Reports of Cases

OPINION OF ADVOCATE GENERAL
TANCHEV
delivered on 11 February 2021 [1]

Case C-579/19

R (on the application of Association of Independent Meat Suppliers and another)
v
Food Standards Agency

(Request for a preliminary ruling from the Supreme Court of the United Kingdom)

(Reference for a preliminary ruling – Regulation (EC) No 854/2004 – Regulation (EC) No 882/2004 – Official controls on food of animal origin – Right to judicial review of a decision of an official veterinarian – Principles of equivalence and effectiveness – Article 47 of the Charter of Fundamental Rights of the European Union)

I. Introduction

1. This request for a preliminary ruling from the Supreme Court of the United Kingdom relates essentially to 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, [2] as well as of Article 54(3) of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. [3] Article 5(2) of Regulation No 854/2004 concerns the application by official veterinarians of health marks when they deem meat fit for human consumption, while Article 54(3) of Regulation No 882/2004 concerns information on rights of appeal against decisions taken by the competent authorities of the Member States as a result of such official controls.

1 Original language: English.

2 OJ 2004 L 139, p. 206.

3 OJ 2004 L 165, p. 1.

2. Regulations No 854/2004 and No 882/2004 form part of the legal framework governing food safety in the European Union.[4] Broadly speaking, those regulations set out harmonised rules on official controls performed by the competent authorities of the Member States to ensure that food business operators comply with their obligations under EU law. In that context, official veterinarians are specially qualified persons who, with the assistance of official auxiliaries, carry out tasks on behalf of those authorities in the system of official controls concerning meat.

3. This case invites the Court to rule on what follows from the 'right to appeal against the decisions taken by the competent authority as a result of the official controls' set out in recital 43 of Regulation No 882/2004 and further elaborated on in Article 54(3) of that regulation.

4. First, the referring court asks about the consistency with Regulations No 854/2004 and No 882/2004 of a legal regime which existed in United Kingdom law prior to the entry into force of those regulations, namely section 9 of the Food Safety Act 1990 ('the 1990 Act').[5] The referring court has done so in the context of a dispute between the claimants in the main proceedings, the Cleveland Meat Company ('CMC') and the Association of Independent Meat Suppliers, and the defendant, the Food Standards Agency ('the FSA'), on which route available in national law for judicial assessment of a decision taken by an official veterinarian not to apply a health mark to meat deemed unfit for human consumption is compatible with EU law. Is section 9 of the 1990 Act, which is a procedure before a Justice of the Peace involving review of the merits of the case, the sole route which meets the above described right of appeal prescribed by EU law, as contended by the claimants, or does a claim for judicial review under UK law ('claim for judicial review'), which is a procedure before a court which does not involve review of the merits of the case, provide an effective and appropriate means for enforcing the food safety requirements of Regulations No 854/2004 and No 882/2004 and more specifically the refusal of the official veterinarian to apply a health mark, as contended by the FSA? This question necessarily entails consideration of the Court's case-law on the procedural autonomy of Member States to establish rules governing actions for safeguarding EU rights, subject to the principles of equivalence and effectiveness and the right to an effective remedy as guaranteed by the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

5. Secondly, the referring court asks whether, in order to comply with those regulations and EU law more generally, Regulation No 882/2004 provides for an appeal against an official veterinarian's decision refusing to apply a health mark under Article 5(2) of Regulation No 854/2004, which includes judicial review on the merits. This question, too, should be answered in the light of pertinent case-law of the Court on the first paragraph of Article 47 of the Charter, given that it relates to the scope of judicial review.

[4] This also includes: 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); 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); 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 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). See further points 39 to 43 of this Opinion.

[5] UK Public General Acts 1990 c. 16.

6. Consequently, this case raises novel issues concerning effective judicial protection for private parties in EU food law and the relationship between Regulations No 854/2004 and No 882/2004 in that regard. It also has potentially broader implications for the development of the Court's case-law on the judicial review of administrative decisions by national courts on the basis of Article 47 of the Charter.

II. Legal framework

7. Article 5(2) of Regulation No 854/2004 provides:

'The health marking of carcases of domestic ungulates, farmed game mammals other than lagomorphs, and large wild game, as well as half-carcases, quarters and cuts produced by cutting half-carcases 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.'

8. According to recital 43 of Regulation No 882/2004:

'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.'

9. Article 54(3) of Regulation No 882/2004 states:

'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.'

III. Facts, main proceedings and questions referred

10. On 11 September 2014, CMC purchased a live bull for about 1 400 pounds sterling (GBP) (approximately EUR 1 700). It was passed fit for slaughter by the official veterinarian stationed at CMC's slaughterhouse. The post-mortem inspection of the carcass and offal was carried out by an official auxiliary, referred to as a meat hygiene inspector, who identified three abscesses in the offal.[6] Later that day, the official veterinarian inspected the carcass and, after discussion with that inspector, declared the meat unfit for human consumption because the abscesses gave rise to the suspicion that the bull had been suffering from pyaemia, a form of blood poisoning.[7] Thus, the

[6] As is apparent from the order for reference, carcass is used in the sense of 'carcase' defined under point 1.9 of Annex I to Regulation No 853/2004 as 'the body of an animal after slaughter and dressing', while 'offal' means, according to point 1.11 thereof, 'fresh meat other than that of the carcase, including viscera and blood'.

[7] Pyaemia is blood poisoning (septicaemia) caused by the spread in the bloodstream of pus-forming bacteria released from an abscess.

official veterinarian did not apply a health mark to the carcass, which would have certified that it was fit for human consumption. As a consequence, CMC was prohibited from selling the carcass under Regulation 19 of the Food Safety and Hygiene (England) Regulations 2013.[8]

11. CMC sought the advice of another veterinary surgeon and challenged the official veterinarian's opinion. It claimed that, in the event of a dispute and its refusal to surrender the carcass voluntarily, the official veterinarian, in accordance with section 9 of the 1990 Act, would have to seize the carcass and take it before a Justice of the Peace for a decision as to whether it should be condemned. The FSA, which is the competent authority for the purposes of EU and national food safety legislation and 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.

12. On 23 September 2014, the official veterinarian, acting for the FSA, served a notice on CMC requiring it to dispose of the carcass as an animal by-product under Regulation 25(2)(a) of the Animal By-Products (Enforcement) (England) Regulations 2013[9] and Regulation No 1069/2009. That notice stated as follows: 'You may have a right of appeal against my decision by way of judicial review. An application for such an appeal should be made promptly and, in any event, generally within three months from the date when the ground for the application first arose'.

13. A claim for judicial review was indeed brought before the High Court of Justice (England & Wales), Queen's Bench Division (United Kingdom) by CMC and the Association of Independent Meat Suppliers (together, 'the claimants') to challenge the FSA's assertion that it was unnecessary 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. Those proceedings were unsuccessful before that court[10] and the Court of Appeal (England & Wales) (Civil Division) (United Kingdom),[11] so the claimants appealed to the Supreme Court of the United Kingdom.

14. The referring court has indicated, inter alia, 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 food authority or an enforcement 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. If the Justice of the Peace, on the basis of such evidence as he or she considers appropriate, finds that the food fails to comply with food safety requirements, he or she is to condemn it and order that it be destroyed at the owner's expense, whereas if the Justice of the Peace refuses to condemn the food, the relevant authority must compensate the owner for any depreciation in its value resulting from the officer's action.

[8] UK Statutory Instruments 2013/2996. As is apparent from the information submitted to the Court, those regulations provide for the execution and enforcement in England of Regulations No 178/2002, No 852/2004, No 853/2004 and No 854/2004.

[9] UK Statutory Instruments 2013/2952.

[10] *R (on the application of Association of Independent Meat Suppliers, Cleveland Meat Company Ltd) v Food Standards Agency* [2015] EWHC 1896 (Admin).

[11] *R (on the application of Association of Independent Meat Suppliers & Anor) v Food Standards Agency* [2017] EWCA Civ 431.

15. In that regard, the referring court pointed out that, according to the claimants, the procedure set out in section 9 of the 1990 Act, which has been part of UK law since the 19th century and continues to operate under the EU food safety regime, provides a means both for enforcing an official veterinarian's decision as to whether meat is fit for human consumption and for operators to subject that decision to judicial scrutiny and ask a Justice of the Peace to rule whether the carcass did in fact comply with food safety requirements. The claimants accept that the Justice of the Peace cannot order an official veterinarian to apply a health mark, but submit that an official veterinarian can be expected to respect the ruling and apply a health mark accordingly, and that compensation may be awarded. Conversely, the FSA does not accept that this procedure is suitable, still less obligatory, 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 condemn for disposal a carcass not bearing such a mark. The referring court asked the Court to assume that the claimants' interpretation 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.

