Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 14 March 2013 [1]

Case C-93/12

ET Agrokonsulting-04-Velko Stoyanov
v
Izpalnitelen direktor na Darzhaven fond 'Zemedelie' – Razplashtatelna agentsia

(Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria))

(Common agricultural policy — Examination of administrative disputes — Determination of the court with jurisdiction — Admissibility by reference to the principles of effectiveness and equivalence and to the right to an effective remedy)

1. For the first time, the Court is required to give a ruling on whether the principles of effectiveness and equivalence, and also the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') preclude a rule of national procedure which has the consequence of concentrating before a single court disputes concerning decisions of the national authority responsible for paying agricultural aid under the common agricultural policy ('the CAP').

2. The Administrativen sad (Administrative Court) Sofia-grad (Bulgaria) considers that such specialisation in the context of those disputes could discourage, or even prevent, the individuals concerned, namely farmers, from having access to a court, which would constitute a violation of their right to an effective remedy.

3. In this opinion I shall set out the reasons why I consider that the first paragraph of Article 47 of the Charter must be interpreted as not precluding a rule of national procedure, such as that at issue in the main proceedings, which has the effect of concentrating before the Administrativen sad Sofia-grad disputes concerning decisions of the national authority responsible for paying agricultural aid under the CAP, provided that that rule does not unreasonably impede the access of individuals to that court, which must be ascertained by the national court.

1 — Original language: French.

I – The legal context

A – *European Union law*

4. On 30 November 2009, the European Commission adopted Regulation (EC) No 1122/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector. [2]

5. Article 58 of Regulation (EC) No 1122/2009 provides as follows:

'If, in respect of a crop group, the area declared for the purposes of any area-related aid schemes, except those for starch potato and seed as provided for in Sections 2 and 5 of Chapter 1 of Title IV of Regulation (EC) No 73/2009, exceeds the area determined in accordance with Article 57 of this Regulation, the aid shall be calculated on the basis of the area determined reduced by twice the difference found if that difference is more than either 3% or two hectares, but no more than 20% of the area determined.

If the difference is more than 20% of the area determined, no area-linked aid shall be granted for the crop group concerned.

If the difference is more than 50%, the farmer shall be excluded once again from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined in accordance with Article 57 of this Regulation. That amount shall be off-set in accordance with Article 5b of Commission Regulation (EC) No 885/2006. If the amount cannot be fully off-set in accordance with that article in the course of the three calendar years following the calendar year of the finding, the outstanding balance shall be cancelled.'

B – *Bulgarian law*

6. Under Article 1(6) of the Law on aid to farmers (Zakon za podpomagane na zemedelskite proizvoditeli), that law regulates the implementation of the single area payment scheme in accordance with the European Union's CAP.

7. Under Article 128 of the Code of Administrative Procedure (Administrativnoprotsesualen kodeks, 'the APK'), all proceedings concerning applications for the adoption, amendment or annulment of an administrative act, or for a declaration that it is void, fall within the jurisdiction of the administrative courts.

8. Article 133(1) of the APK provides that the proceedings fall within the jurisdiction of the Administrativen sad in whose judicial district the authority which adopted the contested administrative act has its seat.

9. In Bulgaria, the sole authority competent to authorise or reject applications for support under the CAP schemes is the Izpalnitelen direktor na Darzhaven fond 'Zemedelie' (Executive director of the National Agriculture Fund, 'the Direktor'), whose seat is in Sofia.

2 — OJ 2009 L 316, p. 65.

10. Paragraph 19 of the transitional and final provisions of the Law amending and supplementing the APK provides that individual administrative acts under the Law on ownership and use of agricultural land (Zakon za sobstvenostta i polzuvaneto na zemedelskite zemi) and its implementing decree and refusals to adopt such acts, unless enacted by the Minister for Agriculture and Food (Ministar na zemedelieto i hranite), may be challenged before the Rayonen sad (First Instance Court) in the place where the property is located, in accordance with the APK.

II – The main proceedings

11. ET Agrokonsulting-04-Velko Stoyanov ('Agrokonsulting') has been registered as a farmer since 23 March 2007. On 11 May 2010 it lodged an application for aid under the following aid schemes of the CAP: (i) the single area payment scheme and (ii) the complementary national payments per hectare of agricultural land. The land in question is situated in the region of Veliko Tarnovo (Bulgaria), approximately 250 km from the city of Sofia.

12. By letter of 2 October 2011, the Direktor refused the application on the ground that the areas declared by Agrokonsulting did not comply with the requirements of Regulation No 1122/2009.

