Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

22 May 2014*

(Directives 92/40/EEC and 2005/94/EC — Decisions 2006/105/EC and 2006/115/EC — Charter of Fundamental Rights of the European Union — Articles 16, 17 and 47 — Measures for the control of avian influenza — Compensation for damage)

In Case C-56/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Szegedi Ítélőtábla (Hungary), made by decision of 28 January 2013, received at the Court on 4 February 2013, in the proceedings

Érsekcsanádi Mezőgazdasági Zrt

v

Bács-Kiskun Megyei Kormányhivatal,

THE COURT (Sixth Chamber),

composed of A. Borg Barthet, President of the Chamber, E. Levits (Rapporteur), and M. Berger, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— Bács-Kiskun Megyei Kormányhivatal, by I. Olasz, and J. Kerényi, acting as Agents,

— the Hungarian Government, by Z. Fehér and K. Szíjjártó, acting as Agents,

— the European Commission, by V. Bottka, H. Krämer and B. Burggraaf, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of (i) Council Directives 92/40/EEC of 19 May 1992 introducing Community measures for the control of avian influenza (OJ 1992 L 167, p. 1), and 2005/94/EC of 20 December 2005 on Community measures for the control of avian

* Language of the case: Hungarian.

influenza and repealing Directive 92/40/EEC (OJ 2006 L 10, p. 16), (ii) Commission Decisions 2006/105/EC of 15 February 2006 concerning certain interim protection measures in relation to suspected cases of highly pathogenic avian influenza in wild birds in Hungary (OJ 2006 L 46, p. 59) and 2006/115/EC of 17 February 2006 concerning certain protection measures in relation to highly pathogenic avian influenza in wild birds in the Community and repealing Decisions 2006/86/EC, 2006/90/EC, 2006/91/EC, 2006/94/EC, 2006/104/EC and 2006/105/EC (OJ 2006 L 48, p. 28) and (iii) Articles 16, 17 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Érsekcsanádi Mezőgazdasági Zrt, a stock-farming undertaking, and the Bács-Kiskun Megyei Kormányhivatal (Office of the regional government of Bács-Kiskun), concerning the latter's refusal to include, when compensating the former for damage caused in the exercise of public authority, an amount representing compensation for loss of profits.

Legal context

European Union law

3 The first paragraph of Article 1 of Directive 92/40 states:

'This Directive defines the Community control measures to be applied in the event of an outbreak of avian influenza in poultry without prejudice to the Community provisions governing intra-Community trade.'

4 Article 1(1) of Directive 2005/94 provides:

'This Directive sets out:

(a) certain preventive measures relating to the surveillance and the early detection of avian influenza and increasing the level of the competent authorities' and the farming community's awareness of, and preparation for, the risks of that disease;

(b) the minimum control measures to be applied in the event of an outbreak of avian influenza in poultry or other captive birds and the early detection of possible spread of avian influenza viruses to mammals;

(c) other subsidiary measures to avoid the spread of influenza viruses of avian origin to other species.'

5 The first subparagraph of Article 67(1) of Directive 2005/94 provides:

'Member States shall bring into force by 1 July 2007 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.'

6 Article 2 of Decision 2006/105, entitled 'Establishment of protection and surveillance zones', provides in paragraph 1:

'Hungary shall establish around the area where the presence of highly pathogenic avian influenza caused by influenza A virus of subtype H5 in wild birds is confirmed and the neuraminidase type N1 is either suspected or confirmed:

(a) a protection zone with a radius of at least three kilometres, and

(b) a surveillance zone with a radius of at least 10 kilometres, including the protection zone.'

7 Article 3(2)(a) and (c) of Decision 2006/105 provide:

'Hungary shall ensure that the following are prohibited in the protection zone:

(a) the removal of poultry and other captive birds from the holding on which they are kept;

...

(c) the transport through the zone of poultry and other captive birds, except transit on major roads or railways and transport to a slaughterhouse for direct slaughter;

...'

8 Under Article 6(1) of that decision:

'By way of derogation from Article 3(2)(a), Hungary may authorise the transport of ready-to-lay pullets and turkeys for fattening to holdings under official control situated either in the protection or in the surveillance zone.'

