

Portugal, Supreme Court of Justice, process number 30060/15.3T8LSB.L3.S1, Supreme, 26 November 2020

Member State

 Portugal

Topic

Preliminary ruling procedure; accountability

Sector

Judicial Interaction Techniques; Use of the Preliminary Reference Procedure

Deciding Court Original Language

Supremo Tribunal de Justiça

Deciding Court English translation

Supreme Court of Justice

Registration N

30060/15.3T8LSB.L3.S1

Date Decision

26 November 2020

ECLI (if available)

ECLI:PT:STJ:2020:30060.15.3T8LSB.L3.S1.1B

National Follow Up Of (when relevant)

Ferreira da Silva e Brito (ECLI:EU:C:2015:565)

EU legal sources and CJEU jurisprudence

Article 267 of the TFEU

CILFIT (ECLI:EU:C:1982:335); Köbler (ECLI:EU:C:2003:513); Traghetti (ECLI:EU:C:2006:391);
Fallimento Olimpiclub Srl. (ECLI:EU:C:2009:506); Ferreira da Silva e Brito (ECLI:EU:C:2015:565)

Subject Matter

Judicial error; State liability; compliance with EU law; exemption of preliminary reference procedure

Legal issue(s)

The main legal issue was whether a national court should raise a preliminary reference procedure when the CJEU had already enacted a firm ruling on the question in another reference procedure in a similar case, taking into account the erga omnes effect of its decisions.

Since the CJEU, in the *Ferreira da Silva e Brito* ruling, had already answered the question of whether article 13, no. 2, of the State's Extra-contractual Civil Liability Regime violated European Union Law, the Supreme Court of Justice considered itself exempt from carrying out a preliminary reference procedure on this issue, following the *Cilfit* ruling.

The Supreme Court ruled that article 13 of said regime is not inconsistent with European Union Law or the CJEU's jurisprudence, following *Köbler* and that at stake was a mere divergence of decisions handed down by the same court regarding the same question of law, not a matter of State liability.

Request for expedited/PPU procedures

No

Interim Relief

N/A

National Law Sources

Article 13, paragraphs 1 and 2, of the State's Extracontractual Civil Liability Regime.

Facts of the case

The core issue was whether there was an employment contract and therefore a labour law relationship between the parties, even though the contract was labelled as a service contract. The labour court found there was no evidence of hierarchy or any other signs of a labour law relationship. The Court of Appeal confirmed this decision but began by ruling out the need to raise a preliminary reference procedure before the CJEU and focused its reasoning on assessing the conformity of the standards set out in paragraphs 1 and 2 of article 13 of the RRCEE with European Union Law, considering previous case law of the CJEU.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The author invoked before the Supreme Court that there was another ruling in a case regarding fellow co-workers where the appeal court had admitted an error of reasoning and therefore considered that in his case he should be entitled to a compensation under no. 2 of article 13 of the State's Extra-contractual Civil Liability Regime regarding judicial error, approved by Law no.

67/2007, of 31.12 (hereinafter: RRCEE) even if the court had not revoked its previous decision. The author claimed that a different understanding of the provisions of no. 2 of article 13 of RRCEE (according to which the claim for compensation must be based on the prior revocation of the harmful decision by the competent jurisdiction) would be unconstitutional. The author also claimed that the decision of the Court of Appeal violated European Union law, namely the caselaw of the CJEU and the EU Charter.

Finally, the author argued that the Supreme Court had to raise a preliminary reference procedure before the CJEU asking (i) whether Portuguese legislation that requires as a precondition for a compensation for judicial error that said decision needs to have been previously revoked, even if there was no way of further appealing, violated Union law?; (ii) whether the existence of two different decisions on the same question of law in Labour Law violated the Charter of Fundamental Rights of the European Union and finally (iii) whether articles 20, 21, 30, 47, 52, 53, and 54 of the Charter of Fundamental Rights of the European Union prevented the application of a national rule that requires as a basis for a claim for compensation against the State a manifest error of law, or a gross error in the assessment of the matter of fact, thus making it impossible for the State to be sued when there is a mere contradiction of judgments regarding the same issue of Labour Law.

The Supreme Court ruled that the action was unfounded, given that, in the present case, the decision in which the alleged error was committed consists of a Judgment of the Court of Appeal that was not revoked. As stated before, since the CJEU, in the *Ferreira da Silva e Brito* ruling, had already answered the question of whether article 13, no. 2, of the State's Extra-contractual Civil Liability Regime violated European Union Law, the Supreme Court of Justice considered itself exempt from carrying out a preliminary reference procedure on this issue, following the *Cilfit* ruling.

Therefore, the Supreme Court ruled that article 13 of said regime is not inconsistent with European Union Law or the CJEU's jurisprudence, following *Köbler* and that at stake was a mere divergence of decisions handed down by the same court regarding the same question of law, not a matter of State liability.

Relation of the case to the EU Charter

Article 51 (1) of the Charter. The Supreme Court argued that even if it was understood that fundamental rights enshrined in the EU Charter were at stake, namely those provided for in the provisions indicated by the appellant, the truth is that they would not be applicable in this case, since, as is known, Article 51(1) binds the institutions, bodies and agencies of the European Union, as well as the Member States, but only when they apply Union law, which was not the case. According to the Supreme Court, in the cases considered by the CJEU, liability of Member States for acts of the judicial function happens if the judicial errors causing the damage are violating European Union Law in the process, and it is this violation that causes the damage at stake. In the present case, it is not demonstrated which rules of European Union law were violated in the process in which the alleged error occurred, which also leads to consider a preliminary ruling to the CJEU as inappropriate.

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)
Consistent interpretation

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)
Citation of previous caselaw of the Supreme Court

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)
Citation of the CJEU case law.

Strategic use of judicial interaction technique (purpose aimed by the national court)
N/A

Impact on Legislation / Policy
N/A

Notes on the national implementation of the preliminary ruling by the referring court
N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?
N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?
N/A

Did the national court take into account national case law on fundamental rights?
N/A

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information
N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?
N/A

Impact on national case law from the same Member State or other Member States

N/A

Connected national caselaw / templates

N/A

Other

N/A

(Link to) full text

<https://jurisprudencia.csm.org.pt/ecli/ECLI:PT:STJ:2020:30060.15.3T8LSB.L3.S1.1B/#integral-text>

Author

Mariana Melo Egídio, Lisbon Public Law Research Centre
