



**LATVIJAS REPUBLIKAS SATVERSMES TIESA**  
**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA**

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**DECISION**

**ON THE PROCEDURE OF ADOPTING A DECISION TO REFER A  
QUESTION TO THE COURT OF JUSTICE OF THE EUROPEAN UNION  
FOR PRELIMINARY RULING**

*Riga*

*28 February 2017*

The Constitutional Court of the Republic of Latvia comprised of: chairman of the court sitting Aldis Laviņš, Justices Kaspars Balodis, Gunārs Kusiņš, Uldis Ķinis, Sanita Osipova, Daiga Rezevska, and Ineta Ziemele, on 31 January, as well as on 8 and 28 February 2017, examining at an open court sitting the case No. 2016-04-03 “On Compliance of the Cabinet of Ministers Regulation of 14 April 2015 No.187 Amendment to the Cabinet of Ministers Regulation of 30 November 2004 No.1002 “Procedure for Implementing the Programming Document “Latvia’s Rural Development Plan for the Implementation of Rural Development Programme for 2004-2006”” with Article 105 of the Satversme of the Republic of Latvia”,

**established:**

1. It is doubted in the Case, whether the provisions of the Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations prohibited the Member States from including in their regulatory enactments the institution of inheriting early retirement support.

2. The first part of Article 267 of the Treaty on the Functioning of the European Union provides that the Court of Justice of the European Union (CJEU) has the jurisdiction to give preliminary rulings concerning the interpretation of the Treaties, as well as the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union. Whereas the third part of this Article provides that, where any such question is raised in a case pending before a court of a Member State against whose decisions there is no judicial remedy under national law, that court has the obligation to bring the matter before CJEU.

The Constitutional Court has already previously noted that its rulings are not subject to appeal, therefore if the outcome in the case depends upon interpretation of legal acts of the European Union, the Constitutional Court has to verify, whether the particular matter has not been already explained by CJEU and whether the provisions of the relevant legal act are as clear as not to cause any reasonable doubt, and has to decide, whether a preliminary ruling by the CJEU is required (*see, for example, Judgement of 28 May 2009 by the Constitutional Court in Case No. 2008-47-01, Para 15.2, and Judgement of 13 October 2015 in Case No. 2014-36-01, Para 14*).

In the case under review questions must be referred to CJEU for preliminary ruling with respect to interpretation of provisions in the Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations.

### **The Constitutional Court found:**

3. Neither the Constitutional Court Law, nor the Rules of Procedure of the Constitutional Court provide *expressis verbis* regulation for a case, where the Constitutional Court finds that a decision must be adopted on referring a question to CJEU for preliminary ruling. Thus, the procedure for adopting a decision like this is to be regarded as a procedural issue unregulated in the Constitutional Court Law and the Rules of Procedure of the Constitutional Court.

The third sentence in the first part of Section 26 of the Constitutional Court Law grants to the Constitutional Court the right to decide on procedural issues that are not regulated by the Constitutional Court Law and the Rules of Procedure of the

Constitutional Court. Pursuant to Para 157 of the Rules of Procedure of the Constitutional Court unregulated procedural decisions are decided upon by the Constitutional Court in full membership with absolute majority of votes. Pursuant to Subparagraph 3 of Para 158 of the Rules of Procedure of the Constitutional Court the decision on an unregulated procedural issue is drawn up as a discrete procedural document, if this issue has been decided upon at a court sitting and elaborated reasoning of the decision must be provided.

In view of the above, the Constitutional Court must establish the procedure for adopting a decision on referring a question to CJEU for preliminary ruling.

4. The first part of Article 23 of Protocol (No 3) of the Treaty on the Functioning of the European Union provides that in cases governed by Article 267 of this Treaty the respective court of the Member State informs the CJEU about its decision to suspend its proceedings and refers the case to CJEU.

Regulatory enactments of the Republic of Latvia that regulate legal proceedings in courts of general jurisdiction and administrative courts comprise provisions that establish the procedure for referring a question to CJEU for preliminary ruling. Thus, Section 5<sup>1</sup> of the Civil Procedure Law provides that in accordance with the European Union legal norms a Court makes a request to the Court of Justice of the European Union regarding interpretation or validity of legal norms for the giving of a preliminary ruling. It follows, in turn, from Para 4<sup>1</sup> of Section 214, Para 4 of Section 216 and Section 472<sup>1</sup> of the Law referred to above that the court, upon adopting a decision to refer a question to CJEU for preliminary ruling suspends legal proceedings in the case until a ruling by CJEU enters into force. The Criminal Procedure Law and the Administrative Procedure Law comprise similar regulation.

The laws referred to above also provide that upon suspending legal proceedings the calculation of term also is suspended. It is suspended as of the moment when circumstance that is the basis for suspending legal proceedings occurred. The calculation of procedural term is resumed as of the date when legal proceedings are resumed. The regulation on resuming legal proceedings included in the Civil Procedure Law and Administrative Procedure law provides, *inter alia*, that legal proceedings are resumed by the Court adopting a decision upon its own initiative.

The procedural principles referred to above are applicable also in legal proceedings before the Constitutional Court. Thus, if the Constitutional Court takes a decision on referring a question to CJEU for preliminary ruling, it suspends legal proceedings in the case under review until the ruling by CJEU enters into force.

**5.** Pursuant to the first part of Section 28 of the Constitutional Court Law the Constitutional Court adopts a decision at a court hearing with the majority vote of Justices it is comprised of. This is the procedure in which the Constitutional Court adopts a decision on referring a question to CJEU for preliminary ruling.

Whereas in the stage, when the case is being prepared for review, the issue regarding turning to CJEU should be decided at the assignments sitting with the majority vote of Justices in the same composition as in the case, where the Constitutional Court adopts a decision on referring a question to CJEU for a preliminary ruling at a court sitting.

In view of the above and on the basis of the first part of Section 26 of the Constitutional Court Law and Chapter XIV of the Rules of Procedure of the Constitutional Court,

**the Constitutional Court held:**

**1.** To provide that in examining a case the Constitutional Court shall take a decision on referring a question to CJEU for a preliminary ruling with the majority vote of the Justices that it is comprised of.

**2.** To provide that in the stage of preparing the case for review, the decision on referring a question to CJEU for preliminary ruling shall be adopted by the Court of Justice at its assignments sitting with the majority vote of Justices in the same composition as at the court sitting that adopts a decision on referring a question to CJEU for a preliminary ruling.

**3.** To provide that if the Constitutional Court adopts a decision on referring a question to CJEU for a preliminary ruling, it shall suspend legal proceedings until the date, when the ruling by CJEU enters into force. When the ruling by CJEU enters into force, the Constitutional Court shall adopt a decision on resuming legal proceedings in the case.

4. To provide that the Constitutional Court shall forward a true copy or a copy on its decision on referring a question to CJEU for preliminary ruling to the official journal “Latvijas Vēstnesis”, as well as issue it to the participants of the case.

5. To forward this decision to the official journal “Latvijas Vēstnesis” for publication.

The decision is not subject to appeal.

Chairman of the court sitting

Aldis Laviņš