



## Reports of Cases

### Case C-571/16

**Nikolay Kantarev**  
v  
**Balgarska Narodna Banka**

(Request for a preliminary ruling from the Administrativen sad Varna)

(Reference for a preliminary ruling — Deposit guarantee schemes — Directive 94/19/EC — Article 1(3)(i) — Article 10(1) — Definition of ‘unavailable deposit’ — Liability of a Member State for harm caused to individuals by breaches of EU law — Sufficiently serious breach of EU law — Procedural autonomy of the Member States — Principle of sincere cooperation — Article 4(3) TEU — Principles of equivalence and effectiveness)

Summary — Judgment of the Court (Fifth Chamber), 4 October 2018

1. *Questions referred for a preliminary ruling — Admissibility — Limits — Hypothetical questions referred in a context excluding a useful answer*

(Art. 267 TFEU)

2. *Freedom of establishment — Freedom to provide services — Credit institutions — Deposit guarantee schemes — Directive 94/19 — Unavailability of a deposit — National legislation subjecting a finding that deposits are unavailable to the insolvency of the credit institution and to withdrawal of its banking licence — Not permissible — Derogation from the time limits provided for the purposes of determining that deposits have become unavailable and of reimbursing those deposits — Not permissible*

(European Parliament and Council Directive 94/19, as amended by Directive 2009/14, Arts 1(3) and 10(1))

3. *Freedom of establishment — Freedom to provide services — Credit institutions — Deposit guarantee schemes — Directive 94/19 — Unavailability of a deposit — Express determination by the relevant competent authority*

(European Parliament and Council Directive 94/19, as amended by Directive 2009/14, Art. 1(3)(i))

4. *Freedom of establishment — Freedom to provide services — Credit institutions — Deposit guarantee schemes — Directive 94/19 — Unavailability of deposits — Determination that funds are unavailable subject to a prior request for payout of funds — Not permissible*

(European Parliament and Council Directive 94/19, as amended by Directive 2009/14, Art. 1(3)(i))

5. *Freedom of establishment — Freedom to provide services — Credit institutions — Deposit guarantee schemes — Directive 94/19 — Rights conferred on individuals — Article 1(3)(i) — Infringement by a Member State — Obligation to make good damage caused to individuals — Conditions — Sufficiently serious infringement — Causal link between the breach and the harm — Verification by the national court*

*(European Parliament and Council Directive 94/19, as amended by Directive 2009/14, Art. 1(3)(i))*

6. *EU law — Rights conferred on individuals — Infringement by a Member State — Obligation to make good damage caused to individuals — Rules on damages — Application of national law — Compliance with the principles of equivalence and effectiveness — National legislation providing for two different remedies subject to different conditions — National legislation subjecting the right to damages to the duty of providing proof of fault — National legislation providing for the payment of a fixed-fee or fee proportional to the value in dispute — National legislation subjecting the right to obtain damages to prior annulment of the administrative measure which caused the harm — Lawfulness — Conditions — National legislation subjecting the right to obtain damages to the additional condition that the national authority intended to cause the harm — Not permissible*

*(Art. 4(3), TEU)*

1. See the text of the decision.

(see paras 42-45)

2. Article 1(3) and Article 10(1) of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009, must be interpreted as precluding, first, national legislation according to which the determination that deposits have become unavailable is concomitant with the insolvency of that credit institution and the withdrawal of that institution's banking licence and, second, derogation from the time limits provided by those provisions for the purposes of determining that deposits have become unavailable and of reimbursing those deposits on the ground that the credit institution must be placed under special supervision.

(see para. 69, operative part 1)

3. Article 1(3)(i) of Directive 94/19, as amended by Directive 2009/14, must be interpreted as meaning that the unavailability of deposits within the meaning of that provision must be determined expressly by the competent national authority and cannot be inferred from other acts of the national authorities — such as the decision of the Balgarska Narodna Banka (Bulgarian Central Bank) to place Korporativna Targovska Banka under special supervision — nor presumed from circumstances such as those in the case in the main proceedings.

(see para. 78, operative part 2)

4. Article 1(3)(i) of Directive 94/19, as amended by Directive 2009/14, must be interpreted as meaning that a determination that a bank deposit is unavailable, within the meaning of that provision, cannot be subject to the condition that the account holder must first make an unsuccessful request for payment of funds from the credit institution.

(see para. 87, operative part 3)

5. Article 1(3)(i) of Directive 94/19, as amended by Directive 2009/14, has direct effect and constitutes a rule of law intended to confer rights on individuals allowing depositors to bring an action for damages for the harm sustained by late repayment of deposits. It is for the referring court to ascertain, first, whether the failure to determine that deposits were unavailable within the time limit of five days laid down in that provision, despite the fact that the conditions which were clearly set out in that provision were satisfied, on the facts of the case in the main proceedings, amounts to a sufficiently serious breach, within the meaning of EU law and, second, whether there is a direct causal link between that breach and the harm sustained by a depositor, such as Mr Nikolay Kantarev.

(see para. 117, operative part 4)

6. Article 4(3) TEU and the principles of equivalence and effectiveness must be interpreted as, in the absence of a specific procedure in Bulgaria holding that Member State liable for harm caused by a national authority's breach of EU law:

- not precluding national legislation which provides for two different remedies falling within the jurisdiction of different courts subject to different conditions, provided that the referring court ascertains whether, in respect of national law, a national authority such as the Bulgarian Central Bank must be held liable on the basis of the *Zakon za otgovornostta na darzhavata i obshtinite za vredi* (Law on Liability of the State and of Municipalities for Damage) or the *Zakon za zadalzheniata i dogovorite* (Law on Obligations and Contracts) and that each of the two remedies complies with the principles of equivalence and effectiveness;
- precluding national legislation which subjects the right of individuals to obtain damages to the additional condition that the national authority in question intended to cause the harm;
- not precluding national legislation which subjects the right of individuals to obtain damages to the duty of providing proof of fault provided that, which it is for the referring court to ascertain, the concept of 'fault' does not go beyond that of a 'sufficiently serious breach';
- not precluding national legislation which provides for the payment of a fixed-fee or fee proportional to the value in dispute provided that, which it is for the referring court to ascertain, the payment of a fixed-fee or fee proportional to the value in dispute is not contrary to the principle of effectiveness, in the light of the amount and level of the fee, whether or not that fee might represent an insurmountable obstacle to access to the courts, whether it is mandatory and of the possibilities of exemption; and
- not precluding national legislation which subjects the right of individuals to obtain damages to prior annulment of the administrative measure which caused the harm, provided that, which it is for the referring court to ascertain, that requirement may reasonably be required of the injured party.

(see para. 147, operative part 5)