



## Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

2 September 2021 \*

(Reference for a preliminary ruling – Protection of health – Regulation (EC) No 854/2004 – Article 5(2) – Regulation (EC) No 882/2004 – Article 54(3) – Hygiene rules applicable to food of animal origin – Post-mortem inspection of the carcass and offal – Official veterinarian – Health marking – Refusal – Meat declared unfit for human consumption – Right of appeal against a decision of the official veterinarian – Effective judicial protection – Article 47 of the Charter of Fundamental Rights of the European Union)

In Case C-579/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court of the United Kingdom, made by decision of 24 July 2019, received at the Court on 30 July 2019, in the proceedings

**The Queen**, on the application of:

**Association of Independent Meat Suppliers,**

**Cleveland Meat Company Ltd,**

v

**Food Standards Agency**

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, N. Piçarra, D. Šváby (Rapporteur), S. Rodin and K. Jürimäe, Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Association of Independent Meat Suppliers and Cleveland Meat Company Ltd, by S. Hockman QC, D. Hercock, Barrister, and H. Leese, Solicitor,

\* Language of the case: English.

- the United Kingdom Government, by S. Brandon, acting as Agent, and by A. Dashwood QC, and A. Heppinstall, Barrister,
- the European Commission, by A. Dawes, W. Farrell and B. Hofstätter, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 February 2021,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 5(2) of Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ 2004 L 139, p. 206, and corrigenda OJ 2004 L 226, p. 83, and OJ 2013 L 160, p. 17), as amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 165, p. 1, and corrigendum OJ 191 L 2004, p. 1) ('Regulation No 854/2004'), as well as the interpretation of Regulation No 882/2004.
- 2 The request has been made in proceedings between, on the one hand, the Association of Independent Meat Suppliers and Cleveland Meat Company Ltd ('CMC'), and, on the other hand, the Food Standards Agency ('FSA'), concerning the procedure to be followed further to a decision of the official veterinarian refusing to affix a health mark to a carcass belonging to CMC, declaring that carcass unfit for human consumption and resulting in the destruction thereof.

### **Legal context**

#### ***European Union law***

#### ***The Withdrawal Agreement***

- 3 By Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 1; 'the Withdrawal Agreement'), the Council of the European Union, on behalf of the European Union and the European Atomic Energy Community, approved the Withdrawal Agreement, which was appended to that decision.
- 4 Article 86 of the Withdrawal Agreement, entitled 'Cases pending before the Court of Justice of the European Union', provides in paragraphs 2 and 3 thereof:

'(2) The Court of Justice of the European Union shall continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom made before the end of the transition period.

(3) For the purposes of this Chapter, proceedings shall be considered as having been brought before the Court of Justice of the European Union, and requests for preliminary rulings shall be

considered as having been made, at the moment at which the document initiating the proceedings has been registered by the registry of the Court of Justice ...’

- 5 In accordance with Article 126 of the Withdrawal Agreement, the transition period began on the date of entry into force of that agreement and ended on 31 December 2020.

***Regulation (EC) No 178/2002***

- 6 Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1) states, in recitals 2 and 10 thereof:

‘(2) A high level of protection of human life and health should be assured in the pursuit of Community policies.

...

(10) Experience has shown that it is necessary to adopt measures aimed at guaranteeing that unsafe food is not placed on the market and at ensuring that systems exist to identify and respond to food safety problems in order to ensure the proper functioning of the internal market and to protect human health. Similar issues relating to feed safety should be addressed.’

- 7 Article 14(1), (2) and (5) of that regulation is worded as follows:

‘(1) Food shall not be placed on the market if it is unsafe.

(2) Food shall be deemed to be unsafe if it is considered to be:

(a) injurious to health;

(b) unfit for human consumption.

...

(5) In determining whether any food is unfit for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.’

**Regulation (EC) No 853/2004**

- 8 Article 5 of Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55, and corrigendum OJ 2004 L 226, p. 22), entitled ‘Health and identification marking’, provides, in paragraph 1 thereof:

‘Food business operators shall not place on the market a product of animal origin handled in an establishment subject to approval in accordance with Article 4(2) unless it has either:

- (a) a health mark applied in accordance with Regulation (EC) No 854/2004; or
- (b) when that regulation does not provide for the application of a health mark, an identification mark applied in accordance with Annex II, Section I, of this Regulation.’

**Regulation No 854/2004**

- 9 Regulation No 854/2004 states, in recitals 1, 2, 4, 6 and 9 thereof:

‘(1) Regulation (EC) No 852/2004 of the European Parliament and of the Council [of 29 April 2004 on the hygiene of foodstuffs (OJ 2004 L 139, p. 1),] lays down general hygiene rules for all foods and Regulation [No 853/2004] lays down specific hygiene rules for products of animal origin.

(2) Specific rules for official controls on products of animal origin are necessary to take account of specific aspects associated with such products.

...

(4) Official controls on products of animal origin should cover all aspects that are important for protecting public health and, where appropriate, animal health and animal welfare. ...

...

(6) The nature and intensity of the official controls should be based on an assessment of public health risks, animal health and welfare, where appropriate, the type and throughput of the processes carried out and the food business operator concerned.

...

(9) In view of their specific expertise, it is appropriate for official veterinarians to carry out audits and inspections of slaughterhouses, game handling establishments and certain cutting plants. Member States should have discretion to decide which are the most appropriate staff for audits and inspections of other types of establishments.’

- 10 Article 1(1), (1a) and (3) of Regulation No 854/2004 provides that:

‘(1) This Regulation lays down specific rules for the organisation of official controls on products of animal origin.

(1a) This Regulation shall apply in addition to Regulation [No 882/2004].

...

(3) The performance of official controls pursuant to this Regulation shall be without prejudice to feed and food business operators' primary legal responsibility for ensuring feed and food safety, as laid down in Regulation [No 178/2002], and any civil or criminal liability arising from the breach of their obligations.'

11 Under Article 2(1)(c), (f) and (g) of Regulation No 854/2004:

'(1) For the purposes of this Regulation, the following definitions shall apply:

(c) "competent authority" means the central authority of a Member State competent to carry out veterinary checks or any authority to which it has delegated that competence;

(f) "official veterinarian" means a veterinarian qualified, in accordance with this Regulation, to act in such a capacity and appointed by the competent authority;

(g) "approved veterinarian" means a veterinarian designated by the competent authority to carry out specific official controls on holdings on its behalf'.

12 Article 4 of that regulation provides:

'(1) Member States shall ensure that food business operators offer all assistance needed to ensure that official controls carried out by the competent authority can be performed effectively.

They shall in particular:

- give access to all buildings, premises, installations or other infrastructures;
- make available any documentation and record required under the present regulation or considered necessary by the competent authority for judging the situation.

