Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

5 November 2014*

(Reference for a preliminary ruling — Agriculture — Animal health — Regulation (EC) No 854/2004 — Products of animal origin intended for human consumption — Official controls — Appointment of an official veterinarian — Slaughter of animals)

In Case C-402/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Anotato Dikastirio Kiprou (Cyprus), made by decision of 5 June 2013, received at the Court on 16 July 2013, in the proceedings

Cypra Ltd

v

Kypriaki Dimokratia,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet (Rapporteur), M. Berger, S. Rodin and F. Biltgen, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Cypra Ltd, by T. Andreou, dikigoros,

— Kypriaki Dimokratia, by M. Khatzigeorgiou, acting as Agent,

— the Cypriot Government, by M. Khatzigeorgiou, acting as Agent,

— the Greek Government, by I. Khalkias and A. Vasilopoulou, acting as Agents,

— the Polish Government, by B. Majczyna, acting as Agent,

— the European Commission, by D. Bianchi and D. Triantafyllou, acting as Agents,

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

* Language of the case: Greek.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the provisions 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 (OJ 2004 L 139, p. 206), as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 (OJ 2006 L 363, p. 1; 'Regulation No 854/2004').

2 The request has been made in proceedings between Cypra Limited ('Cypra'), owner of a slaughterhouse for pigs, sheep and goats in the district of Nicosia (Cyprus), and the Kipriaki Dimokratia (Republic of Cyprus), represented by the Minister for Agriculture, Natural Resources and Environment and the Director of veterinary services, concerning the latter's refusal to send veterinary officers to its slaughterhouse to supervise slaughter on particular days and at particular times.

Legal context

EU law

3 Recitals 4 to 6, 8 and 9 in the preamble to Regulation No 854/2004 read as follows:

'(4) Official controls on products of animal origin should cover all aspects that are important for protecting public health and, where appropriate, animal health and animal welfare. They should be based on the most recent relevant information available and it should therefore be possible to adapt them as relevant new information becomes available.

(5) Community legislation on food safety should have a sound scientific basis. To this end, the European Food Safety Authority should be consulted whenever necessary.

(6) The nature and intensity of the official controls should be based on an assessment of public health risks, animal health and welfare, where appropriate, the type and throughput of the processes carried out and the food business operator concerned.

…

(8) Official controls on the production of meat are necessary to verify that food business operators comply with hygiene rules and respect criteria and targets laid down in Community legislation. These official controls should comprise audits of food business operators' activities and inspections, including checks on food business operators' own controls.

(9) In view of their specific expertise, it is appropriate for official veterinarians to carry out audits and inspections of slaughterhouses, game handling establishments and certain cutting plants. Member States should have discretion to decide which are the most appropriate staff for audits and inspections of other types of establishments.'

4 Article 2 of that regulation, entitled 'Definitions', provides:

'1. For the purposes of this Regulation, the following definitions apply:

(a) "official control" means any form of control that the competent authority performs for the verification of compliance with food law, including animal health and animal welfare rules;

(b) “verification” means checking, by examination and the provision of objective evidence, whether specified requirements have been fulfilled;

(c) “competent authority” means the central authority of a Member State competent to carry out veterinary checks or any authority to which it has delegated that competence;

(d) “audit” means a systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives;

…

(f) “official veterinarian” means a veterinarian qualified, in accordance with this Regulation, to act in such a capacity and appointed by the competent authority;

…’

5 Article 4(7) and (9) of the regulation provides:

‘7. In the case of slaughterhouses, game handling establishments and cutting plants placing fresh meat on the market, an official veterinarian shall carry out the auditing tasks referred to in paragraphs 3 and 4.

…

9. The nature and intensity of auditing tasks in respect of individual establishments shall depend upon the assessed risk. To this end, the competent authority shall regularly assess:

(a) public and, where appropriate, animal health risks;

(b) in the case of slaughterhouses, animal welfare aspects;

(c) the type and throughput of the processes carried out; and

(d) the food business operator’s past record as regards compliance with food law.’

6 Article 5 of that regulation, entitled ‘Fresh meat’, provides:

‘Member States shall ensure that official controls with respect to fresh meat take place in accordance with Annex I.

(1) The official veterinarian shall carry out inspection tasks in slaughterhouses, game handling establishments and cutting plants placing fresh meat on the market in accordance with the general requirements of Section I, Chapter II, of Annex I, and with the specific requirements of Section IV, in particular as regards:

(a) food chain information;

(b) ante mortem inspection;

(c) animal welfare;

(d) post-mortem inspection;

(e) specified risk material and other animal by-products; and

(f) laboratory testing.

…

(5) (a) Member States shall ensure that they have sufficient official staff to carry out the official controls required under Annex I with the frequency specified in Section III, Chapter II.

