



Reports of Cases

ORDER OF THE COURT (Third Chamber)

12 July 2012*

(Reference for a preliminary ruling — Article 92(1) of the Rules of Procedure — Action brought by the victims of massacres against a Member State as the party liable for acts committed by its armed forces in wartime — Charter of Fundamental Rights of the European Union — Clear lack of jurisdiction of the Court)

In Case C-466/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Tribunale ordinario di Brescia (Italy), made by decision of 25 July 2011, received at the Court on 9 September 2011, in the proceedings

Gennaro Currà and Others

v

Bundesrepublik Deutschland,

joined party:

Repubblica italiana,

THE COURT (Third Chamber),

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

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

after hearing the Advocate General,

makes the following

Order

- ¹ This reference for a preliminary ruling concerns the interpretation of the EU and the FEU Treaties and Articles 17, 47 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter').

* Language of the case: Italian.

- 2 The reference has been submitted in the course of proceedings between a number of Italian nationals and the Bundesrepublik Deutschland (Federal Republic of Germany) concerning their application for compensation in respect of the harm which they suffered by reason of their deportation, or the deportation of the persons to whom they are the legal successors, during the Second World War.

Legal context

- 3 According to Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969:

‘Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.’

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

- 4 In its judgment of 6 November 2003 in *Ferrini*, published on 11 March 2004, the Corte suprema di cassazione (Italian Supreme Court of Cassation) held that an Italian national could bring an action for compensation before the Italian courts in respect of the harm which he or she had suffered as a result of his or her deportation, against the Bundesrepublik Deutschland, because, in view of the seriousness of the crimes committed against that national, that State could not rely on the immunity from suit which it enjoys under international law.
- 5 Following that judgment, the applicants in the main proceedings brought proceedings before the Tribunale ordinario di Brescia (District Court, Brescia) with a view to obtaining from the Bundesrepublik Deutschland fair compensation for the forced labour and deportation of which they themselves, or the persons to whom they are the legal successors, had been victims.
- 6 On 23 December 2008, the Bundesrepublik Deutschland brought proceedings before the International Court of Justice against the Repubblica italiana (Italian Republic) on the ground that that latter was not complying with the principle of international law that States have immunity from suit.
- 7 Pending the judgment of the International Court of Justice, the Repubblica italiana enacted Law No 98/2010 of 23 June 2010 laying down urgent provisions on the immunity of foreign States from suit before the Italian courts and on the election of bodies representing Italians abroad (GURI No 147 of 26 June 2010), which suspends the measures implementing decisions finding against the Bundesrepublik Deutschland, that measure being designed to cease on the publication of that Court’s judgment.
- 8 In the light of the international context and the enactment of that law, taking the view that the German and Italian courts had infringed the international rules guaranteeing for Italian citizens enjoyment of their rights, in particular Articles 17 and 47 of the Charter, the applicants in the main proceedings requested the Tribunale ordinario di Brescia to make an order for reference to the Court of Justice.
- 9 The Bundesrepublik Deutschland takes the view that, under international law, it enjoys immunity from suit. This has been confirmed in several Member States, in several judgments of the European Court of Human Rights and in the United Nations Convention on Jurisdictional Immunities of States and their Property, adopted by the General Assembly of the United Nations on 2 December 2004. It adds that the action is inadmissible because, under the 1947 peace treaty, the Repubblica italiana renounced all applications for compensation against the Bundesrepublik Deutschland.

- 10 The referring court, taking the view that the request of the applicants in the main proceedings should be granted, states that the reference for a preliminary ruling concerns the issue of the objection of immunity in relation to EU law, namely the Treaty of Lisbon and the Charter. That court adds that the interpretation sought, in so far as it concerns two Member States, will enable it to resolve the issue of the immunity of the Bundesrepublik Deutschland.
- 11 The Tribunale ordinario di Brescia accordingly decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
1. On the basis of the international obligations resting upon the [Bundesrepublik Deutschland] (Articles 2 and 5(2) of the ... Agreement [on German External Debts, concluded in London on 27 February 1953]), are the alleged civil immunity from the Italian courts in relation to the facts of the present case, which, from 11 March 2004 onwards (the judgment of the Corte suprema di cassazione in *Ferrini*), the [Bundesrepublik Deutschland] may no longer claim, and the agreement [reached with the Italian Government on 18 November 2008 in Trieste] to initiate proceedings before the International Court [of Justice] ([Case] No 143/2008 General list), [together] with the related Italian Law No 89/2010, which renders unenforceable Italian judgments based on serious crimes against humanity, inconsistent with Article 6 [TEU] and Articles 17, 47 and 52 of the Charter ...?
 2. Is the application of Article 7 of the [Law of 22 May 1910 on the Liability of the German Reich for its civil servants] the [Bundesgerichtshof (German Federal Court of Justice)], judgment of 26 June 2003, ... III ZR 245/98... and ... Bundesverfassungsgericht [German Federal Constitutional Court], judgment of 15 February 2006, ... 2 BvR 1476/03) relating to war crimes and crimes against humanity, which prevents European [Union] citizens from obtaining compensation from the [Bundesrepublik Deutschland], inconsistent with Article 2 of the ... Agreement on German External Debts; did it undermine the applicants' rights under Articles 17 and 47 of the Charter ... until 11 March 2004 (the judgment of the Corte suprema di cassazione in *Ferrini*), and is reliance on a time bar therefore inconsistent with European Union obligations and, in particular, Article 3 [TEU] and the last subparagraph of Article 4(3) [TEU] and with the principle *non conceditur... venire [contra] factum [proprium]*?
 3. Is the objection of immunity from suit raised by the [Bundesrepublik Deutschland] inconsistent with the last subparagraph of Article 4(3) [TEU] and Article 21 [TEU] in that it precludes civil liability based on common European [Union law] principles (Article 340 [TFEU]) on the part of that defendant in relation to the breach of international law (the prohibition of slavery and forced labour) which it committed against the citizens of another Member State?

