Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

8 May 2019*

(Reference for a preliminary ruling — Article 49 TFEU — Article 15(2) and Article 16 of the Charter of Fundamental Rights of the European Union — Freedom of establishment and freedom to provide services — Restriction — Decision to immediately close a commercial enterprise — No statement of reasons — Overriding reasons in the public interest — Prevention of criminal offences against persons engaged in prostitution — Protection of public health — Proportionality of the restriction on the freedom of establishment — Articles 47 and 48 of the Charter of Fundamental Rights — Effectiveness of judicial review — Rights of defence — General principle of the right to good administration)

In Case C-230/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol, Austria), made by decision of 27 March 2018, received at the Court on 30 March 2018, in the proceedings

PI

v

Landespolizeidirektion Tirol,

THE COURT (Sixth Chamber),

composed of C. Toader, President of the Chamber, A. Rosas and M. Safjan (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– PI, by A. Zelinka, Rechtsanwalt,

– the Landespolizeidirektion Tirol, by C. Schmalzl, acting as Agent,

– the Austrian Government, by G. Hesse, acting as Agent,

– the European Commission, by H. Krämer and L. Malferrari, acting as Agents,

* Language of the case: German.

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 15(2) and Articles 41, 47 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between PI and the Landespolizeidirektion Tirol (State Police Department of Tyrol, Austria; 'the State Police Department') concerning the lawfulness of the closure of a commercial establishment managed by PI.

Legal context

EU law

The Charter

3 Article 15 of the Charter, entitled 'Freedom to choose an occupation and right to engage in work', provides:

'1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

…'

4 The explanations relating to the Charter (OJ 2007 C 303, p. 17) state, as regards Article 15(2) thereof, that that provision deals with the three freedoms guaranteed by Articles 26, 45, 49 and 56 TFEU, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

5 Article 16 of the Charter, entitled 'Freedom to conduct a business', is worded as follows:

'The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.'

6 The explanations relating to the Charter state, as regards Article 16 thereof, that that provision is based on Court of Justice case-law which has recognised freedom to exercise an economic or commercial activity and freedom of contract, and on Article 119(1) and (3) TFEU, which recognises free competition.

7 Article 35 of the Charter, entitled 'Health care', provides;

'Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. …'

8 Article 41 of the Charter, entitled 'Right to good administration', states:

'1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

…'

9 Article 47 of the Charter, entitled 'Right to an effective remedy and to a fair trial', reads as follows:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

…'

10 Article 48 of the Charter, entitled 'Presumption of innocence and right of defence', states in paragraph 2:

'Respect for the rights of the defence of anyone who has been charged shall be guaranteed.'

11 Article 51 of the Charter, entitled 'Field of application', provides in paragraph 1:

'The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. ...'

12 Article 52 of the Charter, entitled 'Scope and interpretation of rights and principles', provides:

'1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

…

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.'

Directive 2006/123/EC

13 Article 4 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006, on services in the internal market (OJ 2006 L 376, p. 36), entitled 'Definitions', reads as follows:

'For the purposes of this Directive, the following definitions shall apply:

…

(5) "establishment" means the actual pursuit of an economic activity, as referred to in Article 43 [EC], by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;

(6) "authorisation scheme" means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;

…'

14 Chapter III of that directive, entitled 'Freedom of establishment for providers', includes, in Section 1, entitled 'Authorisations', Articles 9 to 13.

15 Article 9 of that directive, entitled 'Authorisation schemes', provides in paragraph 1:

'Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

(a) the authorisation scheme does not discriminate against the provider in question;

(b) the need for an authorisation scheme is justified by an overriding reason relating to the public interest;

(c) the objective pursued cannot be attained by means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective.'

16 Article 10 of that directive, entitled 'Conditions for the granting of authorisation', states in paragraph 1:

'Authorisation schemes are to be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.'

17 Section 2, entitled 'Requirements prohibited or subject to evaluation', of Chapter III of Directive 2006/123 includes Articles 14 and 15.

Austrian law

18 Paragraph 14 of the Tiroler Landes-Polizeigesetz (Tyrol State Police Law) of 6 July 1976 (LGBl. No 60/1976), as last amended (LGBl. No 56/2017) ('the Police Law'), is entitled 'Prohibition' and provides:

'The following shall be prohibited:

(a) acquiescing to sexual acts being carried out on one's own body on a commercial basis or engaging in sexual acts on a commercial basis (prostitution) outside licensed brothels (Paragraph 15);

…’

19 Paragraph 15 of that law, entitled ‘Authorisation to operate a brothel’, provides in paragraph 1:

‘A brothel is a business establishment in which prostitution is practised. A brothel may not be operated without an authorisation (authorisation to operate a brothel).’

