



Reports of Cases

ORDER OF THE COURT (Ninth Chamber)

8 May 2014*

(Article 99 of the Rules of Procedure — Directive 2003/4/EC — Validity — Public access to environmental information — Exception to the obligation to disclose environmental information where the disclosure compromises the ability of any person to receive a fair trial — Optional nature of that exception for Member States — Article 6 TEU — Second paragraph of Article 47 of the Charter)

In Case C-329/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Unabhängiger Verwaltungssenat Wien (Austria), made by decision of 12 June 2013, received at the Court on 17 June 2013, in the proceedings

Ferdinand Stefan

v

Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft,

THE COURT (Ninth Chamber),

composed of M. Safjan, President of the Chamber, A. Prechal (Rapporteur) and K. Jürimäe, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Stefan, by himself,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Greek Government, by G. Karipsiadis, acting as Agent,
- the French Government, by C. Diégo and S. Menez, acting as Agents,
- the Swedish Government, by C. Meyer-Seitz and C. Hagerman, acting as Agents,
- the European Parliament, by L. Visaggio and P. Schonard, acting as Agents,

* Language of the case: German.

- the Council of the European Union, by J. Herrmann and M. Moore, acting as Agents,
- the European Commission, by L. Pignataro-Nolin and H. Krämer, acting as Agents,

having decided, after hearing the Advocate General, to give its decision by reasoned order in accordance with Article 99 of the Court's Rules of Procedure,

makes the following

Order

- 1 This request for a preliminary ruling concerns the validity and interpretation of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).
- 2 The request has been made in proceedings between Mr Stefan and the Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft (Austrian Federal Ministry of Agriculture, Forestry, the Environment and Water Management; 'the Bundesministerium') concerning the latter's refusal to provide Mr Stefan with certain environmental information.

Legal context

EU law

- 3 Article 2 of Directive 2003/4, entitled 'Definitions', provides:

'For the purposes of this Directive

1. "Environmental information" shall mean any information in written, visual, aural, electronic or any other material form on:

(a) the state of the elements of the environment, such as ... water ...

...'

- 4 Article 3 of Directive 2003/4, entitled 'Access to environmental information upon request', provides in paragraph 1:

'Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.'

- 5 Article 4 of Directive 2003/4, entitled 'Exceptions', provides in paragraph 2:

'Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:

...

- (c) the course of justice, the ability of any person to receive a fair trial ...

...'

Austrian law

- 6 The Federal Law on Access to Environmental Information (Bundesgesetz über den Zugang zu Informationen über die Umwelt (Umweltinformationsgesetz), BGBl. 495/1993), as in force at the date of the facts in the main proceedings ('UIG'), was designed to transpose Directive 2003/4 into Austrian law.
- 7 Under Paragraph 4(2) UIG, information on, inter alia, the state of the elements of the environment, such as water, is freely accessible.
- 8 Under Paragraph 6(2) UIG:
'Environmental information other than that mentioned in Paragraph 4(2) UIG must be provided in so far as its disclosure would not adversely affect:

...

7. the course of justice, the ability of any person to receive a fair trial ...'

