

Judgment of the Court (Fifth Chamber) of 4 October 2018 (request for a preliminary ruling from the Administrativen sad — Varna — Bulgaria) — Nikolay Kantarev v Balgarska Narodna Banka

(Case C-571/16) ⁽¹⁾

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

(2018/C 436/03)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: Nikolay Kantarev

Defendant: Balgarska Narodna Banka

Operative part of the judgment

1. Article 1(3) and Article 10(1) of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009, must be interpreted as precluding, first, national legislation according to which the determination that deposits have become unavailable is concomitant with the insolvency of that credit institution and the withdrawal of that institution's banking licence and, second, derogation from the time limits provided by those provisions for the purposes of determining that deposits have become unavailable and of reimbursing those deposits on the ground that the credit institution must be placed under special supervision.
2. Article 1(3)(i) of Directive 94/19, as amended by Directive 2009/14, must be interpreted as meaning that the unavailability of deposits within the meaning of that provision must be determined expressly by the competent national authority and cannot be inferred from other acts of the national authorities — such as the decision of the Balgarska Narodna Banka (Bulgarian Central Bank) to place Korporativna Targovska Banka under special supervision — nor presumed from circumstances such as those in the case in the main proceedings.
3. Article 1(3)(i) of Directive 94/19, as amended by Directive 2009/14, must be interpreted as meaning that a determination that a bank deposit is unavailable, within the meaning of that provision, cannot be subject to the condition that the account holder must first make an unsuccessful request for payment of funds from the credit institution.
4. Article 1(3)(i) of Directive 94/19, as amended by Directive 2009/14, has direct effect and constitutes a rule of law intended to confer rights on individuals allowing depositors to bring an action for damages for the harm sustained by late repayment of deposits. It is for the referring court to ascertain, first, whether the failure to determine that deposits were unavailable within the time limit of five working days laid down in that provision, despite the fact that the conditions which were clearly set out in that provision were satisfied, on the facts of the case in the main proceedings, amounts to a sufficiently serious breach, within the meaning of EU law and, second, whether there is a direct causal link between that breach and the harm sustained by a depositor, such as Mr Nikolay Kantarev.
5. Article 4(3) TEU and the principles of equivalence and effectiveness must be interpreted as, in the absence of a specific procedure in Bulgaria holding that Member State liable for harm caused by a national authority's breach of EU law:

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

⁽¹⁾ OJ C 38, 6.2.2017.

Judgment of the Court (Second Chamber) of 4 October 2018 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Nigyar Rauf Kaza Ahmedbekova, Rauf Emin Ogla Ahmedbekov v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite

(Case C-652/16) ⁽¹⁾

(Reference for a preliminary ruling — Common policy on asylum and subsidiary protection — Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection — Directive 2011/95/EU — Articles 3, 4, 10 and 23 — Applications for international protection lodged separately by family members — Individual assessment — Taking into account threats in respect of a family member in carrying out the individual assessment of the application for international protection of another family member — More favourable standards capable of being retained or introduced by the Member States for the purpose of extending the refugee or subsidiary protection status of a beneficiary of international protection to family members — Assessment of the reasons for persecution — Involvement of an Azerbaijani national in bringing a complaint against her country before the European Court of Human Rights — Common procedural standards — Directive 2013/32/EU — Article 46 — Right to an effective remedy — Full and ex nunc examination — Reasons for persecution or evidence withheld from the determining authority but invoked in the course of an action against the decision taken by that authority)

(2018/C 436/04)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad