JUDGMENT OF THE COURT (First Chamber)

15 September 2011 *

In Case C-197/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Spain), made by decision of 18 March 2010, received at the Court on 23 April 2010, in the proceedings

Unió de Pagesos de Catalunya

v

Administración del Estado,

Coordinadora de Organizaciones de Agricultores y Ganaderos – Iniciativa Rural del Estado Español,

* Language of the case: Spanish.

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel, A. Borg Barthet (Rapporteur), E. Levits and M. Berger, Judges,

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 9 June 2011,

after considering the observations submitted on behalf of:

— la Coordinadora de Organizaciones de Agricultores y Ganaderos – Iniciativa Rural del Estado Español, by R. Granizo Palomeque and I. Hernández Urranburu, abogados,

— the Spanish Government, by M. Muñoz Pérez and A. Rubio González, acting as Agents,

— the German Government, by N. Graf Vitzthum, acting as Agent,

— the Greek Government, by G. Skiani, S. Papaïoannou and X. Basakou, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the European Commission, by H. Tserepa-Lacombe and F. Jimeno Fernandez, acting as Agents.

after hearing the Opinion of the Advocate General at the sitting on 7 July 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 42(3) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

2 The reference has been made in an action for annulment brought by the Unió de Pagesos de Catalunya (Farmers' Union of Catalonia) in respect of Royal Decree 1470/2007 of 2 November 2007 on the application of direct payments in the agriculture and live-stock farming sectors (BOE nº 264 of 3 November 2007, p. 45104; 'Royal Decree 1470/2007').

Legal context

European Union law

Regulation No 1782/2003

3 According to Article 42(3) to (5) of Regulation No 1782/2003:

'3. Member States may use the national reserve to grant, in priority, reference amounts to farmers who commence their agricultural activity after 31 December 2002, or in 2002 but without receiving any direct payment in that year, according to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions.

4. Member States shall use the national reserve for the purpose of establishing, according to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, reference amounts for farmers finding themselves in a special situation, to be defined by the Commission in accordance with the procedure referred to in Article 144(2).

5. Member States may use the national reserve for the purpose of establishing, according to objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortions, reference amounts for

farmers in areas subject to restructuring and/or development programs relating to one or the other form of public intervention in order to avoid abandoning of land and/or in order to compensate specific disadvantages for farmers in those areas.'

Regulation (EC) No 1698/2005

4 Article 20(a) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1) provides:

'Support targeting the competitiveness of the agricultural and forestry sector shall concern:

(a) measures aimed at promoting knowledge and improving human potential through:

…

(ii) setting up of young farmers;

…'

5 Article 22(1)(a) of that Regulation provides:

'Support provided for in Article 20(a)(ii), shall be granted to persons who:

(a) are less than 40 years of age and are setting up for the first time on an agricultural holding as head of the holding'.

National legislation

6 In accordance with its Article 1, the purpose of Royal Decree 1470/2007 is to establish the regulations applicable to certain Community support schemes set up by Regulation No 1782/2003.

7 Article 9(2) of that decree provides, inter alia:

'The following shall be entitled to single payments from the national reserve, provided that they satisfy the requirements laid down:

…

(b) Young farmers who have set up their first business under a Rural Development Programme established under Council Regulation (EC) No 1698/2005 …, in one of the sectors, other than seed production, included in Annex VI of Council Regulation (EC) No 1782/2003…, and have not previously received single payment entitlements from the National Reserve.'

8 Royal Decree 1470/2007 was repealed on 4 October 2008 by Royal Decree 1612/2008 of 3 October 2008, which was itself repealed by Royal Decree 1680/2009 of 13 November 2009. The terms of Royal Decree 1470/2007 were, however, reproduced in the decrees that succeeded it.

The dispute in the main proceedings and the question referred

9 On 27 October 2008, the Unió de Pagesos de Catalunya brought administrative proceedings before the Tribunal Supremo (Supreme Court) (Spain) challenging Royal Decree 1470/2007. In support of its action, it claims in particular that Article 9(b) of that decree is contrary to Article 42(3) of Regulation No 1782/2003, as it infringes the principle of equal treatment between farmers.

10 The referring court considers that Article 9(2)(b) of the said decree establishes a difference in treatment between farmers in that it requires young farmers to have set up their first business under a Rural Development Program established under Regulation No 1698/2005 in order to benefit from the single payment scheme.

11 It therefore takes the view that the outcome to the dispute before it depends on the interpretation of Article 42(3) of Regulation No 1782/2003, in so far as the latter directly affects the validity of the national provision challenged. It also notes that, although Royal Decree 1470/2007 has been repealed, its content was incorporated in Royal Decrees 1612/2008 and 1680/2009. The referring court adds that the provision under challenge remains in existence for other actions which may, in the future, come before it on the same issue.