16. The referring court further observed that it is possible for a slaughterhouse operator, such as CMC, to bring a claim for judicial review to challenge an official veterinarian's decision that meat is unfit for human consumption and thus to refuse to apply a health mark or to annul a disposal notice, such as that served on CMC on 23 September 2014, as mentioned in point 12 of this Opinion. In those proceedings, the court may set aside that decision on any ground which makes it unlawful, including if the official veterinarian acts for an improper purpose, fails to apply the correct legal test or reaches a decision that is irrational or has no sufficient evidential basis. In addition, the court does occasionally hear oral evidence and make mandatory orders, and it has the power to award compensation for breaches of rights under the European Convention on Human Rights ('the ECHR'). However, the referring court noted that a claim for judicial review is not an appeal on the merits of that decision.

17. It was in those circumstances that 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 [No 854/2004 and No 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 [No 882/2004] mandate a right of appeal in relation to a decision of an [official veterinarian] under [A]rticle 5(2) of Regulation [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?'

IV. Procedure before the Court

18. Written observations were submitted to the Court by the claimants, the United Kingdom and the European Commission. Those parties also replied to the written questions put to them by the Court.

19. While this case was pending before the Court, the United Kingdom left the European Union on 31 January 2020. According to Article 86(2) 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,[12] the Court continues 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, which, as defined in Article 126 thereof, is in principle on 31 December 2020. In addition, under Article 89(1) of that agreement, the judgment of the Court, whether handed down before the end of that transition period or at a future date, will have binding force in its entirety on and in the United Kingdom.

20. Consequently, given that the present request for a preliminary ruling was made on 31 July 2019, the Court retains jurisdiction to rule on that request, and the Supreme Court of the United Kingdom is bound by the judgment to be handed down by the Court in these proceedings.

V. Summary of the observations of the parties

21. The claimants submit that the first question should be answered in the negative, as Regulations No 854/2004 and No 882/2004 do not preclude a procedure, such as section 9 of the 1990 Act. They assert that the fact that, under Article 5 of Regulation No 854/2004, together with Annex I thereto, the official veterinarian makes decisions relating to the health marking of meat based on his or her training and qualifications does not preclude effective judicial oversight of the merits of those decisions. Indeed, nowhere in that legislation is a right to challenge those decisions under national procedures precluded.

22. The claimants contend that the second question should be answered to the effect that Regulation No 882/2004 gives rise to a right of appeal against an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 that the meat of a carcass was unfit for human consumption and that in reviewing the merits of that decision, an appeal tribunal should conduct a full review of all relevant issues of fact and law pertaining to that decision and decide, on the merits of the case and on the basis of the evidence, including the evidence of experts called by each side, whether the meat of a carcass fails to comply with food safety requirements. In their view, Regulation No 854/2004 applies in the context of Regulation No 882/2004, and Article 54(3) of Regulation No 882/2004, read in conjunction with recital 43 thereof, establishes a general right of appeal applicable to that decision. They dispute that Article 54 of Regulation No 882/2004 applies only to the official veterinarian's tasks under Article 4 of Regulation No 854/2004, but not Article 5 thereof, especially as this is inconsistent with the definition of non-compliance in Article 2 of Regulation No 882/2004 and the types of remedial measures contemplated by Article 54(2) of Regulation No 882/2004.

23. The claimants argue that a claim for judicial review does not provide for such a merits review and rely on Article 47 of the Charter and the pertinent case-law of the Court on the right to an effective remedy.[13] In their view, the right of a slaughterhouse operator to challenge the merits of an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 is provided for by Article 17, read together with Article 47, of the Charter. They assert that destruction of a carcass as an animal by-product is an unjustified interference with the operator's right to property under

[12] OJ 2020 L 29, p. 7. In accordance with Article 86(3) of that agreement, requests for preliminary rulings are considered as having been made at the moment at which the document initiating the proceedings has been registered by the Court's Registry. In this case, the request was registered by the Court's Registry on 31 July 2019.

[13] The claimants refer, inter alia, to the judgments of 6 November 2012, *Otis and Others* (C-199/11, EU:C:2012:684), and of 16 May 2017, *Berlioz Investment Fund* (C-682/15, EU:C:2017:373).

Article 17 of the Charter, which, in the light of case-law of the European Court of Human Rights ('the ECtHR') on Article 1 of Protocol No 1 to the ECHR,[14] imposes procedural obligations on Member States to ensure that the operator can effectively challenge the measure concerned. They emphasise that, given that the dispute relates to whether meat is fit for human consumption, the procedure should be prompt and accessible, as with section 9 of the 1990 Act, and that a claim for judicial review is prohibitively expensive. They add that the possible administrative solution mentioned in the United Kingdom's observations is irrelevant, as it postdates the dispute in the main proceedings and, in any event, it does not constitute an effective remedy, particularly as it has no legally binding force and does not involve adversarial proceedings.

24. The United Kingdom submits that the first question should be answered in the affirmative, as Regulation No 854/2004 precludes a procedure, such as section 9 of the 1990 Act, for challenging the merits of an official veterinarian's decision under Article 5(2) thereof. In its view, the regime established by Article 5 of Regulation No 854/2004, which in contrast to Article 4 of that regulation is not concerned with rectifying instances of non-compliance, along with Annex I thereto, entrusts the decision on whether meat is fit for human consumption to the official veterinarian, based on his or her professional experience and trained judgment, and requires that decision to be final. Recourse to section 9 of the 1990 Act runs counter to that regulation, since that decision would not be final and the decision-making power vested in the official veterinarian would be transferred to a Justice of the Peace lacking special qualifications and who would be reliant on expert opinions. The United Kingdom claims that Regulation No 882/2004 cannot lay down an appeal procedure that is incompatible with Regulation No 854/2004, as that regulation is a *lex specialis* from which Regulation No 882/2004 cannot derogate.

25. The United Kingdom contends that the second question should be answered in the negative, as Regulation No 882/2004 does not give rise to a right of appeal against an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 and no approach enabling an appeal on the merits of that decision is compatible with Regulation No 854/2004. In its view, Article 54 of Regulation No 882/2004 does not apply to an official veterinarian's decision whether to apply a health mark, since it does not involve enforcement action against operators identified as non-compliant with food law, and Article 54(3) thereof merely requires information on rights of appeal to be given to the operator concerned. It argues that a claim for judicial review provides a slaughterhouse operator with an adequate remedy compatible with Regulation No 854/2004 and fundamental rights. It explains that such a claim allows certain domestic courts to declare unlawful any decision of a public body, to set aside that decision and to decide what action should be taken in its place, and if the official veterinarian made an error in law, came to irrational decision or ignored material evidence, the court could set aside the decision and order that it be re-taken.

26. The United Kingdom submits that interpreting Regulations No 854/2004 and No 882/2004 to the effect that an official veterinarian's decision refusing to apply a health mark is not susceptible to an appeal on the merits is compatible with a slaughterhouse operator's right to property under Article 17 of the Charter and its analogue in Article 1 of Protocol No 1 to the ECHR. It considers

[14] The claimants refer to the judgments of 1 April 2010, *Denisova and Moiseyeva v. Russia* (CE:ECHR:2010:0401JUD001690303), and of 28 June 2018, *G.I.E.M. and Others v. Italy* (CE:ECHR:2018:0628JUD000182806).

that any such interference with that right is proportionate and justified by the public interest of protecting public health and which, in the light of the ECtHR's case-law on Article 1 of Protocol No 1 to the ECHR, [15] does not call for any right of appeal going beyond a claim for judicial review.

27. The United Kingdom adds that, since January 2018, the FSA adopted a possible administrative solution, [16] according to which in cases where an operator disagrees with the official veterinarian's initial determination that meat is unfit for human consumption, it can seek the opinion of another competent veterinarian and the official veterinarian can also seek the opinion of senior colleagues. The official veterinarian may then take those opinions into account before making the decision on health marking. In its view, this process strengthens a claim for judicial review, since it allows an operator to require the official veterinarian to take into account objections to his or her initial opinion, thereby creating possible additional grounds for seeking judicial review of a possible decision on the refusal of a health mark.

