



Reports of Cases

ORDER OF THE COURT (Fifth Chamber)

15 October 2014*

(Reference for a preliminary ruling — Principle of the protection of legitimate expectations — National legislation providing for a reduction in pension entitlements with retroactive effect — Purely internal situation — Clear lack of jurisdiction of the Court)

In Case C-246/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte dei conti, sezione giurisdizionale per la Regione Puglia (Italy), made by decision of 28 April 2014, received at the Court on 21 May 2014, in the proceedings

Vittoria De Bellis,

Diana Perrone,

Cesaria Antonia Villani

v

Istituto Nazionale di Previdenza per i Dipendenti dell'Amministrazione Pubblica (Inpdap),

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, A. Rosas, E. Juhász, D. Šváby and C. Vajda, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 53(2) of the Rules of Procedure of the Court of Justice,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of the principle of the protection of legitimate expectations.

* Language of the case: Italian.

- 2 The request has been made in proceedings between, on the one hand, Ms De Bellis, Ms Perrone and Ms Villani and, on the other, the Istituto Nazionale di Previdenza per i Dipendenti dell'Amministrazione Pubblica (National Provident Institution for the Employees of Public Authorities; 'Inpdap') concerning the pension rights of the applicants.

Legal context

Law No 241/1990

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

'Administrative action shall pursue objectives laid down by law and be governed by the criteria of economy, efficiency, impartiality, right of access and transparency in accordance with the rules set out in this law and other provisions governing distinct procedures as well as by principles derived from the Community legal order.'

Law No 335/1995

- 4 Article 1(41) of Law No 335 of 8 August 1995 reforming the compulsory and supplementary pension scheme (ordinary supplement to GURI No 190 of 16 August 1995, 'Law No 335/1995'), provides:

'The legislation governing the payment of pensions to survivors of an insured pensioner under the compulsory general insurance scheme shall be extended to cover all schemes which preclude or replace this scheme. Where survivors comprise only minors, students or disabled persons, the pension percentage shall be set at 70% solely for survivors' pensions payable from the date of entry into force of this law. The rate of the survivors' pension may take into account the recipient's income, subject to the limits laid down in Table F of the Annex. The payment due as a result of this combined income — including the reduced survivors' pension — may not, in any event, be below the amount the same person would receive if his income were equal to the upper limit of the income band immediately below the band his income falls into. The limits on the combined income shall not apply where the recipient is a member of a nuclear family which includes minors, students or disabled persons within the meaning of the first sentence of this paragraph. This provision shall be without prejudice to more favourable social benefits being received at the date of entry into force of this law — adjustments towards reintegration are planned for future amendments.'

Law No 724/1994

- 5 Article 15(5) of Law No 724 of 23 December 1994 (ordinary supplement to GURI No 304 of 30 December 1994; 'Law No 724/1994') states:

'The provisions relating to payment of the special additional allowance for pensions under Article 2 of Law No 324 of 27 May 1959, as subsequently amended and supplemented, are applicable only to direct pensions awarded before the 31 December 1994 and corresponding survivors' pensions.'

Law No 296/2006

- 6 Paragraphs 774 and 776 of the Sole Article of Law No 296 of 27 December 2006 (ordinary supplement to GURI No 299 of 27 December 2006; ‘Law No 296/2006’) read as follows:

‘774. The extension of legislation governing the payment of pensions to survivors of an insured pensioner under the compulsory general insurance scheme to cover all schemes which preclude or replace this scheme under Article 1(41) of [Law No 335/1995] must be interpreted as meaning that, with regards to survivors’ pensions payable from the date of entry into force of [Law No 335/1995], the special additional allowance that the pension owner was receiving (an integral part of the retirement pension when viewed as a whole), shall be payable at the same percentage as the survivors’ pension, regardless of the starting date of the direct pension.

...