(b) A risk-based approach shall be followed to assess the number of official staff that need to be present on the slaughter line in any given slaughterhouse. The number of official staff involved shall be decided by the competent authority and shall be such that all the requirements of this Regulation can be met.

…'

7 Annex I to Regulation No 854/2004, entitled 'Fresh meat', states, in Section I, Chapter II, B:

'1. Subject to paragraphs 4 and 5:

(a) the official veterinarian is to carry out an ante-mortem inspection of all animals before slaughter;

(b) that inspection must take place within 24 hours of arrival at the slaughterhouse and less than 24 hours before slaughter.

In addition, the official veterinarian may require inspection at any other time

…'

8 Section III of that annex, entitled 'Responsibilities and frequency of controls', provides, in Chapter II thereof:

'1. The competent authority is to ensure that at least one official veterinarian is present:

(a) in slaughterhouses, throughout both ante-mortem and post-mortem inspection;

and

(b) in game handling establishments, throughout post-mortem inspection.

…'

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

9 By letter of 5 March 2007, Cypra informed the competent veterinary services of the slaughter programme for March and April 2007 and requested them to arrange supervision of the slaughter on the days and at the times set out in that letter, essentially because of the need for slaughter on Sundays in the light of agreements which it had concluded for the export of pigmeat to Greece.

10 On 9 March 2007, Cypra repeated its request, stating at the same time that it defines for itself when the slaughterhouse operates and carries out slaughtering.

11 That request was rejected and Cypra brought an action against that decision.

12 The court of first instance dismissed the action, principally accepting the respondents' preliminary objection that their refusal to give a positive response to the appellant's request 'does not constitute neglect of an obligation imposed by law but a failure to act as the result of a discretion' and therefore does not constitute a challengeable act amenable to review under Article 146 of the Constitution.

13 Seised of the appeal, the Anotato Dikastirio Kiprou (Supreme Court of the Republic of Cyprus) considers that the interpretation of Regulation No 854/2004 is at issue. It is unsure as to the obligations on the competent national authorities and the limits on the discretion which those authorities have in applying that regulation.

14 It is in that context that the Anotato Dikastirio Kiprou decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Do the provisions of Regulation (EC) No 854/2004 confer upon the competent authority a discretion to determine the time at which a particular slaughter of animals takes place, in view of its obligation to appoint an official veterinarian for the purposes of carrying out supervision in relation to the slaughter of animals, or is it obliged to appoint such a veterinarian at the time that the slaughter will take place, as determined by the slaughterer?

2. Do the provisions of Regulation (EC) No 854/2004 confer upon the competent authority a discretion to refuse to appoint an official veterinarian for the carrying out of veterinary supervision of the lawful slaughter of animals when it is informed that the slaughter of animals will take place at a particular time, at a licensed slaughterhouse?'

Consideration of the questions referred

15 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether the provisions of Regulation No 854/2004 must be interpreted as meaning that it is for the competent authority to determine the time at which the slaughter of animals takes place, with a view to the appointment of an official veterinarian for the purposes of supervising the slaughter, or whether that authority is obliged to provide such a veterinarian on the day and at the time that the slaughter will take place, as determined by the slaughterer, without being able to object.

16 With a view to interpreting the provisions of Regulation No 854/2004, it is appropriate first to note that that regulation is based on Article 168(4)(b) TFEU, the objective of which is the protection of public health.

17 In that regard, recital 4 in the preamble to that regulation states that 'official controls on products of animal origin should cover all aspects that are important for protecting public health and, where appropriate, animal health and animal welfare'. It is clear from recitals 8 and 9 in the preamble thereto that 'official controls on the production of meat are necessary to verify that food business operators comply with hygiene rules and respect criteria and targets laid down in Community legislation' and that 'in view of their specific expertise, it is appropriate for official veterinarians to carry out audits and inspections of slaughterhouses …'.

18 Article 1 of Regulation No 854/2004 lays down specific rules for the organisation of official controls on products of animal origin.

19 As regards the controls to be carried out by the official veterinarians, Article 5(1) of Regulation No 854/2004 provides that the official veterinarian is to carry out inspection tasks in slaughterhouses in accordance with the general requirements of Section I, Chapter II, of Annex I thereto. That article

also provides, in paragraph 5 thereof, that the number of official veterinarians must be sufficient to carry out the official controls required under Annex I with the frequency specified in Section III, Chapter II.

20 More particularly, Section I, Chapter II, B, 1(b) of Annex I to Regulation No 854/2004 provides that the competent authority of a Member State must arrange for an official veterinarian to be present in the slaughterhouses in order to carry out an ante-mortem inspection which must take place within 24 hours of the animals' arrival at the slaughterhouse and less than 24 hours before slaughter.

