

CICALA

JUDGMENT OF THE COURT (Third Chamber)

21 December 2011 \*

In Case C-482/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Corte dei conti, sezione giurisdizionale per la Regione Siciliana (Italy), made by decision of 20 September 2010, received at the Court on 6 October 2010, in the proceedings

**Teresa Cicala**

v

**Regione Siciliana,**

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, E. Juhász, G. Arestis, T. von Danwitz (Rapporteur) and D. Šváby, Judges,

Advocate General: Y. Bot,  
Registrar: A. Calot Escobar,

\* Language of the case: Italian.

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Regione Siciliana, by V. Farina and D. Bologna, avvocati,
  
- the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,
  
- the Danish Government, by V. Pasternak Jørgensen, acting as Agent,
  
- the German Government, by T. Henze, J. Möller and N. Graf Vitzthum, acting as Agents,
  
- the Greek Government, by E.-M. Mamouna, K. Paraskevopoulou and I. Bakopoulos, acting as Agents,
  
- the European Commission, by C. Cattabriga and H. Kraemer, acting as Agents,

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

gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of the principle of stating 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 reference has been made in proceedings between Ms Cicala and the Regione Siciliana concerning a decision providing for a reduction in the amount of Ms Cicala's pension and the recovery of amounts paid for earlier periods.

### **Legal context**

- 3 Law No 241 of 7 August 1990 introducing new rules governing administrative procedure and relating to 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 at Article 1(1):

'Administrative activity shall pursue objectives established by law and be governed by the criteria of economy, efficiency, impartiality, right of access and transparency according to the methods prescribed by this law and other provisions governing distinct procedures as well as by principles derived from the Community legal order.'

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

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

2. Reasons are not required to be stated for legislative acts and acts of general application.’

- 5 The first paragraph 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 will 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 activity (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:

‘For all matters that are not provided for by this law, the provisions of Law No 241/1990 shall be applicable, insofar as they are compatible, including successive amendments and additions, and also implementation and related measures.’

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

- 8 Ms Cicala, who was employed by the Region of Sicily, receives a pension paid to her by the Region of Sicily. By memorandum dated 1997, the Region of Sicily informed Ms Cicala that the amount of her pension, as established by an earlier regional decree, was more than what was actually due to her and that that amount would be reduced, and that the amounts unduly paid to her would correspondingly be recovered. Ms Cicala 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 act which made it, inter alia, impossible to determine the matters of fact and law warranting the reduction in her pension and the recovery of the sums unduly paid.
- 9 The Region of Sicily submitted, in that regard, that the contested memorandum fell within the administration’s circumscribed powers and that its provisions could not have been different from those that were adopted. During the judicial proceedings, it provided information relating to the reasons explaining that memorandum and concluded that it was not possible, in accordance with Article 21g of Law No 241/1990, to annul it.

- 10 In its decision to refer the matter, the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, sets out considerations relating to the Court's jurisdiction to answer the questions raised. It notes, first of all, that, in the context of the action in the main proceedings, it exercises judicial functions. In the area of pensions, it has exclusive jurisdiction on the merits and has jurisdiction to annul administrative acts. Thus, contrary to the cases giving rise to the orders of 26 November 1999 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 had no jurisdiction to rule on the questions referred by the Corte dei conti, that body must, in the context of these proceedings, be considered to be not an administrative authority but a court within the meaning of Article 267 TFEU.
- 11 The Corte dei conti, sezione giurisdizionale per la Regione Siciliana, further submits that the questions referred are admissible. Article 1(1) of Law No 241/1990 contains a direct, unconditional *renvoi* to principles derived from the legal order of the Union. The Consiglio di Stato (Council of State) held, in a recent judgment (*sez. V* 4035/2009), that principles of EU law apply directly in the internal legal order and must govern the actions of the administration. Thus, it must be considered that the duty to state reasons referred to in the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter applies to all activities of the Italian administration, whether they are exercised in the implementation of EU law or in the context of the administration's own powers.
- 12 In those circumstances, even though, in this case, the action in the main proceedings concerns a purely internal situation, this reference for a preliminary ruling should, in accordance with the Court's case-law, be considered as admissible. Considering that the resolution of that dispute depends on the interpretation of those provisions of EU law, the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, has

decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) 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 requires the Italian administrative authorities to apply the principles of [EU] law, pursuant to the duty 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 relating to individual rights and that are in any event mandatory, in matters relating to pensions, may be exempted from the duty to state reasons, compatible with EU law, and does such a case amount to infringement of an essential procedural requirement governing an administrative measure?’
  
- (2) Is the first sentence of Article 21g(2) of [Law No 241/1990], as interpreted by the administrative case-law – in relation to the duty 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], together with the duty 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 administration to apply the principles of the legal order of the Union, and, consequently, is it compatible and permissible to interpret and apply that provision as allowing the authorities to supplement a statement of reasons for an administrative measure during the proceedings?’

## Jurisdiction of the Court

- 13 Having regard to the reasons for the decision to refer the matter, questions arise as to whether the Court has jurisdiction to rule on the questions referred to it, as regards, on the one hand, the classification as a 'court or tribunal' within the meaning of Article 267 TFEU of the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, and, on the other, the subject-matter of those questions.
- 14 In that latter regard, the Regione Siciliana, the Italian, Danish, German, and Greek Governments, and also the European Commission, argue, in essence, that the Court lacks jurisdiction to answer the questions referred, due to the fact that the action in the main proceedings relates to a purely internal situation. The Italian and Greek Governments, and the Commission too, submit inter alia that the *renvoi* to EU law, provided for in Article 1 of Law No 241/1990, does not fulfil the conditions laid down by the Court's case-law in order to give rise to its jurisdiction.
- 15 Under Article 267 TFEU the Court has jurisdiction to give preliminary rulings concerning the interpretation of the Treaties and acts of the institutions of the Union. In the context of the cooperation between the Court and the national courts established by Article 267 TFEU, it is for the national courts alone to assess, in view of the special features of each case, both the necessity of a preliminary ruling in order to enable them to give their judgment and the relevance of the questions they put to the Court (see, to that effect, Case C-310/10 *Agafiței and Others* [2011] ECR I-5989, paragraphs 24 and 25 and the case-law cited).
- 16 Consequently, when questions submitted by national courts concern the interpretation of a provision of EU law, the Court is, in principle, obliged to give a ruling (Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraph 15; Case C-203/09 *Volvo Car Germany* [2010] ECR I-10721, paragraph 24; and *Agafiței and Others*, paragraph 26).



- 17 In accordance with that case-law, the Court has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning provisions of EU law in situations in which the facts of the case in the main proceedings fell beyond the field of application of EU law but in which those provisions of EU law had been rendered applicable by domestic law due to a *renvoi* made by that law to the content of those provisions. In those cases, the provisions of domestic law incorporating provisions of EU law did not limit the application of the latter (Case C-130/95 *Gilroy* [1997] ECR I-4291, paragraph 23, and Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraph 27 and case-law cited).
- 18 The Court has stated in that regard that when, in regulating purely internal situations, domestic legislation seeks to adopt the same solutions as those adopted in EU law in order, for example, to avoid discrimination against foreign nationals or any distortion of competition or to provide for a single procedure in comparable situations, it is clearly in the interest of the Union that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (*Agafitei and Others*, paragraph 39 and the case-law cited).
- 19 Thus, an interpretation, by the Court, of provisions of EU law in purely internal situations is warranted on the ground that they have been made applicable by national law directly and unconditionally (see, to that effect, Case C-346/93 *Kleinwort Benson* [1995] ECR I-615, paragraph 16, and Case C-280/06 *ETI and Others* [2007] ECR I-10893, paragraph 25), in order to ensure that internal situations and situations governed by EU law are treated in the same way (see, to that effect, *Poseidon Chartering*, paragraph 17, and Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987, paragraph 22).

