follows from its case-law that leave to appeal on a point of law is to be granted if a party sufficiently establishes that the lower court departed from the case-law of the Court of Justice or that the case raises a question concerning the conformity of national law with EU law on which there is no case-law of the Vrhovno sodišče (Supreme Court). The Vrhovno sodišče (Supreme Court) has previously granted leave to bring appeals on a point of law on the ground that the question raised was important from the point of view both of the interpretation and uniform application of EU law and of the development of national law. It therefore deals with questions relating to EU law and those relating to national law in the same way.

21 The referring court nevertheless makes clear that, while it is not inconceivable that the legal significance of a case brought before it may arise from considerations relating to EU law, neither the fact that EU law may be applied when considering the substance of the case, nor the fact that one of the parties to the dispute may have proposed, in its application for leave to appeal on a point of law, that a request for a preliminary ruling be submitted to the Court of Justice, is sufficient, in itself, for leave to appeal on a point of law to be granted.

22 Consequently, the referring court is not required under the ZPP to consider, at the stage of the proceedings relating to the grant of leave to appeal on a point of law, whether or not a question should be referred to the Court of Justice for a preliminary ruling in the event that leave is granted.

23 The referring court also states that there is no judicial remedy under national law against its decisions on applications for leave to appeal on a point of law and that, where it refuses to grant such leave, it merely states that the conditions laid down in Article 367a of the ZPP are not satisfied.

24 However, according to the referring court, it follows from a decision of the Ustavno sodišče (Constitutional Court, Slovenia) of 31 March 2022 that where one of the parties to a dispute requests, in the context of an application for leave to appeal on a point of law, that a request for a preliminary ruling be made to the Court of Justice under Article 267 TFEU, that party's request must be dealt with at the stage of the examination of that application for leave. The Ustavno sodišče (Constitutional Court) has also held that where the Vrhovno sodišče (Supreme Court) delivers a decision refusing leave to appeal on a point of law, Article 47 of the Charter, read in conjunction with Article 22 of the Slovenian Constitution, requires the Vrhovno sodišče (Supreme Court) to give reasons for that decision in the same way as it does for its judicial decisions. It follows from that decision of the Ustavno sodišče (Constitutional Court) that the Vrhovno sodišče (Supreme Court) must, in the context of the proceedings relating to the grant of leave to appeal on a point of law, examine the request that a reference for a preliminary ruling be made to the Court of Justice under Article 267 TFEU, taking into account the criteria laid down by the latter's case-law, and must, in its decision refusing leave to appeal on a point of law, state the reasons for not making a reference for a preliminary ruling to the Court of Justice, so as to enable the Ustavno sodišče (Constitutional Court), if necessary, to verify whether the conditions for derogating from the obligation to make a reference for a preliminary ruling set out in the third paragraph of Article 267 TFEU, as indicated by that case-law, have been satisfied.

25 While the referring court considers that, in this instance, the applications of KUBERA for leave to appeal on a point of law do not satisfy the conditions laid down in Article 367a of the ZPP and cannot, therefore, be granted, it takes the view that, in the light of the decision of the Ustavno sodišče (Constitutional Court) of 31 March 2022, the case in the main proceedings raises an issue that is significant with respect to the interpretation of EU law, as a result of which it is obliged to bring the matter before the Court of Justice for a preliminary ruling under Article 267 TFEU.

26 In that regard, the referring court notes that, in order to determine, at the stage of the examination of an application for leave to appeal on a point of law, whether a question of interpretation of EU law raised by one of the parties to the dispute must be submitted to the Court of Justice for a preliminary ruling, it is required to assess a number of related legal issues. In particular, it has to determine whether EU law is applicable to the dispute, whether the party concerned is requesting that the Court of Justice give a preliminary ruling on the interpretation of a rule of EU law and whether a reference for a preliminary ruling should be made. That would involve, in essence, a substantive assessment of the appeal on a point of law at that stage. The interpretation which the Ustavno sodišče (Constitutional Court) advocates with regard to the obligation arising from Article 267 TFEU would involve a complete change of approach on the part of the referring court in connection with its decisions on applications for leave to appeal on a point of law. Furthermore, the referring court notes that a preliminary ruling by the Court of Justice would not have any practical effect in proceedings relating to the grant of leave to appeal on a point of law, since it is only at the stage of the examination of the substance of the appeal on a point of law that it is possible to determine whether EU law is applicable to the case and whether it requires an interpretation to be given by the Court of Justice.

