Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

11 July 2024*

(Reference for a preliminary ruling – Article 49 TFEU – Concessions in respect of State-owned coastal land – Expiry and renewal – National rules providing that fixed structures built on State-owned land are to be transferred to the State for no consideration – Restriction – None)

In Case C-598/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 15 September 2022, received at the Court on 16 September 2022, in the proceedings

Società Italiana Imprese Balneari Srl

v

Comune di Rosignano Marittimo,

Ministero dell'Economia e delle Finanze,

Agenzia del demanio – Direzione regionale Toscana e Umbria,

Regione Toscana,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Piçarra, N. Jääskinen and M. Gavalec (Rapporteur), Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Società Italiana Imprese Balneari Srl, by E. Nesi and R. Righi, avvocati,

– the Comune di Rosignano Marittimo, by R. Grassi, avvocato,

* Language of the case: Italian.

– the Italian Government, by G. Palmieri, acting as Agent, and by P. Palmieri and L. Delbono, avvocati dello Stato,

– the European Commission, by L. Armati, L. Malferrari and M. Mataija, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 February 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 49 and 56 TFEU.

2 The request has been made in proceedings between Società Italiana Imprese Balneari Srl ('SIIB') and the Comune di Rosignano Marittimo (Municipality of Rosignano Marittimo, Italy; 'the Municipality') concerning decisions by which the Municipality (i) found that, upon the expiry of a concession for the occupation of State-owned coastal land granted to SIIB, the structures built by SIIB on that land had been acquired, for no consideration, by the Italian State and (ii) consequently, imposed an obligation on SIIB to pay increased fees in respect of that land.

Legal context

European Union law

3 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36), provides, in the first subparagraph of Article 44(1), as follows:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 28 December 2009.'

Italian law

4 Article 49(1) of the Codice della Navigazione (Shipping Code), approved by Royal Decree No 327 of 30 March 1942 (GURI No 93 of 18 April 1942), headed 'Transfer of fixed structures', provides:

'Unless otherwise established in the concession agreement, when the concession comes to an end, the fixed structures constructed on State-owned land shall remain vested in the State, without any compensation or reimbursement, without prejudice to the granting authority's right to order their demolition, in which case the State-owned land is to be returned to its original condition.'

5 Under Article 1(251) of the legge n. 296 – Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2007) (Law No 296 laying down provisions for drawing up the annual and multiannual State budget (Finance Law 2007)) of 27 December 2006 (Ordinary Supplement No 244 to GURI No 299 of 27 December 2006), where buildings are constructed by the concessionaire and those buildings are incorporated into State-owned land, increased fees shall be payable in respect of them, since such structures are to be regarded as fixtures forming part of State-owned land.

6 Article 1 of Decree of the President of the Regional Government of Tuscany No 52/R of 24 September 2013 amended Decree of the President of the Regional Government of Tuscany No 18/R of 2001, adding Article 44 bis to the latter, which provides:

'Items shall be classified as easy to remove and clear where they are buildings and structures used for the purposes of operating tourist and recreational activities, built both above and below ground in areas of State-owned coastal land under concession that … can be completely removed using normal engineering methods, with the sites consequently being restored to their original condition, in no more than 90 days.'

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

7 Since 1928, SIIB has continuously managed a beach resort which is mainly located on State-owned coastal land within the territory of the Municipality. SIIB claims to have lawfully constructed a series of buildings on that plot, some of which were the subject of an inventory of forfeited property in 1958. Other buildings were subsequently constructed between 1964 and 1995.

8 By decision of 20 November 2007, the Municipality classified various structures on State-owned coastal land as fixtures of that land and regarded them as being difficult to remove. They were lawfully acquired by the Municipality upon the expiry of concession No 36/2002, which covered the period from 1 January 1999 to 31 December 2002 and was renewed until 31 December 2008 by concession No 27/2003.

9 On 23 September 2008, the Municipality notified SIIB of the initiation of the procedure for the forfeiture of fixtures on State-owned land which had not yet been acquired, but failed to complete that procedure.

10 It then granted that company concession No 181/2009 over State-owned coastal land, which was valid for a period of six years from 1 January 2009 to 31 December 2014 ('the 2009 concession').

11 Relying on Article 1 of the Decree of the President of the Regional Government of Tuscany No 52/R of 24 September 2013, SIIB submitted a declaration to the effect that all structures on State-owned land could be removed within 90 days, with the result that they had to be regarded as easy to remove.

12 The Municipality classified the structures in question as being easy to remove in a decision of 3 February 2014, before withdrawing that decision, by decision of 26 November 2014, on the ground that the buildings on the State-owned land that was under concession had already been acquired by the State under Article 49 of the Shipping Code.