20 Paragraph 19 of that law, entitled ‘Penalty provision’, states in paragraph 2:

‘Anyone who operates a brothel without an authorisation pursuant to Paragraph 15 is committing an administrative offence and shall be liable to a fine of up to EUR 36 000 or, in the event of default of payment, to up to four weeks’ imprisonment.’

21 According to Paragraph 19a of that law, entitled ‘Monitoring and closure of a brothel’:

‘1. If, on the basis of concrete facts, there are reasonable grounds for suspecting an administrative offence pursuant to Paragraph 19(1) or (2), the authority and the bodies of the public security service shall be entitled to … enter buildings or premises that appear to serve the unlawful practice of prostitution. The owners or tenants of such buildings or premises are obliged to acquiesce to their buildings or premises being entered. The exercise of direct coercive power is permitted.

…

3. If, on the basis of concrete facts, there are reasonable grounds for suspecting an administrative offence pursuant to Paragraph 19(2) and it can be assumed that the unlawful brothel business is continuing, the authority may, even without a prior procedure, take such measures as are necessary to stop the brothel business, in particular the on-the-spot closure of the brothel.

4. Upon application of the current operator or of the owner of the premises that have been used as a brothel, the authorities must withdraw, by decision, the measures taken pursuant to subparagraph 3, if the applicant

(a) can produce an authorisation to operate a brothel or

(b) can ensure that the business of the brothel will not be resumed even after the measures pursuant to subparagraph 3 have been withdrawn.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

22 PI, a Bulgarian national, conducted a massage business on the basis of a business licence issued on 9 February 2011 by the Stadtmagistrat Innsbruck (Municipal Administration, Innsbruck, Austria). She ran a massage salon located in that city.

23 On 12 December 2017, two police officers of the State Police Department conducted a check in PI’s massage salon. Those officials believed that, in that salon, sexual services, namely naked massages and erotic massages, were being offered to clients and therefore decided, at approximately 20.30 on that same day, to close that salon on the basis of suspicion of infringement of Paragraph 19(2) of the Police Law (‘the decision of 12 December 2017’). Consequently, official seals were affixed on the salon in question.

24 PI was verbally informed of that decision immediately before the closure of the salon. She was not issued with confirmation of that closure, nor did she receive any documents setting out the reasons for the adoption of that decision.

25 On 13 December 2017, PI instructed a lawyer to safeguard her interests and, on several occasions over the course of the days that followed, that lawyer attempted to gain access to the police file. However, access was refused on the ground that, in the case of administrative measures such as those that PI was subject to, access to files was not permissible since no criminal proceedings had been initiated against her.

26 On 14 December 2017, PI sought annulment of the decision of 12 December 2017 and, on 29 December 2017, the State Police Department decided to grant that request. The decision adopted by that administrative authority did not contain a statement of reasons concerning the closure or set out the grounds for the annulment of the decision of 12 December 2017.

27 On 18 December 2017, PI brought an action before the referring court, the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol, Austria), seeking a declaration that the closure of her massage salon was unlawful.

28 The State Police Department failed to communicate to the referring court the documents and facts relevant to the case; therefore, that court itself proceeded to establish those facts.

29 That court notes that, pursuant to national legislation, a decision regarding the closure of a commercial enterprise, such as PI's massage salon, is legally effective upon its adoption. It states that, in so far as the objective of that legislation is to combat illegal prostitution, competent authorities must be able to adopt measures in the exercise of their direct authority and coercive power.

30 Such a decision may be annulled, at the request of the person concerned, by either the administrative authority, in this instance the State Police Department, with *pro futuro* effect, or by a court, in this instance the referring court, which may review the lawfulness of that decision.

31 However, unlike in other national procedures involving the exercise, by the authorities, of their direct authority and coercive power, the legislation governing the procedure at issue in the main proceedings does not require that those authorities, following the exercise of such power, justify their decision in writing. The obligation to provide a written statement of reasons for a decision taken in the exercise of that power is intended to compel the authority concerned to reassess the legality of its intervention.

