



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

12 June 2014*

(Requests for preliminary rulings — Common foreign and security policy — Restrictive measures against Belarus — Freezing of funds and economic resources — Exceptions — Payment of professional fees associated with legal services — Discretion of the competent national authority — Right to effective judicial protection — Effect of unlawful origin of funds — None)

In Case C-314/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Lithuania), made by decision of 3 May 2013, received at the Court on 7 June 2013, in the proceedings

Užsienio reikalų ministerija,

Finansinių nusikaltimų tyrimo tarnyba

v

Vladimir Peftiev,

BelTechExport ZAO,

Sport-Pari ZAO,

BT Telecommunications PUE,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, A. Rosas (Rapporteur), D. Šváby and C. Vajda, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Peftiev, BelTechExport ZAO, Sport-Pari ZAO and BT Telecommunications PUE, by V. Vaitkutė Pavan and E. Matulionytė, advokatės,

* Language of the case: Lithuanian.

— the Lithuanian Government, by D. Kriauciūnas and J. Nasutavičienė, acting as Agents,
— the European Commission, by M. Konstantinidis and A. Steiblytė, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1)(b) of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus (OJ 2006 L 134, p. 1), as amended by Council Implementing Regulation (EU) No 84/2011 of 31 January 2011 (OJ 2011 L 28, p. 17) and Council Regulation (EU) No 588/2011 of 20 June 2011 (OJ 2011 L 161, p. 1) ('Regulation No 765/2006').
- 2 The request has been made in proceedings between the Užsienio reikalų ministerija (Ministry of Foreign Affairs) and the Finansinių nusikaltimų tyrimo tarnyba (Financial Crime Investigation Service attached to the Ministry of the Interior), on the one hand, and Mr V. Peftiev, BelTechExport ZAO, Sport-Pari ZAO and BT Telecommunications PUE ('the respondents in the main proceedings'), on the other, concerning restrictive measures against the latter.

Legal context

- 3 Recital 1 to Regulation No 765/2006 is worded as follows:

'On 24 March 2006, the European Council deplored the failure of the Belarus authorities to meet OSCE [Organisation for Security and Cooperation in Europe] commitments to democratic elections, considered that the Presidential elections of 19 March 2006 were fundamentally flawed and condemned the action of the Belarus authorities of that day in arresting peaceful demonstrators exercising their legitimate right of free assembly to protest at the conduct of the Presidential elections. The European Council therefore decided that restrictive measures should be applied against those responsible for the violation of international electoral standards.'

- 4 Article 2(1) of Regulation No 765/2006 provides for the freezing of funds and economic resources belonging to President Lukashenko and certain other officials of the republic of Belarus and to natural or legal persons, entities and bodies associated with them, as listed in Annex I thereto.
- 5 Article 2(2) of Regulation No 765/2006 provides that no funds or economic resources are to be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities and bodies listed in Annex I.
- 6 Article 3(1) of Regulation No 765/2006 provides as follows:

'By way of derogation from Article 2, the competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources are:

- (a) necessary to satisfy the basic needs of persons listed in Annex I or in Annex IA and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; ...

...'

7 According to the information on the websites referred to in Annex II to Regulation No 765/2006, the competent authority for Lithuania is the Užsienio reikalų ministerija.

8 In paragraph 3 of the Council document entitled '[European Union] Best Practices for the effective implementation of restrictive measures', in the update of 24 April 2008 (Document 8666/1/08 REV 1) ('the Best Practices') it is stated that the Best Practices are to be considered non exhaustive recommendations of a general nature for effective implementation of restrictive measures in accordance with prevailing European Union law and applicable national legislation. They are not legally binding and should not be read as recommending any action which would be incompatible with applicable European Union or national laws, including those concerning data protection.

9 Under Title C, Chapter VII of the Best Practices, entitled 'Humanitarian exemptions', paragraphs 54 and 55 thereof are worded as follows:

'54. This section addresses only the application of the so-called humanitarian exemption, which should help to ensure that the basic needs of designated persons can be satisfied, and does not consider other exemptions (e.g. for legal expenses or extraordinary expenses).