(2) The competent authority shall carry out official controls to verify food business operators' compliance with the requirements of:

(a) Regulation (EC) No 852/2004;

(b) Regulation (EC) No 853/2004;

and

(c) Regulation (EC) No 1774/2002 [of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1)].

- (3) The official controls referred to in paragraph 1 shall include:
- (a) audits of good hygiene practices and hazard analysis and critical control point (HACCP)-based procedures; and
  - (b) the official controls specified in Articles 5 to 8;  
and
  - (c) any particular auditing tasks specified in the Annexes.
- (4) Audits of good hygiene practices shall verify that food business operators apply procedures continuously and properly concerning at least:
- (a) checks on food-chain information;
  - (b) the design and maintenance of premises and equipment;
  - (c) pre-operational, operational and post-operational hygiene;
  - (d) personal hygiene;
  - (e) training in hygiene and in work procedures;
  - (f) pest control;
  - (g) water quality;
  - (h) temperature control;  
and
  - (i) controls on food entering and leaving the establishment and any accompanying documentation.
- (5) Audits of HACCP-based procedures shall verify that food business operators apply such procedures continuously and properly, having particular regard to ensuring that the procedures provide the guarantees specified in Section II of Annex II to Regulation (EC) No 853/2004. They shall, in particular, determine whether the procedures guarantee, to the extent possible, that products of animal origin:
- (a) comply with microbiological criteria laid down under Community legislation;
  - (b) comply with Community legislation on residues, contaminants and prohibited substances;  
and
  - (c) do not contain physical hazards, such as foreign bodies.

When, in accordance with Article 5 of Regulation (EC) No 852/2004, a food business operator uses procedures set out in guides to the application of HACCP principles rather than establishing its own specific procedures, the audit shall cover the correct use of these guides.

(6) Verification of compliance with the requirements of Regulation (EC) No 853/2004 concerning the application of identification marks shall take place in all establishments approved in accordance with that Regulation, in addition to verification of compliance with other traceability requirements.

(7) In the case of slaughterhouses, game handling establishments and cutting plants placing fresh meat on the market, an official veterinarian shall carry out the auditing tasks referred to in paragraphs 3 and 4.

(8) When carrying out auditing tasks, the competent authority shall take special care:

(a) to determine whether staff and staff activities in the establishment at all stages of the production process comply with the relevant requirements of the Regulations referred to in paragraph 1(a) and (b). To support the audit, the competent authority may carry out performance tests, in order to ascertain that staff performance meets specified parameters;

(b) to verify the food business operator's relevant records;

(c) to take samples for laboratory analysis whenever necessary;

and

(d) to document elements taken into account and the findings of the audit.

(9) The nature and intensity of auditing tasks in respect of individual establishments shall depend upon the assessed risk. To this end, the competent authority shall regularly assess:

(a) public and, where appropriate, animal health risks;

(b) in the case of slaughterhouses, animal welfare aspects;

(c) the type and throughput of the processes carried out;

and

(d) the food business operator's past record as regards compliance with food law.'

13 Article 5 of Regulation No 854/2004 is worded as follows:

'Member States shall ensure that official controls with respect to fresh meat take place in accordance with Annex I.

(1) The official veterinarian shall carry out inspection tasks in slaughterhouses, game handling establishments and cutting plants placing fresh meat on the market in accordance with the general requirements of Section I, Chapter II, of Annex I, and with the specific requirements of Section IV, in particular as regards:

- (a) food chain information;
  - (b) ante-mortem inspection;
  - (c) animal welfare;
  - (d) post-mortem inspection;
  - (e) specified risk material and other animal by-products; and
- and
- (f) laboratory testing.
- (2) The health marking of carcasses of domestic ungulates, farmed game mammals other than lagomorphs, and large wild game, as well as half-carcasses, quarters and cuts produced by cutting half-carcasses into three wholesale cuts, shall be carried out in slaughterhouses and game-handling establishments in accordance with Section I, Chapter III, of Annex I. Health marks shall be applied by, or under the responsibility of, the official veterinarian when official controls have not identified any deficiencies that would make the meat unfit for human consumption.
- (3) After carrying out the controls mentioned in points 1 and 2, the official veterinarian shall take appropriate measures as set out in Annex I, Section II, in particular as regards:
- (a) the communication of inspection results;
  - (b) decisions concerning food chain information;
  - (c) decisions concerning live animals;
  - (d) decisions concerning animal welfare;
- and
- (e) decisions concerning meat.
- (4) Official auxiliaries may assist the official veterinarian with official controls carried out in accordance with Sections I and II of Annex I as specified in Section III, Chapter I. In that case, they shall work as part of an independent team.
- (5) (a) Member States shall ensure that they have sufficient official staff to carry out the official controls required under Annex I with the frequency specified in Section III, Chapter II.
- (b) A risk-based approach shall be followed to assess the number of official staff that need to be present on the slaughter line in any given slaughterhouse. The number of official staff involved shall be decided by the competent authority and shall be such that all the requirements of this Regulation can be met.
- (6) (a) Member States may allow slaughterhouse staff to assist with official controls by carrying out certain specific tasks, under the supervision of the official veterinarian, in relation to the production of meat from poultry and lagomorphs in accordance with Annex I, Section III, Chapter III, part A. If they do so, they shall ensure that staff carrying out such tasks:
- (i) are qualified and undergo training in accordance with those provisions;
  - (ii) act independently from production staff;
- and
- (iii) report any deficiency to the official veterinarian.
- (b) Member States may also allow slaughterhouse staff to carry out specific sampling and testing tasks in accordance with Annex I, Section III, Chapter III, Part B.



- (7) Member States shall ensure that official veterinarians and official auxiliaries are qualified and undergo training in accordance with Annex I, Section III, Chapter IV.’
- 14 In Section I of Annex I to that regulation, Chapter III, headed ‘Health marking’, provides in points 1 and 2:
- ‘(1) The official veterinarian is to supervise health marking and the marks used.
- (2) The official veterinarian is to ensure, in particular, that:
- (a) the health mark is applied only to animals ... having undergone ante-mortem and post-mortem inspection in accordance with this Regulation and when there are no grounds for declaring the meat unfit for human consumption. ...
- ...’
- 15 In Section III of Annex I to Regulation No 854/2004, Chapter IV, headed ‘Professional Qualifications’, provides, in point A:
- ‘Official veterinarians
- (1) The competent authority may appoint only veterinarians who have passed a test meeting the requirements of paragraph 2 as official veterinarians.
- (2) The competent authority must make arrangements for the test. The test is to confirm knowledge of the following subjects to the extent necessary depending on the veterinarian's background and qualifications:
- (a) national and Community legislation on veterinary public health, food safety, animal health, animal welfare and pharmaceutical substances;
- (b) principles of the common agricultural policy, market measures, export refunds and fraud detection ...
- (c) essentials of food processing and food technology;
- (d) principles, concepts and methods of good manufacturing practice and quality management;
- ...
- (g) principles, concepts and methods of risk-analysis;
- (h) principles, concepts and methods of HACCP, use of HACCP throughout the food production food chain;
- (i) prevention and control of food-borne hazards related to human health;
- ...
- (o) information and communication technology as related to veterinary public health;
- ...
- (u) precautionary principle and consumer concerns; and
- (v) principles of training of personnel working in the production chain.
- ...
- ...

