Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

15 March 2017 [1]

(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)

In Case C-3/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hof van beroep te Brussel (Court of Appeal, Brussels, Belgium), made by decision of 23 December 2015, received at the Court on 4 January 2016, in the proceedings

Lucio Cesare Aquino

v

Belgische Staat,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J.-C. Bonichot, A. Arabadjiev, C.G. Fernlund and S. Rodin, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 23 November 2016,

after considering the observations submitted on behalf of:

— Lucio Cesare Aquino, by M. Verwilghen and H. Vandenberghe, advocaten,

— the Belgian Government, by C. Pochet and M. Jacobs, acting as Agents, and E. Matterne, D. Lindemans and F. Judo, advocaten,

— the European Commission, by J.-P. Keppenne and H. Kranenborg, acting as Agents,

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

gives the following

1 — Language of the case: Dutch.

Judgment

1 This request for a preliminary ruling concerns the interpretation of the third paragraph of Article 267 TFEU and the second paragraph of Article 47 and Article 52(3) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Mr Lucio Cesare Aquino and the Belgische Staat (Belgian State) concerning a claim for non-contractual liability.

Legal context

3 Article 18 of the Koninglijk besluit tot vaststelling van de cassatieprocedure bij de Raad van State (Royal Decree laying down the procedure for appeals on a point of law before the Council of State) of 30 November 2006 (*Belgisch Staatsblad*, 1 December 2006, p. 66844) reads as follows:

'1. Where the auditeur concludes that the appeal is inadmissible or should be dismissed, his report shall be served by the principal registrar on the appellant, who has 30 days in which to apply for the proceedings to be continued in order for him to be heard.

If the appellant does not ask to be heard, the principal registrar shall transmit the case-file to the chamber for it to order the case to be discontinued … The report of the auditeur shall be served at the same time as the judgment on the parties who have not yet received it.

If the appellant asks to be heard, the judge shall determine by order the date on which the parties are to appear.

The principal registrar shall mention the present paragraph when serving on the appellant the report concluding that the appeal is inadmissible or should be dismissed.

2. Where the auditeur does not conclude that the appeal is inadmissible or should be dismissed, the president of the chamber or the judge delegated by him shall determine immediately by order the date of the hearing at which the appeal will be examined.'

4 The seventh paragraph of Article 21 of the Gecoördineerte wetten op de Raad van State (Coordinated Laws on the Council of State) of 12 January 1973 (*Belgisch Staatsblad*, 21 March 1973, p. 3461), in the version applicable to the main proceedings, which applies both to actions for annulment and to appeals on a point of law against decisions of the administrative courts, provides:

'It shall be presumed that the appellant is discontinuing the action if he does not make a request for the proceedings to be continued within 30 days from service of the report of the auditeur or the notification that Article 30(1)(3) is to be applied, in which it is proposed that that the appeal be dismissed or declared inadmissible.'

5 The second paragraph of Article 39/60 of the Wet betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen (Law on entry to the territory, residence, establishment and removal of foreign nationals) of 15 December 1980 (*Belgisch Staatsblad*, 31 December 1980, p. 14584), in the version applicable to the main proceedings, ('the Law of 15 December 1980') provides:

'The parties and their lawyers may make oral observations at the hearing. No pleas in law may be relied on other than those set out in the application or submissions.'

6 Article 39/67 of the Law of 15 December 1980 states:

‘Decisions of the [Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings)] shall not be subject to an application to set aside, a third party challenge or an application for review. They shall be subject solely to the appeal on a point of law provided for in Article 14(2) of the Coordinated Laws on the Council of State.’

Facts of the main proceedings and questions referred for a preliminary ruling

7 The applicant in the main proceedings, who has Italian nationality, has lived in Belgium since 1970.

8 By judgment of the Hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium) of 23 November 2006, the applicant in the main proceedings was convicted and sentenced to seven years’ imprisonment.