776. Article 15(5) of [Law No 724/1994] is repealed.’

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

- 7 The applicants in the main proceedings receive an ordinary retirement pension and a survivors’ pension. They have brought an action before the Corte dei conti, sezione giurisdizionale per la Regione Puglia seeking, inter alia, recognition of their right to receive the full amount of the special additional allowance and the related interest.
- 8 In the course of those proceedings, Inpdap pointed out that the applicants started receiving their survivors’ pensions after 16 August 1995. It follows from paragraph 774 of the Sole Article of Law No 296/2006 that Article 1(41) of Law No 335/1995 must be interpreted as meaning that, with regards to survivors’ pensions payable from 17 August 1995, the special additional allowance must be viewed as an integral part of the retirement pension, regardless of when the direct pension payments first started.
- 9 In essence, the Corte dei conti, sezione giurisdizionale per la Regione Puglia contends that, according to its interpretation, the Sole Article of Law No 296/2006, paragraphs 774 and 776, has abolished rights relating to survivors’ pensions under Article 15(5) of Law No 724/1994. The referring Court is of the view that the single objective of the Sole Article of Law No 296/2006, paragraphs 774 and 776, is to protect the financial interests of the Italian State. Therefore, the question arises whether the principle of the protection of legitimate expectations applies where an interpretative statute retroactively modifies provisions granting rights, to the detriment of those concerned, and whether a financial justification alone is capable of constituting an overriding reason in the public interest.
- 10 In that regard, the Corte dei conti, sezione giurisdizionale per la Regione Puglia refers to the case-law of the Corte costituzionale. Two orders — from the Corte dei conti, sezione giurisdizionale per la Regione Puglia and the Corte dei conti, sezione giurisdizionale per la Regione Siciliana, respectively — were referred to the Corte costituzionale which held, in its judgment No 74 of 12 March 2008, that the issues raised concerning the constitutionality of the Sole Article of Law No 296/2006, paragraph 774, were unsubstantiated. In addition, in judgment No 1 of 5 January 2011 regarding Law No 335/1995, the Corte costituzionale held that the principle of the protection of legitimate expectations does not apply to legal relationships pertaining to public and private pension policies. The objective of the legislature in adopting Law No 335/1995 was the harmonisation of public and private pension schemes, resulting in structural reform of public spending and fiscal balances in order to comply with Community obligations arising under the economic and financial stability pact preparing for the changeover to the single European currency.

- 11 With regard to the Court's jurisdiction to reply to the questions referred for a preliminary ruling, the Corte dei conti, sezione giurisdizionale per la Regione Puglia points out that Article 1 of Law No 241/1990 contains a direct, unconditional *renvoi* to the principles of EU law authorising the Italian court to apply to the Court of Justice of the European Union for a practical interpretation where it is vital to a case. It should be noted that in *Cicala* (C-482/10, EU:C:2011:868) and *Romeo* (C-313/12, EU:C:2013:718) the Court held that Article 1 of Law No 241/1990 does not contain a direct, unconditional *renvoi* to EU law. However, the cases giving rise to those two judgments concerned the obligation to state reasons, whereas at issue in the case before the referring court is the principle of the protection of legitimate expectations, which applies in a clear and unconditional manner without being circumscribed by national law.
- 12 In those circumstances the Corte dei conti, sezione giurisdizionale per la Regione Puglia decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Must the principle of the protection of legitimate expectations be interpreted as precluding national legislation, such as [Law No 296/2006], which prescribes, without specifying whether there are any public interest justifications, that the Istituto Nazionale di Previdenza may not pay more favourable survivors' pensions to those who started receiving a survivors' pension after 17 August 1995 as a result of a retirement pension awarded to their spouses before 31 December 1994?
- (2) Are financial grounds capable of justifying, in the public interest, the adoption of an interpretative statute, such as the law at issue in the main proceedings?’

