

**Case C-177/20****Request for a preliminary ruling****Date lodged:**

7 April 2020

**Referring court:**

Győri Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Győr, Hungary)

**Date of the decision to refer:**

6 March 2020

**Applicant:**

‘Grossmania’ Mezőgazdasági Termelő és Szolgáltató Kft.

**Defendant:**

Vas Megyei Kormányhivatal (Vas Region Administrative Department)

[...]

The Győri Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Győr, Hungary), in the proceedings instituted at the request of the commercial company ‘Grossmania’ Mezőgazdasági Termelő és Szolgáltató Kft. ([...] Lukácsháza, Hungary), applicant [...], against the Vas Megyei Kormányhivatal (Vas Region Administrative Department) ([...] Szombathely, Hungary), defendant [...], in connection with a dispute concerning legal transactions in land, has adopted the following

**Decision**

The referring court [...] refers the following question to the Court of Justice of the European Union for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union:

Must Article 267 of the Treaty on the Functioning of the European Union be interpreted as meaning that, where the Court of Justice of the European Union, in a decision given in preliminary ruling proceedings, has declared a legislative

provision of a Member State to be incompatible with EU law, that legislative provision cannot be applied in subsequent national administrative or judicial proceedings either, notwithstanding that the facts of the subsequent proceedings are not entirely identical to those of the previous preliminary ruling proceedings?

[...] [matters of national procedural law]

Grounds:

## 1. Facts

The applicant is a commercial company comprising nationals of Member States other than Hungary.

The applicant held rights of usufruct over the following immovable properties: Jánosháza (Hungary), land registration references 0168/2, 0184/24, 0224/1, 0134/15 and 0238/2; Duka (Hungary), land registration references 010/9 and 0241/2.

The applicant's rights of usufruct over the aforementioned properties were cancelled in the property register pursuant to Paragraph 108(1) of the a mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról szóló 2013. évi CCXII. törvény (Law No CCXII of 2013 laying down various provisions and transitional measures concerning Law No CXXII of 2013 on transactions in agricultural and forestry land; 'the 2013 Law on transitional measures') and Paragraph 94(5) of the az ingatlan-nyilvántartásról szóló 1997. évi CXLI. törvény (Law No CXLI of 1997 on the property register; 'the Law on the property register').

The applicant did not appeal against the cancellation of its rights of usufruct.

By judgment of 6 March 2018, [*SEGRO and Horváth*,] Joined Cases C-52/16 and C-113/16, the Court of Justice of the European Union ['the Court of Justice'] held that Article 63 TFEU precludes national legislation, such as that at issue in the main proceedings, under which rights of usufruct which have previously been created over agricultural land and the holders of which do not have the status of close relation of the owner of the land are extinguished by operation of law and are, consequently, deleted from the property registers.

As a result, the applicant applied to the Vas Megyei Kormányhivatal Celldömölki Járási Hivatala (Celldömölk District Registry, part of the Vas Region Administrative Department, Hungary; 'the first-tier administrative authority') to have its rights of usufruct over the aforementioned properties re-registered.

By decision [...] of 17 May 2019, the first-tier administrative authority turned down the applicant's request, referring in that regard to Paragraph 108(1) of the Law of 2013 on transitional measures and Paragraph 37(1) of the a mező- és

erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény (Law No CXXII of 2013 on transactions in agricultural and forestry land; 'the 2013 Law on agricultural land').

The applicant lodged an administrative appeal and, by decision [...] of 5 August 2019, the defendant confirmed the decision [...] of the first-tier administrative authority. In the grounds of its decision, the defendant referred to Paragraph 108(1) of the 2013 Law on transitional measures and Paragraph 94(5) of the Law on the property register. It stated that the application for re-registration was inadmissible in so far as Paragraph 108(1) of the 2013 Law on transitional measures and Paragraph 37(1) of the 2013 Law on agricultural land were still in force. In its view, the judgment delivered by the Court of Justice in Joined Cases C-52/16 and C-113/16 had been given in particular circumstances and was applicable only to the cases to which the requests for a preliminary ruling related. It supported that assertion by reference also to Paragraph 108(4) and (5) of the 2013 Law on transitional measures. The defendant further noted that the judgment delivered by the Court of Justice in Case C-235/17 had been concerned not with the re-registration of cancelled rights of usufruct but with financial compensation. The defendant concluded that it had no standing, either on application or of its own motion, to re-register previously cancelled rights of usufruct.

The applicant brought an administrative-law action against the decision of the defendant.

The defendant contends that the administrative-law action should be dismissed.

## **2. EU legislation**

### ***Article 63(1) TFEU***

'Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.'

### ***Article 267 TFEU***

'The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question 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.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.'