28. The Commission, addressing the questions in reverse order, submits that the second question should be answered to the effect that Article 54(3) of Regulation No 882/2004, read in conjunction with Article 5(2) of Regulation No 854/2004 and in the light of Article 47 of the Charter, requires Member States to provide for an appeal procedure against an official veterinarian's decision not to apply a health mark, the procedural rules for and the scope of which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. It asserts that, in the absence of specific provisions in Regulation No 854/2004, the general provisions of Regulation No 882/2004 apply, and that an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 falls within the scope of Article 54(3) of Regulation No 882/2004, since that decision concerns a situation of non-compliance and the official veterinarian acts on behalf of the competent authority. In its view, Article 54(3) of Regulation No 882/2004, read in the light of recital 43 thereof, requires Member States to provide for a right of appeal against that decision.

29. The Commission contends that, in the present case, Member States are not required to provide for an appeal procedure entailing a full merits review, having regard to the wording of Article 54(3) of Regulation No 882/2004 and the objective of public health protection pursued by Regulations No 854/2004 and No 882/2004. It is also essential, in its view, to take account of the official veterinarian's role in ensuring that objective in the exercise of his or her functions under Regulation No 854/2004, which involve a number of highly specific factual determinations as regards inspections and health marks.

30. The Commission submits that the first question should be answered to the effect that Regulations No 854/2004 and No 882/2004 do not preclude a procedure, such as section 9 of the 1990 Act, encompassing a decision on the merits of the case as to whether a carcass fails to comply with food safety requirements. It is for the referring court, which alone has jurisdiction to interpret its national law, to determine whether and to what extent that procedure satisfies the requirements set out in reply to the second question, in particular the principles of equivalence and effectiveness.

[15] The United Kingdom refers, inter alia, to the judgments of 24 October 1986, *AGOSI v. the United Kingdom* (CE:ECHR:1986:1024JUD000911880), and of 4 March 2014, *Microintelect OOD v. Bulgaria* (CE:ECHR:2014:0304JUD003412903).

[16] FSA, 'Process for red meat carcases rejected at post mortem inspection - Approach to considering rejection of red meat carcases at a post mortem inspection', available on its website, https://www.food.gov.uk/business-guidance/process-for-red-meat-carcases-rejected-at-post-mortem-inspection.

VI. Analysis

31. By its first question, the referring court seeks, in essence, guidance from the Court as to whether Regulations No 854/2004 and No 882/2004 preclude a national procedure, such as section 9 of the 1990 Act, for challenging an official veterinarian's decision refusing to apply a health mark to meat deemed unfit for human consumption. This question relates to the Court's case-law on the procedural autonomy of Member States to designate the courts and tribunals having jurisdiction to hear actions based on EU law, subject to the principles of equivalence and effectiveness. It also involves the right of access to a court, which is one of the elements of the right to an effective remedy under the first paragraph of Article 47 of the Charter.

32. By its second question, the referring court asks, in substance, whether Article 54(3) of Regulation No 882/2004, read in conjunction with Article 5(2) of Regulation No 854/2004, requires Member States to provide for a right of appeal on the merits against an official veterinarian's decision refusing to apply a health mark to meat deemed unfit for human consumption, or whether the more limited scope of challenging that decision by way of a claim for judicial review is sufficient to comply with those regulations. This question concerns the scope of judicial review as required by the first paragraph of Article 47 of the Charter and is also related to the right of access to a court. Consideration must likewise be given to pertinent case-law of the Court on the principles of equivalence and effectiveness.

33. I observe that the questions raised in the present case have not yet been dealt with by the Court. With a view to answering those questions, it is first necessary to provide some preliminary observations on the link between Article 47 of the Charter and the main proceedings, along with the EU food safety regime and the role of the official veterinarian in that context (Section A). For logical and legal reasons, I will then examine, in reverse order, the second (Section B) and the first (Section C) questions, since the interpretation of the legal framework laid down by Regulations No 854/2004 and No 882/2004 for the purposes of the second question is relevant for the first question.

34. On the basis of that analysis, I have reached the conclusion with regard to the first question that, subject to verification by the referring court, Regulations No 854/2004 and No 882/2004, read in conjunction with the principle of effectiveness and Article 47 of the Charter, preclude a national procedure, such as section 9 of the 1990 Act. With regard to the second question, I have concluded that Article 54(3) of Regulation No 882/2004 requires Member States to provide for a right of appeal against an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 and that those provisions, read in the light of Article 47 of the Charter, do not preclude a procedure laid down by national law, such as a claim for judicial review, pursuant to which the national court or tribunal carrying out the judicial review of such a decision is not permitted to review the merits of that decision.

A. Preliminary observations

1. Article 47 of the Charter and the main proceedings

35. It should be recalled that, according to settled case-law, the European Union is a union based on the rule of law in which individuals have a right to challenge before the courts the legality of any decision or other national measure relating to the application to them of an EU

measure.[17] Under the principle of sincere cooperation laid down in Article 4(3) TEU, it is for the courts of the Member States to ensure that a person's rights enjoy judicial protection under EU law, Article 19(1) TEU, moreover, requiring Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law. That requirement on the part of the Member States corresponds to the right to an effective remedy enshrined in Article 47 of the Charter, which is a reaffirmation of the principle of effective judicial protection.[18] According to the first paragraph of Article 47 of the Charter, any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article.[19]

36. As is apparent from Article 51(1) of the Charter, the provisions thereof are addressed to the Member States only when they are implementing EU law.[20] The fundamental rights guaranteed by the Charter are applicable in all situations governed by EU law and must therefore be complied with, inter alia, where national legislation falls within the scope of EU law.[21]

37. Furthermore, as the Court has held,[22] the right to an effective remedy may be invoked on the basis of Article 47 of the Charter alone, without there being a need for the content thereof to be made more specific by other provisions of EU law or by provisions of the domestic law of the Member States. The recognition of that right in a given case presupposes that the person invoking that right is relying on rights or freedoms guaranteed by EU law. In that regard, the protection of natural and legal persons against arbitrary or disproportionate intervention by the public authorities in the sphere of those persons' private activities constitutes a general principle of EU law, which may be relied on by such persons as a right guaranteed by EU law, for the purposes of Article 47 of the Charter, in order to challenge before a court an act adversely affecting that person.

38. In the main proceedings, a slaughterhouse operator seeks to challenge an official veterinarian's decision refusing to apply a health mark to meat deemed unfit for human consumption pursuant to Article 5(2) of Regulation No 854/2004. It is common ground that the official veterinarian has taken that decision on behalf of the relevant competent authority, in this instance the FSA, based on provisions of EU law. It is clear, in my view, that the Charter is applicable in those circumstances. Moreover, a person who is adversely affected by that decision, such as a slaughterhouse operator whose meat has not received a health mark because it was deemed unfit for human consumption, is entitled to rely on Article 47 of the Charter before a court in the context of the application of Regulation No 854/2004.

2. The EU food safety regime

39. As mentioned in my introductory remarks, Regulations No 854/2004 and No 882/2004 are key legal instruments on official controls within the EU food safety regime, which comprises certain general rules that apply to all foods, along with specific rules on food hygiene.[23]

17 See judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117, paragraph 31).

18 See judgment of 29 January 2020, *GAEC Jeanningros* (C-785/18, EU:C:2020:46, paragraphs 32 and 33).

19 See judgment of 6 October 2020, *Bank Refah Kargaran* v *Council* (C-134/19 P, EU:C:2020:793, paragraph 36).

20 See judgment of 6 October 2020, *Commission* v *Hungary (Higher education)* (C-66/18, EU:C:2020:792, paragraph 212).

21 See judgment of 24 September 2020, *NK (Occupational pensions of managerial staff)* (C-223/19, EU:C:2020:753, paragraph 78).

22 See judgment of 6 October 2020, *État luxembourgeois (Judicial protection against requests for information in tax law)* (C-245/19 and C-246/19, EU:C:2020:795, paragraphs 54 to 59).

23 For a general discussion, see van der Meulen, B.M., 'The Structure of European Food Law', *Laws*, vol. 2, 2013, pp. 69-98.