- (5) The official veterinarian is to maintain up-to-date knowledge and to keep abreast of new developments through regular continuing education activities and professional literature. The official veterinarian is, wherever possible, to undertake annual continuing education activities.
- (6) Veterinarians already appointed as official veterinarians must have adequate knowledge of the subjects mentioned in paragraph 2. Where necessary, they are to acquire this knowledge through continuing education activities. The competent authority is to make adequate provision in this regard.

...'

***Regulation No 882/2004***

16 Regulation No 882/2004 states, in recitals 1, 41 and 43 thereof:

'(1) Feed and food should be safe and wholesome. Community legislation comprises a set of rules to ensure that this objective is attained. These rules extend to the production and the placing on the market of both feed and food.

...

(41) Breaches of feed and food law and of animal health and animal welfare rules may constitute a threat to human health, animal health, and animal welfare. ...

...

(43) Operators should have a right to appeal against the decisions taken by the competent authority as a result of the official controls, and be informed of such a right.'

17 Pursuant to Article 1 of that regulation:

'(1) This Regulation lays down general rules for the performance of official controls to verify compliance with rules aiming, in particular, at:

(a) preventing, eliminating or reducing to acceptable levels risks to humans and animals, either directly or through the environment;

and

(b) guaranteeing fair practices in feed and food trade and protecting consumer interests, including feed and food labelling and other forms of consumer information.

(2) This Regulation shall not apply to official controls for the verification of compliance with the rules on common market organisations of agricultural products.

(3) This Regulation shall be without prejudice to specific Community provisions concerning official controls.

(4) The performance of official controls pursuant to this Regulation shall be without prejudice to feed and food business operators' primary legal responsibility for ensuring feed and food safety, as laid down in Regulation (EC) No 178/2002, and any civil or criminal liability arising from the breach of their obligations.'

18 Article 2 of Regulation No 882/2004 provides:

'For the purposes of this Regulation, the definitions laid down in Articles 2 and 3 of Regulation (EC) No 178/2002 shall apply.

The following definitions shall also apply:

(1) "official control" means any form of control that the competent authority or the Community performs for the verification of compliance with feed and food law, animal health and animal welfare rules;

...

(4) "competent authority" means the central authority of a Member State competent for the organisation of official controls or any other authority to which that competence has been conferred; it shall also include, where appropriate, the corresponding authority of a third country;

(5) "control body" means an independent third party to which the competent authority has delegated certain control tasks

...

(10) "non-compliance" means non-compliance with feed or food law, and with the rules for the protection of animal health and welfare;

...'

19 Article 4(1) of Regulation No 882/2004 provides:

'Member States shall designate the competent authorities responsible for the purposes and official controls set out in this Regulation.'

20 Under Article 5(1) of the regulation:

'The competent authority may delegate specific tasks related to official controls to one or more control bodies in accordance with paragraphs 2 to 4.

...'

21 Article 54 of Regulation No 882/2004, entitled 'Action in case of non-compliance', provides:

'(1) When the competent authority identifies non-compliance, it shall take action to ensure that the operator remedies the situation. When deciding which action to take, the competent authority shall take account of the nature of the non-compliance and the operator's past record with regard to non-compliance.

- (2) Such action shall include, where appropriate, the following measures:
- (a) the imposition of sanitation procedures or any other action deemed necessary to ensure the safety of feed or food or compliance with feed or food law, animal health or animal welfare rules;
  - (b) the restriction or prohibition of the placing on the market, import or export of feed, food or animals;
  - (c) monitoring and, if necessary, ordering the recall, withdrawal and/or destruction of feed or food;
  - (d) the authorisation to use feed or food for purposes other than those for which they were originally intended;
  - (e) the suspension of operation or closure of all or part of the business concerned for an appropriate period of time;
  - (f) the suspension or withdrawal of the establishment's approval;
  - (g) the measures referred to in Article 19 on consignments from third countries;
  - (h) any other measure the competent authority deems appropriate.
- (3) The competent authority shall provide the operator concerned, or a representative, with:
- (a) written notification of its decision concerning the action to be taken in accordance with paragraph 1, together with the reasons for the decision;  
and
  - (b) information on rights of appeal against such decisions and on the applicable procedure and time limits.
- (4) Where appropriate, the competent authority shall also notify the competent authority of the Member State of dispatch of its decision.
- (5) All expenditure incurred pursuant to this Article shall be borne by the responsible feed and food business operator.'

***United Kingdom law***

- 22 Under section 8(2) of the Food Safety Act 1990 ('the 1990 Act'), food fails to comply with food safety requirements if it is unsafe within the meaning of Article 14 of Regulation No 178/2002.
- 23 Section 9 of the 1990 Act, headed 'Inspection and seizure of suspect food', lays down the procedure to be followed where an authorised officer of a supervisory authority such as the Food Safety Agency considers, following an inspection, that food intended for human consumption fails to comply with food safety requirements.

24 Section 9(3) and (4) of that act provides:

‘(3) The authorised officer may either —

(a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it —  
(i) is not to be used for human consumption;

and

(ii) either is not to be removed or is not to be removed except to some place specified in the notice; or

(b) seize the food and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under paragraph (a) above shall be guilty of an offence.

(4) Where the authorised officer exercises the powers conferred by subsection (3)(a) above, he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the food complies with food safety requirements and —

(a) if he is so satisfied, shall forthwith withdraw the notice;

(b) if he is not so satisfied, shall seize the food and remove it in order to have it dealt with by a justice of the peace.’

25 Pursuant to section 9(6) and (7) of that act:

‘(6) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any food falling to be dealt with by him under this section fails to comply with food safety requirements, he shall condemn the food and order —

(a) the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and

(b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(7) If a notice under subsection (3)(a) above is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this section refuses to condemn it, the food authority shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.’

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

26 On 11 September 2014, CMC purchased a live bull for the sum of GBP 1 361.20 (approximately EUR 1 700). The official veterinarian stationed at CMC’s slaughterhouse passed the bull fit for slaughter and issued a slaughter number for it. Once the bull had been slaughtered, a post-mortem inspection of both carcass and offal was carried out by a meat hygiene inspector, who identified three abscesses in the offal. The offal was not retained. The same day, the official

veterinarian inspected the carcass and, after discussion with the meat hygiene inspector, declared the meat unfit for human consumption because pyaemia, a form of septicaemia (blood poisoning), was suspected. As a result, no hygiene mark was affixed to that carcass to certify that it was fit for human consumption. Consequently, CMC was prohibited from selling the carcass under Regulation 19 of the Food Safety and Hygiene (England) Regulations 2013.