27 The referring court also queries whether, given the existence of the procedure for granting leave to appeal on a point of law as provided for by the ZPP, the judicial decisions in respect of which leave to appeal is not granted might be considered to be decisions of a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law and which is under an obligation to bring the matter before the Court of Justice for a preliminary ruling, as provided for by the third paragraph of Article 267 TFEU.

28 Lastly, should the Court of Justice find that the referring court is required to consider, even at the stage of the examination of the application for leave to appeal on a point of law, whether a reference for a preliminary ruling should be made to the Court of Justice, the referring court seeks to establish whether the obligation to state reasons set out, inter alia, in paragraph 51 of the judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi* (C-561/19, EU:C:2021:799) applies also to decisions by which leave to appeal on a point of law is refused.

29 In those circumstances, the Vrhovno sodišče (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the third paragraph of Article 267 TFEU preclude a provision of the [ZPP] under which, in proceedings relating to [examination of an application for] leave to bring an appeal on a point of law (*revizija*), the Vrhovno sodišče (Supreme Court) is not to consider the issue of whether, as a result of a party’s request that a reference for a preliminary ruling be made to the [Court of Justice], it is required to refer one or more questions to the Court of Justice for a preliminary ruling?

(2) [If Question 1 is answered in the affirmative,] must Article 47 of the Charter, regarding the obligation to state the reasons for judicial decisions, be interpreted as meaning that a procedural decision refusing a party’s application for leave to bring an appeal on a point of law (*revizija*) under the [ZPP] constitutes a “judicial decision” which must state the reasons why the party’s request that a reference for a preliminary ruling be made to the [Court of Justice] should not be granted in the case at hand?’

Consideration of the questions referred

The first question

30 By its first question, the referring court asks, in essence, whether the third paragraph of Article 267 TFEU must be interpreted as precluding a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law from deciding – in proceedings relating to the examination of an application for leave to appeal on a point of law the outcome of which depends on the significance of the legal issue raised by one of the parties to the dispute with respect to legal certainty, the uniform application of the law or its development – to refuse such an application for leave without having assessed whether it was obliged to submit to the Court of Justice for a preliminary ruling a question concerning the interpretation or validity of a provision of EU law raised in support of that application.

31 It should be recalled that, although the organisation of justice in the Member States, in particular, the establishment, composition, powers and functioning of national supreme courts, falls within the competence of those States, the fact remains that, when exercising that competence, the

Member States are required to comply with their obligations deriving from EU law (judgment of 11 July 2024, *Hann-Invest and Others*, C-554/21, C-622/21 and C-727/21, EU:C:2024:594, paragraph 44 and the case-law cited).

32 It follows that although EU law does not, in principle, preclude the Member States from establishing procedures for granting leave to appeal or other selection or 'filtering' systems for bringing matters before the national supreme courts, the implementation of such procedures or systems must meet the requirements deriving from EU law, particularly from Article 267 TFEU.

33 In that regard, it must be stated that the preliminary ruling procedure provided for in Article 267 TFEU, which is the keystone of the judicial system established by the Treaties, sets up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, that has the object of securing uniform interpretation of EU law. In so doing, that procedure serves to ensure the consistency of EU law and its full effect and autonomy as well as, ultimately, its particular nature (Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014, EU:C:2014:2454, paragraph 176, and judgments of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 27, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 73).

34 Where there is no judicial remedy under national law against the decisions of a court or tribunal of a Member State, that court or tribunal is in principle obliged to make a reference to the Court of Justice under the third paragraph of Article 267 TFEU where a question concerning the interpretation of EU law or the validity of an act of secondary legislation is raised before it (see, to that effect, judgments of 18 July 2013, *Consiglio Nazionale dei Geologi*, C-136/12, EU:C:2013:489, paragraph 25; of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 32; and of 22 December 2022, *Airbnb Ireland and Airbnb Payments UK*, C-83/21, EU:C:2022:1018, paragraph 79).

35 The obligation on courts or tribunals of a Member State against whose decisions there is no judicial remedy under national law to refer a question to the Court of Justice for a preliminary ruling is based on cooperation, established with a view to ensuring the proper application and uniform interpretation of EU law in all the Member States, between national courts, as courts responsible for the application of EU law, and the Court of Justice. That obligation is intended in particular to prevent a body of national case-law that is not in accordance with the rules of EU law from being established in any of the Member States (judgments of 24 May 1977, *Hoffmann-La Roche*, 107/76, EU:C:1977:89, paragraph 5; of 4 June 2002, *Lyckeskog*, C-99/00, EU:C:2002:329, paragraph 14; and of 4 October 2018, *Commission* v *France (Advance payment)*, C-416/17, EU:C:2018:811, paragraph 109).