9 Article 11 of Decision 2006/105 provides:

'Hungary shall immediately take the necessary measures to comply with this Decision and publish those measures. It shall immediately inform the Commission thereof.'

10 Article 2 of Decision 2006/115, entitled 'Establishment of protection and surveillance zones', provides in paragraph 1:

'The affected Member State shall establish around the area where the presence of highly pathogenic avian influenza caused by influenza A virus of subtype H5 in wild birds is confirmed and the neuraminidase type N1 is either suspected or confirmed:

(a) a protection zone with a radius of at least three kilometres, and

(b) a surveillance zone with a radius of at least 10 kilometres, including the protection zone.'

11 In accordance with Article 3(2) of that decision, which concerns measures in the protection zone:

'The affected Member State shall ensure that the following are prohibited in the protection zone:

(a) the removal of poultry and other captive birds from the holding on which they are kept;

...

(c) the transport through the zone of poultry and other captive birds, except transit on major roads or railways and transport to a slaughterhouse for direct slaughter;

…'

12 According to Article 6(1) of Decision 2006/115:

'By way of derogation from Article 3(2)(a), the affected Member State may authorise the transport of ready-to-lay pullets, turkeys for fattening and other poultry and farmed feathered game to holdings under official control situated either in the protection or in the surveillance zone.'

13 The first paragraph of Article 11 of Decision 2006/115 states:

'All Member States shall immediately adopt and publish the measures necessary to comply with this Decision. They shall immediately inform the Commission thereof.'

Hungarian law

14 Law CLXXVI of 2005 on Animal Health (állategészségügyről szóló 2005. évi CLXXVI. törvény), in the version in force at the material time, makes provision for epidemiological measures.

15 Paragraph 7(4) of that law provides:

'In order to prevent, diagnose and inhibit the spreading of a notifiable animal disease and to reduce the associated damage, or in order to eradicate it, the animal-health authority may, to the extent required by the nature and prevalence of the disease, in defined cases, provide for the following epidemiological measures in the cases defined in separate legislation:

...

(f) establishing a protection zone (surveillance zone);

...

(q) in order to efficiently implement the epidemiological measures, obliging businesses (for example, slaughterhouses and plants treating animal by-products) to collaborate to the extent and for the period required to eliminate the danger, in return for subsequent compensation commensurate with the extent of collaboration.'

16 Paragraph 8(1) of that law provides:

'More than one epidemiological measure may be taken simultaneously. The decision ordering such measures shall be enforced immediately even though appeals may have been brought against that decision.'

17 Paragraph 10 of that law further provides:

'1. Where any of the epidemiological measures listed in Paragraph 7(4)(i)-(q) are taken — with the exceptions specified in subparagraph (4) — compensation from the government shall be available to:

...

(c) the undertakings referred to in Paragraph 7(4)(q).

...

3. The amount of compensation shall be the commercial value of the animal, material, utensil or object, or shall, in the case of Paragraph 7(4)(p) and (q), be adjusted to the damage caused by the use of goods or collaboration (excluding loss of profits). Detailed rules for the estimation of damage and for payment shall be laid down in separate legislation. The compensation payment method shall be defined in the decision ordering the measures.

…'

18 Under Paragraph 14 of Decree No 44 of the Ministry of Agriculture and Rural Affairs of 17 May 2002 on Protection Against Avian Influenza and Newcastle Disease, as in force at the material time:

'1. When avian influenza or Newcastle disease is found by the chief veterinary surgeon for the district in a factory or other production site, the Inspectorate shall order a protection zone with a radius of at least three kilometres around the factory or other production site affected. In establishing the protection zone, account shall be taken of local poultry holdings, the location of abattoirs, natural geographical boundaries and the opportunities for surveillance.'

19 The Civil Code established by Law IV of 1959 (Polgári törvénykönyvről szóló 1959. évi IV. Törvény) provides, in Paragraph 339(1), which concerns compensation for damage:

'A person who causes damage to another person in violation of the law shall be liable for such damage. He shall be relieved of liability if he is able to prove that he has acted in a manner that can generally be expected in the given situation.'