32 The referring court considers that, in the absence of a written document setting out the reasons for the decision adopted by the competent authority in the context of a procedure such as that at issue in the main proceedings, the addressee of such a decision is deprived of the possibility of accessing the file relating to his case, seeing the evidence collected by that authority and expressing his views in that regard. It is only indirectly, in an action brought against the measures taken by that authority, that the addressee can learn of the reasons why the authority suspected that an illegal act had been committed.

33 Furthermore, the possibilities available to challenge the relevant decision are insufficient.

34 Pursuant to Paragraph 19a(4) of the Police Law, the competent authority may only annul its decision concerning the closure of the establishment in question in two situations, namely where the addressee of that decision can produce an authorisation to operate a brothel or can ensure that the business of the brothel will not be resumed after the annulment of the closure decision.

35 However, as regards the decision of 12 December 2017, the referring court is not entitled to review the merits of the facts that led to the adoption of the decision since that court is only competent to assess whether a police officer had, in that instance, reasonable grounds for suspecting illegal activity.

36 In those circumstances, the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 15(2) of the [Charter] to be understood as precluding legislation of a Member State which, as in the case of Paragraph 19[a](3) [of the Police Law], makes it possible for bodies of an authority, even without a prior administrative procedure, to be able to take measures of direct authority and coercive power, such as, in particular, the on-the-spot closure of a business establishment, without these merely being interim measures?

(2) From the perspective of equality of arms and the perspective of an effective legal remedy, is Article 47 of the Charter, potentially in conjunction with Articles 41 and 52 thereof, to be understood as precluding legislation of a Member State which, as laid down in Paragraph 19[a](3) and (4) [of the Police Law], provides for de facto measures of direct authority and coercive power, such as, in particular, closures of business establishments, without documentation and without providing confirmation to the person concerned?

(3) From the perspective of equality of arms, is Article 47 of the Charter, potentially in conjunction with Articles 41 and 52 thereof, to be understood as precluding legislation of a Member State which, for the purpose of annulling de facto measures of direct authority and coercive power, such as, in particular, closures of business establishments, requires a substantiated application to lift that closure from the person affected by those de facto measures, as laid down in Paragraph 19[a](3) and (4) [of the Police Law]?

(4) From the perspective of an effective legal remedy, is Article 47 of the Charter, in conjunction with Article 52 thereof, to be understood as precluding legislation of a Member State which, as in the case of Paragraph 19[a](4) [of the Police Law], allows only for a right to apply for annulment that is restricted to specific conditions in the case of a de facto coercive measure in the form of the closure of a business establishment?'

Consideration of the questions referred

Admissibility

37 In its written observations, the Austrian Government submits that the fourth question and, in part, the second and third questions, are inadmissible in so far as they relate to Article 19a(4) of the Police Law under which a competent authority may annul the measures in question.

38 It states that the State Police Department withdrew the closure measure relating to PI's salon and ordered the removal of the official seals affixed on that salon. In those circumstances, Article 19a(4) of the Police Law is no longer applicable in the main proceedings since the object of those proceedings is not an administrative review, but rather judicial review of the measures concerned.

39 In that regard, it should be noted that, as is apparent from the documents before the Court, the main proceedings relate to a review of the lawfulness of the decision of 12 December 2017 ordering the closure of PI's salon since the appeal against that decision was brought before the decision was annulled by the State Police Department on 29 December 2017.

40 It should also be recalled that, according to the Court's settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national

court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it and to understand the reasons for the referring court's view that it needs answers to those questions in order to rule in the dispute before it (judgment of 14 February 2019, *Milivojević*, C-630/17, EU:C:2019:123, paragraph 48 and the case-law cited).

41 In the present case, it must be stated that the referring court is best placed to assess PI's legal interest in bringing proceedings under national law. Consequently, it must be held that the second to fourth questions are admissible.

Preliminary observations

42 It should be observed as a preliminary point that, in the context of the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (judgment of 19 December 2018, *AREX CZ*, C-414/17, EU:C:2018:1027, paragraph 34 and the case-law cited).

43 In the present case, even if, formally, the referring court has limited its questions to the interpretation of Article 15(2) and Articles 41, 47 and 52 of the Charter, that does not prevent this Court from providing the referring court with all the elements of interpretation of EU law that may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions. It is, in that regard, for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation in view of the subject matter of the dispute in the main proceedings (see, to that effect, judgment of 19 December 2018, *AREX CZ*, C-414/17, EU:C:2018:1027, paragraph 35 and the case-law cited).