9 On 9 November 2011 the applicant in the main proceedings applied to the municipality of Maasmechelen (Belgium) for registration. On 23 February 2012 the Dienst Vreemdelingenzaken (Office for asylum and immigration, Belgium) notified him of the decision to refuse him the right to reside, accompanied by an order to leave the territory, on grounds of public policy and national security, dated 22 February 2012 (‘the decision of 22 February 2012’).

10 On 6 March 2012 the applicant in the main proceedings brought proceedings against that decision before the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings, Belgium). On 15 May 2012, relying on the Court’s case-law in the relevant field, he requested that court to refer a question for a preliminary ruling on the interpretation of Articles 16(4) and 28(3)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34).

11 By judgment of 24 August 2012, the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings) dismissed the application made to it as inadmissible on the ground that it did not contain any plea in law. In particular, that court declined to accede to the request by the applicant in the main proceeding for a question to be referred to the Court for a preliminary ruling, on the ground that the request had been made just before the hearing and he had not put forward anything to show why the request could not have been made earlier.

12 On 24 September 2012 the applicant in the main proceedings appealed against that judgment to the Raad van State (Council of State, Belgium). When the auditeur proposed that the appeal should be declared inadmissible on the ground of lack of admissible pleas in law, the applicant in the main proceedings made no request within the time limit for the proceedings to be continued in order for him to be heard. Consequently, on 4 April 2013 the Raad van State (Council of State) found, on the basis of the seventh paragraph of Article 21 of the Coordinated Laws on the Council of State, that there was a presumption that the applicant in the main proceedings had discontinued the action.

13 In the meantime, on 27 June 2010, the applicant in the main proceedings had initiated proceedings before the Strafuitvoeringsrechtbank van de Nederlandstalige rechtbank van eerste aanleg Brussel (Court for the enforcement of penalties of the Court of First Instance (Dutch-speaking), Brussels, Belgium), seeking to be allowed electronic surveillance. By judgment of 2 March 2012, that court dismissed the application. By another judgment, dated 23 May 2012, the same court also refused a request by the applicant in the main proceedings for conditional release.

14 The applicant in the main proceedings thereupon brought an appeal on a point of law against the judgment last mentioned before the Hof van Cassatie (Court of Cassation, Belgium). He argued in particular that the judgment was contrary to Articles 16 and 28 of Directive 2004/38, and asked for a question to be put to the Court on this point. By judgment of 19 June 2012, the Hof van Cassatie (Court of Cassation) dismissed the appeal, stating that it was not obliged to initiate proceedings before the Court for a preliminary ruling, as the pleas in law put forward by the applicant in the main proceedings were not admissible, for a reason specific to the procedure before the Hof van Cassatie (Court of Cassation).

15 The Strafuitvoeringsrechtbank van de Nederlandstalige rechtbank van eerste aanleg Brussel (Court of enforcement of penalties of the Court of First Instance (Dutch-speaking), Brussels) by judgment of 21 November 2012 authorised electronic surveillance for the applicant in the main proceedings, and by judgment of 14 August 2013 granted him the conditional release sought.

16 On 6 September 2012 the applicant in the main proceedings had reapplied to the municipality of Maasmechelen for registration. On 22 April 2013 the municipality issued him with a residence permit valid until 3 April 2018.

17 On 31 August 2012 the applicant in the main proceedings brought an action in the Nederlandstalige rechtbank van eerste aanleg Brussel (Court of First Instance (Dutch-speaking), Brussels), asking that court to:

— order the Belgian State to withdraw the decision of 22 February 2012, on the ground that that decision was contrary to the provisions of Directive 2004/38;

— declare that the Strafuitvoeringsrechtbank van de Nederlandstalige rechtbank van eerste aanleg Brussel (Court of enforcement of penalties of the Court of First Instance (Dutch-speaking), Brussels), in its judgment of 23 May 2012, and the Hof van Cassatie (Court of Cassation), in its judgment of 19 June 2012, had wrongly described his right of residence as ‘precarious’ and, also wrongly, refused to grant conditional release;