The jurisdiction of the Court

- 13 It should be noted from the outset that the questions referred for a preliminary ruling concern the interpretation of the principle of the protection of legitimate expectations in a purely internal situation.
- 14 In that regard, it should be recalled that the Court does not, in principle, have jurisdiction to reply to a question referred for a preliminary ruling where it is obvious that the provision of EU law referred to it for interpretation is incapable of applying (see, to that effect, *Caixa d'Estalvis i Pensions de Barcelona*, C-139/12, EU:C:2014:174, paragraph 41 and the case-law cited).
- 15 Nevertheless, the Court has jurisdiction to give preliminary rulings on questions concerning provisions of EU law in situations where the facts of the case before the referring court fall outside the scope of EU law, but in which domestic law makes a reference to the content of the EU provisions at issue in order to determine the rules applicable to a situation which is purely internal to the Member State concerned (see, in particular, *Poseidon Chartering*, C-3/04, EU:C:2006:176, paragraph 15; *ETI and others*, C-280/06, EU:C:2007:775, paragraphs 22 and 26; *Salahadin Abdulla and others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraph 48; *Cicala*, EU:C:2011:868, paragraph 17; *Nolan*, C-583/10, EU:C:2012:638, paragraph 45; and *Romeo*, EU:C:2013:718, paragraph 21).
- 16 Indeed, it is clearly in the European Union's interest that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly where, in regulating situations outside the scope of the EU measure concerned, national legislation seeks to adopt the same solutions as those adopted in that measure in order to ensure that internal situations and situations governed by EU law are treated in the same way, irrespective of the circumstances in which the provisions or concepts taken from EU law are to apply (see, in particular, *Salahadin*

Abdulla and Others, EU:C:2010:105, paragraph 48; *Volksbank România*, C-602/10, EU:C:2012:443, paragraphs 87 and 88; *Nolan*, EU:C:2012:638, paragraph 46; *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraphs 20 and 21; and *Romeo*, EU:C:2013:718, paragraph 22).

- 17 Such is the case where the provisions of EU law at issue have been made directly and unconditionally applicable to such situations by national law (*Cicala*, C-482/10, EU:C:2011:868, paragraph 19; *Nolan*, EU:C:2012:638, paragraph 47; and *Romeo*, EU:C:2013:718, paragraph 23). However, that is not the case where national provisions allow the national court to deviate from EU rules as interpreted by the Court (see, to that effect, *Kleinwort Benson*, C-346/93, EU:C:1995:85, paragraphs 16 and 18, and *Romeo*, EU:C:2013:718, paragraph 33 and the case-law cited).
- 18 With regard to Article 1 of Law No 241/1990, to which the Corte dei conti, sezione giurisdizionale per la Regione Puglia refers, the Court has already held that this provision does not contain a *renvoi* to EU law, within the meaning of the Court's case-law cited above, enabling the Court to answer questions concerning the interpretation of EU law in purely internal disputes (see *Cicala*, EU:C:2011:868, and *Romeo*, EU:C:2013:718).
- 19 The Corte dei conti, sezione giurisdizionale per la Regione Puglia has not put forward any evidence such as to enable the Court to hold it has the jurisdiction to rule on the questions submitted. The mere fact that those questions concern the principle of the protection of legitimate expectations rather than the obligation to state reasons, as in in the cases which gave rise to the judgments in *Cicala* (EU:C:2011:868) and *Romeo* (EU:C:2013:718), does not alter this assessment.
- 20 In that regard, it should be borne in mind that, under Article 94(c) of the Court's Rules of Procedure, a request for a preliminary ruling must contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings. That statement of reasons, like the summary of the relevant findings of fact required under Article 94(a) of those rules, must be of such a kind as to enable the Court to ascertain, not only whether the request for a preliminary ruling is admissible, but also whether it has jurisdiction to answer the question referred (order in *Parva Investitionna Banka and Others*, C-488/13, EU:C:2014:2191, paragraph 25).
- 21 Having regard to the above considerations, it must be held, on the basis of Article 53(2) of the Rules of Procedure, that the Court clearly lacks jurisdiction to answer the questions referred by the Corte dei conti, sezione giurisdizionale per la Regione Puglia.

Costs

- 22 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 (Fifth Chamber) hereby orders:

The Court of Justice of the European Union clearly has no jurisdiction to reply to the questions referred by the Corte dei conti, sezione giurisdizionale per la Regione Puglia (Italy) by decision of 28 April 2014 (Case C-246/14).

[Signatures]