40. Regulation No 178/2002 establishes the basic principles regarding food and feed law, and in particular food safety, in the Member States and at EU level,[24] guaranteeing a high level of protection of human health and consumer interests with regard to food products.[25] Food safety requirements are laid down in Article 14 of Regulation No 178/2002, which, inter alia, prohibits the placing on the market of food that is unsafe, including that which is unfit for human consumption.[26] In addition, according to Article 17 of that regulation, the primary responsibility for ensuring that food is safe rests with food business operators.[27] Member States are required to monitor and verify that those operators meet the requirements of EU law on food and feed safety, and to maintain a system of official controls for that purpose.[28]

41. Regulation No 882/2004 establishes general rules for official controls on all types of food and feed.[29] The objective of that regulation, as is apparent from Article 1 thereof, is, inter alia, to prevent, eliminate or reduce risks to humans and animals to acceptable levels through the performance of official controls.[30] To that end, according to Article 2(1) and Article 3 of Regulation No 882/2004, read in the light of recitals 4 and 6 thereof, it is for the Member States to perform official controls to verify that operators comply with feed and food law at all stages of production, processing and distribution.[31] As the Court has recognised, the requirement that official controls be effective, as is repeatedly mentioned in the provisions of Regulation No 882/2004, is a key concern for the EU legislature, which depends primarily on the quality of the inspection work carried out by official veterinarians and official auxiliaries.[32]

42. Alongside Regulation No 882/2004, rules on official controls are found in Regulation No 854/2004, which is part of the 'EU food hygiene package' – also comprising Regulations No 852/2004 and No 853/2004 – with a view to consolidating, simplifying and updating EU legislation on food hygiene requirements.[33] Regulation No 852/2004 concerns general rules on the hygiene of foodstuffs,[34] while Regulation No 853/2004 establishes specific rules on the hygiene of food of animal origin,[35] their main objective being to secure a high level of consumer protection with regard to food safety.[36] Article 5 of Regulation No 853/2004 assumes special importance here, since it generally prohibits operators from placing on the market a product of animal origin, such as meat, unless it carries a health mark applied in accordance with Regulation

[24] See Regulation No 178/2002, Article 1(2); recitals 3 to 5, 10 to 12. See further Commission Staff Working Document, The REFIT Evaluation of the General Food Law (Regulation No 178/2002) (SWD(2018) 38 final, Part 1), 15 January 2018, in particular points 1.2 and 2.

[25] See Regulation No 178/2002, Article 1(1), Article 5(1), Article 6(1), Article 7(1) and Article 8; recitals 2 and 8.

[26] See Regulation No 178/2002, Article 14(1) and (2). See also judgment of 11 April 2013, *Berger* (C-636/11, EU:C:2013:227, paragraph 34).

[27] See Regulation No 178/2002, Article 17(1); recital 30.

[28] See Regulation No 178/2002, Article 17(2).

[29] See Regulation No 882/2004, Article 1(1); recitals 6, 7 and 45. For the definition of 'official control', see Article 2(1) thereof. See further Commission Report on the overall operation of official controls in the Member States on food safety, animal health and animal welfare, and plant health (COM(2012) 122 final), 23 March 2012.

[30] See judgment of 17 March 2016, *Kødbranchens Fællesråd* (C-112/15, EU:C:2016:185, paragraph 37).

[31] See 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).

[32] See judgment of 19 December 2019, *Exportslachterij J. Gosschalk and Others* (C-477/18 and C-478/18, EU:C:2019:1126, paragraphs 57 and 60).

[33] See Commission Report on the experience gained from the application of the hygiene Regulations (EC) No 852/2004, (EC) No 853/2004 and (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 (COM(2009) 403 final), 28 July 2009, in particular point 2.

[34] See Regulation No 852/2004, Article 1(1); recital 8.

[35] See Regulation No 853/2004, Article 1(1); recital 2.

[36] See Regulation No 852/2004, recital 7; Regulation No 853/2004, recitals 9 and 10. See also judgments of 2 May 2019, *T. Boer & Zonen* (C-98/18, EU:C:2019:355, paragraph 44), and of 12 September 2019, *A and Others* (C-347/17, EU:C:2019:720, paragraph 43).

No 854/2004.[37] That regulation lays down specific rules on official controls regarding meat and other animal products.[38] As indicated by recital 4 of Regulation No 854/2004, one of its main objectives is to ensure the protection of public health and, according to recitals 8 and 9 thereof, official controls on meat are necessary to verify that operators comply with hygiene rules and, in view of their specific expertise, official veterinarians are charged with carrying out inspections and other tasks at slaughterhouses.[39]

43. Notably, in terms of changes to EU law occurring after the events in the main proceedings but relevant to the present case, Regulation (EU) 2017/625[40] integrates EU rules on official controls into a single legislative framework,[41] thereby replacing, inter alia, Regulations No 854/2004 and No 882/2004. Additionally, Commission Implementing Regulation (EU) 2019/627[42] contains provisions similar to Regulation No 854/2004 at issue in this case.

3. The role of the official veterinarian

44. It should also be pointed out that, as already alluded to, the official veterinarian plays a central role in the system of official controls on meat,[43] as set out in Regulation No 854/2004 and its accompanying annexes. An official veterinarian is defined in Regulation No 854/2004 as a veterinarian qualified, in accordance with that regulation, to act in such a capacity and appointed by the competent authority.[44] Annex I, Section III, Chapter IV to Regulation No 854/2004 specifies the official veterinarian's professional qualifications, in terms of specialised knowledge and training, which must be met in that regard. By virtue of his or her status and professional experience, the official veterinarian can be regarded as the person best qualified to undertake inspections in the Member States and therefore offers appropriate guarantees of competence and of uniformity of health requirements for meat.[45]

45. In that connection, Articles 4 and 5 of Regulation No 854/2004, in conjunction with Annex I, Section I thereto, define the tasks, generally pertaining to auditing, ante-mortem and post-mortem inspections and health marking, which are carried out by the official veterinarian,

[37] Or, in relevant cases, an identification mark. See Regulation No 853/2004, Article 5(1); recital 15. The definition of 'products of animal origin' and terms related to meat are found in Annex I to that regulation, points 1 and 8.

[38] See Regulation No 854/2004, Article 1(1); recital 2.

[39] See judgment of 5 November 2014, *Cypra* (C-402/13, EU:C:2014:2333, paragraph 17).

[40] Regulation of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ 2017 L 95, p. 1).

[41] See Regulation 2017/625, Article 1; recitals 19, 20, 43 and 92. Under Article 167 thereof, it applies from 14 December 2019 subject to certain exceptions.

[42] Commission Implementing Regulation of 15 March 2019 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No 2074/2005 as regards official controls (OJ 2019 L 131, p. 51). Under Article 75 thereof, it applies from 14 December 2019.

[43] See Commission Proposal for a Regulation of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (COM(2002) 377 final), 11 July 2002 ('Proposal'), Explanatory Memorandum, points 5 and 8. See also points 41 and 42 of this Opinion.

[44] See Regulation No 854/2004, Article 2(1)(f). For the definition of 'competent authority', see Article 2(1)(c) thereof; Regulation No 882/2004, Article 2(4).

[45] See, by analogy, judgment of 15 April 1997, *Bakers of Nailsea* (C-27/95, EU:C:1997:188, paragraphs 35 and 36).

who may be assisted by others, such as official auxiliaries, who are also specially trained.[46] Article 5(2) of that regulation provides that the official veterinarian must ensure that a health mark is applied to meat 'when official controls have not identified any deficiencies that would make the meat unfit for human consumption'.[47] Further to this, Annex I, Section II, Chapter V to Regulation No 854/2004 sets out the decisions on meat taken by the official veterinarian following official controls, which involve a list of 21 grounds on the basis of which meat must be declared unfit for human consumption, including where, as in this case, the meat derives from animals affected by a generalised disease, such as pyaemia, or where, in the official veterinarian's opinion after examination of all the relevant information, the meat may constitute a risk to public or animal health or is for any other reason not suitable for human consumption.[48]

46. Consequently, it is apparent from the provisions of Regulation No 854/2004 that the EU legislature has entrusted the official veterinarian with the responsibility of ensuring that meat placed on the market is fit for human consumption and thus of ensuring the objective of public health protection pursued by that regulation,[49] as with the EU food safety regime generally.[50] Moreover, the official veterinarian has discretion under Regulation No 854/2004,[51] based on his or her special expertise, for the purposes of making decisions on whether meat is fit for human consumption. It is against that background that the questions raised by the present case should be examined.

B. Question 2

47. As mentioned in point 32 of this Opinion, the second question before the Court concerns whether Article 54(3) of Regulation No 882/2004, read in conjunction with Article 5(2) of Regulation No 854/2004, requires Member States to provide for a right of appeal on the merits against an official veterinarian's decision refusing to apply a health mark to meat deemed unfit for human consumption. Accordingly, I will first examine whether Article 54(3) of Regulation No 882/2004 is applicable to an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 (Section 1). I will then consider the scope of judicial review of that decision (Section 2).

