Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

7 November 2013 *

(National administrative procedure — Purely internal situation — Administrative acts — Obligation to state reasons — Whether it is possible for failure to state reasons to be remedied during legal proceedings against an administrative act — Interpretation of the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union — Lack of jurisdiction of the Court)

In Case C-313/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte dei conti, sezione giurisdizionale per la Regione Siciliana (Italy), made by decision of 19 June 2012, received at the Court on 28 June 2012, in the proceedings

Giuseppa Romeo

v

Regione Siciliana,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, E. Juhász, A. Rosas, D. Šváby and C. Vajda, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Ms Romeo, by M. Viaggio, avvocatessa,

— the European Commission, by C. Cattabriga and H. Krämer, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Italian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of the requirement to state reasons for the acts of public authorities, laid down by the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Ms Romeo and the Regione Siciliana (Region of Sicily) concerning a decision providing for a reduction in the amount of Ms Romeo's pension and the recovery of amounts paid for earlier periods.

Italian law

3 Law No 241 of 7 August 1990 introducing new rules on administrative procedure and the right of access to administrative documents (GURI No 192 of 18 August 1990, p. 7), as amended by Law No 15 of 11 February 2005 (GURI No 42 of 21 February 2005, p. 4, 'Law No 241/1990') provides in Article 1(1) thereof as follows:

'Administrative action shall pursue objectives laid down by law and be governed by the criteria of economy, efficiency, impartiality, right of access and transparency in accordance with the rules set out in this law and other provisions governing separate procedures as well as by the principles derived from the Community legal order.'

4 Article 3(1) and (2) of Law No 241/1990 provides, in relation to the obligation to state reasons as follows:

'1. All administrative decisions … must state reasons, except in the cases provided for in paragraph 2. The reasons stated must set out the factual circumstances as well as the legal grounds that led the administration to take the decision in question, having regard to the results of the preliminary examination of the file.

2. Reasons need not be stated for legislative acts and acts of general application.'

5 The first subparagraph of Article 21g(2) of Law No 241/1990 is worded as follows:

'A decision adopted in breach of the rules of procedure or the rules relating to the form of measures may not be annulled where, having regard to the fact that it falls within the administration's circumscribed powers, it is clear that its operative part could not have been different from that which was actually adopted.'

6 Article 3 of Sicilian Regional Law No 10 of 30 April 1991 introducing provisions relating to administrative decisions, right of access to administrative documents and the improvement of the functioning of administrative action ('Sicilian Regional Law No 10/1991') reproduces verbatim Article 3 of Law No 241/1990.

7 Article 37 of Sicilian Regional Law No 10/1991 provides as follows:

'For all matters not covered by this law, the provisions of Law No 241/1990 shall apply, in so far as they are compatible, including subsequent amendments and addenda, as well as related implementation measures.'

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

8 Ms Romeo, who was employed by the Regione Siciliana, receives a pension from that regional authority. By memorandum dated 2007, the Regione Siciliana informed Ms Romeo that the amount of her pension, as established by an earlier regional decree, was greater than she was entitled to, that that amount would be reduced and the sums overpaid would be recovered accordingly.

9 Ms Romeo brought an action for annulment of that memorandum before the Corte dei conti, sezione giurisdizionale per la Regione Siciliana (Court of auditors, administrative appeals section, for the Region of Sicily), alleging a total failure to state reasons for the measure since it was not possible, inter alia, to ascertain the matters of fact and law justifying the reduction in her pension and the recovery of the sums overpaid. During the proceedings the Regione Siciliana, relying on the first subparagraph of Article 21g(2) of Law No 241/1990, claimed that the memorandum at issue was lawful and provided further reasons for the contested measure.

10 The Corte dei conti, sezione giurisdizionale per la Regione Siciliana, raised of its own motion the question whether the first subparagraph of Article 21g(2) of Law No 241/1990 is compatible with European Union law and with the requirement to state reasons for administrative decisions laid down in Article 3 of Law No 241/1990 and Article 3 of Sicilian Regional Law No 10/1991.

11 In the order for reference, the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, refers to considerations relating to whether the Court has jurisdiction to answer the questions referred. It notes, first, that, in the context of the main proceedings, it performs judicial functions. In the area of pensions, it has exclusive and substantive jurisdiction and jurisdiction to annul administrative acts. Thus, contrary to what was held in the cases giving rise to the orders in Case C-192/98 *ANAS* [1999] ECR I-8583, and Case C-440/98 *RAI* [1999] ECR I-8597, in which the Court declared that it did not have jurisdiction to rule on the questions referred by the Corte dei conti, the Corte dei conti should be considered, in these proceedings, not as an administrative authority but as a court or tribunal within the meaning of Article 267 TFEU.