- 27 CMC sought the advice of another veterinary surgeon and challenged the official veterinarian's opinion. It claims that, having regard to the dispute and its refusal to surrender the carcass at issue voluntarily, the official veterinarian, in accordance with section 9 of the 1990 Act, should have seized the carcass and taken it before a justice of the peace for a decision as to whether it should be declared fit for human consumption. The FSA, the competent food safety authority which is responsible for official controls at slaughterhouses, considered that there was no need to use that procedure and that, having been deemed unfit for human consumption by the official veterinarian, the carcass should be disposed of as an animal by-product.
- 28 Subsequently, on 23 September 2014, the official veterinarian, acting on behalf of the FSA, served notice on CMC requiring it to dispose of the carcass at issue as an animal by-product in accordance with Regulation 25(2)(a) of the Animal By-Products (Enforcement) (England) Regulations 2013 and Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ 2009 L 300, p. 1). That notice informed CMC that failure to comply therewith could lead to the removal of the carcass by the person authorised to pay CMC's costs, and that obstructing a person authorised to perform the obligations imposed by that notice constituted an offence. That notice also stated that CMC had a right of appeal against the decision of the official veterinarian by way of judicial review and that such an action had to be brought within three months.
- 29 The appellants in the main proceedings made an application for judicial review before the High Court of Justice (England & Wales), Queen's Bench Division (United Kingdom) in order to challenge, principally, the FSA's assertion that it was not required to use the procedure set out in section 9 of the 1990 Act and to claim, in the alternative, that it was incumbent on the United Kingdom to provide some means of challenging an official veterinarian's decision as to whether meat is fit for human consumption. Their application was dismissed both before that court and before the Court of Appeal (England & Wales) (Civil Division) (United Kingdom). Consequently, the appellants brought an appeal before the Supreme Court of the United Kingdom.
- 30 The referring court states that the case before it raises three issues.
- 31 The first relates to a question of domestic law, namely whether the procedure laid down in section 9 of the 1990 Act applies in the present circumstances and whether it does have to be used by the official veterinarian or the FSA where the carcass owner – namely the slaughterhouse operator concerned – refuses to surrender the carcass voluntarily, so as to afford that operator a means of challenging decisions of the official veterinarian with which it disagrees. The second issue is whether the use of the procedure laid down in that section is compatible with the rules laid down by Regulations No 854/2004 and No 882/2004 in EU law on food safety. The third issue is whether Regulation (EC) No 882/2004 mandates an appeal procedure and, if so, whether such an appeal should be capable of challenging the official veterinarian's decision on the full factual merits or whether the more limited scope of challenge involved in the judicial review of such a decision is sufficient to comply with the requirements of that regulation.

- 32 The referring court has indicated, in particular, that the procedure set out in section 9 of the 1990 Act is not framed in terms of an appeal against an official veterinarian’s decision as to whether meat is fit for human consumption. Under that procedure, if it appears to an authorised officer of a supervisory authority, such as the FSA, that food intended for human consumption fails to comply with food safety requirements, that officer may seize the food in order to have it dealt with by a local justice of the peace, who may be a lay magistrate or a legally qualified district judge and who is readily accessible at all hours. The justice of the peace may, on the basis of such evidence as he or she considers appropriate, find that the carcass at issue fails to comply with requirements relating to human consumption, and order it to be destroyed at the owner’s expense. Moreover, the justice of the peace may also refuse to declare it unfit for human consumption; the supervisory authority concerned must then compensate the owner for any depreciation of that carcass due to the official’s action.
- 33 In that context, the referring court points out that, according to the appellants in the main proceedings, the procedure laid down in section 9 of the 1990 Act provides for the possibility, both for the official veterinarian or the FSA, of taking implementing measures following from the decision of the official veterinarian declaring a carcass unfit for human consumption and, for the slaughterhouse operator concerned, to submit that decision to judicial examination and request that the justice of the peace decide whether or not the carcass at issue meets the food safety requirements at issue.
- 34 The appellants in the main proceedings accept that the justice of the peace cannot order an official veterinarian to affix a health mark, but they submit, first, that an official veterinarian can be expected to respect the decision of the justice of the peace and, second, that compensation may be awarded. Furthermore, the appellants in the main proceedings also allege infringement of the right to property guaranteed by Article 17 of the Charter of Fundamental Rights of the European Union (‘the Charter’), which, in their view, requires that provision be made for a mechanism for judicial review of the decision of the official veterinarian declaring a carcass unfit for human consumption. In that regard, they take the view that there would be infringement of that provision if the operator concerned were deprived of the property in the carcass, or required to dispose of the carcass in such a way as to render it valueless, without proper justification or compensation.
- 35 The FSA, however, takes the view that the procedure laid down in section 9 of the 1990 Act does not serve to resolve a dispute as to whether a carcass is fit for human consumption, as the justice of the peace has no power to order an official veterinarian to apply a health mark or do anything other than declare a carcass not bearing such a mark as unfit for human consumption. The FSA takes the view that the carcass at issue in the main proceedings must therefore, in any case, be disposed of as an animal by-product. As to the alleged infringement of Article 17 of the Charter, the FSA contends that it is clear from the case-law of the Court that that article authorises control of the use of property if this is a proportionate means of achieving a legitimate aim (judgment of 10 July 2003 2003, *Booker Aquaculture and Hydro Seafood*, C-20/00 and C-64/00, EU:C:2003:397). It takes the view that the objective of ensuring a high level of protection of human health and consumers’ interests with regard to food is legitimate and the means chosen proportionate.
- 36 The referring court asks the Court to assume that the interpretation of section 9 of the 1990 Act put forward by the appellants in the main proceedings is correct and that the justice of the peace has the power to give a ruling which may result in an award of compensation if he or she considers that a health mark ought to have been applied to a carcass.