1. Applicability of Article 54(3) of Regulation No 882/2004

48. According to the arguments put forward by the United Kingdom, Article 54(3) of Regulation No 882/2004 is not applicable to an official veterinarian's decision under Article 5(2) of Regulation No 854/2004, nor does that provision require Member States to provide for a right of appeal against decisions of competent authorities taken pursuant to Article 54 of Regulation No 882/2004, but merely obliges those authorities to provide information on such a right to the extent that one exists. The claimants and the Commission take a different view.

[46] See Regulation No 854/2004, Article 5(4) to (7); Annex I, Section III. See also judgments of 5 November 2014, *Cypra* (C-402/13, EU:C:2014:2333, paragraph 19), and of 17 March 2016, *Kødbranchens Fællesråd* (C-112/15, EU:C:2016:185, paragraph 29).

[47] See also Regulation No 854/2004, Annex I, Section I, Chapter III, point 2(a).

[48] See Regulation No 854/2004, Annex I, Section II, Chapter V, points 1(f) and (u).

[49] See, by analogy, judgment of 15 April 1997, *Daut* (C-105/95, EU:C:1997:189, paragraph 20).

[50] See footnote 25 of this Opinion; see also, for example, Regulation No 852/2004, recital 1; judgment of 13 November 2014, *Reindl* (C-443/13, EU:C:2014:2370, paragraph 28).

[51] See, by analogy, judgment of 12 September 2019, *A and Others* (C-347/17, EU:C:2019:720, paragraphs 65 to 69), and Opinion of Advocate General Bobek in *A and Others* (EU:C:2018:974, points 82 and 83 and footnote 25).

49. I should state at the outset that I am in agreement with the claimants and the Commission that Article 54(3) of Regulation No 882/2004 provides for a right of appeal against an official veterinarian's decision under Article 5(2) of Regulation No 854/2004. My reasons for reaching that conclusion are as follows.

50. It should be noted that Regulation No 854/2004 does not contain any rules concerning rights of appeal with regard to decisions of official veterinarians. It is clear from Article 1(1a) of that regulation that it applies in addition to Regulation No 882/2004 and, according to Article 1(3) of Regulation No 882/2004, that regulation does not affect specific EU provisions on official controls. Consequently, in the absence of specific provisions in Regulation No 854/2004 regarding rights of appeals against decisions of official veterinarians, reference should be made to the general provisions in Regulation No 882/2004.

51. Article 54(3) of Regulation No 882/2004 relates to the action that the competent authority must take, in accordance with Article 54(1) thereof, to remedy the situation in case of non-compliance. Under that provision, the competent authority must provide the operator concerned with written notification of its decision on the action to be taken and the reasons for that decision, along with 'information on rights of appeal against such decisions and on the applicable procedure and time limits'.

52. In my view, an official veterinarian's decision refusing to apply a health mark to meat deemed unfit for human consumption pursuant to Article 5(2) of Regulation No 854/2004 can be characterised as involving a situation of non-compliance for the purposes of Article 54 of Regulation No 882/2004.

53. In that regard, it should be pointed out that the term 'non-compliance' is defined broadly in Article 2(10) of Regulation No 882/2004 as 'non-compliance with feed or food law, and with the rules for the protection of animal health and welfare'. In addition, subparagraph (b) of Article 54(2) of that regulation mentions, in particular, measures which restrict or prohibit the placing of food on the market, and that provision, too, has a wide scope, as subparagraph (h) thereof refers to 'any other measure the competent authority deems appropriate'. In accordance with Article 14 of Regulation No 178/2002 (see point 40 of this Opinion), no food can be placed on the market if it is considered unfit for human consumption. It follows from Article 5(2) of Regulation No 854/2004 that an official veterinarian's refusal to apply a health mark has precisely the effect of declaring meat unfit for human consumption and preventing it from being placed on the market. As pointed out by the Commission, there is also no dispute that the official veterinarian's decision on health marking has been taken on behalf of the competent authority, namely the FSA, in this case.

54. Contrary to arguments put forward by the United Kingdom, it seems to me that this is a situation which must be remedied by enforcement action. Here, it is a matter of removing meat that presents a danger to public health by deciding not to apply a health mark. As indicated by the claimants, there is no distinction between Articles 4 and 5 of Regulation No 854/2004 as regards decisions taken by competent authorities which are subject to Article 54 of Regulation No 882/2004, particularly as this would run counter to the broad concept of non-compliance in Article 2 of Regulation No 882/2004 and the measures envisaged by Article 54(2) thereof. Article 4(3) of Regulation No 854/2004 also states that official controls for the purposes of Article 4(1) of that regulation include those specified in Article 5 thereof.

55. I acknowledge that Article 54(3) of Regulation No 882/2004 refers to a requirement for the competent authority to provide information on rights of appeal. Nevertheless, recital 43 of that regulation states: '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'.[52] Therefore, on the basis of an interpretation of Article 54(3) of Regulation No 882/2004 in the light of recital 43 thereof, it should be considered that that provision requires Member States to provide for a right of appeal against decisions taken by the competent authority, which include an official veterinarian's decision under Article 5(2) of Regulation No 854/2004.

56. This analysis appears to be consistent with the origins of Regulations No 854/2004 and No 882/2004. In particular, it should be noted that, while the Commission's proposal for Regulation No 854/2004 did not contain any provisions on rights of appeal,[53] in its first reading, the European Parliament proposed to insert a provision, stating that: 'Member States shall ensure that adequate appeal procedures are available to food business operators. Resort to appeal may not result in any delay or postponement of the implementation of the measures laid down in this Regulation.'[54] The justification was: 'Producers must have the chance to appeal against any decision which they consider unjustified.'[55] Likewise, the Council added a provision to the proposed text, which was virtually identical to Article 54(3) of Regulation No 882/2004.[56] In response, the Commission considered that rights of appeal should be dealt with in the proposed regulation on official feed and food controls,[57] culminating in Regulation No 882/2004. Thus, the proposed provisions on rights of appeal did not appear in the final text of Regulation No 854/2004 as adopted.

57. Consequently, it may be inferred from the agreement to exclude the proposed provisions on rights of appeal in Regulation No 854/2004 in favour of those contained in Regulation No 882/2004 that Article 54(3) of Regulation No 882/2004 would apply to decisions of the competent authority in the context of Regulation No 854/2004. It is also apparent from the Parliament's proposal that such a provision was not concerned merely with a right to receive information, but was intended to ensure that operators had a right to appeal against decisions of the competent authority which adversely affected them.

58. It should be added that this analysis seems to be consistent with Regulation 2017/625 and Implementing Regulation 2019/627, which have replaced Regulations No 854/2004 and No 882/2004 (see point 43 of this Opinion). In addition to provisions corresponding to Article 5(2) of Regulation No 854/2004,[58] as well as Article 54(3) and recital 43 of Regulation

[52] It should be noted that, as indicated in the order for reference, the German-language version of recital 43 ('Unternehmer sollten… Rechtsmittel einlegen können') and especially of Article 54(3) of Regulation No 882/2004 ('sein Widerspruchsrecht') seems to differ from the vast majority of other language versions which use wording similar to that of the English-language version of those provisions; see, for example, the French-language version of recital 43 ('Les exploitants devraient avoir un droit de recours') and Article 54(3) of Regulation No 882/2004 ('des informations sur ses droits de recours contre de telles décisions, ainsi que sur la procédure et les délais applicables').

[53] See Proposal, cited in footnote 43 of this Opinion.

[54] See Position of the European Parliament adopted at first reading on the Proposal, 5 June 2003, Annex I, Chapter 1, Section II.A, draft paragraph 5.

[55] See European Parliament report on the Proposal, A5-0156/2003, 7 May 2003, proposed amendment 70.

[56] See, for example, Doc 11104/03 ADD 3, 11 July 2003, p. 15; Common Position (EC) No 3/2004 on the Proposal, 27 October 2003 (OJ 2004 C 48 E, p. 82), draft Article 9(3) and Statement of the Council's Reasons, Part III.B.

[57] See, in that regard, Commission Amended proposal for a Regulation of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (COM(2003) 577 final), 21 October 2003, Explanatory Memorandum, point 11.

[58] See Regulation 2017/625, Article 18(4); see also Article 3(51) and Article 18(5) thereof; Implementing Regulation 2019/627, Article 1(d) and Article 48(2)(a); recital 17.