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

- 9 During the first half of November 2012, heavy rainfall led to a rise in the level of the Austrian section of the river Drau. Serious flooding caused considerable damage to property, particularly in residential areas close to the banks of that river.
- 10 Following media reports, according to which the negligent operation of locks had contributed significantly to causing the floods, the Staatsanwaltschaft Klagenfurt (Public Prosecutor's Office, Klagenfurt) initiated a criminal investigation against, among others, the keeper of the locks in question.
- 11 Since he wished to obtain information which would allow him to clarify the conditions in which that rise in the water level had occurred, Mr Stefan, on 26 November 2012, sent a request to the Bundesministerium seeking information relating to the levels and flow rates of the river Drau in the vicinity of the power stations at Rosegg-St Jakob, Feistritz-Ludmannsdorf, Ferlach-Maria Rain and Annabrücke for the period from 30 October 2012 to 12 November 2012.
- 12 By decision of 8 March 2013, the Bundesministerium refused to provide that information. One of the reasons given for that refusal was that disclosure of the requested information might adversely affect the criminal proceedings which had been instituted and compromise the ability of the persons concerned to receive a fair trial, with the result that that environmental information could not be provided until those criminal proceedings had been concluded.
- 13 Dealing with an action brought against that refusal decision, the referring court states that Austrian law does not permit the ground for refusal set out in point 7 of Paragraph 6(2) UIG to be applied to the request for provision of the information sought by Mr Stefan because, in accordance with that provision, the ground for refusal at issue does not apply to environmental information coming within the scope of Paragraph 4(2) of that Law, to which Mr Stefan's request of 26 November 2012 relates. According to that court, the Austrian legislature thus only made limited use of the option which Article 4(2) of Directive 2003/4 grants to Member States to regulate the refusal to disclose environmental information.

- 14 However, the referring court takes the view that, even though Paragraph 4(2) UIG requires the competent national authority to accede to Mr Stefan's request, it is apparent that provision of the data sought would have negative effects on the ability of the lock keeper in question to receive a fair trial within the meaning of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, or of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 15 According to that court, since Directive 2003/4 does not oblige Member States to refuse a request for access to environmental information in a case where the disclosure thereof would compromise the ability of any person to receive a fair trial, but merely permits such a refusal in point (c) of the first subparagraph of Article 4(2) thereof, that directive authorises Member States to adopt measures that are at variance with the fundamental rights protected in the European Union, a fact which renders it incompatible with the second paragraph of Article 47 of the Charter.
- 16 In those circumstances, the Unabhängiger Verwaltungssenat Wien (Vienna Independent Administrative Tribunal) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
1. As regards the validity of [Directive 2003/4]: is [that directive] in every respect compatible with the requirements of the second paragraph of Article 47 of the [Charter]?
 2. As regards the interpretation of [Directive 2003/4]: In the event that the Court of Justice affirms the validity of Directive [2003/4] in its entirety or the validity of parts thereof, to what extent and on the basis of what assumptions are the provisions of that directive compatible with the provisions of the [Charter] and the requirements of Article 6 TEU?

Consideration of the questions referred

- 17 Under Article 99 of its Rules of Procedure, where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, where the reply to such a question may be clearly deduced from existing case-law, or where the answer to the question referred for a preliminary ruling admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.
- 18 That procedural provision must be applied in the present case.

Admissibility

- 19 The French Government expresses doubts as to the admissibility of the request for a preliminary ruling, since, in its view, the questions raised by the referring court do not help to resolve the dispute before it.
- 20 According to the French Government, the outcome of the dispute in the main proceedings would not be different if the Austrian legislation had provided that the ground based on the ability of any person to receive a fair trial were applicable to the supply of environmental information, such as that relating to the levels and flow rates of the river Drau at issue in the case in the main proceedings.
- 21 In the context of the dispute in the main proceedings, it is not, the French Government submits, the provision of that information in itself which is liable to compromise the ability of the person accused to receive a fair trial, but rather misuse of that information by the media.