— order the Belgian State to pay damages of EUR 25 000 for the breach of EU law by the Strafuitvoeringsrechtbank van de Nederlandstalige rechtbank van eerste aanleg Brussel (Court of enforcement of penalties of the Court of First Instance (Dutch-speaking), Brussels), the Hof van Cassatie (Court of Cassation) and the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings), on the ground that those courts, adjudicating as courts of last instance, had infringed EU law and disregarded their obligation to make a reference to the Court for a preliminary ruling.

18 By judgment of 27 May 2013, the Nederlandstalige rechtbank van eerste aanleg Brussel (Court of First Instance (Dutch-speaking), Brussels) dismissed the action as inadmissible in part and unfounded in part. The applicant in the main proceedings thereupon appealed against that judgment to the referring court.

19 As regards the decision of 22 February 2012, the Hof van beroep te Brussel (Court of Appeal, Brussels) found that it had been based solely on the existence of the previous criminal convictions of the applicant in the main proceedings, contrary to Article 27(2) of Directive 2004/38. It therefore ordered the Belgian State to pay him the sum of EUR 5 000 as compensation for the non-pecuniary damage resulting from that decision.

20 As regards the damage resulting from the alleged infringement of EU law by the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings), the referring court observes that the applicant in the main proceedings requested that court to refer a question to the Court for a preliminary ruling in a pleading submitted late, and that the request was refused as out of

time by judgment of 24 August 2012. The referring court also notes that the appeal on a point of law against that judgment before the Raad van State (Council of State) was dismissed on the ground of discontinuance.

21 The Hof van beroep te Brussel (Court of Appeal, Brussels) states that the question then arises whether, for each of the three courts referred to by the applicant in the main proceedings, the necessary conditions are satisfied for the Belgian State to be liable.

22 As regards the Strafuitvoeringsrechtbank van de Nederlandstalige rechtbank van eerste aanleg Brussel (Court of enforcement of penalties of the Court of First Instance (Dutch-speaking), Brussels), the referring court finds that there is nothing in the case-file to show that the applicant in the main proceedings requested that court to refer a question to the Court for a preliminary ruling. The successive decisions made by that court, which have all become final, were not the subject of any procedure for erasure, so that he could not have suffered any damage because of them. There cannot therefore be any basis for liability of the Belgian State as a result of that court's exercise of its judicial function.

23 As regards the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings), the referring court observes that the judgment of 24 August 2012 refused the request for a question to be referred to the Court for a preliminary ruling on the ground that the request had been made in a pleading received just before the hearing and nothing had been put forward to show why the request could not have been made earlier.

24 The referring court observes, however, that the appeal against that judgment to the Raad van State (Council of State) was not examined as to its substance or even its admissibility, since, as no request for the proceedings to be continued had been made within the statutory period following service of the auditeur's report, there was found to be a statutory presumption of discontinuance on the part of the applicant in the main proceedings. The question thus arises whether in such circumstances that judgment should be regarded as that of a court adjudicating at last instance because the appeal proceedings did not give rise to an as assessment of the substance. The request by the applicant in the main proceedings for the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings) to refer a question to the Court for a preliminary ruling was refused on the ground that it had been made in a procedural document which, because of the date on which it was filed, could not be taken into account.

25 The referring court notes that the Belgian State may be liable for an infringement of EU law by reason of possible fault in the exercise of the judicial function, if the infringement is manifest. A refusal to initiate the preliminary ruling procedure could entail such an infringement of EU law.

26 According to the referring court, it must be determined whether, in the circumstances of the main proceedings, the refusal of the Hof van Cassatie (Court of Cassation) to accede to the request for a question to be referred to the Court for a preliminary ruling constitutes a breach of Article 267 TFEU, read in the light of the second paragraph of Article 47 and Article 52(3) of the Charter taken together.