36 A court or tribunal of a Member State against whose decisions there is no judicial remedy under national law cannot be relieved of the obligation laid down in the third paragraph of Article 267 TFEU unless it has established that the question raised is irrelevant or that the EU law provision in question has already been interpreted by the Court of Justice or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt (judgments of 6 October 1982, *Cilfit and Others*, 283/81, EU:C:1982:335, paragraph 21, and of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 33).

37 Such a national court or tribunal must take upon itself, independently and with all the requisite attention, the responsibility for determining whether it is under an obligation to refer the question of EU law raised before it to the Court of Justice or whether it is, instead, in one of the situations referred to in the preceding paragraph, in which it may be relieved of that obligation (see, to that effect, judgments of 15 September 2005, *Intermodal Transports*, C-495/03, EU:C:2005:552, paragraph 37, and of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 50 and the case-law cited).

38 If it is in one of those situations, that national court or tribunal is not, therefore, required to bring the matter before the Court under the third paragraph of Article 267 TFEU, even when the question concerning the interpretation or validity of a provision of EU law is raised by a party to the proceedings before it (see, to that effect, judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 57 and the case-law cited).

39 It should also be noted that decisions of a national court or tribunal which can be challenged by the parties before the national supreme court are not decisions of 'a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law' within the meaning of Article 267 TFEU. The fact that the examination of the merits of such challenges, formulated, as in the case in the main proceedings, in the context of an appeal on a point of law, is subject to a procedure under which leave to bring that appeal is granted by that national supreme court does not have the effect of depriving the parties of a judicial remedy (see, to that effect, judgments of 4 June 2002, *Lyckeskog*, C-99/00, EU:C:2002:329, paragraph 16, and of 16 December 2008, *Cartesio*, C-210/06, EU:C:2008:723, paragraph 76). The existence of such a procedure cannot therefore transform the lower court or tribunal whose decision may be challenged in such an appeal into a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law and which, as a result, is under an obligation to make a reference to the Court of Justice as provided for in the third paragraph of Article 267 TFEU.

40 However, a national supreme court, such as the Vrhovno sodišče (Supreme Court), is under such an obligation, subject to what is recalled in paragraph 36 above.

41 In this instance, it is apparent from Article 367a(1) of the ZPP and from the information provided by the referring court that, in order to determine whether leave to appeal on a point of law must be granted, that court is to examine whether the case brought before it raises a question of law that is important for ensuring legal certainty, the uniform application of the law or its development.

42 It should, however, be noted that the particular situations covered by that provision exclusively involve situations characterised, as regards the question of law raised, either by a departure by a decision of a second-instance national court or tribunal from the case-law of the national supreme court, or by the absence of case-law from the latter court, or by the lack of uniformity of its case-law or of that of the higher national courts. In none of those possible situations is reference made to EU law, however, nor, in particular, to the case-law of the Court of Justice of the European Union as it stands on the question raised in support of an application for leave to appeal on a point of law.

43 The referring court explains that it interprets that provision as meaning that it is not required to determine, at the stage of the examination of the application for leave to appeal on a point of law, whether or not it is necessary, in the context of the procedure relating to appeals on a point of law, to submit to the Court of Justice for a preliminary ruling the question of EU law raised in support of that application.

44 The referring court also states that when leave to appeal on a point of law is not granted, the decision refusing leave definitively brings the procedure to an end. In that case, the lower court's interpretation of EU law could prevail in the national legal order concerned, even though the question raised in support of the application for leave to appeal on a point of law would have warranted a reference for a preliminary ruling being made to the Court of Justice.

45 Such legislation or national practices can thus lead to a situation in which a question concerning the interpretation or validity of a provision of EU law, despite being raised by a party before the Vrhovno sodišče (Supreme Court) or having to be raised by that court in the light of the legal issue highlighted by that party and not being a question that is covered by the exceptions referred to in paragraph 36 above, would not be submitted to the Court of Justice, contrary to the obligation imposed on that national court by the third paragraph of Article 267 TFEU.

46 Such a situation is capable of undermining the effectiveness of the system of cooperation between the national courts and tribunals and the Court of Justice established in Article 267 TFEU, and the achievement of the objectives which that article is intended to achieve, particularly that of preventing a body of national case-law that is not in accordance with the rules of EU law from being established in any of the Member States.

47 That interpretation is not called into question by the case-law deriving from the judgments of 15 March 2017, *Aquino* (C-3/16, EU:C:2017:209, paragraph 56), and of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi* (C-561/19, EU:C:2021:799, paragraph 61), according to which a national court or tribunal against whose decisions there is no judicial remedy under national law may decline to refer a question to the Court of Justice for a preliminary ruling on grounds of inadmissibility specific to the procedure before that national court or tribunal, subject to compliance with the principles of equivalence and effectiveness.

