Judgment of the Court of Justice, CILFIT, Case 283/81 (6 October 1982)

Caption: In the CILFIT judgment, the Court of Justice sets limits to the obligation to make a reference for a preliminary ruling, which, according to the third paragraph of Article 177 of the EEC Treaty (now Article 234 of the EC Treaty), falls to the national courts of last instance. Those courts are bound to bring a matter before the Court when, in connection with a case, and irrespective of the considerations of the parties involved, a question arises concerning the interpretation of Community law. It falls to the national judge, therefore, to determine whether the question is relevant.

Source: Reports of Cases before the Court. 1982. [s.l.].

URL: http://www.cvce.eu/obj/judgment_of_the_court_of_justice_cilfit_case_283_81_6_october_1982-en-d3cb219e-ab06-4ae9-b37c-2b2e4c47c60d.html
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Judgment of the Court of 6 October 1982 [1]

Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health

(reference for a preliminary ruling from the Corte Suprema di Cassazione)

(Obligation to request a preliminary ruling)

Case 283/81

1. Preliminary questions — Reference to the Court — Questions of interpretation — Obligation to refer a matter to the Court — Purpose — Scope — Criteria
(EEC Treaty, Art. 177, third paragraph)

2. Preliminary questions — Reference to the Court — Questions of interpretation — Existence — Determination — Discretion of national court — Reference to the Court of Justice by the national court of its own motion — Permissibility
(EEC Treaty, Art. 177)

3. Preliminary questions — Reference to the Court — Questions of interpretation — Obligation to refer a matter to the Court — Limits — Relevance of questions — Concept — Appraisal by national court of last instance.
(EEC Treaty, Art. 177, third paragraph)

4. Preliminary questions — Reference to the Court — Questions of interpretation — Obligation to refer a matter to the Court — Absence — Conditions — Previous interpretation by the Court on the point of law at issue — Effects — Right of any national court to refer a matter to the Court of Justice
(EEC Treaty Art. 177, third paragraph)

5. Preliminary questions — Reference to the Court — Questions of interpretation — Obligation to refer a matter to the Court — Absence — Conditions — Absence of reasonable doubt — Criteria
(EEC Treaty, Art. 177, third paragraph)

1. The obligation to refer to the Court of Justice questions concerning the interpretation of the EEC Treaty and of measures adopted by the Community institutions which the third paragraph of Article 177 of the EEC Treaty imposes on national courts and tribunals against whose decisions there is no judicial remedy under national law is based on cooperation, established with a view to ensuring the proper application and uniform interpretation of Community law in all the Member States, between national courts, in their capacity as courts responsible for the application of Community law, and the Court of Justice. More particularly, the aforesaid provision seeks to prevent the occurrence within the Community of divergences in judicial decisions on questions of Community law. The scope of that obligation must therefore be assessed, in view of those objectives, by reference to the powers of the national courts, on the one hand, and those of the Court of Justice, on the other.

2. Article 177 of the EEC Treaty does not constitute a means of redress available to the parties to a case pending before a national court or tribunal. Therefore the mere fact that a party contends that the dispute gives rise to a question concerning the interpretation of Community law does not mean that the court or tribunal concerned is compelled to consider that a question has been raised within the meaning of that Article. On the other hand, a national court or tribunal may, in an appropriate case, refer a matter to the Court of Justice of its own motion.

3. It follows from the relationship between the second and third paragraphs of Article 177 of the Treaty that the courts or tribunals referred to in the third paragraph have the same discretion as any other national court or tribunal to ascertain whether a decision on a question of Community law is necessary to enable them to give judgment. Accordingly, those courts or tribunals are not obliged to refer to the Court of Justice a question concerning the interpretation of Community law raised before them if that question is not relevant, that is to say, if the answer to that question, regardless of what it may be, can in no way affect the outcome of the case. If, however, those courts or tribunals consider that recourse to Community law is necessary to enable them to decide a case, Article 177 imposes an obligation on them to refer to the Court of Justice any question of interpretation which may arise.