No 882/2004,[59] Regulation 2017/625 contains a specific provision, Article 7, entitled 'Right of appeal', which states that decisions taken by competent authorities as mentioned therein concerning natural and legal persons must be subject to such persons' right of appeal in accordance with national law, and that such a right does not affect the obligation of those authorities to take prompt action pursuant to that regulation. Article 45 of Implementing Regulation 2019/627 also expressly indicates that 'measures in cases of *non-compliance* with requirements for fresh meat' denote those relating to the various grounds under which the official veterinarian declares meat unfit for human consumption, such as where the meat derives from animals affected by pyaemia.[60]

59. I therefore consider that Article 54(3) of Regulation No 882/2004 is applicable to an official veterinarian's decision under Article 5(2) of Regulation No 854/2004. In any event, should the Court find that Article 54(3) of Regulation No 882/2004 is not applicable to such a decision, this would in no way call into question a slaughterhouse operator's right of appeal against that decision on the basis of Article 47 of the Charter in these circumstances (see point 38 of this Opinion).

2. Scope of judicial review

60. As is apparent from their observations, the claimants and the United Kingdom are at loggerheads regarding the scope of judicial review of an official veterinarian's decision under Article 5(2) of Regulation No 854/2004. In essence, the claimants argue that, in order for their right to an effective remedy to be respected, such review must relate to the merits of that decision, as provided by section 9 of the 1990 Act, whereas the United Kingdom submits that that form of review is not permitted by Regulation No 854/2004 and that a claim for judicial review is adequate. For its part, the Commission contends, in substance, that judicial review on the merits is not required by Article 54(3) of Regulation No 882/2004, read in conjunction with Article 5(2) of Regulation No 854/2004 and in the light of Article 47 of the Charter, and that this is a matter for the Member States, subject to the principles of equivalence and effectiveness.

61. Consequently, I observe that the issue before the Court is not whether there is a lack of any right of appeal available to a slaughterhouse operator in these circumstances, but rather is concerned with the effectiveness of the remedy available to that operator under national law to challenge an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 before a national court or tribunal, namely whether that remedy must entail judicial review of the merits of that decision in order to comply with the requirements of EU law.

62. I have concluded that the more limited scope of review of an official veterinarian's decision refusing to apply a health mark to meat deemed unfit for human consumption by a national court or tribunal, such as that involved in a claim for judicial review, is consistent with Article 54(3) of Regulation No 882/2004, read in conjunction with Article 5(2) of Regulation No 854/2004 and in the light of Article 47 of the Charter, and that judicial review of the merits of that decision is not required. My reasons for so concluding are as follows.

63. It should be noted that, as seen in point 9 of this Opinion, Article 54(3) of Regulation No 882/2004 does not contain any rules regarding the exercise of the right of appeal mentioned therein.

[59] See Regulation 2017/625, Article 138(3); recital 30.

[60] See Implementing Regulation 2019/627, Article 45(f). Emphasis added.

64. Under settled case-law, in the absence of EU rules, it is for the legal system of each Member State, in accordance with the principle of procedural autonomy, 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 EU law. However, those rules must not be less favourable than those governing similar domestic situations (principle of equivalence) and must not make it impossible in practice or excessively difficult to exercise rights conferred by EU law (principle of effectiveness).[61] Moreover, as the Court has recognised, despite the absence of EU rules 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 EU measure, it is necessary to take into account the purpose of that measure and to ensure that its effectiveness is not undermined.[62]

65. In that regard, the Court has dealt with questions concerning the scope of judicial review of administrative decisions by national courts in the context of its case-law on the principles of equivalence and effectiveness. For example, the judgment of 6 October 2015, *East Sussex County Council*,[63] concerned a request for a preliminary ruling from a UK court on the issue whether it was inconsistent with an EU directive on the right of access to environmental information if the reasonableness of the charge for supplying that information was subject to limited administrative and judicial review as provided under UK law.

66. In its judgment,[64] the Court answered that question in the negative. In particular, it pointed out that the EU directive did not specify the extent of the administrative and judicial review required and thus it was for national law to determine that extent, subject to the principles of equivalence and effectiveness.[65] With regard to the principle of effectiveness, the Court further observed that, under national law, review was limited to the question whether the decision taken by the public authority was irrational, illegal or unfair, with limited scope for reviewing the relevant factual conclusions reached by that authority.[66] Relying on previous case-law, the Court held that a procedure for judicial review of decisions of administrative authorities which is limited regarding the assessment of questions of fact did not run counter to the principle of effectiveness, provided that it enables the national court or tribunal hearing an application for annulment of such a decision to apply effectively the relevant principles and rules of EU law when reviewing the lawfulness of that decision.[67]

67. In its case-law, the Court has also examined national procedural rules relating to the scope of judicial review of administrative decisions on the basis of the right to effective judicial protection guaranteed by Article 47 of the Charter in a variety of contexts.[68] Indeed, cases, like the present

[61] See judgments of 9 July 2020, *Vueling Airlines* (C-86/19, EU:C:2020:538, paragraph 39), and 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 223).

[62] See judgment of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraph 46).

[63] C-71/14, EU:C:2015:656, paragraphs 17 to 26 and 46.

[64] See judgment of 6 October 2015, *East Sussex County Council* (C-71/14, EU:C:2015:656, paragraph 61).

[65] See judgment of 6 October 2015, *East Sussex County Council* (C-71/14, EU:C:2015:656, paragraphs 50, 51 and 53).

[66] See judgment of 6 October 2015, *East Sussex County Council* (C-71/14, EU:C:2015:656, paragraph 57).

[67] See judgment of 6 October 2015, *East Sussex County Council* (C-71/14, EU:C:2015:656, paragraph 58) (referring to the judgments of 21 January 1999, *Upjohn* (C-120/97, EU:C:1999:14, paragraphs 30, 35 and 36), and of 9 June 2005, *HLH Warenvertrieb and Orthica* (C-211/03, C-299/03 and C-316/03 to C-318/03, EU:C:2005:370, paragraphs 75 to 77 and 79)).

[68] See, inter alia, judgments of 16 May 2017, *Berlioz Investment Fund* (C-682/15, EU:C:2017:373, in particular paragraphs 75 to 89); of 12 July 2018, *Banger* (C-89/17, EU:C:2018:570, paragraphs 42 to 52); and of 24 November 2020, *Minister van Buitenlandse Zaken* (C-225/19 and C-226/19, EU:C:2020:951, paragraphs 40 to 56). For broader discussion of the interplay between the principle of effectiveness and effective judicial protection under Article 47 of the Charter, see, for example, Opinion of Advocate General Bobek in *Banger* (EU:C:2018:225, points 99 to 103), and Opinion of Advocate General Saugmandsgaard Øe in *Braathens Regional Aviation* (C-30/19, EU:C:2020:374, points 66 to 69).

one, involving remedies granted to persons seeking effective judicial protection of their rights based on EU law directly relate to Article 47 of the Charter, as coordination with the ECtHR's case-law on Article 6(1) and Article 13 ECHR is of the utmost importance.[69]

68. According to the Court's case-law, the right to effective judicial protection laid down in Article 47 of the Charter comprises various elements, including the rights of the defence, the principle of equality of arms, the right of access to a court and the right to be advised, defended and represented.[70] With regard, in particular, to the right of access to a court under the first paragraph of Article 47 of the Charter, the Court has held that, for such a court to be able 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.[71] Additionally, the Court has ruled that compliance with the second paragraph of Article 47 of the Charter entails that a decision of an administrative authority which does not itself satisfy the conditions of independence and impartiality must be subject to subsequent control by a judicial body which must, in particular, have jurisdiction to consider all the relevant issues.[72]

69. Nonetheless, it follows from the Court's case-law that compliance with the right to effective judicial protection on the basis of Article 47 of the Charter must be examined in relation to the specific circumstances of the 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.[73] Thus, as noted by commentators, there is not one uniform standard for judicial review of administrative decisions by national courts in cases involving Article 47 of the Charter.[74]

70. Further guidance can be drawn from the ECtHR's case-law on Article 6(1) and Article 13 ECHR, in the light of which Article 47 of the Charter is to be interpreted.[75] With particular regard to Article 6(1) ECHR, the ECtHR has held that the requirement that a court should have 'full jurisdiction' is met where it has exercised 'sufficient jurisdiction' or provided 'sufficient review' in the proceedings before it. This reflects the fact that it is often the case in relation to administrative law appeals in the Member States of the Council of Europe that the extent of judicial review over the facts of a case is limited and that it is characteristic of review proceedings that the competent authorities review the previous proceedings rather than taking factual decisions. Thus, it is not the role of Article 6 ECHR in principle to guarantee access to a court which can substitute its own assessment or opinion for that of the administrative authorities, and

[69] See, in that regard, Prechal, S. and Widdershoven, R., 'Redefining the Relationship between "Rewe-effectiveness" and Effective Judicial Protection', *Review of European Administrative Law*, vol. 4, 2011, pp. 31-50, at pp. 47-48; Widdershoven, R., 'National Procedural Autonomy and General EU Law Limits', *Review of European Administrative Law*, vol. 12, 2019, pp. 5-34, at pp. 21-27.