***Article 91[1] of the Rules of Procedure of the Court of Justice***

'A judgment shall be binding from the date of its delivery.'

**3. National legislation**

***Paragraph 108(1) of the 2013 Law on transitional measures:***

'Any right of usufruct or right of use existing on 30 April 2014 and created, for an indefinite period or for a fixed term expiring after 30 April 2014, by a contract between persons who are not close members of the same family shall be extinguished by operation of law on 1 May 2014.'

***Paragraph 37(1) of the 2013 Law on agricultural land:***

'The creation by contract of rights of usufruct or rights of use shall be invalid, unless the contract creates such rights in favour of a close member of the same family.'

**4. Grounds for the reference for a preliminary ruling**

***4.1 Precedent and judgments of the Court of Justice***

The Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely, Hungary) submitted to the Court of Justice a request for a preliminary ruling relating to Paragraph 108(1) of the 2013 Law on transitional measures and Paragraph 94(5) of the Law on the property register.

By the judgment given in Joined Cases C-52/16 and C-113/16, the Court of Justice held that Article 63 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which rights of usufruct which have previously been created over agricultural land and the holders of which do not have the status of close relation of the owner of that land are extinguished by operation of law and are, consequently, deleted from the property registers.

On the basis of that judgment of the Court of Justice, the Hungarian courts, in the proceedings which had been suspended on account of the aforementioned preliminary ruling proceedings, annulled the administrative decisions which had ordered the cancellation of the rights of usufruct in question.

The aforementioned national legislation also triggered the initiation against Hungary of proceedings for failure to fulfil obligations which culminated in the judgment delivered by the Court of Justice on 21 May 2019 in Case C-235/17. In that judgment, the Court of Justice held that Hungary had not established either that the cancellation effected by the contested provision of rights of usufruct held directly or indirectly by nationals of Member States other than Hungary was intended to secure the attainment of objectives in the general interest that are recognised by the case-law of the Court or mentioned in Article 65(1)(b) TFEU, or that that cancellation was appropriate and coherent, or indeed limited to the measures necessary for the purpose of seeking to secure such objectives. Furthermore, that cancellation did not comply with Article 17(1) of the [Charter of Fundamental Rights of the European Union; 'the Charter']. Consequently, the restrictions on the free movement of capital thus arising from the deprivation of property acquired using capital protected by Article 63 TFEU could not be justified. Accordingly, the Court found that, by adopting the contested provision and thereby cancelling, by operation of law, the rights of usufruct over agricultural land located in Hungary that were held, directly or indirectly, by nationals of other Member States, Hungary had failed to fulfil its obligations under Article 63 TFEU in conjunction Article 17 of the Charter.

#### ***4.2 Hungarian legislation currently in force***

Paragraph 108(1) of the 2013 Law on transitional measures remains in force after the aforementioned judgments of the Court of Justice.

The legislature has supplemented that Paragraph with new subparagraphs.

Paragraph 108(4) of the 2013 Law on transitional measures provides that, where, pursuant to a judicial decision, a right extinguished under subparagraph 1 must be restored, but, because of a formal or material defect, that right should not have been registered in accordance with the legislation in force at the time of its original registration, the authority responsible for administering the property register must inform the Public Prosecutor's Office and stay the proceedings pending the conclusion of the investigation by the Public Prosecutor's Office and the resultant judicial proceedings.

Under Paragraph 108(5) of the 2013 Law on transitional measures, a defect for the purposes of subparagraph 4 is to be considered to exist in the case where:

- (a) the holder of the right of use is a legal person;

(b) the right of usufruct or the right of use was registered in the property register after 31 December 2001 in favour of a holder who is a legal or a natural person not of Hungarian nationality;

(c) at the time when the application to register the right of usufruct or the right of use was made, acquisition of the right required a certificate or authorisation issued by another authority, in accordance with the legislation then in force, but the applicant failed to provide that document.

#### ***4.3. Decision of the Alkotmánybíróság (Constitutional Court, Hungary) No 25/2015 of 21 July 2015 and its consequences***

In its decision No 25/2015 of 21 July 2015, the Alkotmánybíróság ruled on Paragraph 108(1) of the 2013 Law on transitional measures. In the operative part of that decision, it held that a situation had been created which was contrary to the Hungarian Fundamental Law because, as regards rights of usufruct and rights of use extinguished pursuant to Paragraph 108 of the 2013 Law on transitional measures, the legislature had not adopted legislation allowing compensation to be awarded for exceptional pecuniary damage which cannot be claimed for in the context of a settlement between the parties to the contract but which relates to valid contracts. The Alkotmánybíróság called upon the legislature to rectify that omission, which was contrary to the Fundamental Law, by 1 December 2015.