4. Although the third paragraph of Article 177 of the EEC Treaty unreservedly requires national courts or tribunals against whose decisions there is no judicial remedy under national law to refer to the Court every question of interpretation raised before them, the authority of an interpretation already given by the Court may however deprive the obligation of its purpose and thus empty it of its substance. Such is the case especially when the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case or where previous decisions of the Court have already dealt with the point of law in question, irrespective of the nature of the proceedings which led to those decisions, even though the questions at issue are not strictly identical. However, it must not be forgotten that in all such circumstances national courts and tribunals, including those referred to in the third paragraph of Article 177, remain entirely at liberty to bring a matter before the Court of Justice if they consider it appropriate to do so.

5. The third paragraph of Article 177 of the EEC Treaty is to be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community.

In Case 283/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the First Civil Division of the Corte Suprema di Cassazione (Supreme Court of Cassation) for a preliminary ruling in the proceedings pending before that court

SRL CILFIT — in liquidation — and 54 Others, Rome,

v

MINISTRY OF HEALTH, in the person of the Minister, Rome,

and

LANIFICIO DI GAVARDO SPA, Milan,

v

MINISTRY OF HEALTH, in the person of the Minister, Rome,

on the interpretation of the third paragraph of Article 177 of the EEC Treaty,

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: F. Capotori
Registrar: P. Heim

gives the following

JUDGMENT

Facts and issues

I — Facts and procedure

By a summons served on the Italian Minister for Health on 18 September 1974, the plaintiffs in the main proceedings, which are textile firms, contended that since the adoption of Law No 30 of 30 January 1968 they had paid, by way of fixed health inspection levy, LIT 700 per quintal of imported wool, until the entry into force of Law No 1239 of 30 December 1970, which amended the levy, although they should have been required to pay only a sum of LIT 70 per quintal "according to the correct interpretation of the Law of 30 January 1968 and, in any event, according to the authentic interpretation of that law given by Law No 1239 of 1970".

After the Tribunal di Roma [District Court, Rome] had dismissed their applications by judgment of 27 October 1976, the plaintiffs in the main proceedings lodged an appeal based on the argument rejected by

the Tribunale. They also contended that Law No 1968 was inapplicable as a result of the adoption of Regulation (EEC) No 827/68 of the Council of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (Official Journal, English Special Edition 1968 (I) p. 209).

By judgment of 12 December 1978, the Corte d'Appello [Court of Appeal], Rome, rejected all the submissions relied upon by the plaintiffs and accepted the Ministry of Health's argument concerning the compatibility of Law No 30 of 1968 with the aforesaid regulation.

On 4 October 1979, the plaintiff in the main proceedings appealed against that judgment. In support of its submission that the appeal should be dismissed, the Ministry of Health, sharing the view held by the Court of Appeal, argued that since wool is not included in Annex II to the EEC Treaty, it is not subject to the common organization of the markets and cannot therefore come within the scope of the regulation in question.

The Ministry of Health urged the Court of Cassation to "decide the case along the lines suggested on the ground that the factual circumstances are so obvious as to rule out the possibility of their being capable of any other interpretation and that obviates the need to refer the matter for a preliminary ruling to the Court of Justice of the European Communities".

The Court of Cassation took the view that counsel for the Ministry of Health had raised a question concerning the interpretation of Article 177 of the Treaty in so far as he contended that that provision must be understood as meaning that the Court of Cassation, against whose decisions there is no judicial remedy under national law, is not obliged to refer a matter to the Court of Justice "when the solution of a question on the interpretation of acts performed by the Community institutions is so obvious as to preclude the very possibility of their being open to another interpretation".

Therefore the Court of Cassation, by order of 27 March 1981, stayed the proceedings and submitted to the Court of Justice a reference for a preliminary ruling on the following question:

"Does the third paragraph of Article 177 of the EEC Treaty, which provides that where any question of the same kind as those listed in the first paragraph of that article is raised in a case pending before a national court or tribunal against whose decisions there is no judicial remedy under national law that court or tribunal must bring the matter before the Court of Justice, lay down an obligation so to submit the case which precludes the national court from determining whether the question raised is justified or does it, and if so within what limits, make that obligation conditional on the prior finding of a reasonable interpretative doubt?"