[70] See judgment of 26 July 2017, *Sacko* (C-348/16, EU:C:2017:591, paragraph 32).

[71] See judgment of 6 November 2012, *Otis and Others* (C-199/11, EU:C:2012:684, paragraph 49). As the Court has ruled, this is an aspect of the essence of the right to an effective remedy enshrined in Article 47 of the Charter for the purposes of Article 52(1) thereof: see judgment of 6 October 2020, *État luxembourgeois (Judicial protection against requests for information in tax law)* (C-245/19 and C-246/19, EU:C:2020:795, paragraph 66).

[72] See judgment of 13 December 2017, *El Hassani* (C-403/16, EU:C:2017:960, paragraph 39). In that regard, the Court has ruled that statements and findings of administrative authorities cannot bind the courts: see judgment of 16 October 2019, *Glencore Agriculture Hungary* (C-189/18, EU:C:2019:861, paragraphs 65 to 69).

[73] See judgment of 26 July 2017, *Sacko* (C-348/16, EU:C:2017:591, paragraph 41); see also Opinion of Advocate General Bobek in *Banger* (C-89/17, EU:C:2018:225, points 104 to 107).

[74] See, in that regard, Widdershoven, R., 'The European Court of Justice and the Standard of Judicial Review', in de Poorter, J. et al. (eds), *Judicial Review of Administrative Discretion in the Administrative State*, Asser Press, 2019, pp. 39-62, at pp. 49-53, 58.

[75] See judgment of 30 June 2016, *Toma and Biroul Executorului Judecătoresc Horațiu-Vasile Cruduleci* (C-205/15, EU:C:2016:499, paragraphs 40 and 41). According to the explanations relating to Article 47 of the Charter, the protection under the first paragraph of that provision is more extensive than that under Article 13 ECHR, since it guarantees the right to an effective remedy before a court, and the second paragraph of that provision is not confined to disputes relating to civil law rights and obligations, as compared to Article 6(1) ECHR.

the ECtHR has placed particular emphasis on the respect which must be accorded to decisions taken by the administrative authorities on grounds of expediency and which often involve specialised areas of law.[76]

71. In assessing whether the extent of the review carried out by a court is sufficient, the ECtHR takes account of the powers of the judicial body in question, along with such factors as: (1) the subject matter of the decision appealed against, 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; (2) the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the adjudicatory body; and (3) the content of the dispute, including the desired and actual grounds of appeal.[77] Whether the review carried out is sufficient therefore depends on the circumstances of a given case.[78] The principle of 'full jurisdiction' has been interpreted in a flexible manner, particularly in administrative law cases where the jurisdiction of the court was restricted on account of the technical nature of the subject matter of the dispute.[79]

72. For example, in the application of those factors, the ECtHR has found no violation of Article 6(1) ECHR in circumstances where the court could not substitute its own decision for that of the administrative authority and its jurisdiction over the facts was limited, but it could have annulled the decision on a number of grounds and the subject matter of the decision appealed against was 'a classic exercise of administrative discretion' in a specialised area of law taken in the context of ensuring standard setting and compliance with the relevant legislation and regulations pursuant to public interest aims.[80] Furthermore, the ECtHR has found on several occasions that the remedy of judicial review under UK law provided sufficient review under Article 6(1) ECHR.[81]

73. In contrast, the ECtHR has found violations of Article 6(1) ECHR where the court considered itself bound by the prior findings of the administrative authority which were decisive for the outcome of the case without examining the issues independently,[82] or it was precluded from determining the central issue in dispute, involving a simple question of fact not requiring a measure of professional knowledge or experience nor the exercise of administrative discretion pursuant to wider policy aims and thus could be decided by a non-specialist court.[83]

74. On that basis, I observe in particular that the ECtHR's case-law on Article 6(1) ECHR allows for a limited review of the merits of administrative decisions by national courts in line with the treatment of administrative appeals in the Member States. Moreover, that case-law takes into account the special expertise and discretion of the administrative authority concerned. I consider that these points should be taken into consideration in the interpretation of Article 47 of the Charter and its application in the circumstances of the present case.

[76] See judgment of 6 November 2018, *Ramos Nunes De Carvalho e Sá v. Portugal* (CE:ECHR:2018:1106JUD005539113, §§ 176 to 178).

[77] See judgment of 20 October 2015, *Fazia Ali v. the United Kingdom* (CE:ECHR:2015:1020JUD004037810, § 78).

[78] See judgment of 6 November 2018, *Ramos Nunes De Carvalho e Sá v. Portugal* (CE:ECHR:2018:1106JUD005539113, § 181).

[79] See judgment of 21 June 2016, *Al-Dulimi and Montana Management Inc. v. Switzerland* (CE:ECHR:2016:0621JUD000580908, § 130).

[80] See judgment of 21 July 2011, *Sigma Radio Television Ltd v. Cyprus* (CE:ECHR:2011:0721JUD003218104, §§ 158 to 169, in particular §§ 159 and 161).

[81] See judgment of 27 October 2009, *Crompton v. the United Kingdom* (CE:ECHR:2009:1027JUD004250905, §§ 72, 79 and 80). As regards Article 13 ECHR, see judgment of 30 October 1991, *Vilvarajah and Others v. the United Kingdom* (CE:ECHR:1991:1030JUD001316387, §§ 122 to 127).

[82] See judgment of 21 July 2011, *Sigma Radio Television Ltd v. Cyprus* (CE:ECHR:2011:0721JUD003218104, § 157).

[83] See judgment of 14 November 2006, *Tsfayo v. the United Kingdom* (CE:ECHR:2006:1114JUD006086000, §§ 46 to 49, in particular § 46).

75. Having regard to its wording, Article 54(3) of Regulation No 882/2004 does not require Member States to provide for judicial review of the merits of decisions of the competent authority. It follows that this is a matter for the Member States, provided that they comply with their obligations under EU law and in particular the requirements flowing from the principles of equivalence and effectiveness and the right to effective judicial protection on the basis of Article 47 of the Charter. Therefore, it seems to me that Regulations No 854/2004 and No 882/2004 do not appear in principle to preclude a Member State from establishing procedural rules which provide for review by a national court or tribunal of the merits of an official veterinarian's decision under Article 5(2) of Regulation No 854/2004, as with section 9 of the 1990 Act, or which provide for the more limited scope of challenging that decision, such as that involved in a claim for judicial review.

76. As regards the principle of effectiveness, judicial review of the merits of that decision does not appear necessary, in the light of the Court's case-law mentioned in points 64 to 66 of this Opinion, to guarantee the objectives and effectiveness of Regulations No 854/2004 and No 882/2004. On the contrary, it seems to me that the more limited scope of challenging that decision, such as that involved in a claim for judicial review, would preserve the special expertise of the official veterinarian in taking decisions as to whether meat is fit for human consumption under Article 5(2) of Regulation No 854/2004 for the purposes of ensuring that unfit meat is not placed on the market and thus contributing to a high level of public health protection pursued by that regulation (see point 42 of this Opinion). There is also no information before the Court to indicate that a claim for judicial review would prevent the national court from applying the relevant principles and rules of EU law when reviewing that decision.

77. As regards the right to effective judicial protection on the basis of Article 47 of the Charter, it appears that, in the situation in the main proceedings, an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 cannot be reviewed on the merits, whether before an administrative authority or a court. In the light of the ECtHR's case-law on Article 6(1) ECHR (see points 70 to 73 of this Opinion), this may be considered to reflect the legal systems of the Member States in so far as there may be a limited review of administrative decisions on the merits by a national court or tribunal, and there is no right to a level of jurisdiction which can substitute its opinion for that of the competent authority, particularly in situations involving special expertise and the exercise of discretion by that authority. In my view, this is the case here, concerning a decision on the health marking of meat deemed unfit for human consumption that is taken on the basis of a detailed inspection of the meat and the extensive professional knowledge and training of the official veterinarian as set out in Regulation No 854/2004 (see points 44 to 46 of this Opinion).