44 As is apparent from the documents before the Court, PI, a Bulgarian national, works on a self-employed basis in Austria, where she operates a massage salon.

45 For the purpose of deciding on the appeal before it, the referring court asks whether EU law precludes national legislation providing that a commercial establishment, such as that at issue in the main proceedings, may be closed with immediate effect by a decision of a national authority on the grounds that it suspects prostitution is practised, without the authorisation required, within that establishment, yet without that legislation ensuring that certain procedural rights are complied with in relation to the person operating that establishment.

46 In that regard, it should be noted at the outset that the activity described in paragraph 44 of the present judgment constitutes a service, within the meaning of Article 57 TFEU, since it is exercised in the territory of a Member State by a national of another Member State. Furthermore, operating a massage salon on the territory of another Member State falls within the scope of the freedom of establishment and the freedom to provide services under Article 49 et seq. TFEU.

47 Assuming that PI's activity also includes the operation of an establishment in which prostitution services are offered, it should be recalled that prostitution constitutes a provision of services for remuneration (judgment of 20 November 2001, *Jany and Others*, C-268/99, EU:C:2001:616, paragraph 49), whereas an activity consisting in the operation of a prostitution business falls within the freedom of establishment, within the meaning of Article 49 TFEU and Articles 9 to 15 of Directive

2006/123, where carried out by the provider for an indefinite period and through a stable infrastructure (see, to that effect, judgment of 1 October 2015, *Trijber and Harmsen*, C-340/14 and C-341/14, EU:C:2015:641, paragraphs 67 to 77).

48 Thus, if it were to become apparent in the present case, that the activity of PI is carried out for an indefinite period and through a stable infrastructure, which it is for the referring court to verify, that activity would fall within the scope of the freedom of establishment, within the meaning of Article 49 TFEU and Articles 9 to 15 of Directive 2006/123.

49 It is apparent from the order for reference that, under the national legislation applicable to the main proceedings, the practice of prostitution is subject to an authorisation.

50 As regards Directive 2006/123, Articles 9 to 13 of which lay down the conditions that must be met by an authorisation scheme, it should be noted that the questions referred in the context of the present request for a preliminary ruling do not concern the lawfulness of the national legislation governing the practice of prostitution as such, but rather the compatibility with EU law of a measure, adopted without certain procedural guarantees, closing a commercial establishment.

51 In those circumstances, the questions referred must be answered in the light of Article 49 TFEU and not Directive 2006/123.

52 Article 15(2) of the Charter, which is referred to in the first question, recognises the freedom of every citizen of the Union to exercise the right of establishment and to provide services in any Member State.

53 It is clear from the explanations relating to the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be taken into consideration for the purpose of interpreting it, that Article 15(2) of the Charter deals with the three freedoms guaranteed by Articles 26, 45, 49 and 56 TFEU, namely, the free movement of workers, freedom of establishment and freedom to provide services.

54 In that regard, it should be noted that even though the referring court does not make reference, in its request for a preliminary ruling, to Article 16 of the Charter, it is clear from the case-law of the Court that that provision refers, inter alia, to Article 49 TFEU, which guarantees the fundamental freedom of establishment (see, to that effect, judgment of 13 February 2014, *Sokoll-Seebacher*, C-367/12, EU:C:2014:68, paragraph 22).

55 Consequently, making reference, with regard to the freedom of establishment, to Article 15(2) of the Charter, necessarily requires, in the context of the main proceedings, an assessment of compliance with that freedom in the light of Article 16 of the Charter.

56 As regards Article 41 of the Charter, which is referred to in the second and third questions, it must be observed that it is clear from the wording of that provision that it is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the European Union (judgment of 13 September 2018, *UBS Europe and Others*, C-358/16, EU:C:2018:715, paragraph 28 and the case-law cited). It follows that Article 41 of the Charter is irrelevant to the case in the main proceedings.

57 Nevertheless, that provision reflects a general principle of EU law to the effect that the right to good administration encompasses the obligation of the administration to give reasons for its decisions (see, to that effect, judgment of 17 July 2014, *YS and Others*, C-141/12 and C-372/12, EU:C:2014:2081, paragraph 68). The obligation of the administration to state reasons for a decision which are sufficiently specific and concrete to allow the person concerned to understand the grounds of the individual measure adversely affecting him is thus a corollary of the principle of respect for the rights

of the defence, which is a general principle of EU law (see, to that effect, judgments of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 88, and of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431, paragraph 38).