The order making the reference was registered at the Court on 30 October 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the plaintiffs in the main proceedings, represented by G. Scarpa, G. Stella Richter, G. M. Ubertazzi and F. Capelli; by the Government of the Kingdom of Denmark, represented by its Legal Adviser, Laurids Mikaelsen, acting as Agent; by the Government of the Italian Republic, represented by S. Laporta, Avvocato dello Stato, and by A. Squillante, acting as Agent; and by the Commission of the European Communities, represented by G. Olmi, Deputy Director General, and Miss Mary Minch, a member of the Commission's Legal Department, acting as Agents.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice

A — Observations of the plaintiffs in the main proceedings

The *plaintiffs in the main proceedings* define the problem raised in the question submitted by the national court and express the view that it is concerned solely with the following three points:

"Does the obligation to make a reference for a preliminary ruling depend on a decision of the court hearing the case which establishes that the question raised before it is concerned with the interpretation rather than the application of Community law?

Must the Court of Cassation seek a ruling on interpretation from the Court of Justice even though the matter is not in any doubt?

Irrespective of the clarity of the text, must the question of interpretation appear *prima facie* to be substantially justified, fair and plausible?"

(a) Questions concerning interpretation and questions concerning application

The plaintiffs observe that the EEC Treaty is concerned only with questions of interpretation; therefore, the courts referred to in the third paragraph of Article 177 are required to make a reference for a preliminary ruling only in respect of such questions. Thus it is for those courts to determine beforehand whether the question raised before them is concerned with interpretation or rather with application.

However, in disputes brought before them national courts must apply Community law and it is for that purpose that they may refer questions concerning its interpretation to the Court of Justice.

Thus any doubts concerning the application of Community law relate above all to its interpretation with the result that the court would have to look beyond the external appearance of the question raised by the parties regarding the application of Community law "and discover the underlying question of interpretation".

(b) Must the Court of Cassation seek a ruling on interpretation from the Court even though the matter is not in any doubt?

The plaintiffs consider, in the first place, that under national law the maxim *in claris non fit interpretatio* "does not authorize the court to confine itself to the apparent meaning of a provision, on the basis of its literal purport", but implies that "if a provision is clear and unequivocal and there is no possible scope for divergence between the letter and the spirit, then (and only then) is an interpretation other than that suggested by the wording of the provision prohibited".

Next, the plaintiffs maintain that the rules of interpretation of classical international law which enable the principle of the *acte clair* to be applied should not be followed in Community law on the ground that Community law is a legal system in evolution and should be interpreted in a sense "which transcends the wording of the various specific provisions" and is therefore teleological, thus ensuring that the system is effectively applied.

Furthermore, the expressions used in legislation are not sufficiently clear to eliminate the risk of differing interpretations, especially since in the case of Community law the national court has to overcome numerous difficulties resulting from the technical nature thereof, from the fact that the national court does not always have access to all the sources which make up the Community legal system and from the uncertainties "due to the sometimes complex interaction of national law and Community law".

In view of those difficulties, the courts referred to in the third paragraph of Article 177 are under an obligation to make a reference "whenever the interpretation of a Community provision is necessary, even though the meaning is apparently clear".

(c) Must the question of interpretation appear *prima facie* to be substantially justified, fair and plausible?

The last paragraph of Article 177 requires courts of last instance to bring a matter before the Court of Justice "if and only if 'a question' is raised before them".

The word "question" should be understood in the broad sense, that is to say not necessarily as referring to a disagreement between the parties but as meaning that an interpretative doubt in a case constitutes a necessary and sufficient condition for creating an obligation to make a reference to the Court of Justice.