13 SIIB challenged the latter decision before the Tribunale amministrativo regionale per la Toscana (Regional Administrative Court, Tuscany, Italy).

14 By decision of 16 April 2015, the Municipality reaffirmed that the buildings constructed on the area under concession were fixtures of State-owned land. It therefore applied to them an increased fee for the period from 2009 to 2015, in accordance with Article 1(251) of Law No 296 of 27 December 2006. By other measures, the Municipality set the amounts payable in respect of the years that followed.

15 SIIB also challenged the decisions referred to in the preceding paragraph before the same court. That court dismissed all the actions by judgment of 10 March 2021, against which SIIB brought an appeal before the Consiglio di Stato (Council of State, Italy), which is the referring court.

16 The Consiglio di Stato (Council of State) notes that Article 49 of the Shipping Code is to be interpreted as meaning that the acquisition of buildings by the State occurs automatically upon the expiry of the concession, even if it is renewed, since its renewal entails a break in continuity between titles of occupation of State-owned land. However, if the concession is extended before its normal expiry date, the structures erected by the concessionaires on State-owned land remain the exclusive private property of the concessionaire until the actual expiry or early revocation of the concession and no fee is payable in respect of those structures.

17 It is apparent from the order for reference that, at first instance, the Tribunale amministrativo regionale per la Toscana (Regional Administrative Court, Tuscany) held that both the 1958 inventory of forfeited property and the 2009 concession produced effects which became final, since SIIB did not challenge them in good time. That court added that the classification of the structures built by SIIB on State-owned coastal land as structures that were difficult to remove and as fixtures on that land was the result not of a unilateral decision of the Municipality, but of a common agreement in the form of the concession document signed by both parties.

18 In particular, that court ruled out the possibility that applying Article 49 of the Shipping Code would entail *de facto* expropriation of the concessionaire without compensation. The acquisition free of charge by the State of fixed structures built on State-owned land would take place, under that provision, only in the absence of a stipulation to the contrary in the concession agreement. Therefore, the rule that the State will acquire for no consideration applies only with the consent of the parties.

19 SIIB claims, however, that, where a concession is renewed, the incorporation into the State-owned coastal land without compensation for the structures constructed by the concessionaire on that land which are difficult to remove is contrary to EU law, in particular Articles 49 and 56 TFEU, as interpreted in the judgment of 28 January 2016, *Laezza* (C-375/14, EU:C:2016:60). According to the case-law of the Consiglio di Stato (Council of State), the incorporation of such structures into that land for no consideration is justified by the need to ensure that fixed structures intended to remain on that land are at the full disposal of the grantor of the concession. Where the concession, instead of ending, is renewed without interruption, there is no justification for the effect provided for in Article 49 of the Shipping Code that the fixtures will be acquired. Moreover, that effect makes establishment less attractive to economic operators from other Member States interested in the same asset and would require the concessionaire to make a disproportionate sacrifice in terms of his or her rights, since he or she would have to transfer his or her buildings to the State for no consideration.

20 The Municipality, for its part, points out that the 2009 concession had not been granted automatically upon the renewal of concession No 27/2003, but that it did so following a specific instruction in the context of which it exercised its discretion. At that time, it was stipulated that the new concession would be regarded as an entirely different concession from the previous one. Furthermore, the absence of a stipulation to the contrary in the concession agreement shows that the concessionaire regarded the loss of ownership of the structures erected as being compatible with the general economic balance of the concession.

21 In response to a request for information from the Court, the referring court stated, on 8 September 2023, that SIIB retained an interest in bringing proceedings against the incorporation into the State-owned coastal land of the fixed assets which it built on that coastal land, on which it could rely, inter alia, in an appeal against the decision of the grantor of the concession requiring it to pay increased fees. That court also stated that the transfer of ownership of such structures to the State's pool of assets occurs automatically upon the expiry of the concession allowing it to occupy the land. Any declaration, either administrative or judicial, of the State's right of ownership over those works is merely declaratory in nature and authorises the grantor of the concession to increase the amount of the fee.

22 That court stated that, in the present case, the fixed structures erected by SIIB were incorporated into State-owned coastal land on 31 December 2008, when concession No 27/2003 expired. That incorporation led the Municipality to charge SIIB an increased fee from 2009 onwards.

23 Lastly, the referring court stated, in essence, that the Shipping Code applies indiscriminately to Italian economic operators and to those from other Member States.