12 In those circumstances, the Tribunal Supremo decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 9(2)(b) of Royal Decree 1470/2007, which makes the opportunity to acquire entitlement to single payments from the national reserve subject to the condition that young farmers should have set up their first business under a Rural Development Programme established under Regulation No 1698/2005, compatible with Article 42(3) of Regulation No 1782/2003?'

Admissibility of the question referred

13 The Spanish Government submits, in its written observations, that the reference for a preliminary ruling must be declared inadmissible on the ground that, taking account of the repeal of Royal Decree 1470/2007, the Court's answer to the question referred is irrelevant in deciding the action before the Tribunal Supremo.

14 In that regard, the Spanish Government relies on the case-law of the Tribunal Supremo, according to which, 'since the direct action against measures of general application is a procedural instrument the purpose of which is to eliminate from the legal order rules enacted by the holders of regulatory power that are contrary to law, and not to rule on individual claims that may arise from a defined legal relationship between the particular applicant and the government, that action becomes redundant when, at the time when the decision is to be given, the regulatory measure has been eliminated from the legal order by any other means'.

15 According to the Spanish Government, the Tribunal Supremo has already ruled that a previous action brought by the Unió de Pagesos de Catalunya against Royal Decree 1617/2005, which had been repealed by Royal Decree 1470/2007, was devoid of purpose. That court apparently also considered the action brought by another farmers' association for the annulment of Royal Decree 1470/2007 devoid of purpose, and therefore took no further action in that case on the ground that Royal Decree 1470/2007 had been repealed by Royal Decree 1612/2008.

16 It has consistently been held that the procedure provided for by Article 267 TFEU is an instrument for cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of European Union law which they need in order to decide the disputes before them (see, inter alia, Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraph 22; Case C-380/01 *Schneider* [2004] ECR I-1389, paragraph 20; and Case C-445/06 *Danske Slagterier* [2009] ECR I-2119, paragraph 65).

17 In the context of that cooperation, questions relating to European Union law enjoy a presumption of relevance. The Court may thus refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions

submitted to it (see, inter alia, Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421; and Joined Cases C-570/07 and C-571/07 *Blanco Pérez and Chao Gómez* [2010] ECR I-4629, paragraph 36).

18 The Court's function in preliminary rulings is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (see, inter alia, Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 32; Case C-478/07 *Budějovický Budvar* [2009] ECR I-7721, paragraph 64; and Case C-384/08 *Attanasio Group* [2010] ECR I-2055, paragraph 28).

19 In this case, it is apparent from the order for reference that the Tribunal Supremo considers that, despite the repeal of the provisions of Royal Decree 1470/2007, the question whether Article 42(3) of Regulation No 1782/2003 precludes that decree remains pertinent because Royal Decrees 1612/2008 and 1680/2009 reproduced its wording, with the result that other actions may be brought before the Tribunal Supremo on the same issue.

20 In its response to the Court's letter of 21 January 2011, by which, applying Article 104(5) of its Rules of Procedure, the Court asked the Tribunal Supremo whether the repeal of Royal Decree 1470/2007 and the case-law relied on by the Spanish Government in its written observations affected the relevance of the question referred, that court reiterated that the repeal of Royal Decree 1470/2007 did not cast doubt on the admissibility of its question. In that regard, it recalled that the content of Article 9(2)(b) of Royal Decree 1470/2007 had been reproduced in the decrees that succeeded it, with the result that other actions might come before the Tribunal Supremo on the same issue. That court also indicated that the case-law relied on by the Spanish Government was not pertinent in that instance, since the repeal of Royal Decree 1470/2007 did not take place in the course of the proceedings before it, and Decrees

1612/2008 and 1680/2009 provide identical conditions for access for young farmers to entitlements to payments from the national reserve.

21 Clearly, in those circumstances, the significance which the Tribunal Supremo attaches to the answer the Court will give to its question is linked not to the case before it, but to the circumstance that other potential actions seeking the annulment of similar provisions may be brought before it.

22 Moreover, it must be noted that neither the Tribunal Supremo in its letter of 2 March 2011 nor the parties at the hearing were able to explain how the dispute in the main proceedings had not become devoid of purpose following the repeal of Royal Decree 1470/2007. It must also be noted that, on the basis of the file submitted to the Court, the reference for a preliminary ruling appears to be of a hypothetical nature.

23 When a reference for a preliminary ruling is of such nature, it is for the referring court to provide the Court with information explaining how the reference has a real and specific bearing on the dispute in the main proceedings.

24 It is clear that in this instance, the Tribunal Supremo went no further than to affirm, in its letter of 2 March 2011, that the case-law relied on by the Spanish Government was not applicable to the case in the main proceedings, which 'remain current', without, however, giving any precise explanations in that regard.

25 Accordingly, the reference for a preliminary ruling must be declared inadmissible because the question referred is hypothetical.

Costs

26 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 (First Chamber) hereby rules:

The reference for a preliminary ruling made by the Tribunal Supremo (Spain) by decision of 18 March 2010 is inadmissible because the question referred is hypothetical.

[Signatures]