However, the purpose of the question submitted by the Court of Cassation is not so much to ascertain the meaning of the term in question as to determine whether it is "reasonable" to use it. One answer may be obtained from the wording of the third paragraph of Article 177 "which makes no distinction between questions which are reasonable and those which are not".

A comparative study of the second and third paragraphs of Article 177 lends weight to that initial answer since both those provisions lead to the adoption of an interpretation designed to widen the obligation to make a reference, in other words to deprive the national court or tribunal referred to in the third paragraph of any discretion.

That argument is also supported by the objective of Article 177, which is to ensure the uniform application of Community law in the Member States, especially since that objective is constantly growing in importance and since the task of the Court of Cassation is, *inter alia*, to ensure "that the law is uniformly applied".

Moreover, the decisions of the Court of Justice are also consistent with a broad interpretation of Article 177; in particular in its judgment of 27 March 1953 in joined Cases 28 to 30/62 *Da Costa en Schaake* [1963] ECR 31, the Court held that "the third paragraph of Article 177 unreservedly requires courts or tribunals of a Member State against whose decisions there is no judicial remedy under national law … to refer to the Court every question of interpretation raised before them".

That view is endorsed by leading academic lawyers and finally, as regards judicial policy, there would be a "serious risk" in allowing national supreme courts to determine whether questions raised before them are reasonable, inasmuch as they might inhibit or distort the process of integration between Community law and national law. To allow national supreme courts such a discretion would also involve "the risk of creating an atmosphere of tension between national courts and Community institutions" and might promote discord.

B — Observations of the Italian Government

After outlining the facts of the case, the *Italian Government* observes that it stated before the Court of Cassation that there was in the present case "a factual circumstance so clear and so important as to preclude the very possibility of there being any interpretative doubt, thus making it unnecessary to refer the matter for a preliminary ruling to the Court of Justice of the European Communities".

The Italian Government considers that, in spite of the differences in the wording of the second and third paragraphs of Article 177, the third paragraph is no different "in scope and that consequently the purpose of that provision is not to deprive the national court of last instance of the power to determine whether a preliminary ruling is necessary".

The authors of the Treaty considered it appropriate to provide for a filter for questions of interpretation which might be submitted to the Court, as is shown by the retention of the ordinary procedure for making a reference to the Court even in proceedings before the national court of last instance.

Furthermore, when the Court of Justice stated in the *Da Costa en Schaake* judgment cited above that the obligation imposed by the third paragraph of Article 177 upon national courts or tribunals of last instance may be deprived of its purpose and emptied of its substance by the authority of an interpretation given by the Court in an earlier preliminary ruling in a similar case, it recognized that a national court of last instance

is empowered to define the scope of the proceedings and thus to disclaim jurisdiction over a question or problem of interpretation concerning Community law by relying on the answer given by the Court to the same question.

Since Community law forms part of the legal system of each of the Member States "it would be absurd to take the view that a national court is prohibited from interpreting a provision which it is nevertheless obliged to apply". That consideration disposes of the argument that the national court of last instance must confine itself to taking note of the existence of arguments put forward by the parties which are based on Community law and referring them to the Court of Justice for scrutiny. That court must therefore formulate a question which is capable of being referred to the Court of Justice and, to that end, it must determine whether an interpretative doubt actually exists; that is supported by the opinion of Mr Advocate General Lagrange in the *Da Costa en Schaake* case (cited above), in which he pointed out that "before the procedure of referring a question for a preliminary ruling on interpretation can be set in motion, there must clearly be a question".

Thus, according to the Italian Government, a provision may be described as "clear" not only when it has already been interpreted by the Court of Justice in connection with a related question but also "when it cannot reasonably have more than one meaning having regard to its letter and context".

In the Italian Government's opinion, it seems highly improbable that the national court of last instance has, in Community matters, been divested of some of its conventional instruments of interpretation and must therefore restrict itself exclusively to the letter of a provision in order to determine whether or not the meaning is obscure, whilst refraining *a priori* from considering any lingering doubts merely by comparing the results of a literal interpretation with those which a logical and systematic interpretation would yield.