20 Paragraph 349(1) of the Civil Code provides:

'Liability for damages caused in the exercise of public authority shall arise only if the damage could not be avoided by ordinary legal remedies or the aggrieved person resorted to the ordinary legal remedies for the avoidance of damage.'

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

21 The appellant in the main proceedings, an undertaking engaged in agricultural activities relating to the keeping of animals, including the fattening of turkeys, concluded a lease for the period 6 February 2006 to 31 December 2006 with an agricultural cooperative in respect of a turkey-rearing enclosure in Nagybaracska (Hungary). The appellant in the main proceedings planned to use the leased site for two fattening cycles for reared turkeys.

22 On 10 February 2006, a deceased mute swan infected with the H5N1 virus was found on the outskirts of Nagybaracska, approximately 50 metres away from the leased site.

23 In that regard, in order to take measures for the control of highly pathogenic avian influenza, the Commission adopted, on 15 and 17 February 2006 respectively, Decisions 2006/105 and 2006/115.

24 By administrative decisions 945-0/BACSK/2006 and 945-1/BACSK/2006 of 15 and 21 February 2006 respectively, and under the existing national legislative framework, the respondent in the main proceedings ordered the establishment of a protection zone, which also extended to the administrative territory of Csátalja and Nagybaracska, and prescribed other measures such as, in particular, a prohibition on the movement of poultry within the protection zone. The order imposing the protection zone was lifted on 21 April 2006.

25 On 23 February 2006, the respondent in the main proceedings, by administrative opinion 1011-5/BACSK/2006, against which there was no right of appeal, rejected the appellant's application for permission to keep turkeys in the rearing enclosure at Nagybaracska; it did so on the basis of the restrictions that applied in the protection zone established and because, in its view, the appellant and its partners owned a number of sites to which the turkeys could be brought depending on the capacity of each of those sites.

26 On 16 March 2006, the appellant in the main proceedings submitted to the respondent in those proceedings a claim for damages seeking compensation in full for the damage it had sustained as a result of the establishment of the protection zone and the rejection of its application to keep the turkeys in question in that protection zone.

27 As a result of various administrative decisions, which were reviewed by the courts, compensation amounting to HUF 3 509 879 (approximately EUR 12 000) was awarded to the appellant in the main proceedings and paid to it, while its claim for the amount representing loss of profits was rejected.

28 At that juncture, the appellant in the main proceedings brought an action against the Bács-Kiskun Megyei Kormányhivatal, claiming that the latter was not entitled to introduce a ban preventing the turkeys from being brought to the leased site and that it was therefore obliged to pay the appellant the compensation in respect of loss of profits which had not been awarded in the administrative compensation procedure.

29 On 13 May 2012, the Kecskeméti törvényszék (Kecskemét Regional Court) dismissed the action brought by the appellant in the main proceedings on the ground that the decisions taken by the respondent in the exercise of its discretion were not unlawful and that, in any event, the conditions for a finding of liability in respect of damage caused in the exercise of public authority were not met. The appellant appealed against that judgment to the Szegedi Ítélőtábla (Szeged Court of Appeal).

30 In those circumstances, the Szegedi Ítélőtábla decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Was the decision of the Hungarian administrative authorities, within the framework of interim protection measures against highly pathogenic avian influenza, to order a protection zone and, within that framework, to prohibit inter alia the transportation of poultry consistent with EU law, in particular [Directives 92/40 and 2005/94], and … Decision 2006/105…?

Was the decision by the Hungarian administrative authorities, within the framework of interim protection measures against highly pathogenic avian influenza, to amend some of the rules on protection zones and, within that framework, to prohibit inter alia the moving of poultry within the protection zone, together with the measure taken by those authorities in the form of an official opinion to the appellant (a decision against which there was no right of appeal), by which the authorities refused permission for the transport of turkeys (for the purpose of rearing them) to a site within the protection zone and located precisely at the centre of infection, consistent with EU law, in particular [Directives 92/40 and 2005/94], and … Decision 2006/115…?