27 The referring court is also uncertain whether the procedure before the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings) may have infringed the second paragraph of Article 47 and Article 52(3) of the Charter taken together, in so far as that court held that a procedural rule prevented acceptance of the request for a question to be referred to the Court for a preliminary ruling. The request was refused on the ground that it had been made in a procedural document which, because of the date on which it was filed, could not be taken into account.

28 There remains the question, finally, of whether that refusal was an infringement of Article 267 TFEU.

29 In those circumstances, the Hof van beroep te Brussel (Court of Appeal, Brussels) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) In the light of the application of the case-law developed by the Court of Justice in the *Köbler* case (judgment of 30 September 2003, *Köbler*, Case C-224/01[, EU:C:2003:513]) and the *Traghetti del Mediterraneo* case (judgment of 13 June 2006, *Traghetti del Mediterraneo*, Case C-173/03, EU:C:2006:391) on State liability for wrongdoing by courts which constitutes a breach of EU law, should a court whose decision is not assessed in the context of an appeal on a point of law because, by application of a national procedural rule, the appellant, who has filed a pleading in the appeal proceedings, is irrebuttably presumed to have discontinued the proceedings be regarded as a court of last instance?

(2) Is it compatible with the third paragraph of Article 267 TFEU, also in the light of the second paragraph of Article 47 and Article 52(3) of the Charter … read together, that a national court, which under that Treaty provision is obliged to make requests for preliminary rulings to the Court of Justice, rejects a request for such a ruling on the sole ground that the request is formulated in a pleading which, in accordance with the applicable procedural law, cannot be taken into account because it was filed out of time?

(3) In a case where the highest of the ordinary courts does not accede to a request to refer a question for a preliminary ruling, should it be assumed that a breach of the third paragraph of Article 267 TFEU has been committed, also in the light of the second paragraph of Article 47 and Article 52(3) of the Charter … read together, when that court rejects the request, with the only reason given being that “since the grounds of appeal are not admissible for a reason specific to the proceedings before the Hof” the question would not be asked?’

Consideration of the questions referred

Question 1

30 By its first question, the referring court essentially asks whether 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 nonetheless 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.

31 It must be recalled, as a preliminary point, that in accordance with the third paragraph of Article 267 TFEU national courts against whose decisions there is no judicial remedy under national law are required to make a reference to the Court (see, to that effect, judgment of 6 October 1982, *Cilfit and Others*, 283/81, EU:C:1982:335, paragraph 6).

32 The obligation to refer a question to the Court for a preliminary ruling under the third paragraph of Article 267 TFEU is based on cooperation, established with a view to ensuring the proper application and uniform interpretation of EU law in all the Member States, between national courts, in their capacity as courts responsible for the application of EU law, and the Court (see, to that effect, judgment of 9 September 2015, *X and van Dijk*, C-72/14 and C-197/14, EU:C:2015:564, paragraph 54).

33 Moreover, the obligation to make a reference laid down by the third paragraph of Article 267 TFEU is intended in particular to prevent a body of national case-law that is not in accordance with the rules of EU law from being established in any of the Member States (see, to that effect, judgment of 15 September 2015, *Intermodal Transports*, C-495/03, EU:C:2005:552, paragraph 29).

34 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).

35 In this respect, it appears from the documents before the Court that, under Article 39/67 of the Law of 15 December 1980, decisions of the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings) may be the subject of the appeal on a point of law provided for in Article 14(2) of the Coordinated Laws on the Council of State.

36 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.

37 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.

38 In the light of the above considerations, the answer to Question 1 is that 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.

Question 2

39 By its second question, the referring court asks whether the third paragraph of Article 267 TFEU, read in the light of the second paragraph of Article 47 and Article 52(3) of the Charter, must be interpreted as authorising a court to refuse a request for a question to be referred to the Court for a preliminary ruling, on the sole ground that the request is formulated in a pleading which, in accordance with the applicable procedural law, cannot be taken into account because it is filed out of time.