24 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do Articles 49 and 56 TFEU and the principles arising from the [judgment of 28 January 2016, *Laezza* (C-375/14, EU:C:2016:60)], where applicable, preclude the interpretation of a national provision such as Article 49 [of the Shipping Code] as meaning that it results in the transfer without consideration and without compensation, by the concessionaire on expiry of the concession, when that concession has been renewed on an uninterrupted basis, where applicable by virtue of a new measure, of the building works constructed on the State-owned land forming part of the complex of assets organised for the operation of the resort enterprise, since that effect of immediate forfeiture could constitute a restriction that goes beyond what is necessary to achieve the objective actually pursued by the national legislature and is therefore disproportionate to the aim?'

The request to have the oral part of the procedure reopened

25 By document lodged at the Court Registry on 17 April 2024, SIIB requested that the Court order the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court.

26 In support of its request, SIIB submits that, in point 103 of her Opinion, the Advocate General went beyond the subject matter of the question referred, by concluding, implicitly but necessarily, that the national legislation at issue in the main proceedings did not infringe Article 17 of the Charter of Fundamental Rights of the European Union ('the Charter').

27 In those circumstances, SIIB requests that a hearing be held so that the question of whether Article 17 of the Charter is relevant to the present case may be the subject of an exchange of arguments.

28 In that regard, it must be noted, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the interested parties referred to in Article 23 of the Statute to submit observations in response to the Advocate General's Opinion

(order of 4 February 2000, *Emesa Sugar*, C-17/98, EU:C:2000:69, paragraph 2, and judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 40 and the case-law cited).

29 Second, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his or her involvement. It is not therefore an opinion addressed to the judges or to the parties which stems from an authority outside the Court, but rather, it is the individual reasoned opinion, expressed in open court, of a Member of the Court of Justice itself. Under these circumstances, the Advocate General's Opinion cannot be debated by the parties. Moreover, the Court is not bound either by the Advocate General's submissions or by the reasoning which led to those submissions. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he or she examines in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 41 and the case-law cited).

30 That said, the Court, in accordance with Article 83 of its Rules of Procedure, may at any time, after hearing the Advocate General, order the reopening of the oral procedure, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument that has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

31 That is not the case here.

32 First, the Court notes that the question referred by the national court concerns the interpretation of Articles 49 and 56 TFEU, which enshrine, respectively, the freedom of establishment and the freedom to provide services. That court did not specifically ask the Court about the interpretation of Article 17 of the Charter, which relates to the right to property.

33 Second, in point 103 of her Opinion, the Advocate General merely referred to existing case-law of the Court according to which the examination of the restriction established by national legislation from the point of view of Article 49 TFEU also covers possible limitations of the exercise of the rights and freedoms laid down in Articles 15 to 17 of the Charter, so that a separate examination of the right to property enshrined in Article 17 of the Charter is not necessary (see, to that effect, judgments of 20 December 2017, *Global Starnet*, C-322/16, EU:C:2017:985, paragraph 50, and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 56).

34 In so far as, by its request that the oral procedure be reopened, SIIB is in fact seeking to refute that assessment, it is sufficient to point out that it is clear from the case-law cited in paragraph 29 of this judgment that a party's disagreement with the Opinion of the Advocate General, irrespective of the questions examined by the Advocate General in his or her Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure.

35 Third, in the present case, the Court concludes that it has all the information necessary to answer the question referred to it.

36 In those circumstances, there is no need to order the reopening of the oral part of the procedure.

Admissibility of the request for a preliminary ruling

37 In its written observations, the Italian Government claims that the request for a preliminary ruling is inadmissible on the ground that the question referred to the Court is not relevant for the purpose of deciding the dispute in the main proceedings.

38 In that regard, it must be borne in mind that, according to settled case-law, in the context of the cooperation between the Court and the national courts established in Article 267 TFEU, it is solely for the national court before which the dispute in the main proceedings 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 question which it submits to the Court. It follows that questions referred for a preliminary ruling concerning EU law enjoy a presumption of relevance which can be rebutted, in particular where it is quite obvious that the interpretation, or the determination of validity, of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose (see, to that effect, judgments of 16 December 1981, *Foglia*, 244/80, EU:C:1981:302, paragraphs 15 and 18; of 7 September 1999, *Beck and Bergdorf*, C-355/97, EU:C:1999:391, paragraph 22; and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 42).

39 In the present case, in response to a request for information from the Court of Justice, the referring court stated that SIIB still had an interest in bringing proceedings against the incorporation into the State-owned coastal land of fixed assets which it built on that land, in so far as that incorporation resulted in an increase in the fee for occupying the State-owned land that it had to pay. According to that court, SIIB may challenge that incorporation in an action against the decision by which the grantor of the concession required it to pay an increased fee in accordance with Article 1(251) of Law No 296 of 27 December 2006.