55. While acting consistently with the letter and spirit of the Regulations, the competent authority shall take into account fundamental rights when granting exemptions to cover basic needs.'

10 Under Title C, Chapter VIII of the Best Practices, entitled 'Guidance when considering requests for exemptions', paragraphs 57 and 59 to 61 thereof state:

'57. Designated persons and entities can request an authorisation to use their frozen funds or economic resources, for example to satisfy a creditor. ...

...

59. A person or entity wishing to make funds or economic resources available to a designated person or entity must request authorisation. In considering such requests, the competent authorities should, inter alia, take into account any evidence provided on the justification for the request, and whether the applicant's links with the designated person or entity are such as to suggest that both of them might work together to circumvent the freezing measures.

60. When considering requests for authorisation to use frozen funds or economic resources or to make available funds or economic resources, competent authorities should make whatever further investigation they deem appropriate in the circumstances, which may include consulting any other Member States with an interest. Also, competent authorities should consider conditions or safeguards in order to avoid released funds or economic resources being used for any purposes incompatible with the purpose of the exemption. Thus, for example, direct bank transfers may be preferable to cash payments.

Appropriate conditions or limits should also be considered where necessary (e.g. on the quantity or the re-sale value of funds or economic resources that may be made available each month) when granting an authorisation, taking into account the criteria set out in the Regulations. All authorisations should be granted in writing and prior to use of or making available of the funds or economic resources concerned.

61. Regulations oblige competent authorities to inform the person making the request and other Member States whether the request has been granted. ...'

Facts in the main proceedings and the questions referred for a preliminary ruling

- 11 By Regulation No 588/2011 and Council Decision 2011/357/CFSP of 20 June 2011 amending Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2011 L 161, p. 25), the respondents in the main proceedings were in the list of persons subject to restrictive measures applicable in the Member States of the European Union.
- 12 In order to challenge those restrictive measures, they contacted a Lithuanian law firm, which brought an action for annulment before the General Court of the European Union (Case T-438/11 *BelTechExport v Council* (OJ 2011 C 290, p. 15); Case T-439/11 *Sport-pari v Council* (OJ 2011 C 290, p. 15); Case T-440/11 *BT Telecommunications v Council* (OJ 2011 C 290, p. 16); and Case T-441/11 *Peftiev v Council* (OJ 2011 C 290, p. 17)).
- 13 On 3 August 2011, the law firm issued to the respondents in the main proceedings four invoices for the legal services rendered, on the basis of which the respondents in the main proceedings transferred the corresponding sum of money to the law firm's bank account. However, as the restrictive measures applied by the European Union were in force, the transferred funds were frozen in the law firm's bank account.
- 14 Between 2 and 6 December 2011, relying on Article 3 of Regulation No 765/2006, the respondents in the main proceedings made a request to the Užsienio reikalų ministerija et au Finansinių nusikaltimų tyrimo tarnyba that the measures freezing the financial funds not be applied in so far as it was necessary to pay for the legal services provided.
- 15 By decisions of 4 January 2012, the Užsienio reikalų ministerija decided not to allow the respondents in the main proceedings the benefit of the derogation under Article 3(1)(b) of Regulation No 765/2006. It stated therein that it had taken its decision 'having had regard to all legal and political circumstances'. The referring court states that, during the administrative examination of the case, the Užsienio reikalų ministerija stated that it had information in its possession which had led it to form the view that the monetary funds of the respondents in the main proceedings, intended for payment of the legal services provided by the law firm concerned, had been acquired unlawfully.
- 16 On 19 January 2012, the Finansinių nusikaltimų tyrimo tarnyba adopted decisions in which it stated that it was not possible to give effect to the derogation requested by the respondents in the main proceedings, given the refusal of the Užsienio reikalų ministerija.
- 17 The respondents in the main proceedings then instituted proceedings before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius), asking it to annul the decisions of 4 January 2012 of the Užsienio reikalų ministerija and the decisions of 19 January 2012 of the Finansinių nusikaltimų tyrimo tarnyba, and to order those two bodies to examine afresh their requests and to adopt reasoned decisions, having regard to the applicable legal provisions.
- 18 By judgment of 27 August 2012, the Vilniaus apygardos administracinis teismas upheld in its entirety the action brought by the respondents in the main proceedings and remitted to the Užsienio reikalų ministerija and the Finansinių nusikaltimų tyrimo tarnyba, for reconsideration, their requests for implementation of the derogation.