13. Agrokonsulting lodged an appeal against that decision before the Administrativen sad, Burgas (Bulgaria). On 16 November 2011, that court found that there was a conflict of jurisdiction, stayed the proceedings and referred the case to the Administrativen sad Sofia-grad, for a ruling on jurisdiction, on the ground that, under Article 133 of the APK, the matter was within the jurisdiction of the administrative court within whose judicial district the Direktor's seat was located, namely, Sofia.

14. The Administrativen sad Sofia-grad considers that the conflict of jurisdiction should be referred to the Varhoven administrativen sad (Supreme Administrative Court) (Bulgaria) and is, however, uncertain with regard to the interpretation and the scope of the principles of procedural autonomy, effectiveness and equivalence. It has therefore decided to stay the proceedings and to refer two questions to the Court of Justice for a preliminary ruling.

III – The questions referred

15. The national court has referred the following questions to the Court of Justice for a preliminary ruling:

'1. Are the principle of effectiveness set out in the case-law [of the Court of Justice] of the European Union and the principle of effective judicial protection enshrined in Article 47 of the Charter of Fundamental Rights of the European Union to be interpreted as not permitting a national procedural rule such as Article 133(1) of the Code of administrative procedure which makes jurisdiction for administrative disputes concerning the implementation of the European Union's common agricultural policy dependent solely on the seat of the administrative authority which adopted the contested administrative act, considering that that rule does not take into consideration the place in which the properties are located and the place of residence of the person seeking justice?

2. Is the principle of equivalence set out in the case-law of the Court of Justice of the European Union to be interpreted as not permitting a national procedural rule such as Article 133(1) of the Code of administrative procedure which makes jurisdiction for administrative disputes concerning the implementation of the European Union's common agricultural policy dependent solely on the seat of the administrative authority which adopted the contested administrative

act, if account is taken of paragraph 19 of the transitional and final provisions of the Law amending and supplementing the Code of Administrative Procedure (which concerns jurisdiction for domestic administrative disputes concerning agricultural land)?'

IV – My assessment

16. In essence, the questions from the referring court are whether the principles of equivalence and effectiveness, and Article 47 of the Charter, must be interpreted as meaning that they preclude a national procedural rule, such as Article 133(1) of the APK, which has the consequence of concentrating before the Administrativen sad Sofia-grad disputes concerning decisions of the national authority responsible for paying agricultural aid under the CAP.

A – *Preliminary observations*

17. The German Government, in its written observations, submits that the Court has no jurisdiction to reply to the first question in so far as it relates to Article 47 of the Charter. The German Government considers that the provision at issue in the main proceedings does not concern the implementation of European Union law.

18. I cannot share that view.

19. Article 51(1) of the Charter states that the provisions thereof are addressed to the Member States only when they are implementing European Union law. Under Article 51(2), the Charter does not extend the field of application of European Union law beyond the powers of the European Union, or establish any new power or task for the European Union, or modify powers and tasks as defined in the Treaties.

20. Paragraphs (1) and (2) of Article 51 are closely connected. Paragraph (1) sets out the scope of the Article and paragraph (2) confirms it by stating that the Charter does not have the effect of extending the powers and tasks conferred on the European Union by the Treaties. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the European Union only has those powers which have been conferred upon it.[3]

21. In the present case, regard must be had to the legal context. Article 133(1) of the APK lays down a jurisdiction rule concerning disputes relating to the payment of agricultural aid under Regulation No 1122/2009. Admittedly, that rule does not have the object of implementing the Regulation. However, it inevitably affects European Union law and, in particular, the rights of individuals deriving from the Regulation in so far as, if it is found that the Regulation violates the right to an effective remedy, those rights could be considerably altered or even totally denied.

22. Therefore, in adopting a jurisdiction rule of that kind, Bulgaria is indeed acting within the field of European Union law.[4]

3 — See the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17).

4 — The Explanations relating to Article 51(1) of the Charter state that '[a]s regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States *when they act in the scope of Union law*' (italics added). The following judgments are cited: Case 5/88 *Wachauf* [1989] ECR 2609; Case C-260/89 *ERT* v *DEP* [1991] ECR I-2925; and Case C-309/96 *Annibaldi* [1997] ECR I-7493. I would also refer to my Opinion in Case C-108/10 *Scattolon* [2011] ECR I-7491, points 116 to 120. For confirmation of that interpretation, see, most recently, Case C-617/10 *Åkerberg Fransson* [2013] ECR, paragraph 17 et seq.

23. To accept that the present case does not concern the implementation of European Union law within the meaning of Article 51(1) of the Charter on the ground that the rule concerned is a rule of national procedure, would amount to ruling out any possibility of examining the compatibility of such a rule with the fundamental rights safeguarded by the Charter.