58 Therefore, it follows from the foregoing considerations that, by its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 49 TFEU, Article 15(2) and Articles 16, 47 and 52 of the Charter and the general principle of the right to good administration must be interpreted, in circumstances such as those at issue in the main proceedings, as precluding national legislation providing that an administrative authority may decide to close a commercial establishment with immediate effect, on the ground that it suspects that prostitution is practised in that establishment without the authorisation required under that national legislation, in so far as that legislation, in the first place, does not require reasons, in fact and in law, to be given in writing for such a decision and to be communicated to its addressee, in the second place, requires that any application brought by that addressee and seeking annulment of that decision must be reasoned and, in the third place, limits the grounds on which the competent administrative body may annul that decision.

The questions

59 In accordance with the Court's settled case-law, any national measure which, albeit applicable without discrimination on grounds of nationality, prohibits, hinders or renders less attractive the exercise by EU nationals of the freedom of establishment guaranteed by the Treaty constitutes a restriction within the meaning of Article 49 TFEU (judgment of 14 November 2018, *Memoria and Dall'Antonia*, C-342/17, EU:C:2018:906, paragraph 48 and the case-law cited).

60 In the present case, national legislation such as that at issue in the main proceedings, providing that an administrative authority may decide to close a commercial establishment with immediate effect, on the ground that it suspects that prostitution is practised in that establishment without the authorisation required under that legislation, could have negative consequences on the turnover and continuation of the professional activity, in particular as regards the rapport with customers receiving the services concerned. Consequently, that legislation is liable to prevent or dissuade nationals of other Member States who wish to establish themselves in the Province of Tyrol (Austria) to carrying out an occupational activity such as that at issue in the main proceedings (see, by analogy, judgment of 5 November 2014, *Somova*, C-103/13, EU:C:2014:2334, paragraphs 41 to 45).

61 It follows that that national legislation constitutes a restriction on the freedom of establishment for the purposes of Article 49 TFEU.

62 In accordance with the Court's settled case-law, a restriction on freedom of establishment provided for in Article 49 TFEU may be justified, if applied without discrimination on grounds of nationality, by overriding reasons in the public interest, provided that it is appropriate for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it (judgment of 14 November 2018, *Memoria and Dall'Antonia*, C-342/17, EU:C:2018:906, paragraph 51 and the case-law cited).

63 It is also settled case-law that the fundamental rights guaranteed by the Charter are applicable in all situations governed by EU law and that they must, therefore, in particular be complied with where national legislation falls within the scope of EU law (judgment of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 62 and the case-law cited).

64 That is in particular the case where national legislation is such as to obstruct one or more of the fundamental freedoms guaranteed by the Treaty and the Member State concerned relies on overriding reasons in the public interest in order to justify such an obstacle. In such a situation, the national

legislation concerned can fall within the exceptions thereby provided for only if it complies with the fundamental rights the observance of which is ensured by the Court (judgment of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 63 and the case-law cited).

65 In the present case, in so far as the national legislation at issue in the main proceedings constitutes, as is apparent from paragraph 61 of the present judgment, a restriction on the freedom of establishment for the purposes of Article 49 TFEU, it also entails a limitation on the exercise of the freedom of establishment and the freedom to conduct a business, respectively enshrined in Article 15(2) and Article 16 of the Charter.

66 At the same time, Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights enshrined by the Charter as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, in accordance with the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (judgment of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 70 and the case-law cited).

67 In the present case, the Austrian Government submits that that national legislation is necessary for the prevention of criminal activities related to prostitution and the protection of human health.

68 It states that, given that the practice of prostitution is not prohibited in the Province of Tyrol, it is subject to checks and to limitations laid down in the public interest. To that effect, that national legislation subjects the activity to authorisation. In addition, persons carrying out that activity are subject to specific health requirements and regular checks to detect sexually transmitted diseases, including AIDS and tuberculosis.

69 Since illegal prostitution avoids such checks, it presents, in the view of that government, a risk to the health of the persons carrying out that activity, to their clients and, in general, to society.

70 In that regard, it should be recalled that preventing criminal offences being committed against persons in prostitution, in particular human trafficking, forced prostitution and child prostitution, constitutes an overriding reason relating to the public interest (see, to that effect, judgment of 1 October 2015, *Trijber and Harmsen*, C-340/14 and C-341/14, EU:C:2015:641, paragraph 68).