To date, the legislature has not enacted any provisions which put an end to that situation, classified by the Alkotmánybíróság as being contrary to the Fundamental Law, or, in particular, which make compensation available to the holders of rights of usufruct and rights of use.

For natural and legal persons such as the applicant, this means, first, that the Hungarian authorities rely on Paragraph 108(1) of the 2013 Law on transitional measures in order not to grant applications for the re-registration of rights of usufruct and rights of use, and, secondly, that, in the absence of legislative provisions making available financial reparation for the cancellation of those rights, it is impossible to establish a sum by way of compensation that will make good the pecuniary damage sustained.

Similarly, in the judgment in Case C-235/17, the Court of Justice held that the deprivation of property effected by the contested provision could not be justified on the ground that it is in the public interest; nor were any arrangements in place whereby fair compensation is paid in good time. Accordingly, that provision infringed the right to property guaranteed by Article 17(1) of the Charter (paragraph 129).

#### ***4.4. Difference between the factual situations***

The facts underlying this dispute differ from those that gave rise to Joined Cases C-52/16 and C-113/16, disposed of by the Court of Justice, in so far as the

applicant in the present dispute did not appeal against the administrative decisions cancelling its rights of usufruct, whereas, in the aforementioned references for a preliminary ruling, the applicant did appeal against the administrative decisions cancelling their rights of usufruct.

In this case, the applicant, acting on the basis of the judgment delivered by the Court of Justice in Joined Cases C-52/16 and C-113/16, applied to have its cancelled rights of usufruct re-registered, in view of the fact that the Court of Justice had held that the relevant Hungarian legislation was contrary to EU law. Moreover, the applicant did not obtain any financial compensation for the cancellation of its rights of usufruct because no legislative provisions had been adopted to that effect.

Consequently, given that the Hungarian legislation was contrary to EU law and the applicant had not received any financial compensation, the only option open to the applicant was to apply to have its rights of usufruct re-registered.

The defendant nonetheless argues that the cancellation of the rights of usufruct was carried out properly, in accordance with the legislation in force at that time, and that Paragraph 108(1) of the 2013 Law on transitional measures — which is still in force now — precludes re-registration.

#### **4.5. Erga omnes and temporal effects of preliminary rulings**

The first issue raised by the question referred for a preliminary ruling has to do with the general binding effects of preliminary rulings, that is to say their *erga omnes* effects.

The Court of Justice held in its judgment of 27 March 1963, *Da Costa and Others* (Joined Cases 28/62 to 30/62, [1963] ECR 31) 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'.

In the judgment of 6 October 1982, *CILFIT and Others* (283/81), the Court of Justice, referring to the aforementioned judgment in *Da Costa and Others*, held that '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'.

Lastly, the Court of Justice held in the judgment in *CILFIT and Others* 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.

As regards the issue of temporal effects, the Court of Justice has usually held in its case-law that interpretative preliminary rulings have *ex tunc*, that is to say retroactive, effects. This means, in essence, that Community legislation must be applied in a manner consistent with the interpretation given as from its entry into force. In the judgment given in Cases [66/79, 127/79 and 128/79], the Court of Justice held, in respect of interpretations having retroactive effects, that the interpretation which the Court of Justice gives to a rule of Community law clarifies and defines, where necessary, the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation.

The Legfelsőbb Bíróság (Supreme Court, Hungary) ruled on the aforementioned issues in its decision of principle in administrative-law proceedings No 1815/2008, relating to the registration duty. According to the facts of that case, the administrative authority assessed the registration duty payable by the applicant notwithstanding the latter's contention that the Court of Justice had held that registration duty charges in Hungary were in breach of EU law. The court of first instance dismissed the administrative-law action on the ground that, throughout the administrative proceedings, the defendant administrative authority had acted in accordance with the legislation in force.

According to the Legfelsőbb Bíróság, the Hungarian courts cannot disregard the case-law of the Court of Justice. It recalled that the Court of Justice had given judgments of principle on the relationship between EU law and national law, to which the applicant too referred in its appeal in cassation, the Legfelsőbb Bíróság itself having cited the most important of these in its own judgment.

The Legfelsőbb Bíróság thus noted that, in the view of the court of first instance, the defendant had adopted its decision in accordance with the legislation in force at that time, which raised the question of the binding and temporal effects of Community law and of the judgments of the Court of Justice. As regards general binding effects (*erga omnes* effects) of preliminary rulings, there was no uniform position, since the Court of Justice had not yet given a clear ruling in that regard.