- 37 The referring court observes, moreover, that, although the FSA made no mention of it in its arguments, a slaughterhouse operator has the right to bring judicial review proceedings before the High Court of Justice (England and Wales) (United Kingdom) either to challenge a decision taken by the official veterinarian declaring a carcass unfit for human consumption or to have a disposal notice, such as that referred to in paragraph 28 of the present judgment, annulled. In those proceedings, the court hearing the application for judicial review may annul such a decision on any ground of unlawfulness, including where the official veterinarian acts for a purpose other than that for which his or her powers have been conferred on him or her, fails to apply the correct legal test or reaches a decision that is irrational or has no sufficient evidential basis. Furthermore, that court does occasionally hear oral evidence; it may make mandatory orders, and it has the power to award compensation for breaches of rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR').
- 38 However, the referring court states that judicial review proceedings do not constitute an appeal on the merits against the decision of the official veterinarian declaring a carcass unfit for human consumption.
- 39 In those circumstances, the Supreme Court of the United Kingdom decided to stay the main proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Do Regulations (EC) Nos 854/2004 and 882/2004 preclude a procedure whereby pursuant to section 9 of the 1990 Act a justice of the peace decides on the merits of the case and on the basis of the evidence of experts called by each side whether a carcass fails to comply with food safety requirements?
- (2) Does Regulation (EC) No 882/2004 mandate a right of appeal in relation to a decision of an [official veterinarian] under article 5.2 of Regulation (EC) No 854/2004 that the meat of a carcass was unfit for human consumption and, if it does, what approach should be applied in reviewing the merits of the decision taken by the [official veterinarian] on an appeal in such a case?'

## **Consideration of the questions referred**

### ***The jurisdiction of the Court***

- 40 As a preliminary point, it should be noted that it follows from Article 86(2) of the Withdrawal Agreement, which entered into force on 1 February 2020, that the Court is to continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom made before the end of the transition period set at 31 December 2020, which is the case for this request for a preliminary ruling.

### ***The first question***

- 41 As is clear from paragraphs 33 and 36 of the present judgment, the referring court is asking the Court of Justice to start from the premiss that the interpretation of section 9 of the 1990 Act put forward by the appellants in the main proceedings is correct and that, therefore, pursuant to that provision, in a situation such as that at issue in the main proceedings where the official



veterinarian has refused to affix a health mark to a carcass and the owner of the carcass at issue disagrees with that refusal, the official veterinarian is required to apply to the competent justice of the peace for a decision on the destruction of the carcass at issue, so as to afford the owner of that carcass the possibility of challenging the decision of the official veterinarian.

- 42 In those circumstances, it must be considered that, by its first question, the referring court is asking, in essence, whether Regulations No 854/2004 and No 882/2004 must be interpreted as precluding national legislation under which, where an official veterinarian refuses to affix a health mark to a carcass and the owner of that carcass does not concur with that decision, the official veterinarian must bring the matter before a court so that the latter may give a decision on the merits and on the basis of the evidence of experts called by each side whether a carcass fails to comply with food safety requirements, without being able formally to annul decisions of the official veterinarian or order the lifting of the effects of such decisions.
- 43 In order to interpret the provisions of Regulations No 854/2004 and No 882/2004, it should be noted that those regulations form part of the ‘food hygiene package’ under EU law, as indicated by the referring court and as the Advocate General observes in point 42 of his Opinion.
- 44 The objective pursued by all those regulations is, in accordance with recitals 4 and 6 of Regulation No 854/2004 and recitals 1 and 41 of Regulation No 882/2004, to achieve a high level of protection of public health with regard to food. In order to attain that level, those regulations require that the Member States perform the official controls to verify that food and feed business operators comply with feed and food law at all stages of the production process (see, to that effect, judgment of 12 September 2019, *Pollo del Campo and Others*, C-199/18, C-200/18 and C-343/18, EU:C:2019:718, paragraph 33).
- 45 In that context, the competent authority under Article 2(1)(c) of Regulation No 854/2004, namely the central authority of a Member State competent to carry out veterinary checks or any authority to which it has delegated that competence – in the present case, the FSA – appoints, in accordance with Article 2(1)(f) of that regulation, the official veterinarian who meets the requirements relating to professional qualifications laid down in point A of Section III, Chapter IV of Annex I to that regulation, as a veterinarian authorised to act in that capacity.
- 46 In that connection, as the Advocate General observes in points 44 to 46 of his Opinion, it is clear from Regulation No 854/2004 and the annexes thereto that, in the context of official controls of products of animal origin intended for human consumption, the EU legislature entrusted the official veterinarian with the responsibility for ensuring that meat placed on the market is fit for human consumption and conferred various tasks on him or her, in accordance with Section I of Annex I to that regulation, headed ‘Tasks of the official veterinarian’. Accordingly, the official veterinarian may reasonably be considered to be the person best qualified to carry out checks in the Member States (see, by analogy, judgment of 15 April 1997, *Bakers of Nailsea*, C-27/95, EU:C:1997:188, paragraph 35).
- 47 Furthermore, given that the field of food safety is characterised by a complexity presenting a high level of specialisation, the official veterinarian enjoys, in the course of those checks, broad discretion which is, however, circumscribed by the requirements laid down in the regulations in that field (see, to that effect, judgment of 12 September 2019, *A and Others*, C-347/17, EU:C:2019:720, paragraph 69).

- 48 The important role played, in accordance with Regulation No 854/2004, by the official veterinarian as an administrative authority and a duly qualified expert who specialises in and is ultimately responsible for food safety matters, cannot be reconciled with national legislation, such as that referred to in the first question, under which, if the official veterinarian finds that he or she must refuse to affix a health mark to a carcass and the owner of that carcass disputes that finding, the official veterinarian must necessarily bring the matter before a court so that it might decide whether that carcass meets food safety requirements.
- 49 Such legislation leads to the replacement of the official veterinarian, as the person ultimately responsible in matters of food safety, by a court ruling on the merits of the case.
- 50 Inasmuch as, in the dispute in the main proceedings, it is alleged that such national legislation makes it possible to afford the owner of a carcass, to which the official veterinarian has refused to affix a health mark, the possibility of challenging that decision of the official veterinarian, it is nevertheless necessary to determine whether Regulations No 854/2004 and No 882/2004 require the Member State concerned to make provision for a legal remedy against such a decision.
- 51 It should be noted that Regulation No 854/2004, which lays down, pursuant to Article 1 thereof, specific rules for the organisation of official controls on products of animal origin, does not contain any rules on rights of appeal against decisions of the official veterinarian. By contrast, Regulation No 882/2004, which lays down general rules for the performance of official controls in that area, expressly provides, in Article 54(3) thereof, in the event of non-compliance by the operator concerned, that the operator has rights of appeal against decisions which aim to remedy that non-compliance.
- 52 As is clear from Article 1(1a) of Regulation No 854/2004, it applies in addition to Regulation No 882/2004 which, under Article 1(3) thereof, does not affect specific provisions of EU law on official controls. In the absence of specific provisions in Regulation No 854/2004 regarding rights of appeal against decisions of official veterinarians, reference should therefore be made to the general provisions contained in Regulation No 882/2004.
- 53 In that connection, it is necessary to examine whether Article 54 of Regulation No 882/2004, in particular paragraph 3 thereof, is applicable to decisions of the official veterinarian made as part of the official controls he or she carries out, and more specifically to decisions, made pursuant to Article 5(2) of Regulation No 854/2004, not to affix health marks to food.
- 54 Pursuant to Article 54(3) of Regulation No 882/2004, the competent authority must provide the operator concerned with written notification of its decision on the action to be taken in accordance with Article 54(1), the reasons for that decision, along with information on that operator's rights of appeal against such decisions and on the applicable procedure and time limits. That provision must be read in the light of recital 43 of that regulation, which states that 'operators should have a right to appeal against the decisions taken by the competent authority as a result of the official controls, and be informed of such a right'.
- 55 Article 54 of Regulation No 882/2004, in accordance with paragraph 1 thereof, refers to the measures which the competent authority is required to take so that, where it finds there to be non-compliance, the operator may remedy that situation. In those circumstances, it must be determined whether the decision of the official veterinarian not to affix health marks to food is capable of falling within the scope of the concept of 'non-compliance' within the meaning of Article 54 of Regulation No 882/2004.