- 19 The Užsienio reikalų ministerija appealed against the judgment of the Vilniaus apygardos administracinis teismas before the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), seeking to have that judgment set aside and a new judgment delivered. The Finansinių nusikaltimų tyrimo tarnyba made the same request.
- 20 Before the referring court, the Užsienio reikalų ministerija, relying on the wording of Article 3(1)(b) of Regulation No 765/2006, argues that it is indeed given an absolute discretion when deciding whether or not to apply that derogation. This interpretation is supported by the fact that the question here for consideration is linked to political issues touching on the external relations which Member States have with other States, an area in which Member States and their authorities ought to have a broader freedom of action.
- 21 The referring court takes the view, however, in the light of the Best Practices and the Court of Justice's case-law, that the interpretation of that provision must take account of the need to ensure protection of fundamental rights, including the right to a judicial remedy. It notes in that regard that the only way of having restrictive measures annulled is to bring an action before the General Court but, in order to do that, it is necessary to have legal representation, as set out in Articles 43 and 44 of the Rules of Procedure of the General Court. Lastly, the referring court observes that, in cases of this nature, the General Court appraises exhaustively the requests of applicants seeking to be granted legal aid and, where there is a need, grants it.
- 22 In those circumstances the Lietuvos vyriausiasis administracinis teismas decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
1. Must Article 3(1)(b) of [Regulation No 765/2006] be interpreted as meaning that the authority which is responsible for application of the derogation set out in Article 3(1)(b) of that regulation enjoys an absolute discretion when taking a decision on whether to grant that derogation?
 2. If the answer to the first question is in the negative, by which criteria should that authority be guided, and by which criteria is it bound, when taking a decision on whether to grant the derogation set out in Article 3(1)(b) of [Regulation No 765/2006]?
 3. Must Article 3(1)(b) of [Regulation No 765/2006] be interpreted as meaning that the authority which is responsible for granting the aforementioned derogation is entitled or obliged, when carrying out the assessment as to whether to grant the derogation sought, to have regard for, inter alia, the fact that the applicants submitting the request are seeking to give effect to their fundamental rights (in this case, the right to a judicial remedy), although it must also ensure that if, in the specific case, the derogation is granted, the objective of the sanction provided for will not be negated and that the derogation will not be misused (for example, if the amount of money earmarked for securing a legal remedy would be manifestly disproportionate in relation to the scale of the legal services provided)?
 4. Must Article 3(1)(b) of [Regulation No 765/2006] be interpreted as meaning that one of the bases capable of providing justification for not granting the derogation set out in that provision may be the illegal nature of the acquisition of the funds in respect of the use of which that derogation is to be implemented?