40 It follows that an answer from the Court to the question referred is necessary for resolving the dispute in the main proceedings.

41 Furthermore, although the dispute is purely national in nature, it is sufficient to point out, as the Commission has done, that the Shipping Code applies without distinction to both Italian economic operators and to those from other Member States. Thus, according to the referring court, it not inconceivable that operators established in other Member States had been or were interested in exercising the freedom of establishment and the freedom to provide services in order to carry on business in Italy and, consequently, that that legislation is capable of producing effects which are not confined to that territory.

42 In those circumstances, the request for a preliminary ruling is admissible in so far as it concerns Article 49 TFEU (see, to that effect, judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 50).

43 Accordingly, it is necessary to rule on the request for a preliminary ruling.

Consideration of the question referred

44 In so far as the referring court refers, in its question, to Articles 49 and 56 TFEU, which enshrine the freedom of establishment and the freedom to provide services respectively, the Court notes that the grant of a concession for the occupation of State-owned coastal land necessarily means that the concessionaire needs to have access to the territory of the host Member State with a view to participating, on a stable and continuous basis, for a relatively long period, in the economic life of that State. It follows that the award of such a concession falls within the scope of the right of establishment provided for in Article 49 TFEU (see, to that effect, judgments of 30 November 1995, *Gebhard*, C-55/94, EU:C:1995:411, paragraph 25; of 11 March 2010, *Attanasio Group*, C-384/08, EU:C:2010:133, paragraph 39; and of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 50).

45 In addition, under the first paragraph of Article 57 TFEU, the provisions of the Treaty relating to the freedom to provide services are applicable only if, inter alia, those relating to the right of establishment do not apply. Article 56 TFEU must therefore be disregarded.

46 Furthermore, since it follows from the first subparagraph of Article 44(1) of Directive 2006/123 that that directive is inapplicable *ratione temporis* to the dispute in the main proceedings, the question referred for a preliminary ruling must be examined in the light of Article 49 TFEU alone.

47 In those circumstances, the Court holds that, by its question, the referring court asks, in essence, whether Article 49 TFEU must be interpreted as precluding a national rule which provides that, upon the expiry of a concession to occupy State-owned land and unless otherwise stipulated in the concession agreement, the concessionaire is required to transfer immediately, for no consideration and without compensation, the fixed structures which it has erected on the land that is subject to the concession, even in the event that the concession is renewed.

48 The first paragraph of Article 49 TFEU prohibits restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. As the Court has consistently held, all measures which prohibit, impede or render less attractive the exercise of the freedom guaranteed by Article 49 TFEU, even if they apply without discrimination as to nationality, must be regarded as restrictions on that freedom of establishment (see, to that effect, judgments of 5 October 2004, *CaixaBank France*, C-442/02, EU:C:2004:586, paragraph 11; of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 48; and of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 61).

49 That said, the prohibition laid down by Article 49 TFEU is not infringed by national legislation applicable to all operators carrying on business on national territory the purpose of which is not to regulate the conditions concerning the establishment of the economic operators concerned and the potential restrictive effects of which on the freedom of establishment are too uncertain and indirect for the obligation laid down by it to be regarded as being capable of hindering that freedom (see, to that effect, judgments of 20 June 1996, *Semeraro Casa Uno and Others*, C-418/93 to C-421/93, C-460/93 to C-462/93, C-464/93, C-9/94 to C-11/94, C-14/94, C-15/94, C-23/94, C-24/94 and C-332/94, EU:C:1996:242, paragraph 32, and of 6 October 2022, *Contship Italia*, C-433/21 and C-434/21, EU:C:2022:760, paragraph 45).

50 In the present case, as is apparent from paragraph 23 of the present judgment, it is common ground that Article 49(1) of the Shipping Code can be relied on against all operators carrying on business in Italy. Consequently, as the Advocate General observed in point 51 of her Opinion, all

economic operators are therefore faced with the same concern, that is whether it is economically viable to seek and apply to be granted a concession knowing that, upon its expiry, fixed structures built will be transferred to State ownership.

51 Moreover, that provision does not concern, as such, the conditions of establishment of concessionaires who are authorised to carry on tourist and leisure business activities on Italian State-owned coastal land. That provision merely provides that, upon the expiry of the concession and in the absence of any provision to the contrary in the concession agreement, the fixed structures built by the concessionaire are to be incorporated immediately and without financial compensation into State-owned coastal land.