71 In addition, it follows from the settled case-law of the Court that the protection of public health is one of the overriding reasons in the public interest recognised by EU law (judgment of 1 March 2018, *CMVRO*, C-297/16, EU:C:2018:141, paragraph 57).

72 The protection of health is also guaranteed by Article 35 of the Charter, which provides that everyone has the right of access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices.

73 In the present case, the supply of services from engaging in prostitution, even for a short period, in an unregistered commercial establishment, and, therefore, without an authorisation granted by a public authority of a Member State does not ensure proper control by competent authorities of these activities within the establishment concerned and, consequently, may increase the risk, for persons conducting their business there, of being victims of criminal offences.

74 Similarly, the provision of those services by persons not subject to specific health requirements and regular checks to detect sexually transmitted diseases likely to increase risks for the health of both persons who engage in prostitution and to their customers, since it is common ground that untreated sexually transmitted diseases cause a deterioration of the state of health and that being a carrier of an untreated sexually transmitted disease increases the risk of contracting another disease.

75 In those circumstances, the restriction on freedom of establishment that national legislation, such as that at issue in the main proceedings, which confers on an administrative authority the power to decide to close with immediate effect a commercial establishment on the ground that it suspects the exercise, within that establishment, of a prostitution business without the authorisation required by that regulation, must be regarded as being justified by overriding reasons in the public interest, and suitable for securing the attainment of the objectives pursued by the legislation, namely the prevention of the commission of criminal offences against persons who engage in prostitution and the protection of public health.

76 That being so, it must be determined whether the possibility for a national administrative authority to decide to close with immediate effect a commercial establishment on the ground that it suspects the exercise, within that establishment, of a prostitution business without the permit required by national legislation may be regarded as proportionate to the objectives referred to in the preceding paragraph.

77 In that regard, national legislation such as that at issue in the main proceedings, providing that an administrative authority can decide to close with immediate effect a commercial establishment for the above reasons, could, in principle, be regarded as proportionate in the light of those objectives. However, in the present case, that legislation allows the closure of an establishment without the stating of any reasons, in fact and in law, in writing and communicated to its addressee, while requiring, at the same time, that the application for the annulment of a decision on that closure be reasoned by the person concerned.

78 It follows from the case-law of the Court that the effectiveness of the judicial review guaranteed by Article 47 of the Charter also requires that the person concerned be able to ascertain the reasons upon which the decision taken by an administrative authority in relation to him is based, either by reading the decision itself or by communication of those reasons on its request, without prejudice to the power of the court having jurisdiction to require the authority concerned to communicate them so as to enable him to defend his rights in the best possible conditions and to decide in full knowledge of the circumstances whether it is worthwhile applying to the court having jurisdiction, and in order to put the latter fully in a position to carry out the review of the lawfulness of the national decision in question (judgments of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 53, and of 16 May 2017, *Berlioz Investment Fund*, C-682/15, EU:C:2017:373, paragraph 84).

79 Moreover, the right to be heard in all proceedings, which is affirmed by Articles 47 and 48 of the Charter and which forms an integral part of respect for the rights of the defence, which is a general principle of EU law, requires the authorities to pay due attention to the observations submitted by the person concerned, examining carefully and impartially all the relevant aspects of the individual case and giving a detailed statement of reasons for their decision; the obligation to state reasons for a decision are sufficiently specific and concrete to allow the person concerned to understand the reasons for the refusal of his request is thus a corollary of the principle of respect for the rights of the defence (see, to that effect, judgment of 5 November 2014, *Mukarubega*, C-166/13, EU:C:2014:2336, paragraphs 43, 45 and 48).

80 When the authorities of the Member States take measures which come within the scope of EU law, they are, as a rule, subject to the obligation to observe the rights of defence of addressees of decisions which significantly affect their interests (judgment of 5 November 2014, *Mukarubega*, C-166/13, EU:C:2014:2336, paragraph 50).

81 The requirement that the national administrative authorities state reasons is particularly important in a case such as that in the main proceedings, in which it must be determined whether a restriction of the freedom of establishment within the meaning of Article 49 TFEU and the rights of establishment and to conduct a business, enshrined in Article 15(2) and Article 16 of the Charter respectively, is justified and proportionate.