- 56 It must be pointed out that the concept of ‘non-compliance’ is broadly defined in Article 2(10) of Regulation No 882/2004, and refers to non-compliance with feed or food law, and with the rules for the protection of animal health and welfare.
- 57 Furthermore, Article 54(2)(b) of that regulation lays down, among the measures necessary for the operator to remedy a situation of non-compliance identified by the competent authority, the measures which restrict or prohibit the placing on the market of food. In accordance with Article 14(1) of Regulation No 178/2002, food is not to be placed on the market if it is considered unfit for human consumption.
- 58 It follows that the decision of the official veterinarian, taken pursuant to Article 5(2) of Regulation No 854/2004 read in conjunction with the provisions referred to in paragraphs 56 and 57 of the present judgment, not to affix a health mark to food, on the ground that an irregularity liable to render meat unfit for human consumption was detected during the official check, has the precise effect of preventing a carcass which is unfit for human consumption being placed on the market.
- 59 Consequently, Article 54(3) of Regulation No 882/2004 is applicable to the decision of the official veterinarian, made pursuant to Article 5(2) of Regulation No 854/2004, not to affix health marks to food, and requires Member States to provide for a remedy by way of which the slaughterhouse operator concerned may challenge such a decision.
- 60 It is therefore necessary to examine whether a procedure such as that referred to in the first question guarantees the operator concerned effective judicial protection within the meaning of Regulations No 854/2004 and No 882/2004.
- 61 It is clear from the case-law of the Court that the possibility, for a given individual, of bringing proceedings before a court in order to obtain a finding that the rights which are guaranteed to that individual by EU law have been infringed and to obtain compensation for the harm suffered as a result of that infringement ensures that the individual has effective judicial protection, where the court hearing the dispute has the possibility of reviewing the act or measure which has given rise to that infringement and that harm (see judgment of 6 October 2020, *État luxembourgeois (Judicial protection against requests for information in tax matters)*, C-245/19 and C-246/19, EU:C:2020:795, paragraph 101).
- 62 As is apparent from the order for reference, the procedure laid down in section 9 of the 1990 Act is not drawn up with a view to an appeal against a decision of the official veterinarian within the meaning of Regulations No 854/2004 and No 882/2004. If it appears to the court seised, on the basis of such evidence as it considers appropriate, that the food at issue fails to comply with food safety requirements, it is to declare that food unfit for human consumption and order it to be destroyed at the owner’s expense. Furthermore, the court seised may also refuse to declare the food in question unfit for human consumption, since the supervisory authority must then compensate the owner for any depreciation due to the actions of the official in question. The referring court sets out the claims, made by the appellants in the main proceedings, that, in the latter situation, the official veterinarian should comply with the court’s decision and, consequently, affix a health mark to the carcass concerned.
- 63 In that connection, it should be noted, first, as the Advocate General does in point 88 of his Opinion, that that procedure does not allow the operator concerned, whose rights and interests are directly affected by a decision of the official veterinarian, to bring an action on its own initiative before the court having jurisdiction.

- 64 Second, it should be observed that, in the context of such a procedure, the court is not in a position to impose on the official veterinarian its own decision concerning the factual assessments on which the decision of the official veterinarian at issue is based.
- 65 Although that court appears to be able to establish the facts as to whether or not the food concerned meets the requirements relating to food safety on the basis of evidence which it considers appropriate and whether, in that regard, it may also take account of the opinion of another veterinarian whom it has directed to examine the carcass in question, it is not, however, authorised to annul the decision of the official veterinarian declaring that carcass unfit for human consumption and ordering the disposal of that carcass as an animal by-product.
- 66 Consequently, the procedure concerned by the first question seeks neither the annulment of the decision of the official veterinarian declaring the carcass at issue unfit for human consumption nor the lifting of the effects of that decision and, therefore, does not result in a judicial decision which has legally binding effects on the administrative authority concerned.
- 67 In so far as concerns the submissions of the appellants in the main proceedings that the official veterinarian should comply with the decision to refuse to declare the food in question unfit for human consumption and affix a health mark to it, it should be observed that the fact remains that the court seised does not have the power itself to give a final and binding decision on a challenge to the decisions of the official veterinarian brought before it.
- 68 Similarly, the fact that compensation may be payable where, in proceedings such as those referred to in the first question, the court seised refuses to declare the carcass at issue unfit for human consumption cannot lead to a different outcome, since the award of such compensation does not, as such, fall within the scope of the dispute before that court.
- 69 It must therefore be found that a procedure such as that referred to in the first question cannot provide a slaughterhouse operator with sufficient safeguards against decisions of the official veterinarian and, therefore, that procedure does not satisfy the requirements of an effective remedy within the meaning of Regulations No 854/2004 and No 882/2004.
- 70 It follows from all the foregoing considerations that Regulations No 854/2004 and No 882/2004 must be interpreted as precluding national legislation under which, where an official veterinarian refuses to affix a health mark to a carcass and the owner of that carcass does not concur with that decision, the official veterinarian must bring the matter before a court so that the latter may give a decision on the merits and on the basis of the evidence of experts called by each side whether a carcass fails to comply with food safety requirements, without being able formally to annul decisions of the official veterinarian or order the lifting of the effects of such decisions.

### *The second question*

- 71 By its second question, the referring court is asking, in essence, whether Article 54 of Regulation No 882/2004, read in conjunction with recital 43 of that regulation and in the light of Article 47 of the Charter, must be interpreted as precluding national legislation under which the decision made by the official veterinarian, in accordance with Article 5(2) of Regulation No 854/2004, not to affix a health mark to a carcass may be subject to limited judicial review only, in the context of which the court seised may annul that decision on any ground rendering it unlawful, including where

that veterinarian acts for a purpose other than that for which his or her powers have been conferred on him or her, fails to apply the correct legal test or reaches a decision that is irrational or has no sufficient evidential basis.

