Reports of Cases

Case C-3/16

Lucio Cesare Aquino
v
Belgische Staat

(Request for a preliminary ruling from the Hof van beroep te Brussel)

(Reference for a preliminary ruling — EU law — Rights conferred on individuals — Infringement by a court — Questions referred for a preliminary ruling — Reference to the Court — National court of last instance)

Summary — Judgment of the Court (First Chamber), 15 March 2017

1. *Questions referred for a preliminary ruling — Reference to the Court — Questions of interpretation — Obligation to refer — Court giving a decision against which there is a judicial remedy under national law — No obligation to refer — Appeal not examined because of discontinuance by the appellant — Irrelevant*

   (Art. 267, third para., TFEU)

2. *Questions referred for a preliminary ruling — Reference to the Court — Questions of interpretation — Obligation to refer — Appeal on a point of law dismissed on grounds of inadmissibility specific to the procedure before the court concerned — No obligation to refer — Respect for the principles of equivalence and effectiveness*

   (Art. 267, third para., TFEU)

1. The third paragraph of Article 267 TFEU must be interpreted as meaning that a court against whose decisions there is a judicial remedy under national law may not be regarded as a court adjudicating at last instance, where an appeal on a point of law against a decision of that court is not examined because of discontinuance by the appellant.

As the Court has pointed out on a number of occasions, a court adjudicating at last instance is by definition the last judicial body before which individuals may assert the rights conferred on them by EU law. Courts adjudicating at last instance have the task of ensuring at national level the uniform interpretation of rules of law (see, to that effect, judgments of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 34, and of 13 June 2006, *Traghetti del Mediterraneo*, C-173/03, EU:C:2006:391, paragraph 31).

It follows that the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings) cannot be regarded as a court adjudicating at last instance, in so far as its decisions may be reviewed by a higher court before which individuals can assert the rights conferred on them by EU

law. The decisions it makes do not therefore come from a national court against whose decisions there is no judicial remedy under national law within the meaning of the third paragraph of Article 267 TFEU.

The fact that, in accordance with Article 18 of the Royal Decree of 30 November 2006 laying down the procedure for appeals on a point of law before the Council of State, an appellant who has brought an appeal on a point of law against a decision of the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings) is irrebuttably presumed to have discontinued the action if he fails to request the proceedings to be continued within a period of 30 days from the date on which he was served with the auditeur's report proposing that the appeal should be declared inadmissible or dismissed does not affect the fact that the decisions of the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings) can be challenged before a higher court, and consequently come from a court that is not adjudicating at last instance.

(see paras 34, 36-38, operative part 1)

2. The third paragraph of Article 267 TFEU must be interpreted as meaning that a court adjudicating at last instance may decline to refer a question to the Court for a preliminary ruling where an appeal on a point of law is dismissed on grounds of inadmissibility specific to the procedure before that court, subject to compliance with the principles of equivalence and effectiveness.

In this respect, it should be recalled, to begin with, that, where there is no judicial remedy against the decisions of a national court, that court is in principle obliged to make a reference to the Court within the meaning of the third paragraph of Article 267 TFEU where a question of the interpretation of the FEU Treaty is raised before it (judgment of 18 July 2013, *Consiglio Nazionale dei Geologi*, C-136/12, EU:C:2013:489, paragraph 25).

It follows from the relationship between the second and third paragraphs of Article 267 TFEU that the courts referred to in the third paragraph have the same discretion as all other national courts as to whether a decision on a question of EU law is necessary to enable them to give judgment. They are not therefore obliged to refer a question of the interpretation of EU law raised before them if the question is not relevant, that is to say, if the answer to that question, whatever it may be, cannot have any effect on the outcome of the case (judgment of 18 July 2013, *Consiglio Nazionale dei Geologi*, C-136/12, EU:C:2013:489, paragraph 26).

Consequently, if, in accordance with the procedural rules of the Member State concerned, the pleas in law raised before a court referred to in the third paragraph of Article 267 TFEU must be declared inadmissible, a request for a preliminary ruling cannot be regarded as necessary and relevant for that court to be able to give judgment.

(see paras 42-44, 56, operative part 3)