40 Since, as follows from the answer to Question 1, the Raad voor Vreemdelingenbetwistingen (Council for asylum and immigration proceedings) cannot be regarded as a court adjudicating at last instance, and Question 2 is founded on the contrary premiss, there is no need to answer Question 2.

Question 3

41 By its third question, the referring court essentially asks whether 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 has to be dismissed on grounds of inadmissibility specific to the procedure before that court.

42 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).

43 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).

44 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.

45 According to settled case-law of the Court, the justification for a request for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered, but rather that it is necessary for the effective resolution of a dispute (judgment of 2 April 2009, *Elshani*, C-459/07, EU:C:2009:224, paragraph 42).

46 In the present case, as may be seen from the order for reference, the Hof van Cassatie (Court of Cassation) held that, because the appeal on a point of law against the judgment of the Strafuitvoeringsrechtbank van de Nederlandstalige rechtbank van eerste aanleg Brussel (Court of enforcement of penalties of the Court of First Instance (Dutch-speaking), Brussels) of 23 May 2012 was inadmissible, the formulation of a question to be referred to the Court was of no relevance, since the answer to that question could not have any effect on the outcome of the case.

47 Nevertheless, national procedural rules cannot affect the powers which a national court derives from Article 267 TFEU, nor can they release that court from its obligations under that provision.

48 It should be recalled here that, according to settled case-law of the Court, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of procedural autonomy, on condition, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (judgment of 17 March 2016, *Bensada Benallal*, C-161/15, EU:C:2016:175, paragraph 24 and the case-law cited).

49 It follows that two cumulative conditions, namely respect for the principles of equivalence and effectiveness, must be satisfied in order for a Member State to be able to assert the principle of procedural autonomy in situations which are governed by EU law (judgment of 17 March 2016, *Bensada Benallal*, C-161/15, EU:C:2016:175, paragraph 25).

50 First, as regards the principle of equivalence, it should be borne in mind that this requires that all the rules applicable to actions apply without distinction to actions alleging infringement of EU law and to similar actions alleging infringement of national law (see, to that effect, judgments of 16 January 2014, *Pohl*, C-429/12, EU:C:2014:12, paragraph 26, and of 20 October 2016, *Danqua*, C-429/15, EU:C:2016:789, paragraph 30).

51 In the present case, there is nothing before the Court to cast doubt on the conformity with that principle of the procedural rules at issue in the main proceedings.

52 Secondly, as regards the principle of effectiveness, a national procedural rule such as that at issue in the main proceedings must not be such as to render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (judgment of 20 October 2016, *Danqua*, C-429/15, EU:C:2016:789, paragraph 29).

53 Moreover, according to the Court's case-law, each case that raises the question whether a national procedural provision renders the exercise of rights conferred on individuals by the EU legal order impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national instances. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment of 21 February 2008, *Tele2 Communications*, C-426/05, EU:C:2008:103, paragraph 55).

54 In the present case, it appears from the order for reference and the observations of the parties that the Hof van Cassatie (Court of Cassation), in accordance with national procedural rules, declared inadmissible the pleas in law put forward by the applicant in the main proceedings in support of his appeal against the judgment of the Strafuitvoeringsrechtbank van de Nederlandstalige rechtbank van eerste aanleg Brussel (Court of enforcement of penalties of the Court of First Instance (Dutch-speaking), Brussels) of 23 May 2012, on the ground that, although by those pleas he had contested one of the counter-arguments on the basis of which that court had rejected his application for conditional release, the other arguments it had accepted were capable on their own of justifying that judgment.

55 Consequently, it does not appear that the national rules at issue in the main proceedings are such as to render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order.

56 In the light of the above considerations, the answer to Question 3 is that 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.

Costs

57 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:

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.**

2. **There is no need to answer Question 2.**

3. **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.**

[Signatures]