- 72 As is clear from paragraphs 54 and 59 of the present judgment, Regulations No 854/2004 and No 882/2004 require Member States to provide a remedy whereby the slaughterhouse operator concerned may challenge the decisions of the official veterinarian and that the latter must, as the competent authority, provide that operator with information on its rights of appeal and on the applicable procedure and time limits.
- 73 In that regard, it should be noted that those regulations leave it to the Member States to lay down the rules necessary for the slaughterhouse operators concerned to be able to exercise their right to an effective remedy.
- 74 It should be borne in mind that, according to the settled case-law of the Court, the second subparagraph of Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by European Union law (judgment of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraph 31 and the case-law cited). Furthermore, when they lay down the detailed procedural rules governing actions at law, the Member States are to ensure compliance with that right. Thus, despite the absence of rules of EU law on procedures for bringing actions before national courts, and in order to determine the rigour of judicial review of national decisions adopted pursuant to an act of EU law, it is necessary to take into account the purpose of the act and to ensure that its effectiveness is not undermined (judgment of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraphs 46 and 54 and the case-law cited).
- 75 That requirement on the part of the Member States corresponds to the right enshrined in Article 47 of the Charter, entitled ‘Right to an effective remedy and to a fair trial’, which provides that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal (judgment of 27 September 2017, *Pušár*, C-73/16, EU:C:2017:725, paragraph 58 and the case-law cited).
- 76 It follows that, when they lay down detailed procedural rules governing actions in law for safeguarding the rights conferred by Regulations No 854/2004 and No 882/2004 on slaughterhouse operators who have been adversely affected by decisions of the official veterinarian not to affix a health mark to a carcass, the Member States must ensure compliance with the right to an effective remedy and to have access to an impartial tribunal, enshrined in Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection (see, by analogy, judgment of 27 September 2017, *Pušár*, C-73/16, EU:C:2017:725, paragraph 59 and the case-law cited).
- 77 In that connection, it should be recalled that Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed in the ECHR, without adversely affecting the autonomy of EU law and that of the Court of Justice of the European Union. Account must therefore be taken of the corresponding rights of the ECHR for the purpose of interpreting the Charter, as the minimum threshold of protection (judgment of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, paragraph 124 and the case-law cited).

- 78 It should be borne in mind, in that context, that compliance with the right to effective judicial protection, guaranteed by Article 47 of the Charter, must be examined, in accordance with settled case-law, in relation to the specific circumstances of each case, including the nature of the act at issue, the context in which it was adopted and the legal rules governing the matter in question (see, to that effect, judgment of 26 July 2017, *Sacko*, C-348/16, EU:C:2017:591, paragraph 41 and the case-law cited).
- 79 These are criteria which are, in essence, comparable to those applied by the European Court of Human Rights. The latter court has consistently held that, in order to assess whether, in a given case, the national courts have carried out a review of a sufficient extent, it must have regard to the powers of the judicial body in question and to such factors as, first, the subject matter of the decision appealed against, and in particular, whether or not it concerned a specialised issue requiring professional knowledge or experience and whether it involved the exercise of administrative discretion and, if so, to what extent; second, the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the administrative body; and third, the content of the dispute, including the desired and actual grounds of appeal (ECtHR, 6 November 2018, *Ramos Nunes de Carvalho e Sá v Portugal*, CE:ECHR:2018:1106JUD005539113, § 179 and the case-law cited).
- 80 It follows that the Court of Justice and the European Court of Human Rights adopt the same rule whereby, as the Advocate General observes in point 68 of his Opinion, the right to effective judicial protection guaranteed by Article 47 of the Charter provides that, in order for a court or tribunal to determine a dispute concerning rights and obligations under EU law, it must have power to consider all the questions of fact and law that are relevant to the case before it (judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 49 and the case-law cited).
- 81 In the present case, as the referring court states, that is not so in the main proceedings.
- 82 It is apparent from the order for reference that the slaughterhouse operator has the option of bringing judicial review proceedings before the High Court of Justice (England & Wales) either to challenge the decision taken by the official veterinarian declaring a carcass unfit for human consumption – a decision which therefore comprises a refusal to affix a health mark – or to have a notice of disposal of that carcass annulled. That court may annul the decision of the official veterinarian on any ground which makes the decision unlawful, including if he or she acts for an improper purpose, fails to apply the correct legal test or reaches a decision which is irrational or has no sufficient evidential basis. The court does occasionally hear oral evidence and make mandatory orders, and has power to award compensation for breaches of the rights under the ECHR. However, the referring court states that judicial review proceedings do not constitute an appeal on the merits against that decision.
- 83 It is therefore necessary to determine whether the scope of a judicial review of a decision made by the official veterinarian, in accordance with Article 5(2) of Regulation No 854/2004, not to affix a health mark to a carcass, such as that carried out by the High Court of Justice (England & Wales), meets the requirements of Article 54 of Regulation No 882/2004, read in the light of Article 47 of the Charter and the case-law cited in paragraphs 74 and 79 of the present judgment.
- 84 In that connection, it should be noted, in the first place, that no provision of Regulations No 854/2004 and No 882/2004 provides for a full judicial review of the merits of the decision of the official veterinarian not to affix a health mark to a carcass.

