

JUDGMENT OF THE COURT  
16 JANUARY 1974

**Rheinmühlen-Düsseldorf v Einfuhr- und  
Vorratsstelle für Getreide und Futtermittel  
(preliminary ruling requested by the  
Bundesfinanzhof)**

'Consequences of judgments of appeal courts'

**Case 166/73**

Summary

*Preliminary ruling - Reference to the Court - jurisdiction of national courts -  
Extent  
([FEU] Treaty, Article [267])*

In Case 166/73

Reference to the Court under [Article 267 TFEU] by the Bundesfinanzhof for a preliminary ruling in the action pending before that court between

RHEINMUHLEN-DÜSSELDORF, Düsseldorf-Holthausen,

and

EINFUHR- UND VORRATSSTELLE FÜR GETREIDE UND  
FUTTERMITTEL, Frankfurt-on-Main,

on the interpretation of the second paragraph of [Article 267 TFEU],

## THE COURT

composed of: R. Lecourt, President, A. M. Donner (Rapporteur) and M. Sorensen (Presidents of Chambers), R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. O. Dalaigh and Lord Mackenzie Stuart, Judges,

Advocate-General: J. P. Warner Registrar:

A. Van Houtte

gives the following

## JUDGMENT

### Grounds of judgment

- 1 By order dated 14 August 1973, filed at the Registry on 4 September 1973, the Bundesfinanzhof referred to the Court under [Article 267 TFEU] the question whether the second paragraph of [Article 267 TFEU] gives 'to a court or tribunal against whose decisions there is a judicial remedy under national law a completely unfettered right to refer questions to the Court of Justice' or 'does it leave unaffected rules of domestic law to the contrary whereby a court is bound on points of law by the judgments of the courts superior to it'?

It appears from the order that the question is put in the context of proceedings directed against the decision of the Hessisches Finanzgericht requesting from the Court an interpretation of the provisions of Regulation No 19/62 of the Council (OJ 1962, p. 933) in order to be able to judge a case which had been sent back to it by the appellate court, the Bundesfinanzhof, which had reserved an earlier judgment of the Finanzgericht.

Since the interpretation requested by the Finanzgericht concerns the conformity with [Union] law of the grounds which had led the Bundesfinanzhof to reverse the earlier judgment of the Finanzgericht, the question arises whether Paragraph 126 (5) of the Finanzgerichtsordnung whereby the inferior judge is bound by the *ratio decidendi* of the superior court, does not preclude the lower court from referring a case to the Court of Justice for a preliminary ruling.

- 2 [Article 267 TFEU], is essential for the preservation of the [Union] character of the law established by the Treaty and has the object of ensuring that in all circumstances this law is the same in all States of the [Union].

Whilst it thus aims to avoid divergences in the interpretation of [Union] law which the national courts have to apply, it likewise tends to ensure this application by making available to the national judge a means of eliminating difficulties which may be occasioned by the requirement of giving [Union] law its full effect within the framework of the judicial systems of the Member States.

Consequently any gap in the system so organized could undermine the effectiveness of the provisions of the Treaty and of the secondary [Union] law.

The provisions of [Article 267 TFEU], which enable every national court or tribunal without distinction to refer a case to the Court for a preliminary ruling when it considers that a decision on the question is necessary to enable it to give judgment, must be seen in this light.

- 3 The provisions of [Article 267 TFEU] are absolutely binding on the national judge and, in so far as the second paragraph is concerned, enable him to refer a case to the Court of Justice for a preliminary ruling on interpretation or validity.

This Article given national courts the power and, where appropriate, imposes on them the obligation to refer a case for a preliminary ruling, as soon as the judge perceives either of his own motion or at the request of the parties that the litigation depends on a point referred to in the first paragraph of [Article 267 TFEU].

- 4 It follows that national courts have the widest discretion in referring matters to the Court of Justice if they consider that a case pending before them raises questions involving interpretation, or consideration of the validity, of provisions of [Union] law, necessitating a decision on their part.

It follows from these factors that a rule of national law whereby a court is bound on points of law by the rulings of a superior court cannot deprive the inferior courts of their power to refer to the Court questions of interpretation of [Union] law involving such rulings.

It would be otherwise if the questions put by the inferior court were substantially the same as questions already put by the superior court.

On the other hand the inferior court must be free, if it considers that the ruling on law made by the superior court could lead it to give a judgment contrary to [Union] law, to refer to the Court questions which concern it.

If inferior courts were bound without being able to refer matters to the Court, the jurisdiction of the latter to give preliminary rulings and the application of [Union] law at all levels of the judicial systems of the Member States would be compromised.

- 5 The reply must therefore be that the existence of a rule of domestic law whereby a court is bound on points of law by the rulings of the court superior to it cannot of itself take away the power provided for by [Article 267 TFEU] of referring cases to the Court.

## **Costs**

- 6 The costs incurred by the Commission of the European [Union], which has submitted observations to the Court, are not recoverable.

Since the proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before a national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the observations of the Commission of the European [Union] and the plaintiff in the main action;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty [on the Functioning of the European Union], especially Article [267];

Having regard to the Protocol on the Statute of the Court of Justice of the European [Union], especially Article 20;

Having regard to the Rules of Procedure of the Court of Justice of the European [Union];

#### THE COURT

in answer to the question referred to it by the Bundesfinanzhof by order of that court dated 14 August 1973, hereby rules:

**The existence of a rule of domestic law whereby a court is bound on points of law by the rulings of a court superior to it cannot of itself take away the power provided for by [Article 267 TFEU] of referring cases to the Court of Justice of the European [Union].**

Lecourt

Donner  
Sorensen

Monaco

Mertens de Wilmars

Pescatore

Kutscher

O. Dalaigh

Mackenzie Stuart

Delivered in open court in Luxembourg on 16 January 1974.

A. Van Houtte

Registrar

R. Lecourt

President