The jurisdiction of the Court

- 12 Under Articles 92(1) and 103(1) of its Rules of Procedure, where it is clear that it has no jurisdiction to take cognisance of a reference for a preliminary ruling, the Court of Justice may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action.
- 13 By its questions, the referring court essentially asks whether the objection of civil immunity deriving from international law which the Bundesrepublik Deutschland invokes before the Italian courts and which it applies to the facts in the main proceedings in its domestic law, and Law No 98/2010, are contrary to Articles 3 TEU, 4(3) TEU, 6 TEU, 340 TFEU and Articles 17, 42 and 52 of the Charter.

- 14 It must first be recalled that, under Article 5(2) TEU, the European Union may act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein, and competences not conferred upon the European Union in the Treaties remain with the Member States.
- 15 Furthermore, it is settled case-law that, in the context of a reference for a preliminary ruling pursuant to Article 267 TFEU, the Court can interpret EU law only within the limits of the powers conferred on it (see Case C-400/10 PPU *McB*. [2010] ECR I-8965, paragraph 51, and order of 14 December 2011 in Joined Cases C-483/11 and C-484/11 *Boncea and Others and Budan*, paragraph 32). More particularly, the Court has no jurisdiction under Article 267 TFEU to give a ruling on the interpretation of provisions of international law which bind Member States outside the framework of EU law (Case 130/73 *Vandeweghe and Others* [1973] ECR 1329, paragraph 2).
- 16 In the present case, the dispute in the main proceedings concerns an application for compensation brought by citizens of a Member State against another Member State in respect of events which took place during the Second World War, and thus before the European Communities were established.
- 17 However, the referring court does not refer to any information capable of demonstrating that the Court has jurisdiction *ratione materiae*. It requests the Court, first, to rule on the interpretation of the general principle of international law relating to State immunity and on the interpretation of the Agreement on German External Debts, to which the European Union is not a party, and, secondly, to determine whether, in the light of such an interpretation, the law and the conduct of two Member States are in compliance with a number of provisions of the EU and FEU Treaties and of the Charter.
- 18 Admittedly, the European Union must respect international law in the exercise of its powers (see, by analogy, Case C-286/90 *Poulsen and Diva Navigation* [1992] ECR I-6019, paragraph 9, and Case C-366/10 *Air Transport Association of America and Others* [2011] ECR I-13755, paragraph 123). Thus, the Court must apply international law and may be required to interpret certain rules falling within the scope of that law, but solely within the context of the competence which has been conferred on the European Union by the Member States.
- 19 There is, however, nothing to indicate that the situation forming the subject-matter of the case in the main proceedings might come within the scope of EU law or, therefore, of the rules of international law which have a bearing on the interpretation of EU law. Consequently, the Court has no jurisdiction to interpret and apply the rules of international law which the referring court is minded to apply to that situation.
- 20 The Court notes, moreover, in this respect that, as regards the interpretation and application of the principle of State immunity in an application for compensation brought by citizens of one State against another State in respect of events which took place during the Second World War, the two Member States at issue brought proceedings before the International Court of Justice without challenging the jurisdiction of that latter court. That court declared that it had jurisdiction and delivered a judgment on the merits of the case on 3 February 2012.
- 21 It follows from all of the foregoing that it is clear that the Court of Justice has no jurisdiction *ratione materiae* to reply to the questions referred for a preliminary ruling.
- 22 Even if the European Union could interpret the rules of international law as envisaged by the referring court, it follows from Article 28 of the Vienna Convention on the Law of Treaties, which binds the EU institutions and forms part of the European Union legal order as a rule of customary international law (see, by analogy, Case C-386/08 *Brita* [2010] ECR I-1289, paragraph 42), that, in the absence of a different intention expressed in the treaty concerned, the provisions of that treaty do not bind the States party to it so far as concerns an act or an event predating its entry into force.

- 23 However, there is no indication whatsoever in the treaties of any such different intention under which the European Union's competence could be extended to events such as those of the case in the main proceedings, which took place before it existed.
- 24 It follows that it is clear that Court has no jurisdiction *ratione temporis* to reply to the questions referred.
- 25 As regards, more specifically, the provisions of the Charter which the referring court is requesting the Court to interpret, suffice it to point out that, according to Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing EU law. Moreover, under Article 51(2) thereof, the Charter does not extend the field of application of EU law beyond the powers of the European Union or establish any new power or task for the European Union, or modify powers and tasks as defined in the Treaties. Accordingly, the Court is called upon to interpret, in the light of the Charter, the law of the European Union within the limits of the powers conferred on it (Case C-256/11 *Dereci and Others* [2011] ECR I-11315, paragraph 71 and the case-law cited).
- 26 Since the situation in the main proceedings does not come within the scope of EU law and the Court therefore does not have jurisdiction, the provisions of the Charter relied upon cannot, in themselves, form the basis for any new power.
- 27 In those circumstances, it must be held that it is clear that the Court has no jurisdiction to take cognisance of the request for a preliminary ruling submitted by the Tribunale ordinario di Brescia.

Costs

- 28 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 orders:

It is clear that the Court of Justice of the European Union has no jurisdiction to take cognisance of the request for a preliminary ruling submitted by the Tribunale ordinario di Brescia (Italy).

[Signatures]