Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 13 February 2025 [1]

Case C-605/23

'Ati-19' EOOD
v
Nachalnik na otdel 'Operativni deynosti' – Sofia v Glavna direktsia 'Fiskalen kontrol' pri Tsentralno upravlenie na Natsionalna agentsia za prihodite

(Request for a preliminary ruling from the Administrativen sad – Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria))

(Reference for a preliminary ruling – Common system of value added tax (VAT) – Directive 2006/112/EC – Article 273 – Charter of Fundamental Rights of the European Union – First paragraph of Article 47 – Right to an effective remedy – Administrative measure for sealing of premises – Application for a stay – Judicial review limited to an assessment of the damage which may result from execution of the measure)

1. In the proceedings which have given rise to this reference for a preliminary ruling, an application has been made for a stay of an order provisionally enforcing the sealing of business premises, issued by the Bulgarian tax authorities [2] in the light of irregularities identified with regard to the collection of value added tax (VAT).

2. The decision to seal the business premises for the reason stated may, in the abstract, be classified as a measure intended to ensure the correct collection of VAT and to prevent evasion (Article 273 of Directive 2006/112/EC). [3]

3. Although, in addition to ordering the sealing of the business premises, the tax authorities imposed a financial penalty on the undertaking which owns those premises, the proceedings brought before the referring court do not concern that financial penalty.

4. The referring court asks, in summary, whether the national provision governing appeals against the provisional enforcement of an administrative sealing measure is compatible with the right guaranteed by the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

[1] Original language: Spanish.

[2] The defendant in the action before the referring court is the Nachalnik na otdel 'Operativni deynosti' – grad Sofia v Glavna direktsia 'Fiskalen kontrol' pri Tsentralno upravlenie na Natsionalna agentsia za prihodite (Head of the Department 'Operational Activities' – Sofia City for the Directorate General 'Fiscal Supervision' of the Central Administration of the National Revenue Agency, Bulgaria).

[3] Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT Directive').

I. Legislative framework

A. European Union law. The VAT Directive

5. Under Article 2(1)(a), 'the supply of goods for consideration within the territory of a Member State by a taxable person acting as such' is subject to VAT.

6. Article 273 provides:

'Member States may impose other obligations which they deem necessary to ensure the correct collection of VAT and to prevent evasion, subject to the requirement of equal treatment as between domestic transactions and transactions carried out between Member States by taxable persons and provided that such obligations do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

The option under the first paragraph may not be relied upon in order to impose additional invoicing obligations over and above those laid down in Chapter 3.'

B. National law

1. The Law on VAT[4]

7. Article 118(1), in the version applicable to the facts of the proceedings, reads:

'Any person, whether or not registered under this law, is obliged to register and record in writing the supplies and sales made by him or her on business premises by issuing a fiscal cash register receipt generated by a fiscal memory device (cash register receipt) or a cash register receipt generated by an automatic integrated business management system (system receipt), irrespective of whether or not another tax document is requested. The recipient must receive the cash register receipt or the system receipt and keep it until he or she has left the premises.'

8. Article 185(1) and (2) provides:

'(1) Failure to issue a supporting document referred to in Article 118(1) shall, for natural persons who are not traders, be sanctioned by a fine of between 100 and 500 leva (BGN) and, for legal persons and individual traders, by a financial penalty of between BGN 500 and BGN 2000.

(2) Apart from the cases referred to in paragraph 1, any person who commits or permits the commission of an offence referred to in Article 118 or in a legislative act implementing that article shall be liable to a fine of between BGN 300 and BGN 1000 for natural persons who are not traders, or to a financial penalty of between BGN 3000 and BGN 10000 for legal persons and individual traders. Where the offence does not result in a failure to indicate tax revenue, the penalties provided for in paragraph 1 shall be imposed'

[4] Zakon za danak varhu dobavenata stoynost (Law on value added tax) of 21 July 2006 (DV No 63 of 4 August 2006, p. 8; 'Law on VAT').

9. Article 186 reads:

‘(1) The coercive administrative measure of sealing business premises for a period of up to 30 days shall be ordered, irrespective of the fines or financial penalties provided for, against any person who:

1. omits to

(a) issue a document evidencing the sale concerned in accordance with Article 118;

…

(3) The coercive administrative measure pursuant to paragraph 1 shall be applied by means of a reasoned order issued by the revenue service or by an official authorised by that department.

(4) An appeal shall lie against the order referred to in paragraph 3 in accordance with the procedure laid down in the Code of Administrative Procedure.’

10. In accordance with Article 187(1) and (4):

‘(1) Where a coercive administrative measure is ordered pursuant to Article 186(1), access to the person’s business premises shall also be prohibited and the property present in those premises and in the adjoining storage facilities shall be removed by the person or by his or her authorised representative. …

…

(4) At the request of the offender and subject to his or her providing proof of full payment of the fine or financial penalty, the authority shall terminate the coercive administrative measure imposed by it. The removal of seals shall be subject to an obligation of cooperation on the part of the offender. In the event of a repeat offence, removal of the seals from the premises shall not be permitted until one month has elapsed since its placing under seal.’

11. Article 188 [5] is worded:

‘(1) The coercive administrative measure referred to in Article 186(1) shall be provisionally enforceable in accordance with the provisions of Article 60(1) to (7) of the Code of Administrative Procedure.