2. Was the aim of … Directive [92/40] or … Directive [2005/94], as sources of EU law, to create a system of regulation by EU law of compensation for any damage caused to individuals by interim protection measures taken against highly pathogenic avian influenza within the European Union? Did the legal basis in EU law indicated in … Directive [92/40] or [2005/94], or … Decisions [2006/105] and [2006/115] provide appropriate powers to create a system of regulation by EU law of compensation for damage caused to individuals by interim protection measures taken in relation to highly pathogenic avian influenza?

3. If the response to the second question is in the affirmative, is it lawful and consistent with EU law to restrict compensation claims resulting from interim national measures taken in the course of the implementation of the legislation listed? May a national legal provision that restricts State compensation to the actual damage and costs, and excludes the opportunity to recover loss of profits, be regarded as a necessary and proportionate restriction in connection with a claim for compensation for damage caused to individuals?

4. If the response to the second question is in the negative, may the appellant base a claim for compensation to recover loss of profits directly on a violation of the provisions of the Charter … (Article 16, concerning freedom to conduct a business, Article 17, concerning the right to property, and Article 47, concerning the right to an effective remedy and to a fair trial), if the interim measures taken by the Member State in the course of the implementation of EU law for the purpose of protection against highly pathogenic avian influenza caused damage to the appellant but the legal rules of the Member State relating to compensation for the damage caused restrict the submission of such claims and exclude the opportunity to submit a claim for loss of profits?

5. If a full claim for damages can be enforced on the basis of any EU law, may such claims be enforced exclusively against the State or, on a wide construction of the concept of the State, may such a claim also be enforced against the public administrative authority, in proceedings for compensation for damage caused in the exercise of public authority? If the claim can also be enforced against administrative bodies, may the law of the Member State require that additional conditions be complied with in order for a right to compensation to arise?

6. If EU law does not allow the appellant to obtain full compensation, directly on the basis of EU law, for the damage sustained by it, does the requirement for procedural equivalence mean that the same rules are to govern the processing of claims that may be decided on the basis of EU law and similar claims that may be decided on the basis of Hungarian law?

7. In circumstances such as those in the present case — given that the legislative and administrative measures taken by Member States for the purposes of protection against highly pathogenic avian influenza occurring in wild birds within the European Union, of necessity, affect the operation of the internal market — is it possible to request an *amicus curiæ* opinion from the Commission in legal proceedings relating to measures implementing EU law, particularly in cases where it becomes clear that the Commission has initiated infringement proceedings against the Member State in connection with legal matters relevant to the legal dispute in question?

8. If it is possible to request either an *amicus curiæ* opinion or to make a simple request for information from the Commission, is the Commission obliged to supply an *amicus curiæ* opinion or the information sought with regard to the data, documents and statements arising during the infringement proceedings and the practices engaged in by the Commission within this area, particularly if the information in question is not in the public domain and originated during the period prior to the infringement proceedings being brought before the Court of Justice? May such information be used in public in an individual legal dispute before a court of the Member State?'

Consideration of the questions referred

Preliminary observations

31 It is necessary to point out that, according to the account of the facts given in the order for reference, the outbreak of avian influenza at issue in the main proceedings was identified in a wild bird. In the case in question, the bird concerned was a swan found dead as a result of being infected with avian influenza.

32 So far as Directives 92/40 and 2005/94 are concerned, it follows from Article 1 of each of those directives that their scope is restricted to establishing preventive measures and control measures in the event of a suspected or actual outbreak, within a holding, of avian influenza in poultry or other captive birds.

33 Consequently, those directives do not apply to the present case since an outbreak of avian influenza in a wild bird, the isolated nature of which calls for less restrictive measures, does not fall within the scope of those directives.

34 The questions raised by the referring court should therefore be considered in the light of those observations.

The seventh and eighth questions

35 By its seventh and eighth questions, which it is appropriate to examine first, the referring court seeks to ascertain to what extent a national court is able to ask the Commission to provide it with clarification in a dispute concerning measures implementing EU law, in particular when the Commission has commenced infringement proceedings concerning the transposition of Directive 2005/94, and in what way the information obtained may be used.