12 In addition, in the light of the *renvoi* to European Union law in Article 1(1) of Law No 241/1990, the present request for a preliminary ruling is justified by the need to ensure that the principle that reasons must be given for administrative measures is applied uniformly to all administrative acts as a principle of European administrative law. It is true that, when questions identical to the second and third questions in the present case were raised in a similar case referred to the Court of Justice by the Corte dei conti, the Court held, in its judgment in Case C-482/10 *Cicala* [2011] ECR I-14139, that Article 1(1) of Law No 241/1990 does not contain a direct, unconditional *renvoi* to the second paragraph of Article 296 or Article 41(2)(c) of the Charter, and, as a result, declined jurisdiction to answer the questions referred.

13 However, in the light of the decision of the Consiglio di Stato (Council of State) of 10 May 2011 (Decision No 2755/2011) relating to the legal consequences resulting from the fact that an administrative act concerning a flora and hunting plan was unlawful, the same questions must again be put to the Court, along with an additional question. The Consiglio di Stato, on the basis of Article 1 of the Code of Administrative Procedure, annexed to Legislative Decree No 104 of 2 July 2010, which provides that 'administrative courts shall ensure the full and effective protection of rights in accordance with the principles of the [Italian] Constitution and European law', applied Article 264 TFEU directly and unconditionally to a purely domestic situation and disapplied national procedural rules.

14 The Corte dei conti, sezione giurisdizionale per la Regione Siciliana, concludes from this that the Consiglio di Stato disregarded the judgment in *Cicala*, by deciding that Article 264 TFEU was applicable, and, moreover, is uncertain whether the Consiglio di Stato correctly applied the Court's case-law concerning that article.

15 According to the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, given the Consiglio di Stato's decision referred to in paragraph 13 above, the question arises whether, on the basis of national legislation which makes a direct and unconditional *renvoi* to European Union law, a national court has the discretion to misinterpret and misapply that law.

16 As regards the present case, the Corte dei Conti, sezione giurisdizionale per la Regione Siciliana, considers that Article 21g(2) of Law No 241/1990, as interpreted by national case-law, is at variance with the Court of Justice's case-law concerning the obligation to state reasons for administrative acts. If it were to apply that Article 21g(2) as interpreted by national case-law, it would be disregarding the Court of Justice's case-law relating the obligation to state reasons, whereas, under Article 1 of Law No 241/1990, it would be obliged to apply the Court's case-law.

17 Furthermore, while the present case concerns a purely internal problem, it is none the less necessary, on the basis of the foregoing considerations, to ascertain whether the principle of European Union law relating to the obligation to state reasons must also be applied to national administrative acts relating to national pensions.

18 In those circumstances, the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) In interpreting and applying the rules and principles of European Union law, may a national court – on the basis of national legislation which makes a *renvoi* to European Union law in relation to purely internal situations – depart from, or incorrectly apply, the interpretation given to those rules and principles in the case-law of the Court of Justice?

(2) Are the interpretation and application of Article 3 of [Law No 241/1990] and Article 3 of [Sicilian Regional Law No 10/1991] – in relation to Article 1 of [Law 241/1990], which require the Italian administrative authorities to apply the principles of European Union law, in accordance with the obligation to state reasons for the acts of public authorities laid down in the second paragraph of Article 296 TFEU and Article 41(2)(c) of the [Charter] – to the effect that measures of public authorities in private-law form – that is to say, measures which relate to individual rights and which are in any event mandatory in matters relating to pensions – may be exempt from the obligation to state reasons, compatible with European Union law, and does such a case amount to infringement of an essential procedural requirement governing an administrative measure?

(3) Is the first sentence of Article 21g(2) of [Law No 241/1990], as interpreted by the administrative case-law – in relation to the obligation to state reasons for an administrative measure laid down by Article 3 of [Law 241/1990] and Article 3 of [Sicilian Regional Law No 10/1991], read in conjunction with the obligation to state reasons for the acts of public authorities laid down by the second paragraph of Article 296 TFEU and Article 41(2)(c) of the [Charter] – compatible with Article 1 of [Law No 241/1990], which requires the administrative authorities to apply the principles of European Union law, and, consequently, are the interpretation and application of that interpretation whereby the authorities may supplement a statement of reasons for an administrative measure in court proceedings compatible and permissible?'