48 In fact, the first of those judgments concerned a national rule under which a ground of appeal is inadmissible if it seeks to challenge only one ground of the judgment under appeal when the other grounds are capable on their own of justifying that judgment (judgment of 15 March 2017, *Aquino*, C-3/16, EU:C:2017:209, paragraph 54). The second of those judgments concerned a national rule according to which a further question that has been raised by a party after the action has been brought before the national court or tribunal of last instance must be declared inadmissible where it changes the subject matter of the dispute (judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 60).

49 At issue in the cases that gave rise to the judgments mentioned in the preceding paragraph were national rules establishing conditions of admissibility of a purely procedural nature, non-compliance with which prevented the national court or tribunal of last instance from examining the substance of the appeal.

50 Unlike those rules, a criterion of leave to appeal on a point of law such as that provided for in Article 367a(1) of the ZPP requires the Vrhovno sodišče (Supreme Court) to examine the significance of the legal issue raised in support of the application for leave to appeal with respect to legal certainty, the uniform application of the law or its development.

51 However, it is also apparent from settled case-law that the principle that national law should be interpreted in conformity with EU law requires national courts and tribunals, in observance, inter alia, of the prohibition on interpretation of national law *contra legem*, to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the provision of EU law in question is fully effective and achieving an outcome consistent with the objective pursued by it (see, to that effect, judgments of 5 October 2004, *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraphs 118 and 119; of 29 June 2017, *Popławski*, C-579/15, EU:C:2017:503, paragraphs 31 to 34; and of 11 July 2024, *Skarb Państwa (Payment not significantly delayed or small claim)*, C-279/23, EU:C:2024:605, paragraph 29 and the case-law cited).

52 The requirement to interpret national law in conformity with EU law entails, in particular, the obligation for national courts and tribunals to change established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of EU law. Consequently, a national court or tribunal cannot validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has consistently been interpreted in a manner that is incompatible with EU law (see, to that effect, judgments of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraphs 33 and 34; of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraphs 72 and 73; and of 11 July 2024, *Skarb Państwa (Payment not significantly delayed or small claim)*, C-279/23, EU:C:2024:605, paragraph 30 and the case-law cited).

53 In view of the fact that national courts and tribunals alone have jurisdiction to interpret national law, it is for the referring court to determine whether it is possible to interpret the national legislation at issue in the main proceedings in accordance with the requirements of Article 267 TFEU. That said, it is for the Court of Justice to provide the referring court with some useful guidance in the light of the information contained in the order for reference (see, to that effect, judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 64).

54 In the present case, as is apparent from the information provided by the referring court concerning the change resulting from the case-law of the Ustavno sodišče (Constitutional Court) referred to in paragraph 24 above, an interpretation that is in conformity with the national legislation at issue in the main proceedings does seem possible.

55 In that regard, it should be observed that the provisions of the ZPP at issue in the main proceedings do not seem to prohibit the Vrhovno sodišče (Supreme Court) from assessing, in the context of the procedure for examining an application for leave to appeal on a point of law, whether the question concerning the interpretation or validity of a provision of EU law raised in support of that application requires that a reference for a preliminary ruling be made to the Court of Justice or, instead, falls within one of the exceptions referred to in paragraph 36 above.

56 In particular, the list of situations in Article 367a(1) of the ZPP does not seem to be exhaustive. In those circumstances, that provision appears to be capable of being interpreted in a manner consistent with the obligation provided for in the third paragraph of Article 267 TFEU as meaning that the criterion of the significance of the legal issue raised with respect to legal certainty, the uniform application of the law or its development, set out in that provision of national law, includes the situation in which the party to the dispute who is seeking leave to appeal on a point of law raises a question concerning the interpretation or validity of a provision of EU law which does not fall within any of the exceptions referred to in paragraph 36 above and which requires, therefore, that a reference be made to the Court of Justice for a preliminary ruling in the light of the objectives of Article 267 TFEU recalled in paragraphs 33 to 35 above.

57 The assessment referred to in paragraph 55 above would not involve a more detailed examination than that which the Vrhovno sodišče (Supreme Court) is required to carry out under Article 367a(1) and Article 367b(4) of the ZPP, since that assessment requires only that that court satisfy itself of the relevance of the question raised for the resolution of the dispute that has been brought before it and that it verify, if necessary, the need to obtain from the Court of Justice an interpretation of the provision of EU law to which that question relates because it does not fall within any of the exceptions referred to in paragraph 36 above.