Consideration of the questions referred

Consideration of the first to third questions

- 23 By its first to third questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 3(1)(b) of Regulation No 765/2006 must be interpreted as meaning that, when taking a decision on whether to grant a derogation requested under that provision with a view to bringing an action challenging the lawfulness of restrictive measures imposed by the European Union, the competent national authority enjoys an absolute discretion and, if not, what factors or criteria must that authority take into consideration.
- 24 It should be borne in mind that, when deciding on a request for release of frozen funds pursuant to Article 3(1)(b) of Regulation No 765/2006, the competent national authority implements EU law. It follows that that authority is required to observe the Charter of Fundamental Rights of the European Union ('the Charter'), as provided for in Article 51(1) thereof.
- 25 Article 3(1)(b) of Regulation No 765/2006, the purpose of which is to facilitate access to legal services, must therefore be interpreted in keeping with the requirements deriving from Article 47 of the Charter. The second sentence of the second paragraph of Article 47 of the Charter, concerning the right to an effective judicial remedy, provides that everyone is to have the possibility of being advised, defended and represented. The third paragraph of Article 47 of the Charter provides specifically that legal aid is to be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
- 26 Thus, Article 3(1)(b) of Regulation No 765/2006 must be interpreted in accordance with Article 47 of the Charter, to the effect that a freeze of funds cannot have the effect of depriving the persons whose funds have been frozen from effective access to justice.
- 27 In the present case it must be remembered that, under the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union and the first subparagraph of Article 43(1) of the Rules of Procedure of the General Court, an action such as the one brought by the respondents in the main proceedings, as referred to in the order for reference, may be signed only by a lawyer.
- 28 The requirement imposed by Article 19 of the Statute of the Court of Justice is based on a view of the lawyer's role as collaborating in the administration of justice and as being required to provide, in full independence and in the overriding interests of that cause, such legal assistance as the client needs (see, to that effect, Case 155/79 *AM & S Europe v Commission* EU:C:1982:157, paragraph 24; Case C-550/07 P *Akzo Nobel Chemicals and Akcros Chemicals v Commission* EU:C:2010:512, paragraph 42; and Joined Cases C-422/11 P and C-423/11 P *Prezes Urzędu Komunikacji Elektronicznej and Poland v Commission* EU:C:2012:553, paragraph 23). Moreover, the Court has held previously that, as no provision is made in the Statute or Rules of Procedure of the Court of Justice for a derogation from or exception to that obligation, an application signed by the applicant himself is insufficient for the purposes of instituting proceedings (see order in Case C-502/06 P *Correia de Matos v Parliament* EU:C:2007:696, paragraph 12).
- 29 It follows from the foregoing that, when taking a decision on whether to grant a derogation for the release of funds and economic resources under Article 3(1)(b) of Regulation No 765/2006, the competent national authority does not enjoy an absolute discretion, but must exercise its powers in a manner which upholds the rights provided for in the second sentence of the second paragraph of Article 47 of the Charter and, in a situation such as that in the main proceedings, observes the indispensable nature of legal representation in bringing an action challenging the lawfulness of restrictive measures.

- 30 The Lithuanian Government submits that the very refusal to grant the derogation referred to in Article 3(1)(b) of Regulation No 765/2006 does not undermine the essence of the right to an effective legal remedy, because the natural or legal person providing the legal services will obtain possession of the financial resources owing to it after the funds and economic resources have been released. This argument, however, is based on the assumption that the action brought will be successful, which it may not be. Moreover, a Member State may not require a legal services professional to bear such a risk and financial burden when Article 3(1)(b) of Regulation No 765/2006 provides for a derogation to be granted for frozen funds and economic resources in order to cover payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services.
- 31 As regards the Lithuanian Government's argument that the respondents in the main proceedings could obtain legal aid as provided for under national law in order to obtain legal representation, suffice it to note that, through Article 3(1)(b) of Regulation No 765/2006, the European Union legislature introduced a coherent system in order to ensure observance of the rights guaranteed by Article 47 of the Charter, irrespective of any freezing of funds. When a person included in the list in Annex I to that regulation must have recourse to necessary legal services, it cannot be that that person must be regarded as destitute due to that freezing of funds; rather, that person must be able to apply to have certain funds or economic resources released, provided that the conditions set out in that provision are satisfied. The very essence of Article 3(1)(b) precludes the competent national authority from refusing to authorise a release of funds on the ground that such a person may have recourse to legal aid.
- 32 As regards the criteria to be taken into consideration by the competent national authority when deciding on a request for a derogation, Article 3(1)(b) of Regulation No 765/2006 sets out limitations on the use of funds: they must be intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services.
- 33 Lastly, in order to achieve optimal control over the use of the funds released, the competent national authority may take account of the recommendations set out in Title C, Chapter VII of the Best Practices relating to humanitarian exemptions, which are applicable *mutatis mutandis* to requests for derogations such as the one at issue in the main proceedings, as it is aimed at procuring the benefit of effective judicial protection through the bringing of an action against the restrictive measures imposed on the respondents in the main proceedings. According to the Best Practices, the competent national authority may set the conditions it deems appropriate in order to guarantee, inter alia, that the objective of the sanction imposed is not frustrated and the derogation granted is not distorted. That authority may, in particular, give preference to bank transfers over cash payments.
- 34 In the light of the foregoing, the answer to the first to third questions is:
- Article 3(1)(b) of Regulation No 765/2006 must be interpreted as meaning that, when taking a decision on whether to grant a derogation requested under that provision with a view to bringing an action challenging the lawfulness of restrictive measures imposed by the European Union, the competent national authority does not enjoy an absolute discretion, but must exercise its powers in a manner which upholds the rights provided for in the second sentence of the second paragraph of Article 47 of the Charter and observes the indispensable nature of legal representation in bringing such an action before the General Court.
 - The competent national authority may verify that the funds release of which is requested are intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services. It may also set the conditions it deems appropriate in order to guarantee, inter alia, that the objective of the sanction imposed is not frustrated and the derogation granted is not distorted.

