



Reports of Cases

ORDER OF THE COURT (Second Chamber)

28 November 2013*

(Request for a preliminary ruling — Charter of Fundamental Rights of the European Union — Right to an effective remedy — Legal persons pursuing a commercial objective — Legal aid — No link with European Union law — Clear lack of jurisdiction of the Court)

In Case C-258/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the 5^a Vara Cível de Lisboa (Portugal), made by decision of 13 March 2013, received at the Court on 13 May 2013, in the proceedings

Sociedade Agrícola e Imobiliária da Quinta de S. Paio Lda

v

Instituto da Segurança Social IP,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts (Rapporteur), Vice-President of the Court, J.L. da Cruz Vilaça, J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 53(2) of the Rules of Procedure of the Court of Justice

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in proceedings between Sociedade Agrícola e Imobiliária da Quinta de S. Paio Lda ('Sociedade Agrícola') and Instituto da Segurança Social IP ('the Instituto') involving the refusal of the latter to grant legal aid to the former.

* Language of the case: Portuguese.

Legal context

European Union legislation

Directive 2003/8/EC

- 3 Recital 5 to Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ 2003 L 26, p. 41, and corrigendum OJ 2003 L 32, p. 15), is worded as follows:

‘This Directive seeks to promote the application of legal aid in cross-border disputes for persons who lack sufficient resources where aid is necessary to secure effective access to justice. The generally recognised right to access to justice is also reaffirmed by Article 47 of the [Charter].’

- 4 The scope *ratione personae* of the right to legal aid is defined as follows in Article 3(1) of Directive 2003/8:

‘Natural persons involved in a dispute covered by this Directive shall be entitled to receive appropriate legal aid in order to ensure their effective access to justice in accordance with the conditions laid down in this Directive.’

Portuguese law

- 5 Law No 34/2004 of 29 July 2004, as amended by Law No 47/2007 of 28 August 2007 (‘Law No 34/2004’), establishes the scheme of access to the law and access to the courts and also transposes Directive 2003/8 into Portuguese law.

- 6 Article 7(3) of Law No 34/2004 provides:

‘Legal persons pursuing a commercial objective and individual establishments with limited liability are not entitled to legal protection.’

- 7 However, Portuguese legislation exempts legal persons pursuing a commercial objective and single member limited liability companies which are insolvent or have entered into a composition with creditors, from payment of fees and expenses for a legal action.

The order for reference and the questions referred for preliminary ruling

- 8 Sociedade Agrícola, established in Lisbon (Portugal), is a legal person pursuing a commercial objective.
- 9 On 15 January 2013 it requested legal aid of the Instituto, which is the competent administrative body, in the form of an exemption from payment of court fees and other expenses relating to legal proceedings, as well as the appointment and payment of a lawyer, claiming that it intended to bring a legal action for the sum of EUR 52 500.
- 10 The Institute found, however, that the abovementioned request for legal aid was clearly inadmissible on the basis that, in accordance with Article 7(3) of Law No 34/2004, legal persons pursuing a commercial objective are not entitled to legal aid.

- 11 Sociedade Agrícola instituted proceedings against the abovementioned decision of the Instituto before the 5^a Vara Cível de Lisboa, requesting that it make a preliminary reference in order for the Court to rule on the interpretation of Article 47 of the Charter.
- 12 According to the national court, the Court's judgment in Case C-279/09 *DEB* [2010] ECR I-13849 is relevant for resolving the dispute in the main proceedings. However, it considers that that judgment must nevertheless be clarified with regard to legal persons pursuing a commercial objective.
- 13 In those circumstances, the 5^a Vara Cível de Lisboa decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:
- ‘(1) Does Article 47 of the [Charter], which lays down the right to effective legal protection preclude national legislation that prohibits legal persons pursuing a commercial objective from obtaining legal aid?
- (2) Must Article 47 of the [Charter] be construed as having ensured the right to effective judicial protection, where the domestic law of the Member State, whilst excluding legal persons pursuing a commercial objective from receiving legal aid, automatically grants them an exemption from the costs and charges relating to legal proceedings where they are insolvent or have entered into a composition with creditors?’

The jurisdiction of the Court

- 14 Under Article 53(2) of the Rules of Procedure of the Court, where it is clear that the Court has no jurisdiction to hear and determine a case, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.
- 15 That provision should be applied in the present case.
- 16 According to the established case-law of the Court, in the context of a request for a preliminary ruling under Article 267 TFEU, the Court may interpret Union law only within the limits of the powers conferred upon it (see Case C-400/10 PPU *McB* [2010] ECR I-8965, paragraph 51, and order in Case C-14/13 *Cholakova* [2013] ECR, paragraph 21).
- 17 The questions referred for a preliminary ruling focus on the interpretation of Article 47 of the Charter.
- 18 In this regard, it should be recalled that the Charter's scope so far as concerns action of the Member States is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to Member States only when they are implementing European Union law (Case C-617/10 *Åkerberg Fransson* [2013] ECR, paragraph 17).
- 19 That provision also confirms the established case-law, according to which the fundamental rights guaranteed within the Union legal order are designed to be applied in all situations regulated by Union law, but cannot be applied outside certain situations (see, to that effect, order in Joined Cases C-483/11 and C-484/11 *Bonacea and Others* [2011] ECR, paragraph 29, and *Åkerberg Fransson*, paragraph 19 and the case-law cited).
- 20 Where a legal situation does not fall within the scope of Union law, the Court has no jurisdiction to rule on it and any Charter provisions relied upon cannot, of themselves, form the basis for such jurisdiction (see, to that effect, order in Case C-466/11 *Curà and Others* [2012] ECR, paragraph 26, and *Åkerberg Fransson*, paragraph 22).

- 21 There is no evidence in the order for reference to indicate that the objective of the main proceedings concerns the interpretation or application of a rule of Union law other than those set out in the Charter (see orders of 7 February 2013 in Case C-498/12 *Pedone*, paragraph 14; of 7 February 2013 in Case C-499/12 *Gentile*, paragraph 14; and of 8 May 2013 in Case C-73/13 *T*, paragraph 13).
- 22 Given that Directive 2003/8 does not envisage the grant of legal aid to legal persons (see *DEB*, paragraph 43), it should, first, be held that that directive does not apply to the main proceedings.
- 23 Second, it is important to note that, unlike the case giving rise to the judgment in *DEB* in which the Court interpreted Article 47 of the Charter in an action for State liability brought under Union law, there is no concrete evidence in the order for reference to indicate that Sociedade Agrícola submitted a request for legal aid for a legal action seeking to protect the rights conferred on it by Union law.
- 24 In these circumstances, it should be held that the Court clearly has no jurisdiction to rule on the questions put by the 5^a Vara Cível de Lisboa.

Costs

- 25 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

The Court clearly has no jurisdiction to rule on the questions referred for a preliminary ruling by the 5^a Vara Cível de Lisboa (Portugal) in its decision of 13 March 2013 (Case C-258/13).

[Signatures]