58 It should also be pointed out that the obligation to which a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law is subject under the third paragraph of Article 267 TFEU, apart from those exceptions, is without prejudice to its responsibility for deciding at what stage in the national proceedings it is appropriate to refer a question to the Court of Justice for a preliminary ruling (see, to that effect, judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 56). Moreover, it is for that court or tribunal to assess whether it is in the interests of the proper administration of justice for that question not to be referred until after both parties have been heard (see, to that effect, judgment of 1 February 2017, *Tolley*, C-430/15, EU:C:2017:74, paragraph 32).

59 It is thus for a national supreme court to which an application for leave to appeal on a point of law has been made and which is under an obligation to make a reference for a preliminary ruling to the Court of Justice ruling to decide whether it is appropriate to do so at the stage of the examination of that application for leave or at a later stage (see, by analogy, judgment of 4 June 2002, *Lyckeskog*, C-99/00, EU:C:2002:329, paragraph 18). If it decides to submit its request for a preliminary ruling at the stage of the examination of the application for leave to appeal on a point of law, it must suspend further processing of that application pending the preliminary ruling and subsequently apply that ruling in its assessment as to whether leave to appeal on a point of law should be granted.

60 In the light of all of the above, the answer to the first question is that the third paragraph of Article 267 TFEU must be interpreted as precluding a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law from deciding – in proceedings relating to the examination of an application for leave to appeal on a point of law the outcome of which depends on the significance of the legal issue raised by one of the parties to the dispute with respect to legal certainty, the uniform application of the law or its development – to refuse such an application for leave without having assessed whether it was obliged to submit to the Court of Justice for a preliminary ruling a question concerning the interpretation or validity of a provision of EU law raised in support of that application.

The second question

61 By its second question, the referring court asks, in essence, whether Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter, must be interpreted as meaning that a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law must set out, in its decision refusing an application for leave to appeal on a point of law containing a request that a question concerning the interpretation or validity of a provision of EU law be referred to the Court of Justice for a preliminary ruling, the reasons why that reference was not made.

62 In that regard, it must be noted that it follows from the system established by Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter, that, if a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law takes the view, because the case before it involves one of the three situations mentioned in paragraph 36 above, that it is relieved of its obligation to make a reference to the Court under the third paragraph of Article 267 TFEU, the statement of reasons for its decision must show either that the question of EU law raised is irrelevant for the resolution of the dispute, or that the interpretation of the EU law provision concerned is based on the Court's case-law or, in the absence of such case-law, that the interpretation of EU law was so obvious to the national court or tribunal of last instance as to leave no scope for any reasonable doubt (judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 51).

63 It follows from the answer to the first question that, without prejudice to the application of a purely procedural ground of inadmissibility such as those referred to in paragraph 49 above, a national supreme court such as the Vrhovno sodišče (Supreme Court) cannot refuse an application for leave to appeal on a point of law that raises a question concerning the interpretation or validity of a provision of EU law without first assessing whether it is required to refer that question to the Court of Justice for a preliminary ruling or whether that question falls within one of the exceptions referred to in paragraph 36 above.

64 Accordingly, where that national supreme court decides to refuse such an application on the basis of one of those exceptions, that decision must comply with the obligation to state reasons referred to in paragraph 62 above.

65 In the light of the above considerations, the answer to the second question is that Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter, must be interpreted as meaning that a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law must set out, in its decision refusing an application for leave to appeal on a point of law containing a request that a question concerning the interpretation or validity of a provision of EU law be referred to the Court of Justice for a preliminary ruling, the reasons why that reference was not made, namely that that question is irrelevant for the resolution of the dispute or that the provision of EU law in question has already been interpreted by the Court or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **The third paragraph of Article 267 TFEU must be interpreted as precluding a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law from deciding – in proceedings relating to the examination of an application for leave to appeal on a point of law the outcome of which depends on the significance of the legal issue raised by one of the parties to the dispute with respect to legal certainty, the uniform application of the law or its development – to refuse such an application for leave without having assessed whether it was obliged to submit to the Court of Justice for a preliminary ruling a question concerning the interpretation or validity of a provision of EU law raised in support of that application.**

2. **Article 267 TFEU, read in the light of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law must set out, in its decision refusing an application for leave to appeal on a point of law containing a request that a question concerning the interpretation or validity of a provision of EU law be referred to the Court of Justice for a preliminary ruling, the reasons why that reference was not made, namely that that question is irrelevant for the resolution of the dispute or that the provision of EU law in question has already been interpreted by the Court or that the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt.**

[Signatures]