Therefore it must be acknowledged that the provisions of Article 177 imply the need for an effective filter for the reference of questions of interpretation to the Court. It necessarily follows that the national court of last instance must give proper consideration to the question whether or not a genuine doubt exists.

It remains to define the limits of the court's discretion in this matter. The question is more complex in theory than it is in practice, at least at the present stage of development of Community law and given the degree of "Community awareness" attained in each of the Member States. Furthermore, the objective embodied in Article 177 of achieving a uniform interpretation of Community law and "the notion that any resistance will ultimately be overcome by the force of law" raise the question of the extent to which in practice a national court of last instance may deny in good faith the existence of a genuine preliminary question.

The Italian Government therefore proposes that the answer to the question submitted should be "that the EEC Treaty requires national courts of last instance to seek a preliminary ruling from the Court of Justice in cases in which, after due consideration, they recognize that the question of interpretation raised before them is not manifestly unfounded".

C — Observations of the Danish Government

After describing the objective of Article 177 and the way in which it operates the *Danish Government* expresses the view that the third paragraph of that article "cannot be understood as meaning that a national court against whose decisions there is no judicial remedy must refer to the Court of Justice any question concerning the interpretation or validity of a provision of Community law merely because the parties wish it to do so".

Such an approach would transform that article into a remedy available to private individuals, which is by no means the purpose of that provision.

It is clear from the Court's judgment of 22 November 1978 in Case 93/78 *Mattheus* ([1978] ECR 2203) that "national courts are under an obligation to determine whether it is necessary to make a reference to the Court of Justice of the European Communities". Accordingly, it is for the national court to decide whether a doubt

really exists which justifies referring a question to the Court of Justice for a preliminary ruling; that view is supported by the Court's judgment of 16 December 1981 in Case 244/80 *Foglia* v *Novello* ([1981] ECR 3045).

Next, the Danish Government, like the Italian Government, maintains that the decisions of the Court, in particular the *Da Costa en Schaake* judgment cited above, reaffirm that the obligation to make a reference to the Court of Justice for a preliminary ruling, as provided for by the third paragraph of Article 177, is not an absolute one.

The Danish Government observes that even where there are no previous decisions by the Court, the national court may none the less decide a point directly, without requesting a preliminary ruling, if the provision of Community law at issue does not give rise to any difficulties of interpretation.

With regard to the theory of the *acte clair*, the Danish Government recalls that the Commission, in reply to Written Question No 608/78 (Official Journal 1979, C 28 pp. 8 and 9) stated that the courts "may decline to make a reference and decide the matter themselves in cases where such questions are perfectly straightforward and the answer is obvious to any lawyer with a modicum of experience".

The Danish Government informs the Court that the above criterion is also applied by the Danish courts, including courts of last instance.

It observes that, in its opinion, "a theoretical interpretative doubt does not in itself justify systematic recourse to the procedure for obtaining a preliminary ruling. For that, there must be a genuine interpretative doubt".

If, however, the *acte clair* test is to be adopted it must be applied with caution and the national supreme court must take a number of factors into account, especially as the provisions of Community law are drafted in several languages and the aim of Article 177 is to ensure the uniform application of Community law. In conclusion, therefore, that national court may not, on its own authority, set aside a Community measure which it regards as unlawful; similarly, it may not discard an interpretation previously adopted by the Court of Justice.

The Danish Government therefore proposes that the Court should give the following answer to the question referred to it:

"National courts against whose decisions there is no judicial remedy are under an obligation to refer to the Court of Justice of the European Communities for a preliminary ruling questions on the validity or interpretation of Community law if they consider that a decision on the question is necessary to enable them to give judgment in a particular case. It is neither necessary nor sufficient, for the purposes of that obligation, for a party to make a request to that effect. However, a court against whose decisions there is no judicial remedy and whose authority is such that its decisions are capable of constituting precedents must, for reasons based on the need to apply Community law in a uniform manner, avoid resolving such questions itself wherever possible".