36 In that regard it is settled case-law that the Court may refuse to rule on a question referred for a preliminary ruling by a national court where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see Case C-379/98 *PreussenElektra* EU:C:2001:160, paragraph 39 and the case-law cited).

37 Here, since Directive 2005/94 is not applicable in the present case, the interpretation of EU law that is sought for the purpose of ascertaining whether the Commission should provide clarification in respect of infringement proceedings brought against Hungary concerning transposition of that directive is of no relevance in view of the decision which the referring court is required to take.

38 It follows that the referring court's seventh and eighth questions are inadmissible.

The first question

39 By its first question, the referring court asks, in essence, whether Decisions 2006/105 and 2006/115 must be interpreted as meaning that they preclude (i) national measures such as the administrative decisions of 15 and 21 February 2006 ordering the establishment of a protection zone in the administrative territory of Csátalja and Nagybaracska and prohibiting the movement of poultry within that zone and (ii) an administrative opinion such as that of 23 February 2006, refusing to grant an undertaking such as the appellant in the main proceedings permission to keep turkeys in its rearing enclosure at Nagybaracska.

40 In the first place, Articles 2(1)(a) and 3(2)(c) of Decision 2006/105 and the identical provisions of Decision 2006/115, on the one hand, require the Member State concerned to establish around the area where the presence of highly pathogenic avian influenza in wild birds is confirmed a protection zone with a radius of at least three kilometres and, on the other, prohibit the transport through the zone of poultry and other captive birds, except transit on major roads or railways and transport to a slaughterhouse for direct slaughter.

41 In the present case it is apparent from the wording of those provisions that the national measures at issue before the referring court, namely the establishment of a protection zone and the prohibition on transporting poultry through the zone, which were adopted as administrative measures by the Hungarian authorities on 15 and 21 February 2006 respectively, comply with those provisions; that has not been disputed by either of the parties to the main proceedings.

42 In the second place, since Article 3(2)(c) of Decision 2006/105 prohibits the transport of poultry through the protection zone, that is to say, transit in the course of which the animals are neither loaded nor unloaded, it is clear that, *a fortiori*, the transport of poultry to a rearing enclosure located in that zone, as was proposed in the present case, is also prohibited. Furthermore, as the Commission submits, the exceptions provided for in Article 6 of Decision 2006/105 apply exclusively to transport within the protection zone or to departures from it. Those exceptions therefore do not apply to transport outside the protection zone where the destination is that zone, as is the case in the main proceedings.

43 Accordingly, the refusal of the Hungarian authorities, by the administrative opinion of 23 February 2006, to grant permission to transport poultry into the protection zone complies with Article 3(2)(c) of Decisions 2006/105 and 2006/115. The fact that the form of an administrative opinion was chosen does not affect that finding, since those decisions do not lay down any specific rules as to their implementation.

44 Having regard to the foregoing considerations, the answer to the first question is that Decisions 2006/105 and 2006/115 must be interpreted as meaning that they do not preclude (i) national measures such as the administrative decisions of 15 and 21 February 2006 ordering the establishment of a protection zone in the administrative territory of Csátalja and Nagybaracska and prohibiting the movement of poultry within that zone or (ii) an administrative opinion such as that of 23 February 2006, refusing to grant an undertaking such as the appellant in the main proceedings permission to keep turkeys in its rearing enclosure at Nagybaracska.

The second and fourth questions

45 By its second and fourth questions, which it is appropriate to consider together, the referring court asks, in essence, whether Decisions 2006/105 and 2006/115 establishing measures for the control of avian influenza must be interpreted as meaning that they include or refer to provisions establishing a system of compensation for any damage caused by the measures for which they provide and, if they do not, whether the fact that a provision of national law excludes loss of profits from compensation for any damage caused by national protection measures such as those at issue in the main proceedings, which have been taken in accordance with Decisions 2006/105 and 2006/115, infringes the freedom to conduct a business, the right to property and the right to an effective remedy laid down in, respectively, Articles 16, 17 and 47 of the Charter.