It was nonetheless reasonable to infer from the case-law that the latter is applicable to everyone and has binding effects. It cited in support of that assertion the judicial position expressed in *Da Costa and Others* [Joined Cases 28/62 to 30/62] and *CILFIT and Others* [283/81], the essence of which is that preliminary rulings have a normative force allowing them to produce legal effects in other cases too, given that the obligation to refer a question for a preliminary ruling may be deprived of its purpose and even divested of its substance where the question referred is materially identical to one which has already been the subject of a preliminary ruling in a similar case. The Legfelsőbb Bíróság observed that those considerations were relevant because the Court of Justice had ruled on the compatibility of the Hungarian registration duty with Community law in two cases ([Joined Cases] C-290/05 and C-333/05).

As regards temporal effects, the Legfelsőbb Bíróság stated that, given that, at the time when the court of first instance delivered its judgment, the Court of Justice had already given judgment in the case concerning the Hungarian registration duty, the former court should not have disregarded the content of the latter judgment on the ground that this had not yet been delivered at the time when the defendant adopted its decision.

Indeed, on the basis of the legal principle laid down by the Court of Justice, the defendant itself should have interpreted the relationship between the Hungarian registration duty and Community law in the same way as the Court of Justice had done in [Joined Cases C-290/05 and C-333/05]. In the light of the *ex tunc* effects of the Court's ruling, the defendant's decision was unlawful even under the legislation in force at the time when that decision was adopted because a certain part of that legislation (registration duty charges) infringed Community law.

Consequently, the court of first instance should also have applied to the case before it the considerations set out by the Court of Justice in [Joined Cases C-290/05 and C-333/05] and should not have disregarded that judgment on the ground that the applicant could claim the tax difference in separate proceedings.

#### ***4.6. Issues relating to the present judicial proceedings***

During the administrative proceedings prior to the present judicial proceedings, both the defendant and the first-tier administrative authority were aware of the content of the judgment delivered by the Court of Justice in Joined Cases C-52/16 and C-113/16, in accordance with which Paragraph 108(1) of the 2013 Law on transitional measures infringed EU law. Unlike the situation in the case heard and determined by the Legfelsőbb Bíróság, the preliminary ruling to the effect that the relevant national legislative provision was contrary to EU law was already known during the administrative proceedings.

The differences between the underlying facts raise doubts. Thus, the facts underlying the judgment delivered in Joined Cases C-52/16 and C-113/16 are that the defendants brought an administrative-law action against the administrative

decisions cancelling their rights of usufruct or rights of use. By contrast, the facts underlying the present case differ from those in so far as the applicant did not take any action against the administrative decisions cancelling its rights of usufruct, but, rather, in the light of the judgment delivered by the Court of Justice in Joined Cases C-52/16 and C-113/16, applied to have its rights of usufruct re-registered, given that Paragraph 108(1) of the 2013 Law on transitional measures was contrary to EU law. The defendant turned down the applicant's request to that effect.

According to the judgment in *Da Costa and Others*, a court adjudicating at last instance is under no obligation to institute preliminary ruling proceedings if the authority of an interpretation given by the Court of Justice under Article 177 [Translator's Note: now Article 267 TFEU] deprives that obligation of its purpose; such is the case especially where the question raised is materially identical to a question which has already been the subject of a previous preliminary ruling in a similar case.

Pursuant to the judgment in *CILFIT and Others*, the same effect may be produced where previous decisions of the Court of Justice 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.

The course mapped by the aforementioned decisions of the Court of Justice suggests an answer to the effect that a decision adopted in preliminary ruling proceedings instituted in connection with a specific case is applicable to later proceedings before a national court, even if the question raised is not strictly identical to the previous question or the two questions are the same only in essence.

So far as the present case is concerned, the Court of Justice clearly held in Joined Cases C-52/16 and C-113/16 that Paragraph 108(1) of the 2013 Law on transitional measures — relied on by the defendant — is contrary to EU law. The referring court takes the view that, since the same can be said in the present case, the question referred for a preliminary ruling here is concerned not with that issue but with whether, in the event that the underlying factual situations are not entirely identical, the national court may refrain from applying a national legislative provision which, according to the ruling of the Court of Justice in a previous decision, infringes EU law. The underlying factual situations of the two cases are therefore different, but the relevant legislative provision is identical.

There is also the issue of whether the national court hearing the present case, if it refrains from applying Paragraph 108(1) of the 2013 Law on transitional measures because that provision infringes EU law, may compel the defendant to carry out the re-registration procedure in relation to the applicant, to which end it would be open to the defendant to apply subparagraphs 4 and 5 of Paragraph 108 of the 2013 Law on transitional measures, which have now entered into force.

[...] [matters of national procedural law]

Győr, 6 March 2020.

[...] [signatures]

WORKING DOCUMENT