D — Observations of the Commission

As a preliminary remark, the *Commission* expresses the view that the question submitted to the Court of Justice by the Italian Supreme Court of Cassation "is fundamental".

In the first place, the Commission relies on the theory of the *acte clair* which states that "there must be a genuine difficulty, raised by the parties or perceived by the Court itself, such as to insinuate a doubt into an alert mind"; it also refers to a similar concept which exists in Italy and in the Federal Republic of Germany regarding the obligation on the part of courts to refer to the constitutional court questions relating to the constitutionality of national legislation. The position in Italy and in the Federal Republic of Germany is that

"a court is not obliged to refer a matter to the constitutional court if it considers that the grounds relied upon before it for declaring a measure unconstitutional are manifestly devoid of all substance".

Next, after examining the principal arguments for and against the view that a court of last instance has a margin of discretion in relation to Community law, the Commission considers that such a view is acceptable under Community law.

In this connection it recalls that in its reply to Written Question No 608/78 by Mr Krieg (Official Journal 1979 C 28) it has already stated that in its opinion:

"National courts are not required, under Article 177 of the EEC Treaty, to stay proceedings and systematically refer to the Court of Justice all questions concerning the interpretation of Community law which are submitted to them. They can decline to make a reference and decide the matter themselves in cases where such questions are perfectly straightforward and the answer is obvious to any lawyer with a modicum of experience."

After analysing the third paragraph of Article 177, the Commission expresses the conviction that its earlier standpoint is correct. It takes the view that before there can be an obligation to make a reference for a preliminary ruling a question must arise before the national court of last instance and that question must relate to the interpretation of a text. According to the Commission, the word "question" is synonymous with "problem" and the verb "to interpret" means to comprehend and explain the wording of a text or a speech, the meaning of which is obscure or which creates uncertainty".

If therefore a provision is quite unequivocal "no question can arise and there is no need to seek an interpretation".

Admittedly, it is true that interpretation is a continuing process, even in relation to provisions which are unequivocal and therefore immediately comprehensible, but "it is clear however that only genuine problems, intellectual difficulties which need to be overcome can form the subject-matter of the questions of interpretation referred to in the third paragraph of Article 177".

The discretion which the Commission thus attributes to the court hearing the case falls into the same category as the discretionary powers which have already been entrusted to it. National courts must therefore decide cases brought before them and apply Community law, whilst recognizing the jurisdiction of the Court of Justice to interpret Community law. The Court of Justice's recognition of the national court's margin of discretion "would bear witness to its confidence in national courts"; moreover, only in a spirit of mutual confidence can the procedures provided for by Article 177 be applied successfully.

Of course, mistakes may be made by national courts in interpreting a provision of Community law but, in the Court's opinion, the drawbacks which may result from such errors are limited and offset by the advantages, especially for the proper administration of justice, of not compelling the courts of last instance of the Member States to refer to the Court of Justice all questions concerning provisions of Community law".

However, the Commission wishes to "emphasize categorically that, in view of the peculiarities of Community law, the national court's discretion in relation to Community law must be exercised only with the greatest caution".

The Commission recalls in this regard that Community legislation is drafted in seven languages and frequently reflects political compromises with the result that "the exercise of a discretion by a national court in relation to Community legislation calls for much greater caution than recourse to the theory of the *acte clair* in a national context". Thus, before it exercises its discretion, a national court must first and foremost acquaint itself with the decisions of the Court of Justice and, if the slightest doubt exists, the supreme court must refer the matter to the Court of Justice for a preliminary ruling.

In the Commission's opinion, the result would be that "cases in which it is legitimate to refrain from referring a matter to the Court of Justice would in practice be very few".

The Commission therefore proposes that the question referred to the Court of Justice for a preliminary ruling should be answered as follows:

"Under the third paragraph of Article 177 of the EEC Treaty courts against whose decisions there is no judicial remedy under national law must refer to the Court of Justice any question raised before them regarding the meaning of a provision of Community law, unless they have established that that provision does not give rise to any reasonable interpretative doubt."