24. Furthermore, I fail to see how examination of the question referred in the light of Article 47 of the Charter would extend the field of application of European Union law beyond the powers of the European Union or would establish a new power or task for the European Union or, further, modify the power and the tasks defined in the Treaties, within the meaning of Article 51(2) of the Charter.

B – *The questions referred*

25. In the present case, the referring court is uncertain as to whether conferring exclusive jurisdiction on the Administrativen sad Sofia-grad in a particular dispute, namely concerning decisions of the national authority responsible for the payment of agricultural aid under the CAP, is such as to deprive the persons concerned, in this case, farmers, of effective access to a court.

26. It has consistently been held that, in the absence of European Union rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from European Union law. [5]

27. That is an expression of the procedural autonomy of the Member States. However, the fact remains that those detailed procedural rules must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by European Union law (principle of effectiveness). [6]

28. Consequently it is in the light of those principles and of the right to an effective remedy expressed in Article 47 of the Charter that the referring court seeks a ruling from the Court of Justice on the question whether those factors preclude national legislation which confers exclusive jurisdiction upon the Administrativen sad Sofia-grad in disputes concerning the payment of agricultural aid under the CAP.

29. However, it seems to me to be appropriate to examine this issue solely from the viewpoint of Article 47 of the Charter.

30. The requirements of equivalence and effectiveness embody the general obligation on the Member States to ensure judicial protection of an individual's rights under European Union law. [7]

31. The principle of effective judicial protection, which is a fundamental right, includes the right to an effective remedy. [8] That right is itself embodied in the first paragraph of Article 47 of the Charter, which states 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.

5 — Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 44 and the case-law cited.

6 — Case C-279/09 *DEB* [2010] ECR I-13849, paragraph 28 and the case-law cited.

7 — Case C-63/08 *Pontin* [2009] ECR I-10467, paragraph 44 and the case-law cited.

8 — See, to that effect, Case C-199/11 *Otis and Others* [2012] ECR, paragraphs 46 and 48 and the case-law cited.

32. Having regard to those matters, it therefore seems to me that the question can be considered only from the viewpoint of that provision. [9]

33. To be precise, the question here is whether an applicant for agricultural aid under the CAP is prevented from exercising his rights under European Union law by the mere fact that any disputes concerning the payment of the aid are concentrated exclusively before the Administrativen sad Sofia-grad. The referring court considers that the distance between the applicant's place of residence and the place where the court is situated could, in certain cases, as in the main proceedings, be an obstacle to exercising the right to an effective remedy because it would prevent physical access to a court or, at least, deter the applicant from instituting proceedings. Consequently there would be a violation of the first paragraph of Article 47 of the Charter.

34. In reality, the main question here relates to the specialisation of the Administrativen sad Sofia-grad. Does it actually prevent an individual's physical access to the court or, at least, deter him from seeking it?

35. Pursuant to their sovereign power, the Member States often choose to include specialised courts in their judicial system, either because the disputes in question are technical or because they are specialised, such as those concerning patents, minors or terrorism. [10]

36. Such specialisation may take several forms: disputes may be concentrated before a single court or specialised chambers may be established within one and the same court.

37. When arranging the judicial map of its territory, a Member State must therefore take into account several factors, including the accessibility of means of transport for providing actual physical access to the court for individuals. The conclusion reached by the national authorities depends on the specific circumstances of each area.

38. Therefore, while the general obligation on the Member States to ensure judicial protection of an individual's rights under European Union law applies equally to the designation of the courts and tribunals having jurisdiction to hear and determine actions based on European Union law, [11] the Court cannot substitute its own assessment for that of the Member States regarding the best policy to adopt in relation to the classification of disputes and the arrangement of the judicial map in their respective territories. [12] The Member State remains the best placed to make such an assessment because it alone has the essential knowledge to do so.

39. In my view, therefore, the Court must do no more than inform the national court of the factors to be taken into account to determine whether the concentration of disputes before one court is an excessive obstacle to access to the court and therefore undermines the right to an effective remedy.

9 — In the *DEB* judgment cited above, the question from the referring court was whether the principle of effectiveness should be interpreted as meaning that it precludes a national rule under which the pursuit of a claim before the courts is subject to the making of an advance payment in respect of costs and under which a legal person does not qualify for legal aid even though it is unable to make that advance payment. The Court reworded the question in order to consider it solely from the viewpoint of Article 47 of the Charter (paragraphs 27 to 33).

10 — Https://e-justice.europa.eu.