- 22 According to the French Government, which refers in this regard to paragraphs 110 to 112 of the judgment of the European Court of Human Rights in *Ressiot and Others v France* (Cases No 15054/07 and No 15066/07, 28 September 2012), it is not contrary to the principle of the right to a fair trial that the media should be able to disseminate reliable and accurate information, and information based on true facts, which is linked to ongoing criminal proceedings, to the extent to which, in their reports, that principle is taken into account.
- 23 In circumstances such as those in the case in the main proceedings, the risk of interference with the right to a fair trial as a result of the dissemination of the environmental information at issue is, the French Government submits, even less apparent since it does not relate to information which is liable, on its own, to facilitate the incrimination of the person concerned.
- 24 It must be recalled, in this regard, that a request for a preliminary ruling made by a national court may be declared inadmissible only where it is quite obvious that the interpretation of EU law that is sought is unrelated 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 (see, inter alia, Case C-500/10 *Belvedere Costruzioni* EU:C:2012:186, paragraph 16 and the case-law cited).
- 25 The French Government's argument concerning the admissibility of the request for a preliminary ruling rests on the premiss that the disclosure of environmental information, in circumstances such as those in the case in the main proceedings, does not constitute a breach of the right to a fair trial within the meaning of the second paragraph of Article 47 of the Charter.
- 26 Such a determination, however, comes under the jurisdiction of the referring court. Furthermore, it requires an interpretation of that provision of the Charter, in relation to which that court has not referred questions to the Court of Justice in the context of the present request for a preliminary ruling.
- 27 In those circumstances, the view cannot be taken that it is manifestly evident that the questions are unrelated to the actual facts of the main action or its purpose, or that the problem is hypothetical.
- 28 Consequently, the request for a preliminary ruling is admissible.

Substance

- 29 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Directive 2003/4 is valid in the light of Article 6 TEU and the second paragraph of Article 47 of the Charter.
- 30 In this regard, it must be noted that, under Article 51(1) of the Charter, the fundamental rights guaranteed therein must be respected where national legislation comes within the scope of EU law (see, to that effect, Case C-617/10 *Åkerberg Fransson* EU:C:2013:105, paragraph 21).
- 31 It follows that Member States are required to respect, inter alia, the second paragraph of Article 47 of the Charter when they implement Directive 2003/4.
- 32 As regards the question whether that directive and, in particular, point (c) of the first subparagraph of Article 4(2) thereof authorise Member States to disregard that obligation resulting from primary EU law, it must be borne in mind that a provision of secondary EU law must, so far as possible, be given an interpretation which renders that provision consistent with the Treaties and the general principles of EU law (see, inter alia, Case C-250/11 *Lietuvos geležinkeliai* EU:C:2012:496, paragraph 40 and the case-law cited).

- 33 By referring to the ability of any person to benefit from the right to receive a fair trial, point (c) of the first subparagraph of Article 4(2) of Directive 2003/4 authorises Member States to provide for an exception to the obligation to disclose environmental information in order, specifically, to allow them, if the circumstances so require, to respect the right to a fair trial laid down in the second paragraph of Article 47 of the Charter.
- 34 Furthermore, even if a Member State does not provide for such an exception in its legislation intended to transpose Directive 2003/4, although, in order to respect the second paragraph of Article 47 of the Charter, circumstances require it, it must be borne in mind that Member States are, in any event, required to use the margin of appreciation conferred on them by point (c) of the first subparagraph of Article 4(2) of that directive in a manner which is consistent with the requirements flowing from that article of the Charter (see, to that effect, Case C-540/03 *Parliament v Council* EU:C:2006:429, paragraph 104).
- 35 Since all authorities of the Member States, including the administrative and judicial bodies, must ensure the observance of the rules of EU law within their respective spheres of competence, they are, in a case such as that here at issue in the main proceedings, required, if the conditions are fulfilled for application of the second paragraph of Article 47 of the Charter, to ensure compliance with the fundamental right guaranteed by that article (see, to that effect, Case C-249/11 *Byankov* EU:C:2012:608, paragraph 64).
- 36 In those circumstances, an interpretation to the effect that Directive 2003/4 authorises Member States to adopt measures that are incompatible with the second paragraph of Article 47 of the Charter or with Article 6 TEU cannot be accepted. That directive is therefore, on the same basis, not invalid in the light of those two provisions.
- 37 In the light of the foregoing, the answer to the questions raised is that consideration thereof has disclosed no factor of such a kind as to affect the validity of Directive 2003/4.

Costs

- 38 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Ninth Chamber) hereby rules:

Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.

[Signatures]