21 Thus, the provisions of Regulation No 854/2004 provide not only for a discretion as regards the public and animal health risks but also for an obligation on the competent authorities to supervise the type and throughput of the processes carried out and an obligation to have the staff necessary.

22 As the Polish and Cypriot Governments and the European Commission have rightly pointed out, Regulation No 854/2004 does not contain any provision concerning the operating times or public holidays of the competent authorities and does not stipulate at all, a fortiori, whether they are required to have staff available on Sundays and public holidays. Section I, Chapter II, B, 1(b) of Annex I to that regulation merely puts in place a timeframe as regards certain activities of the official veterinarians.

23 In that regard, in accordance with the general principles on which the European Union is based and which govern relations between it and the Member States, it is for the latter, under Article 5 of the EU Treaty, to ensure that EU rules are implemented within their territories. In so far as EU law, including its general principles, does not include common rules to that effect, the national authorities when implementing such regulations act in accordance with the procedural and substantive rules of their own national law (see, inter alia, judgments in *Dominikanerinnen-Kloster Altenhohenau*, C-285/93, EU:C:1995:398, paragraph 26; *Karlsson and Others*, C-292/97, EU:C:2000:202, paragraph 27, and *Azienda Agricola Giorgio, Giovanni and Luciano Visentin and Others*, C-495/00, EU:C:2004:180, paragraph 39).

24 Since Regulation No 854/2004 does not contain any general rule in that regard, in principle there is nothing to prevent the competent authorities from deciding which days are public holidays and refusing to provide official veterinarians to the slaughterhouses on those days. Furthermore, the competent authority cannot be required to satisfy every request for controls made by the slaughterhouses, since Regulation No 854/2004 does not place such an obligation on the Member States.

25 Indeed, the competent authority is alone in holding information concerning all the slaughterhouses and, in consequence, is alone in being able to decide, having regard to all the tasks incumbent on it in the various slaughterhouses, whether the health checks for the slaughter can be carried out on the dates proposed by the slaughterhouse. Thus, the competent authority, together with the staff of the slaughterhouses, must be able to fix the time at which the controls provided for in Article 5(1) of Regulation No 854/2004, which refers to Annex I, Chapter II, Section I, of that regulation, can be carried out by the official veterinarians.

26 Nevertheless, when adopting measures to implement EU legislation, Member States must exercise their discretion in compliance with the general principles of EU law (see, to that effect, judgments in *Mulligan and Others*, C-313/99, EU:C:2002:386, paragraph 35, and *Azienda Agricola Giorgio, Giovanni and Luciano Visentin and Others*, EU:C:2004:180, paragraph 40), which include the principles of legal certainty, the protection of legitimate expectations, proportionality and non-discrimination (judgment in *Kurt und Thomas Etling and Others*, C-230/09 and C-231/09, EU:C:2011:271, paragraph 74).

27 Thus, in order to comply with the principles referred to in paragraph 26 of this judgment and with a view to planning the official controls required under Article 5 of Regulation No 854/2004, the competent authority may refuse to provide official veterinarians on the dates and at the times requested by the slaughterhouses unless it is objectively necessary for the slaughter to take place on a specific day.

28 However, it is for the slaughterhouses, with a view to fixing the operating times for slaughter, to inform the competent authorities, in advance and with reasonable notice, of the date and time of the slaughter of animals so that those authorities can provide veterinarians at the time requested. In that regard, and in order to ensure that the effectiveness of the provisions of Regulation No 854/2004 is not undermined, it is for the referring court to assess the extent to which the request for slaughter, in the present case, was made sufficiently in advance to enable the competent authority to arrange for an official veterinarian to attend and whether it is objectively necessary for the slaughter to take place on Sundays.

29 Having regard to all the foregoing considerations, the answer to the questions referred is that the provisions of Regulation No 854/2004 must be interpreted, in principle, as not precluding the competent authority determining the time at which the slaughter of animals takes place, with a view to the appointment of an official veterinarian for the purposes of supervising the slaughter, and refusing to provide such a veterinarian on the day and at the time determined by the slaughterer, unless it is objectively necessary for the slaughter to take place on a specific day, which it is for the referring court to ascertain.

Costs

30 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 (First Chamber) hereby rules:

The provisions 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, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, must be interpreted, in principle, as not precluding the competent authority determining the time at which the slaughter of animals takes place, with a view to the appointment of an official veterinarian for the purposes of supervising the slaughter, and refusing to provide such a veterinarian on the day and at the time determined by the slaughterer, unless it is objectively necessary for the slaughter to take place on a specific day, which it is for the referring court to ascertain.

[Signatures]