- 85 In the second place, as has been pointed out in paragraph 47 of the present judgment, given that the field of food safety is characterised by a high level of complexity with a high level of specialisation, the official veterinarian has broad discretion in the context of the official checks for which he or she is responsible. It is clear from Article 5(2), *in fine*, of Regulation No 854/2004, that health marks are affixed by, or under the responsibility of, the official veterinarian where official checks have not identified any grounds for declaring the meat unfit for human consumption.
- 86 As is provided in Section I, Chapter II of Annex I to that regulation, in relation to inspections in the context of official checks, the official veterinarian is to check and analyse relevant information from the records of the holding of provenance of animals intended for slaughter and to take account of the documented results of this check and analysis when carrying out ante- and post-mortem inspection.
- 87 Furthermore, it is clear from Section I, Chapter III of that annex that the official veterinarian must ensure, *inter alia*, that the health mark is affixed only to animals which have undergone an ante- and post-mortem inspection in accordance with that regulation and where there are no grounds for declaring the carcass in question unfit for human consumption.
- 88 It follows that, in order to decide whether or not a health mark should be affixed to a carcass, the official veterinarian must carry out a complex technical assessment requiring appropriate professional qualifications and expertise in the field. The official veterinarian is thus fully responsible for preventing any meat unfit for human consumption from being placed on the market and thus ensuring the objective pursued by Regulations No 854/2004 and No 882/2004.
- 89 Moreover, his or her decision must, pursuant to Article 54(3) of Regulation No 882/2004, comply with certain requirements concerning, in particular, written notification thereof and the statement of reasons, as well as information on rights of appeal. Amongst those requirements, the obligation to state reasons for decisions adopted by the national authorities is, as is clear from the settled case-law of the Court, particularly important, since it puts their addressees in a position to defend their rights under the best possible conditions and decide in full knowledge of the circumstances whether it is worthwhile to bring an action against those decisions. It is also necessary in order to enable the courts to review the lawfulness of those decisions and it is therefore a requirement for ensuring that the judicial review guaranteed by Article 47 of the Charter is effective (see, to that effect, judgments of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraph 40, and of 15 July 2021, *Commission v Landesbank Baden-Württemberg and CRU*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 103).
- 90 In that context, it should be observed that, in the light of the specific circumstances of the present case, in particular the food safety rules, the national court having jurisdiction must, when an action is brought before it in order to challenge decisions of an official veterinarian such as that at issue in the main proceedings, ensure that the judicial proceedings as a whole comply both with the right to an effective remedy, within the meaning of Article 47 of the Charter, and with the objective of achieving a high level of protection of public health pursued by Regulations No 854/2004 and No 882/2004, on the basis of Article 168(4)(b) TFEU.
- 91 That responsibility of the official veterinarian when he or she decides that a carcass is fit for human consumption and can thus be placed on the market does not, in the light of the objective of protecting public health, require that Article 47 of the Charter be interpreted, in the context of

proceedings for judicial review of decisions of administrative authorities, as requiring the Member States to establish a judicial review of all of the official veterinarian's assessments of the very specific facts found during inspections relating to health marking.

- 92 In the present case, it is apparent from the documents before the Court that the High Court of Justice (England & Wales), when examining an appeal against a decision of an official veterinarian such as that at issue in the main proceedings, has jurisdiction to review that decision in accordance with the detailed rules set out in paragraph 82 of the present judgment, in particular in order to ensure that the official veterinarian did not act for a purpose other than that for which his or her powers were conferred on him or her and, where applicable, to sanction the fact that he or she failed to apply the correct legal test or reached a decision that is irrational or has no sufficient evidential basis.
- 93 In so far as such a judicial review before the national court having jurisdiction is carried out in the light of the requisite statement of reasons for the decision of the official veterinarian, its scope thus limited does not go so far as to compromise the very essence of the guarantees protecting the rights of the slaughterhouse operator when it challenges, in accordance with Regulations No 854/2004 and No 882/2004 read in the light of Article 47 of the Charter, a decision of the official veterinarian refusing to affix a health mark after declaring the meat in question unfit for human consumption. Therefore, such a review can be in compliance with the right of a slaughterhouse operator to effective judicial protection, guaranteed by Article 47 of the Charter.
- 94 That finding cannot be called into question by the argument put forward by the slaughterhouse operator at issue in the main proceedings before the referring court alleging infringement of the right to property.
- 95 In that connection, it should be observed on the one hand that, admittedly, following a decision by the official veterinarian not to affix the health mark, the processing of the carcass concerned may result in the obligation to destroy it. However, such destruction is part of the processing of that carcass, in accordance with Regulation No 1069/2009, which, with the objective, inter alia, of controlling the risks to public and animal health, lays down a classification of animal by-products and derived products into three categories according to the degree of risk they pose to public and animal health, on the basis of a risk assessment. It should be recalled, as the Court pointed out in today's judgment, *Toropet* (C-836/19, paragraph 45), that that degree of risk on which that classification on the three categories depends is also the relevant criterion for the final use of animal by-products. Regulation No 1069/2009 established lists of possible uses and disposal for each category of material and the rules applicable to each of them in order to reduce that level of risk to a minimum.
- 96 On the other hand, according to the settled case-law of the Court, the right to property, which is guaranteed by Article 17 of the Charter, is not an absolute right, but must be considered in relation to its function in society (see, to that effect, judgment of 10 July 2003, *Booker Aquaculture and Hydro Seafood*, C-20/00 and C-64/00, EU:C:2003:397, paragraph 68). In the context of the case in the main proceedings, the right to property must be reconciled with Article 38 of the Charter, which, like Article 168(4)(b) TFEU, seeks to ensure a high level of consumer protection in EU policies, including the protection of public health.
- 97 The importance of the objective of consumer protection may justify even substantial negative economic consequences for certain economic operators (see, by analogy, judgment of 23 March 2021, *Airhelp*, C-28/20, EU:C:2021:226, paragraph 50 and the case-law cited). That is



also the case here, in so far as Article 1(3) of Regulation No 854/2004 provides for the primary legal liability of food business operators to ensure food safety themselves, in accordance with Regulation No 178/2002, irrespective of the economic consequences which that duty might cause them.

- 98 In the light of all the foregoing considerations, the answer to the second question is that Article 54 of Regulation No 882/2004, read in conjunction with recital 43 thereof and in the light of Article 47 of the Charter, must be interpreted as not precluding national legislation according to which the decision made by the official veterinarian, in accordance with Article 5(2) of Regulation No 854/2004, as amended by Regulation No 882/2004, not to affix a health mark to a carcass may be subject to limited judicial review only, in the context of which the court seised may annul that decision on any ground rendering it unlawful, including where that veterinarian has acted for a purpose other than that for which his or her powers have been conferred on him or her, fails to apply the correct legal test or reaches a decision that is irrational or has no sufficient evidential basis.

### **Costs**

- 99 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 (Fourth Chamber) hereby rules:

- 1. Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption, as amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004, and Regulation No 882/2004 must be interpreted as precluding national legislation under which, where an official veterinarian refuses to affix a health mark to a carcass and the owner of that carcass does not concur with that decision, the official veterinarian must bring the matter before a court so that the latter may give a decision on the merits and on the basis of the evidence of experts called by each side whether a carcass fails to comply with food safety requirements, without being able formally to annul decisions of the official veterinarian or order the lifting of the effects of such decisions.**
- 2. Article 54 of Regulation No 882/2004, read in conjunction with recital 43 thereof and in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation according to which the decision made by the official veterinarian, in accordance with Article 5(2) of Regulation No 854/2004, as amended by Regulation No 882/2004, not to affix a health mark to a carcass may be subject to limited judicial review only, in the context of which the court seised may annul that decision on any ground rendering it unlawful, including where that veterinarian has acted for a purpose other than that for which his or her powers have been conferred on him or her, fails to apply the correct legal test or reaches a decision that is irrational or has no sufficient evidential basis.**

Vilaras

Piçarra

Šváby

Rodin

Jürimäe

Delivered in open court in Luxembourg on 2 September 2021.

A. Calot Escobar  
Registrar

M. Vilaras  
President of the Fourth Chamber