52 Although Article 49(1) of the Shipping Code is therefore not intended to regulate the conditions relating to the establishment of the undertakings concerned, it is also necessary to verify that it does not nevertheless produce restrictive effects within the meaning of the case-law cited in paragraph 49 of this judgment.

53 In that regard, the Court notes that Article 49 of the Shipping Code merely gives due effect to the fundamental principles of State-owned land. As the Advocate General stated in point 47 of her Opinion, the appropriation for no consideration and without compensation by the concession-granting public entity of the fixed structures built by the concessionaire on State-owned land constitutes the essence of the inalienability of the public domain.

54 The principle of inalienability means, inter alia, that State-owned land remains the property of public entities and that licences to occupy State-owned land are precarious, in that they cover a fixed period and are, moreover, revocable.

55 In accordance with that principle, the legislative framework applicable, in the present case, to a concession to occupy State-owned land sets the term of the licence to occupy the land without the slightest ambiguity. It follows that SIIB could not have been unaware, from the moment the concession agreement was concluded, that the licence to occupy State-owned land granted to it was precarious and revocable.

56 Furthermore, it appears that any restrictive effects of Article 49(1) on freedom of establishment are too uncertain and indirect, within the meaning of the case-law cited in paragraph 49 of the present judgment, for that provision to be able to be regarded as liable to hinder that freedom.

57 Since Article 49(1) expressly provides for the possibility of derogating by agreement from the principle of the immediate forfeiture without compensation or reimbursement of fixed structures built by the concessionaire on State-owned coastal land, that provision highlights the contractual, and therefore consensual, dimension of a concession to occupy State-owned land. It follows that the immediate forfeiture, for no consideration and without compensation, of fixed structures built by the concessionaire on that land cannot be regarded as a type of compulsory transfer of those structures.

58 Lastly, the question whether it is a renewal or the first award of a concession cannot have any bearing on the assessment of Article 49(1) of the Shipping Code. In that regard, it is sufficient to note that the renewal of a concession for the occupation of State-owned land takes the form of a succession of two titles of occupation of State-owned land and not in the continuation or

extension of the first. Moreover, that interpretation is such as to ensure that a concession can be awarded only following a competitive tendering procedure placing all the candidates and tenderers on an equal footing.

59 It must also be stated that the interpretation of Article 49 TFEU provided in paragraphs 50 to 58 of the present judgment is not invalidated by 'principles arising from the judgment of 28 January 2016, *Laezza* (C-375/14, EU:C:2016:60)' to which the referring court refers in its question.

60 In that case, which concerned the betting and gaming sector, the concessionaires used assets which they actually owned in order to carry on their economic activity. By comparison, in the present case, as the Italian Government submitted in its written observations, the licence for the occupation of State-owned coastal land which had been granted to SIIB merely conferred on it a right of use of a transitional nature in respect of the fixed structures which it had built on that land.

61 In addition, it follows from paragraph 43 of the judgment of 28 January 2016, *Laezza* (C-375/14, EU:C:2016:60) that a measure ordering the transfer free of charge of the rights to use assets necessary for the operation of games of chance was a type of penalty, in that it was binding on the concessionaire, who could not negotiate it. By contrast, in the present case, the question whether the buildings constructed by the concessionaire on State-owned land during the concession must become part of the State-owned land for no consideration is a contractual negotiation between the concession-granting public entity and its concessionaire. Under Article 49(1) of the Shipping Code, it is only by default ('Unless otherwise established in the concession agreement') that 'when the concession comes to an end, the fixed structures constructed on State-owned land shall remain vested in the State, without any compensation or reimbursement, without prejudice to the granting authority's right to order their demolition, in which case the State-owned land is to be returned to its original condition'.

62 Consequently, the answer to the question asked by the referring court is that Article 49 TFEU must be interpreted as not precluding a national rule which provides that, upon the expiry of a concession to occupy State-owned land and unless otherwise stipulated in the concession agreement, the concessionaire is required to transfer immediately, for no consideration and without compensation, the fixed structures which it has erected on the land that is subject to the concession, even in the event that the concession is renewed.

Costs

63 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 (Third Chamber) hereby rules:

Article 49 TFEU

must be interpreted as not precluding a national rule which provides that, upon the expiry of a concession to occupy State-owned land and unless otherwise stipulated in the concession agreement, the concessionaire is required to transfer immediately, for no consideration and

without compensation, the fixed structures which it has erected on the land that is subject to the concession, even in the event that the concession is renewed.

[Signatures]