Consideration of the fourth question

- 35 By its fourth question, the referring court asks whether Article 3(1)(b) of Regulation No 765/2006 must be interpreted as meaning that one of the bases capable of providing justification for not granting the derogation set out in that provision may be the unlawful nature of the acquisition of the funds in respect of the use of which that derogation is to be implemented.
- 36 As observed by the respondents in the main proceedings and the European Commission, a seizure or confiscation of funds acquired unlawfully may be effected pursuant to a wide range of rules under European Union or national law.
- 37 Those rules are distinct from Regulation No 765/2006, pursuant to which the funds belonging to the respondents in the main proceedings were frozen. As evidenced by recital 1 in the preamble thereto, the purpose of Regulation No 765/2006 is not to penalise unlawful acquisitions of funds, but rather to apply restrictive measures against persons responsible for infringements of international electoral standards at the time of the elections of 19 March 2006 in Belarus.
- 38 The freezing of the funds and economic resources belonging to the respondents in the main proceedings must accordingly be effected in accordance with the provisions of Regulation No 765/2006, which sets out the detailed rules for the freezing of funds and economic resources and for the scheme applicable to those funds and economic resources.
- 39 Thus, since it is a derogation from the freezing of funds and economic resources in order to pay for legal services, it must be appraised in accordance with Article 3(1)(b) of Regulation No 765/2006, which makes no reference to the origin of the funds or possible unlawful acquisition thereof.
- 40 Accordingly, the answer to the fourth question is that Article 3(1)(b) of Regulation No 765/2006 must be interpreted as meaning that, in a situation such as that of the main proceedings, in which a freezing of funds and economic resources is based on that regulation, a derogation from the freezing of funds and economic resources in order to pay for legal services must be appraised in accordance with that provision, which makes no reference to the origin of the funds or possible unlawful acquisition thereof.

Costs

- 41 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 (Fifth Chamber) hereby rules:

- 1. Article 3(1)(b) of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus, as amended by Council Implementing Regulation (EU) No 84/2011 of January 2011 and by Council Regulation (EU) No 588/2011 of 20 June 2011, must be interpreted as meaning that, when taking a decision on whether to grant a derogation requested under that provision with a view to bringing an action challenging the lawfulness of restrictive measures imposed by the European Union, the competent national authority does not enjoy an absolute discretion, but must exercise its powers in a manner which upholds the rights provided for in the second sentence of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and observes the indispensable nature of legal representation in bringing such an action before the General Court of the European Union.**

The competent national authority may verify that the funds release of which is requested are intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services. It may also set the conditions it deems appropriate in order to guarantee, inter alia, that the objective of the sanction imposed is not frustrated and the derogation granted is not distorted.

- 2. Article 3(1)(b) of Regulation No 765/2006, as amended by Implementing Regulation No 84/2011 and by Regulation No 588/2011, must be interpreted as meaning that, in a situation such as that of the main proceedings, in which a freezing of funds and economic resources is based on that regulation, a derogation from the freezing of funds and economic resources in order to pay for legal services must be appraised in accordance with that provision, which makes no reference to the origin of the funds or possible unlawful acquisition thereof.**

[Signatures]