11 — *Impact*, paragraphs 47 and 48. See also Case C-224/01 *Köbler* [2003] ECR I-10239, paragraph 46.

12 — See, to that effect, *Köbler*, paragraph 47 and the case-law cited.

40. In that connection, the Court stated at paragraph 45 of the *DEB* judgment cited above, which concerned legal aid, repeating the case-law of the European Court of Human Rights, that the right of access to a court is not absolute. Therefore the Court pointed out that it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which undermines the very core of that right, whether they pursue a legitimate aim and whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve. [13]

41. That also holds true for the present case.

42. In particular, as the Commission pointed out in its observations, to determine whether the jurisdiction rule in the main proceedings undermines the right of access to a court, first of all, the distance which the applicant must travel must be set against the existence of means of transport enabling him to reach Sofia. In the present case, it appears from the facts of the main proceedings that the principal place of business of Agrokonsulting is situated in Burgas, which is approximately 370 kilometres from Sofia. The existence of a motorway network and also rail and air connections must be taken into account by the referring court.

43. On that point, the Direktor stated at the hearing that the journey by motorway between the two cities took approximately three hours. Although that may appear to be an appreciable distance in the eyes of the most vulnerable individuals, I do not think it is a physical obstacle which excessively restricts access to the Administrativen sad Sofia-grad.

44. In any case, the referring court will, in its assessment, have to determine whether the existing means of transport are easily accessible for the applicant and whether the cost of travel is prohibitive to the extent of deterring individuals from bringing an action against a decision of the Direktor refusing their application for agricultural aid. The referring court may, for example, assess those costs in the light of the amount which may be granted by way of legal aid.

45. Those factors will also have to be weighed against the objective pursued by the national jurisdiction rule. In the present case, the fact that the Administrativen sad Sofia-grad specialises in disputes relating to the payment of agricultural aid is explained by the specific nature of those disputes.

46. Their specific nature was pointed out by all the parties in their observations submitted to the Court and also in the course of the hearing. Proof of eligibility for agricultural aid under the CAP is provided by experts appointed by the Administrativen sad Sofia-grad. The Direktor stated that such experts hardly ever go to the site in so far as they use orthophotography, that is to say, aerial or satellite images which are examined in the integrated control system situated in Sofia. In disputes of that kind, direct personal contact with the applicant therefore appears much less necessary than in, for example, criminal cases or family-law matters.

47. Finally, it must not be forgotten that the concentration of disputes before a single court enables the court to acquire a degree of expertise, which has the effect of shortening the duration of proceedings. In the present case, the Bulgarian Government stated at the hearing that proceedings before the Administrativen sad Sofia-grad take 6 to 8 months, compared with 12 to 18 months as a general rule. The right to a hearing within a reasonable time is also an essential aspect of the right to an effective remedy. [14]

13 — *DEB*, paragraphs 46, 47 and 60.

14 — Second paragraph of Article 47 of the Charter.

48. Specialisation on the part of a court may therefore contribute, in the interest of the individuals concerned, to the sound administration of justice and to the efficacious resolution of disputes. In that connection, at the hearing the Commission made a point which seems to me particularly relevant in the present case. With regard to payments made under the CAP, according to Article 9 of Regulation (EC) No 883/2006,[15] the payments will be reduced for expenditure effected after the deadlines laid down. Therefore farmers who are refused agricultural aid have an interest in a rapid decision on their action as otherwise the amount awarded may be reduced.

49. Having regard to all the foregoing considerations, I am of the opinion that the first paragraph of Article 47 of the Charter must be interpreted as meaning that it does not preclude a rule of national procedure, such as that in Article 133(1) of the APK, which has the effect of concentrating before the Administrativen sad Sofia-grad disputes concerning decisions of the national authority responsible for paying agricultural aid under the CAP, provided that the rule in question does not excessively impede the access of individuals to that court, which is a matter to be determined by the national court.

V – Conclusion

50. In the light of the foregoing, I propose that the Court should give the following reply to the Administrativen sad Sofia-grad (Bulgaria):

The first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that it does not preclude a rule of national procedure, such as that in Article 133(1) of the Code of Administrative Procedure, which has the effect of concentrating before the Administrativen sad Sofia-grad disputes concerning decisions of the national authority responsible for paying agricultural aid under the common agricultural policy, provided that the rule in question does not excessively impede the access of individuals to that court, which is a matter to be determined by the national court.

15 — Commission Regulation (EC) No 883/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the keeping of accounts by the paying agencies, declarations of expenditure and revenue and the conditions for reimbursing expenditure under the EAGF and the EAFRD (OJ 2006 L 171, p. 1).