Consideration of the questions referred

The second and third questions

19 It must be observed at the outset that the second and third questions concern the interpretation of the provisions of the FEU Treaty and of the Charter in a situation which is purely internal, as the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, itself admits.

20 In those circumstances, the Court must assess of its own motion whether it has jurisdiction to rule on the interpretation of those provisions (see, to that effect, Case C-245/09 *Omalet* [2010] ECR I-13771, paragraph 10 and the case-law cited).

21 According to settled case-law, the Court has jurisdiction to give preliminary rulings on questions concerning European Union provisions in situations where the facts of the cases being considered by the national courts are outside the scope of European Union law, but in which domestic law refers to the content of those provisions of European Union in order to determine the rules applicable to a situation which is purely internal to the Member State concerned (see, inter alia, Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraph 15; Case C-280/06 *ETI and Others* [2007] ECR I-10893, paragraphs 22 and 26; Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08 *Salahadin Abdulla and Others* [2010] ECR I-1493, paragraph 48; *Cicala*, paragraph 17, and Case C-583/10 *Nolan* [2012] ECR, paragraph 45).

22 Indeed, it is clearly in the European Union's interest that, in order to forestall future differences of interpretation, provisions or concepts taken from European Union law should be interpreted uniformly, where, in regulating situations outside the scope of the European Union measure concerned, national legislation seeks to adopt the same solutions as those adopted in that measure, in order to ensure that internal situations and situations governed by European Union law are treated in the same way, irrespective of the circumstances in which the provisions or concepts taken from European Union law are to apply (see, to that effect, *Salahadin Abdulla and Others*, paragraph 48; Case C-602/10 *SC Volksbank România* [2012] ECR, paragraphs 87 and 88; *Nolan*, paragraph 46 and the case-law cited; and Case C-32/11 *Allianz Hungária Biztosító and Others* [2013] ECR, paragraphs 20 and 21).

23 Such is the case where the provisions of European Union law at issue have been made directly and unconditionally applicable by national law to such situations (see, to that effect, *Cicala*, paragraph 19 and *Nolan*, paragraph 47).

24 With regard to the legislation at issue in the main proceedings, the Court of Justice – to which the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, referred questions in a similar case which are identical to the second and third questions in the present case – has already had to address the question of whether Article 1 of Law No 241/1990 contains a *renvoi* to European Union law, within the meaning of the Court's case-law cited above, enabling the Court to answer questions concerning the interpretation of European Union law in purely internal disputes (see *Cicala*).

25 In the judgment in *Cicala*, on the basis of the information provided in the order for reference and the written observations submitted to the Court by the Regione of Sicilia, the Italian Government and the European Commission, the Court held, inter alia, that Law No 241/1990 does not contain sufficiently precise indications from which it may be inferred that, by referring, in Article 1 of that law, to principles deriving from European Union law, the national legislature intended, in relation to the obligation to state reasons, to make a *renvoi* to the contents of the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter, or indeed to other rules of European Union law concerning the obligation to state reasons for acts, in order that internal situations and situations governed by European Union law should be treated in the same way. In those circumstances, the Court declared that it had no jurisdiction to rule on the questions referred by the Corte dei conti, sezione giurisdizionale per la Regione Siciliana.

26 In particular, the Court found at paragraphs 23 to 25 of *Cicala*, first, that Law No 241/1990 and Sicilian Regional Law No 10/1991 lay down specific rules in relation to the obligation to state reasons for administrative acts and breach of that obligation, and, second, that Article 1 of Law No 241/1990 makes a *renvoi* of a general nature to 'principles derived from the Community legal order', and not

specifically to the second paragraph of Article 296 TFEU or Article 41(2)(c) of the Charter, mentioned in the questions referred, or even to other rules of European Union law concerning the obligation to state reasons for acts.

27 The Court concluded, at paragraphs 26 and 27 of that judgment, that it cannot be considered that the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter have been made directly and unconditionally applicable by Italian law, for the purposes of ensuring that internal situations and situations governed by European Union law are treated in the same way.

28 At paragraph 28 of that judgment, the Court added that the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, did not indicate whether the *renvoi* in Article 1 of Law No 241/1990 to principles deriving from European Union law has the effect of setting aside the national rules relating to the obligation to state reasons and replacing them with the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter.

29 In the present case, the referring court does not put forward, as the Commission pointed out in its written observations to the Court, any reasons which call into question the conclusion that the Court does not have jurisdiction to answer the questions referred.

30 Accordingly, the reference to the Consiglio di Stato's decision cited in the order for reference is irrelevant. That decision concerns issues and rules of Italian law different from those in question in the main proceedings and does not deal with the question whether Article 1 of Law No 241/1990 contains a *renvoi*, within the meaning of Court's case-law, to Article 296 TFEU and Article 41(2)(c) of the Charter.

31 In addition, it is not apparent from the grounds set out the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, in support of the decision to refer to Court the same questions as those referred in the case giving rise to the judgment in *Cicala* that the purpose of the *renvoi*, provided for in Article 1 of Law No 241/1990 to principles deriving from European Union law, is, in fact, to ensure that internal situations and situations governed by European Union law are treated in the same way.

32 In accordance with the findings set out, inter alia, at paragraph 24 above, where provisions of national legislation are applicable for the purposes of regulating the internal situation concerned, such as the specific rules of Italian law at issue in the main proceedings relating to the obligation to state reasons and the consequences of a breach of that obligation, it is apparent that the purpose of a provision of that national legislation referring to European Union law, such as that at issue in the main proceedings, is not to ensure such identical treatment.

33 Identical treatment is ensured only where the *renvoi* made by the national law to European Union rules is direct and unconditional, and where the provisions of national law do not allow the interpretation of those rules by the Court to be departed from (see, to that effect, Case C-346/93 *Kleinwort Benson* [1995] ECR I-615, paragraph 16; *Poseidon Chartering*, paragraphs 17 and 18; *ETI and Others*, paragraph 25; and *Allianz Hungária Biztosító and Others*, paragraph 21).

34 Accordingly, where national legislation contains both specific rules, such as those reproduced at paragraphs 4 to 7 above concerning the obligation to state reasons, for the resolution of a question of domestic law, and a provision referring to principles deriving from European Union law, as is the case in the national legislation at issue in the main proceedings, it must be made clear by that national legislation that it is not those specific national rules but the principles of European Union law which are to be applied when resolving that very question of domestic law.

35 In the present case, in the light of the indications given by the Corte dei conti, sezione giurisdizionale per la Regione Siciliana in the order for reference, it does not appear that the Italian legislature intended, as regards the obligation to state reasons, purely internal situations to be subject to the

second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter rather than the specific rules of Italian law relating to the obligation to state reasons and the consequences of a breach of that obligation.

36 Nor has the Corte dei conti, sezione giurisdizionale per la Regione Siciliana provided information from which it may be deduced that the *renvoi* in Article 1 of Law No 241/1990 to principles deriving from European Union law, in fact, refers to what is set out in the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter or indeed to other rules of European Union law concerning the obligation to state reasons for acts.

37 In those circumstances, it cannot be concluded that the second paragraph of Article 296 TFEU or Article 41(2)(c) of the Charter or indeed other rules of European Union law concerning the obligation to state reasons for acts have been made directly and unconditionally applicable, as such, by Article 1 of Law No 241/1990, so that internal situations and situations relating to European Union law are treated in the same way. Therefore it must be held that, in the present case, there is no clear European Union interest in a uniform interpretation of provisions or concepts taken from European Union law, irrespective of the circumstances in which those provisions or concepts are to apply.

38 Consequently, the Court does not have jurisdiction to answer the second and third questions referred.

The first question

39 It is apparent from the above that the first question seeks, in actual fact, to obtain from the Court an advisory opinion on a general question which is irrelevant to the resolution of the dispute before the Corte dei conti, sezione giurisdizionale per la Regione Siciliana.

40 According to the settled case-law of the Court, the justification for a request for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute concerning European Union law (Case C-314/96 *Djabali* [1998] ECR I-1149, paragraph 19; Case C-147/02 *Alabaster* [2004] ECR I-3101, paragraph 54, and Case C-617/10 *Åkerberg Fransson* [2013] ECR, paragraph 42).

41 Accordingly, the first question must be regarded as inadmissible.

42 In those circumstances, it is not necessary to examine whether the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, is, in the context of the dispute in the main proceedings, a court or tribunal within the meaning of Article 267 TFEU.

Costs

43 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **The first question referred by the Corte dei conti, sezione giurisdizionale per la Regione Siciliana (Italy), by decision of 19 June 2012 is inadmissible.**

2. **The Court of Justice of the European Union has no jurisdiction to answer the second and third questions referred by the Corte dei conti, sezione giurisdizionale per la Regione Siciliana by decision of 19 June 2012.**

[Signatures]