- 20 In this instance, it is common ground that the action in the main proceedings concerns provisions of national law that apply in a purely national context and among them, in particular, those relating to the stating of reasons for administrative acts are at issue in that action.
- 21 Accordingly, it must be examined whether an interpretation by the Court of the provisions referred to by the questions raised is warranted, as the national court maintains, on the ground that those provisions have been made applicable by national law directly and unconditionally, within the meaning of the case-law cited at paragraph 19 herein, by means of a *renvoi* made by Article 1 of Law No 241/1990 to principles derived from the legal order of the Union.
- 22 In that regard, the Italian Government submits, in particular, that the duty to state reasons is wholly governed by internal law relating to administrative procedure and may not, thus, be the subject of interpretation by the Court.
- 23 Law No 241/1990 and Sicilian Regional Law No 10/1991 provide for specific rules in relation to the duty to state reasons for administrative acts. Moreover, Law No 241/1990 lays down, in relation to the consequences of an infringement of that duty, specific rules that are made applicable to the procedure in the main proceedings through Article 37 of Sicilian Regional Law No 10/1991.
- 24 Thus, as was in particular noted by the national court itself, the Region of Sicily and the Italian Government, Article 3 of Law No 241/1990 and Article 3 of Sicilian Regional Law No 10/1991 establish the principle of a duty to state reasons for administrative decisions by laying down, inter alia, what those reasons must cover. Moreover, as regards the consequences of infringing that obligation, Article 21g(2) of Law No 241/1990 provides that a decision cannot be annulled when it falls within the administration's circumscribed powers and it is clear that its provisions could not have been different from those that were adopted. Finally, according to the national court,

that latter provision allows, under certain conditions, the possibility of supplementing the statement of reasons for an administrative act during proceedings.

- <sup>25</sup> On the other hand, Article 1 of Law No 241/1990 makes a *renvoi* in a general manner to ‘principles derived from the Community legal order’, and not specifically to the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter, referred to by the questions raised or even to other rules of EU law concerning the duty to state reasons for acts.
- <sup>26</sup> Accordingly, it cannot be considered that the provisions referred to by the questions raised have been, as such, made applicable directly by Italian law.
- <sup>27</sup> Likewise, it cannot be considered, in those circumstances, that the *renvoi* to EU law as a means of regulating purely internal situations is, in this case, unconditional so that the provisions referred to by those questions are applicable without limitation to the situation at issue in the main proceedings.
- <sup>28</sup> In that regard, it should be noted that the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, does not indicate at all whether that *renvoi* has the consequence of setting aside the national rules relating to the duty to state reasons and of replacing them with the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter, which are addressed, indeed, according to their wording, not to the Member States but solely to the EU institutions and bodies, or indeed with other rules of EU law relating to the duty to state reasons, even when it is a purely internal situation at issue, in order to treat purely internal situations and those governed by EU law in the same manner.

29 Thus, neither the decision to refer nor Law No 241/1990 contains precise enough indications from which it could be deduced that, by referring, in Article 1 of Law No 241/1990, to principles deriving from EU law, the national legislature intended, in relation to the duty to state reasons, to make a *renvoi* to the content of the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter, or indeed to other rules of EU law concerning the duty to state reasons for acts, in order that internal situations and situations falling within EU law should be treated in the same way. It cannot therefore be concluded that there is, in this case, a definite interest of the Union in preserving uniformity of interpretation of those provisions.

30 It follows from all the foregoing considerations that the Court does not have jurisdiction to answer the questions referred by the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, having regard to the subject-matter of those questions.

31 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 action in the main proceedings, a court or tribunal within the meaning of Article 267 TFEU.

## Costs

32 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 (Third Chamber) hereby rules:

**The Court of Justice of the European Union has no jurisdiction to answer the questions referred by the Corte dei conti, sezione giurisdizionale per la Regione Siciliana (Italy), by decision of 20 September 2010.**

[Signatures]