Abstract

This article is a reflection about the need (or no need) to apply, within the frame of prejudicial interpretation (IP) regulated in the "Tratado de Creación del Tribunal de Justicia de la Comunidad Andina de las Naciones" - TJCA* - (the Creation of the Justice Court of the Andean Nations’ Community Treaty), the doctrine of the clarified act, the "acto aclarado". As we know, this treaty created the so-called prejudicial interpretation, consisting of the opportunity enjoyed by the judges of the Comunidad Andina de las Naciones - CAN - to consult the aforementioned TJCA with respect to the interpretation of a community rule or standard, supposing that any such judges are resolving a given case where they must either apply juridical provisions of the CAN or, at least, where the application is discussed by the parties. National judges are forced to make the aforementioned consultations in all those hypotheses where the judgment or sentence they pronounce is not subject to appeal or remedy, according to the relevant internal law. With regard to the remaining affairs, said consultation is facultative for internal judges. Within this framework, the article deals with the question about whether or not, supposing that a national judge’s consultation to the TJCA is obligatory, this imperativeness should decline when the Court itself has repeatedly resolved the question through a previous prejudicial interpretation in a matter that keeps an analogy of both de facto and de jure.

Keywords

Clarified act, normative interpretation, Andean community law, European community law, Andean Court of Justice, community jurisprudence.

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