46 In the first place, the Court notes — concurring with the respondent in the main proceedings, the Hungarian Government and the Commission — that Decisions 2006/105 and 2006/115 do not include any provision establishing a system of compensation for damage caused to individuals by the implementation of the measures for the control of avian influenza provided for by those decisions.

47 Furthermore, in so far as those decisions are implementing acts adopted under Article 9(3) and (4) of Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13) and Article 10(3) and (4) of Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29), it cannot be inferred from either the wording or the purpose of those directives, which were the basis on which the decisions were adopted, that the Commission has any competence conferring on it power to establish a system of compensation.

48 In any event, it should be observed that the Court has previously held that the EU legislature may consider, in the context of its broad discretion in the field of agricultural policy, that full or partial compensation is appropriate for owners of farms on which animals have been destroyed and slaughtered. None the less, the existence, in EU law, of a general principle requiring compensation to be paid in all circumstances cannot be inferred from that fact (see Joined Cases C-20/00 and C-64/00 *Booker Aquaculture and Hydro Seafood* EU:C:2003:397, paragraph 85).

49 That authority is equally applicable in the case before the referring court, particularly when account is taken of the fact that the national measures at issue in the main proceedings are less severe than the destruction and slaughter measures in *Booker Aquaculture and Hydro Seafood* (EU:C:2003:397).

50 It follows that Decisions 2006/105 and 2006/115 establishing measures for the control of avian influenza neither include nor refer to any provisions establishing a system of compensation for damage caused by the measures for which they provide. Consequently, those decisions do not lay down any obligation requiring the Member States to pay compensation.

51 In the second place, in so far as the referring court raises the question of the compatibility of the system established by the national legislature for providing compensation for damage caused by the adoption of the measures at issue in the case before it with the freedom to conduct a business, the right to property and the right to an effective remedy, as guaranteed by the Charter, it is appropriate to start by making the point that, under the national legislation in issue in the main proceedings, an economic operator, who is obliged to cooperate in connection with an epidemiological measure, is entitled to compensation for loss caused by that cooperation, with the exception of loss of profits.

52 The Court notes that, since there is no basis in EU law for an obligation to pay compensation, a national measure such as that in issue before the referring court, which provides for the State concerned to pay compensation in respect of actual damage and costs, with the exception of loss of profit, does not fall within the scope of EU law but is exclusively a matter for the national legislature.

53 In that regard it should be noted that, according to settled case-law, the preliminary ruling procedure laid down in Article 267 TFEU is based on a clear separation of functions between national courts and tribunals and the Court of Justice, and the latter is empowered only to rule on the interpretation or the validity of the acts of EU law referred to in that provision. In that context, it is not for the Court to rule on the interpretation of provisions of national law or to decide whether the referring court's interpretation of them is correct (Case C-418/11 *Texdata Software* EU:C:2013:588, paragraph 28 and the case-law cited).

54 Furthermore, under Article 51(1) of the Charter, which governs its field of application, the provisions of the Charter are addressed to the Member States only when they are implementing EU law. That provision confirms the Court's settled case-law, according to which the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but cannot be applied outside such situations. Where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied

upon cannot, of themselves, form the basis for such jurisdiction (see, to that effect, Case C-617/10 *Åkerberg Fransson* EU:C:2013:105, paragraphs 17, 19 and 22, and the order in Case C-258/13 *Sociedade Agrícola e Imobiliária da Quinta de S. Paio* EU:C:2013:810, paragraphs 18 to 20).

55 Consequently, the Court of Justice does not have jurisdiction to rule on the legality of a provision of national law such as that at issue in the main proceedings — which does not provide for full compensation, including in respect of loss of profit, for damage sustained as a result of the adoption, in accordance with EU law, of national protection measures against avian influenza — in the light of the right to an effective remedy, the right to property and the freedom to conduct a business.

56 Indeed, as has been stated in paragraphs 48 and 49 of this judgment, there is in EU law no general principle laying down an obligation which requires the Member States to pay compensation for damage caused by such measures.