78. It should also be pointed out that, as indicated by the order for reference (see point 16 of this Opinion), in the context of a claim for judicial review, the court may examine whether the findings made by the official veterinarian are supported by evidence and can overturn the decision that was adopted. Thus, it appears that the court can make an independent assessment without being bound by the prior findings of the official veterinarian and has the power to annul the decision taken by the official veterinarian on a number of grounds.

79. As regards the possible administrative solution referred to in the United Kingdom's observations (see point 27 of this Opinion), that solution is set out in a text issued by the FSA and appears to be an administrative practice. It is common ground that it was not used in the dispute in the main proceedings, as it was adopted by the FSA after that dispute arose. Nonetheless, it should be noted that this process allows an official veterinarian to reconsider, in

the light of second opinions from other competent veterinarians, his or her assessment of meat as being unfit for human consumption before making the decision under Article 5(2) of Regulation No 854/2004. On that basis, it seems to me that, while such a process may be relevant for the purposes of bringing an action to challenge that decision in cases where it is availed of, it does not constitute a means of judicial review of that decision and thus does not suffice by itself to ensure effective judicial protection on the basis of Article 47 of the Charter.

80. It should be added that the arguments put forward by the claimants relating to the procedural obligations on Member States in the context of the right to property protected by Article 17 of the Charter do not invalidate this analysis. In the light of the ECtHR's case-law on Article 1 of Protocol No 1 to the ECHR,[84] which must be taken into account in interpreting Article 17 of the Charter,[85] the more limited scope of challenging an official veterinarian's decision under Article 5(2) of Regulation No 854/2004, such as that involved in a claim for judicial review, can be considered, in my view, to afford a slaughterhouse operator a reasonable opportunity of putting its case before a court for the purposes of effectively challenging that decision, in so far as its right to property under that article has been engaged.

81. I therefore conclude that Article 54(3) of Regulation No 882/2004, read in conjunction with Article 5(2) of Regulation No 854/2004 and in the light of Article 47 of the Charter, does not preclude a procedure laid down by national law, such as a claim for judicial review, which provides for judicial review of the official veterinarian's decision refusing to apply a health mark to meat deemed unfit for human consumption pursuant to which the national court or tribunal carrying out that review is not permitted to review the merits of that decision.

C. Question 1

82. As mentioned in point 31 of this Opinion, the first question before the Court concerns whether Regulations No 854/2004 and No 882/2004 preclude a national procedure, such as section 9 of the 1990 Act.

83. As is apparent from the order for reference, this question is raised in the context of a dispute in the main proceedings between the claimants and the FSA regarding the correct procedure under national law for judicial assessment of an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 and whether the FSA has complied with the rules provided for by domestic law.

84. I have concluded that, subject to verification by the referring court, a national procedure, such as section 9 of the 1990 Act, is inconsistent with Regulations No 854/2004 and No 882/2004, read in conjunction with the principle of effectiveness and Article 47 of the Charter. My reasons for reaching that conclusion are as follows.

85. It should be recalled from point 64 of this Opinion that, under the Court's case-law, in the absence of EU rules, it is for the legal system of each Member State, in accordance with the principle of procedural autonomy, to designate the courts and tribunals having jurisdiction over actions for safeguarding rights which individuals derive from EU law, subject to the principles of equivalence and effectiveness. As regards the principle of effectiveness, it should also be borne in

[84] See judgments of 3 April 2012, *Kotov v. Russia* (CE:ECHR:2012:0403JUD005452200, § 114), and of 12 July 2016, *Vrzić v. Croatia* (CE:ECHR:2016:0712JUD004377713, § 110).

[85] See judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)* (C-235/17, EU:C:2019:432, paragraph 72).

mind that every case in which the question arises as to whether a national procedural rule makes the exercise of rights conferred on individuals by EU law impossible in practice or excessively difficult must be analysed by reference, where appropriate, to the basic principles of the national legal system concerned, including the principle of legal certainty.[86] Moreover, in establishing the procedural rules governing such actions, Member States must ensure compliance with Article 47 of the Charter.[87]

86. It follows that national measures designating the courts and tribunals having jurisdiction to hear actions challenging an official veterinarian's decision under Article 5(2) of Regulation No 854/2004 fall within the ambit of the procedural autonomy of Member States, provided that they comply with their obligations under EU law, including the principles of equivalence and effectiveness and the right to effective judicial protection on the basis of Article 47 of the Charter. As mentioned in point 75 of this Opinion, Regulations No 854/2004 and No 882/2004 do not appear in principle to preclude a Member State from establishing procedural rules which provide for review by a national court or tribunal of the merits of an official veterinarian's decision under Article 5(2) of Regulation No 854/2004, as with section 9 of the 1990 Act, or which provide for the more limited scope of challenging that decision, such as that involved in a claim for judicial review.

87. Nevertheless, it seems to me that the following aspects of the situation in the main proceedings are particularly pertinent.

88. As indicated by the referring court (see point 14 of this Opinion), the procedure set out in section 9 of the 1990 Act subjects the official veterinarian's decision to review by a Justice of the Peace, who may consider, on the basis of appropriate evidence, that meat does not comply with food safety requirements. However, it is not the slaughterhouse operator, whose interests are adversely affected by that decision, which is able to refer the matter to the Justice of the Peace, but rather the officer of the FSA. To my mind, the fact that that procedure cannot be invoked by a slaughterhouse operator in order to enforce its rights under EU law and is dependent on action taken by national authorities, such as the FSA, appears, subject to verification by the referring court, to make the exercise of EU rights impossible in practice or excessively difficult.

89. Likewise, in those circumstances, it seems to me that the procedure set out in section 9 of the 1990 Act does not guarantee a slaughterhouse operator a right of access to a court in accordance with the first paragraph of Article 47 of the Charter, given that that operator is not afforded a real possibility of bringing legal proceedings before a court to challenge that decision.[88]

90. Moreover, the system of judicial review under UK law appears problematic on grounds of legal certainty. As the Court has recognised, Member States have an obligation to create a legal situation that is sufficiently precise, clear and foreseeable to enable individuals to ascertain their rights and obligations.[89] Subject to verification by the referring court, the procedural rules at

[86] See judgment of 8 March 2017, *Euro Park Service* (C-14/16, EU:C:2017:177, paragraph 37).

[87] See judgments of 8 November 2016, *Lesoochranárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 65), and of 14 May 2020, *Országos Idegenrendézeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* (C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 142).

[88] See judgment of 12 December 2019, *Aktiva Finants* (C-433/18, EU:C:2019:1074, paragraph 36). It is worth noting that the ECtHR has held, in its case-law on Article 6(1) ECHR, that the right of access to a court must be 'practical and effective', and not 'theoretical or illusory': see judgment of 5 April 2018, *Zubac v. Croatia* (CE:ECHR:2018:0405JUD004016012,§ 77). See also, in that regard, Opinion of Advocate General Cruz Villalón in *Samba Diouf* (C-69/10, EU:C:2011:102, point 43), and Opinion of Advocate General Hogan in *B. M. M. and B. S. (Regroupement familial – enfant mineur)* (C-133/19, EU:C:2020:222, point 44).

[89] See judgment of 28 January 2010, *Commission* v *Ireland* (C-456/08, EU:C:2010:46, paragraph 61).

issue in the main proceedings do not seem to satisfy the requirement of legal certainty and thus are not consistent with the principle of effectiveness on account of the lack of clarity as to whether the correct way of challenging the official veterinarian's decision under Article 5(2) of Regulation No 854/2004 is by way of the procedure set out in section 9 of the 1990 Act or by way of a claim for judicial review.

91. I therefore conclude that, subject to verification by the referring court, Regulations No 854/2004 and No 882/2004, read in conjunction with the principle of effectiveness and Article 47 of the Charter, preclude a national procedure, such as section 9 of the 1990 Act.

VII. Conclusion

92. In the light of the foregoing considerations, I propose that the Court of Justice should answer the questions referred by the Supreme Court of the United Kingdom as follows:

(1) Subject to verification by the referring court, 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 and Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, read in conjunction with the principle of effectiveness and Article 47 of the Charter of Fundamental Rights of the European Union, are to be interpreted as precluding a national procedure, such as section 9 of the 1990 Act.

(2) Article 54(3) of Regulation No 882/2004 requires Member States to provide for a right of appeal against an official veterinarian's decision refusing to apply a health mark to meat deemed unfit for human consumption pursuant to Article 5(2) of Regulation No 854/2004. Those provisions, read in the light of Article 47 of the Charter, are to be interpreted as not precluding a procedure laid down by national law, such as a claim for judicial review, pursuant to which the national court or tribunal carrying out the judicial review of such a decision is not permitted to review the merits of that decision.