III — Oral procedure

At the sitting on 8 June 1982, the plaintiffs in the main action, represented by G. M. Ubertazzi and F. Capelli, the Italian Government, represented by S. Laporta, Avvocato dello Stato, and the Commission of the European Communities, represented by G. Olmi, Deputy Director General of its Legal Department, and by Miss Mary Minch, a member of its Legal Department, acting as Agents, presented oral argument and replied to the questions put to them by the Court.

The Advocate General delivered his opinion at the sitting on 13 July 1982.

Decision

1 By order of 27 March 1981, which was received at the Court on 31 October 1981, the Corte Suprema di Cassazione [Supreme Court of Cassation] referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the third paragraph of Article 177 of the EEC Treaty.

2 That question was raised in connection with a dispute between wool importers and the Italian Ministry of Health concerning the payment of a fixed health inspection levy in respect of wool imported from outside the Community. The firms concerned relied on Regulation (EEC) No 827/68 of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (Official Journal, English Special Edition 1968 (I) p. 209). Article 2 (2) of that regulation prohibits Member States from levying any charge having an effect equivalent to a customs duty on imported "animal products", not specified or included elsewhere, classified under heading 05.15 of the Common Customs Tariff. Against that argument the Ministry for Health contended that wool is not included in annex II to the Treaty and is therefore not subject to a common organization of agricultural markets.

3 The Ministry of Health infers from those circumstances that the answer to the question concerning the interpretation of the measure adopted by the Community institutions is so obvious as to rule out the possibility of there being any interpretative doubt and thus obviates the need to refer the matter to the Court of Justice for a preliminary ruling. However, the companies concerned maintain that since a question concerning the interpretation of a regulation has been raised before the Corte Suprema di Cassazione, against whose decisions there is no judicial remedy under national law, that court cannot, according to the terms of the third paragraph of Article 177, escape the obligation to bring the matter before the Court of Justice.

4 Faced with those conflicting arguments, the Corte Suprema di Cassazione referred to the Court the following question for a preliminary ruling:

"Does the third paragraph of Article 177 of the EEC Treaty, which provides that where any question of the same kind as those listed in the first paragraph of that Article is raised in a case pending before a national court or tribunal against whose decisions there is no judicial remedy under national law that court or tribunal must bring the matter before the Court of Justice, lay down an obligation so to submit the case which precludes the national court from determining whether the question raised is justified or does it, and if so

within what limits, make that obligation conditional on the prior finding of a reasonable interpretative doubt?"

5 In order to answer that question it is necessary to take account of the system established by Article 177, which confers jurisdiction on the Court of Justice to give preliminary rulings on, *inter alia*, the interpretation of the Treaty and the measures adopted by the institutions of the Community.

6 The second paragraph of that article provides that any court or tribunal of a Member State *may*, if it considers that a decision on a question of interpretation is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon. The third paragraph of that article provides that, where a question of interpretation is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal *shall* bring the matter before the Court of Justice.

7 That obligation to refer a matter to the Court of Justice is based on cooperation, established with a view to ensuring the proper application and uniform interpretation of Community law in all the Member States, between national courts, in their capacity as courts responsible for the application of Community law, and the Court of Justice. More particularly, the third paragraph of Article 177 seeks to prevent the occurrence within the Community of divergences in judicial decisions on questions of Community law. The scope of that obligation must therefore be assessed, in view of those objectives, by reference to the powers of the national courts, on the one hand, and those of the Court of Justice, on the other, where such a question of interpretation is raised within the meaning of Article 177.

8 In this connection, it is necessary to define the meaning for the purposes of Community law of the expression "where any such question is raised" in order to determine the circumstances in which a national court or tribunal against whose decisions there is no judicial remedy under national law is obliged to bring a matter before the Court of Justice.

9 In this regard, it must in the first place be pointed out that Article 177 does not constitute a means of redress available to the parties to a case pending before a national court or tribunal. Therefore the mere fact that a party contends that the dispute gives rise to a question concerning the interpretation of Community law does not mean that the court or tribunal concerned is compelled to consider that a question has been raised within the meaning of Article 177. On the other hand, a national court or tribunal may, in an appropriate case, refer a matter to the Court of Justice of its own motion.