82 In that connection, it has been established that it is for the national courts to carry out a global assessment of the circumstances in which restrictive legislation was adopted and implemented on the basis of the evidence provided by the competent authorities of the Member State, seeking to demonstrate the existence of objectives capable of justifying a restriction of a fundamental freedom guaranteed by the FEU Treaty and its proportionality (see, to that effect, judgment of 28 February 2018, *Sporting Odds*, C-3/17, EU:C:2018:130, paragraph 53).

83 While those courts may be required, under national procedural rules, to take the necessary measures in order to encourage the production of such evidence, they cannot, in contrast, be required to substitute themselves for those authorities in setting out the justifications which it is the duty of the latter to provide. Should such justifications not be provided through absence or passivity of those authorities, the national courts must be able to draw all inferences which result from such failure (judgment of 28 February 2018, *Sporting Odds*, C-3/17, EU:C:2018:130, paragraph 54).

84 In this case, the national legislation, as it does not require that the decision ordering the closure with immediate effect of a commercial establishment such as that at issue in the main proceedings is properly reasoned, in fact and in law, in writing and communicated to its addressee, does not satisfy the requirements laid down by the case-law referred to in paragraphs 78 to 83 of this judgment.

85 Indeed, that legislation does not ensure that the addressee of that decision can ascertain the reasons upon which it is based, to enable him to defend his rights and to decide whether it is appropriate to refer the matter to the competent court. Accordingly, in the present case, that legislation does not make it possible to ensure the effectiveness of the judicial review or the respect for the rights of the defence, guaranteed by Articles 47 and 48 of the Charter and the general principles of EU law.

86 As regards the requirement, laid down by the national legislation at issue in the main proceedings, under which an application for annulment of a decision closing an establishment must be duly reasoned by the person concerned, it should be noted that this requirement is disproportionate, in view of the fact that, on the other hand, that same legislation does not provide for the obligation to state reasons for such a decision.

87 In this regard, requiring the addressee of an administrative decision to give reasons for its application for annulment of that decision, while the latter is not itself reasoned, shall affect the right of the addressee to an effective remedy and to a court, as well as his rights of defence.

88 As regards the restriction provided for in paragraph 19a(4) of the Police Law of the reasons that may justify the withdrawal by an administrative body of a decision to close a commercial establishment, it should be borne in mind that that decision may be annulled if the addressee of that decision can either produce an authorisation to operate a brothel or ensure that the business of the brothel will not be resumed after that withdrawal.

89 Assuming that that provision of the Police Law is applicable to the dispute in the main proceedings, which it is for the referring court to verify, it does not appear that the restriction referred to in the previous paragraph is disproportionate in the light of the objectives pursued by such a law, namely preventing the commission of criminal offences against persons who engage in prostitution and the protection of public health.

90 Since, as has been found in paragraphs 73 to 75 of this judgment, the possibility of closing a commercial establishment with immediate effect because the competent authority suspects the exercise, within that establishment, of a prostitution business without the required authorisation to that effect is justified by those objectives, the restriction provided for in Article 19a(4) of the Police Law must be regarded as a logical consequence of the prohibition, laid down by the legislation concerned, on operating a prostitution establishment without such authorisation.

91 It therefore follows from the foregoing considerations that the answer to the questions referred is that Article 49 TFEU, Article 15(2) and Articles 16, 47 and 52 of the Charter and the general principle of the right to good administration must be interpreted, in circumstances such as those at issue in the main proceedings, as precluding national legislation providing that an administrative authority may decide to close a commercial establishment with immediate effect, on the ground that it suspects that prostitution is practised in that establishment without the authorisation required under that legislation, in so far as that legislation, first, does not require reasons, in fact and in law, to be given in writing for such a decision and to be communicated to its addressee, and second, requires that any application brought by that addressee and seeking annulment of that decision must be reasoned.

Costs

92 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 (Sixth Chamber) hereby rules:

Article 49 TFEU, Article 15(2) and Articles 16, 47 and 52 of the Charter of Fundamental Rights of the European Union and the general principle of the right to good administration must be interpreted, in circumstances such as those at issue in the main proceedings, as precluding national legislation providing that an administrative authority may decide to close a commercial establishment with immediate effect, on the ground that it suspects that prostitution is practised in that establishment without the authorisation required under that legislation, in so far as that legislation, first, does not require reasons, in fact and in law, to be given in writing for such a decision and to be communicated to its addressee, and second, requires that any application brought by that addressee and seeking annulment of that decision must be reasoned.

[Signatures]