57 In view of the foregoing considerations, the answer to the second and fourth questions is that, first, Decisions 2006/105 and 2006/115 establishing measures for the control of avian influenza must be interpreted to the effect that they neither include nor refer to any provisions establishing a system of compensation for damage caused by the measures for which they provide and, second, the Court of Justice does not have jurisdiction to rule on the legality of a provision of national law such as that at issue in the main proceedings — which does not provide for full compensation, including in respect of loss of profit, for damage sustained as a result of the adoption, in accordance with EU law, of national protection measures against avian influenza — in the light of the right to an effective remedy, the right to property and the freedom to conduct a business.

The third and fifth questions

58 According to the order for reference, the third and fifth questions call for an answer only if the second and fourth questions have been answered in the affirmative.

59 Having regard to the answer to the second and fourth questions, there is no need for the Court to reply to the third and fifth questions.

The sixth question

60 By its sixth question, the referring court asks, in essence, whether the principle of equivalence must be interpreted as meaning that, if an entitlement to compensation for damage sustained by an undertaking such as the appellant in the main proceedings does not arise under EU law, that principle may be applied so that the same procedural rules govern the processing of claims that may be decided on the basis of EU law and similar claims that may be decided on the basis of Hungarian law.

61 So far as the principle of equivalence is concerned, it is clear from the Court's case-law that observance of that principle requires that the national rule at issue be applied without distinction, whether the action is based on rights which individuals derive from EU law or whether it is based on an infringement of national law, where the purpose and cause of action are similar. It is for the national court, which has direct knowledge of the applicable procedural rules, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics (see Case C-93/12 *Agrokonsulting-04* EU:C:2013:432, paragraph 39 and the case-law cited).

62 In view of the Court's answer to the second and fourth questions, no provision of EU law requires the Member States to establish a system of compensation for any damage caused by national protection measures such as those in issue before the referring court. Rather, whether to establish such a system is a matter exclusively for the national legislature to decide.

63 Accordingly, the principle of equivalence, which requires that a national rule be applied without distinction whether the situation is governed, on the one hand, by EU law or, on the other, by national law, cannot be applied in a situation which does not fall within the scope of EU law, such as the situation in issue before the referring court.

64 In any event, as regards the actions for compensation for damage caused by the national protection measures in issue in the main proceedings, there is nothing in the order for reference which suggests a different application of national procedural rules with regard to rights guaranteed by EU law and rights provided for by national law.

65 In view of the foregoing considerations, the principle of equivalence is not applicable in a situation such as that at issue in the main proceedings.

Costs

66 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

1. **Commission Decisions 2006/105/EC of 15 February 2006 concerning certain interim protection measures in relation to suspected cases of highly pathogenic avian influenza in wild birds in Hungary and 2006/115/EC of 17 February 2006 concerning certain protection measures in relation to highly pathogenic avian influenza in wild birds in the Community and repealing Decisions 2006/86/EC, 2006/90/EC, 2006/91/EC, 2006/94/EC, 2006/104/EC and 2006/105/EC must be interpreted as meaning that they do not preclude (i) national measures such as the administrative decisions of 15 and 21 February 2006 ordering the establishment of a protection zone in the administrative territory of Csátalja and Nagybaracska (Hungary) and prohibiting the movement of poultry within that zone or (ii) an administrative opinion such as that of 23 February 2006, refusing to grant an undertaking such as the appellant in the main proceedings permission to keep turkeys in its rearing enclosure at Nagybaracska.**

2. **First, Decisions 2006/105 and 2006/115 must be interpreted to the effect that they neither include nor refer to any provisions establishing a system of compensation for damage caused by the measures for which they provide and, second, the Court of Justice does not have jurisdiction to rule on the legality of a provision of national law such as that at issue in the main proceedings — which does not provide for full compensation, including in respect of loss of profit, for damage sustained as a result of the adoption, in accordance with EU law, of national protection measures against avian influenza — in the light of the right to an effective remedy, the right to property and the freedom to conduct a business.**

[Signatures]