10 Secondly, it follows from the relationship between the second and third paragraphs of Article 177 that the courts or tribunals referred to in the third paragraph have the same discretion as any other national court or tribunal to ascertain whether a decision on a question of Community law is necessary to enable them to give judgment. Accordingly, those courts or tribunals are not obliged to refer to the Court of Justice a question concerning the interpretation of Community law raised before them if that question is not relevant, that is to say, if the answer to that question, regardless of what it may be, can in no way affect the outcome of the case.

11 If, however, those courts or tribunals consider that recourse to Community law is necessary to enable them to decide a case, Article 177 imposes an obligation on them to refer to the Court of Justice any question of interpretation which may arise.

12 The question submitted by the Corte di Cassazione seeks to ascertain whether, in certain circumstances, the obligation laid down by the third paragraph of Article 177 might none the less be subject to certain restrictions.

13 It must be remembered in this connection that in its judgment of 27 March 1963 in Joined Cases 28 to 30/62 (*Da Costa* v *Nederlandse Belastingadministratie* (1963) ECR 31) the Court ruled that: "Although the third paragraph of Article 177 unreservedly requires courts or tribunals of a Member State against whose decisions there is no judicial remedy under national law … to refer to the Court every question of

interpretation raised before them, the authority of an interpretation under Article 177 already given by the Court may deprive the obligation of its purpose and thus empty it of its substance. Such is the case especially when the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case."

14 The same effect, as regards the limits set to the obligation laid down by the third paragraph of Article 177, may be produced where previous decisions of the Court have already dealt with the point of law in question, irrespective of the nature of the proceedings which led to those decisions, even though the questions at issue are not strictly identical.

15 However, it must not be forgotten that in all such circumstances national courts and tribunals, including those referred to in the third paragraph of Article 177, remain entirely at liberty to bring a matter before the Court of Justice if they consider it appropriate to do so.

16 Finally, the correct application of Community law may be so obvious as to leave no scope for any reasonable doubt as to the manner in which the question raised is to be resolved. Before it comes to the conclusion that such is the case, the national court or tribunal must be convinced that the matter is equally obvious to the courts of the other Member States and to the Court of Justice. Only if those conditions are satisfied, may the national court or tribunal refrain from submitting the question to the Court of Justice and take upon itself the responsibility for resolving it.

17 However, the existence of such a possibility must be assessed on the basis of the characteristic features of Community law and the particular difficulties to which its interpretation gives rise.

18 To begin with, it must be borne in mind that Community legislation is drafted in several languages and that the different language versions are all equally authentic. An interpretation of a provision of Community law thus involves a comparison of the different language versions.

19 It must also be borne in mind, even where the different language versions are entirely in accord with one another, that Community law uses terminology which is peculiar to it. Furthermore, it must be emphasized that legal concepts do not necessarily have the same meaning in Community law and in the law of the various Member States.

20 Finally, every provision of Community law must be placed in its context and interpreted in the light of the provisions of Community law as a whole, regard being had to the objectives thereof and to its state of evolution at the date on which the provision in question is to be applied.

21 In the light of all those considerations, the answer to the question submitted by the Corte Suprema di Cassazione must be that the third paragraph of Article 177 of the EEC Treaty is to be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community.

Costs

22 The costs incurred by the Italian Government, the Danish Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Corte Suprema di Cassazione, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question submitted to it by the Corte Suprema di Cassazione by order of 27 March 1981, hereby rules:

The third paragraph of Article 177 of the EEC Treaty must be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court of Justice or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community.

Mertens de Wilmars
Bosco
Touffait
Due
Pescatore
Mackenzie Stuart
O'Keeffe
Koopmans
Everling
Chloros
Grévisse

Delivered in open court in Luxembourg on 6 October 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President

1 — Language of the Case: Italian.