(2) No appeal shall lie against the judgment of the court.’

12. Article 193 states:

‘(1) The Law on administrative offences and penalties shall govern the establishment of offences under this Law and under the legislative acts implementing it, the adoption and enforcement of decisions imposing administrative penalties, and any appeals against such decisions.

[5] In the version applicable to the case, as amended and published in DV No 100 of 20 December 2019.

(2) Findings of offences shall be established by the revenue services and the decisions imposing administrative penalties shall be adopted by the Executive Director of the National Revenue Agency or by the official authorised by him or her for that purpose.'

2. The Code of Administrative Procedure[6]

13. Under Article 6(5), in the version applicable to the facts at issue in the proceedings, administrative authorities must refrain from adopting acts and engaging in conduct liable to cause damage which is manifestly disproportionate in view of the aim pursued.

14. Article 60 provides:

'(1) The administrative act shall comprise an order for its provisional enforcement where required by the life or health of citizens, so as to protect particularly important State or public interests where enforcement of the decision is liable to be prevented or significantly impeded, or if the delay in enforcement is likely to cause damage which is serious or reparable only with difficulty, or at the request of one of the parties – to protect one of its particularly important interests. In the latter case, the administrative authority shall require the corresponding guarantee.

(2) The provisional enforcement order shall state the grounds on which it is based.

…

(5) An appeal may be lodged against the order authorising or refusing provisional enforcement, through the administrative authority before the court within three days of notification of the order, irrespective of whether or not an appeal has been lodged against the administrative act.

(6) The appeal shall be examined as soon as possible in chamber by the Board without notification of copies of the appeal to the parties. The appeal does not suspend provisional enforcement, but the court may suspend provisional enforcement until it has given a final ruling on the appeal.

(7) Where it sets aside the order under appeal, the court shall rule on the substance of the case. If provisional enforcement is set aside, the administrative authority shall restore the pre-enforcement situation.

(8) An appeal may be brought against the order of the court.'

15. Under Article 128(1)(1), the administrative courts have jurisdiction to hear and determine cases seeking, inter alia, amendment or annulment of administrative acts.

16. In accordance with Article 146, the grounds of appeal against administrative acts are: (a) lack of jurisdiction; (b) procedural defects; (c) serious breach of the rules of administrative procedure; (d) breach of provisions of substantive law; (e) incompatibility with the objective pursued by the law.

[6] Administrativnoprotsetsualen kodeks (Code of Administrative Procedure) (DV No 30 of 11 April 2006; 'the CAP').

17. Article 166 reads:

‘(1) An appeal shall suspend enforcement of the administrative act.

(2) At each stage of the proceedings until the judgment becomes final, the court may, at the request of the applicant, suspend provisional enforcement, authorised by a final order of the authority which adopted the act referred to in Article 60(1), if the provisional enforcement would be likely to cause the applicant damage which is serious or reparable only with difficulty. …’

II. The facts, the dispute and the question referred for a preliminary ruling

18. ‘Ati-19’ EOOD is a one-person company with limited liability which operates business premises in Blagoevgrad (Bulgaria).

19. On 3 August 2023, the Bulgarian tax authorities carried out an inspection at the business premises of Ati-19, during which:

– Before identifying themselves, the inspectors made a purchase to the value of BGN 14.80 (approximately EUR 8) without being issued with a fiscal cash register receipt.

– The daily fiscal record showed an amount of BGN 327.80 (approximately EUR 167), whereas there was a total of BGN 573.55 (approximately EUR 293) in the cash register.

20. By decision of 8 August 2023, administrative proceedings for the imposition of a penalty were commenced against Ati-19.

21. On 29 August 2023, the tax authorities imposed a financial penalty of BGN 1 000 (approximately EUR 500) on Ati-19.

22. On 30 August 2023, the tax authorities ordered the sealing of the business premises and a ban on entry for a period of 14 days.

23. On 6 September 2023, the sealing measure was served on Ati-19. In the confirmation of receipt, the effective date for the enforcement of sealing was set as 21 September 2023.

24. On 14 September 2023, Ati-19 brought an action before the Administrativen sad Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria) under Article 60(5) of the CAP, contesting the order for the enforcement of sealing.

25. On 18 September 2023, the court ruled that the action brought by Ati-19 was out of time on the grounds that it had not been lodged within the time limit of three days following notification of the order.

26. On 19 September 2023, Ati-19 applied to the same court, under Article 166(2) of the CAP, for a stay of enforcement of the sealing of the premises.

27. Against that background, the Administrativen sad Blagoevgrad (Administrative Court, Blagoevgrad) has referred the following question to the Court of Justice for a preliminary ruling:

'Must Article 47(1) of the Charter … be interpreted as not precluding national rules on protection against the provisional enforcement of measures introduced by the national legislature to safeguard the interest referred to in Article 273 of [the VAT Directive], in the context of which the scope of judicial review is limited to the existence of damage suffered?'

III. Procedure before the Court of Justice

28. The request for a preliminary ruling was received at the Registry of the Court of Justice on 4 October 2023.

29. Written observations were lodged by the Bulgarian Government and the European Commission.

30. At the request of the Court, the referring court confirmed, by letter received at the Registry of the Court of Justice on 28 December 2023, that, as at 20 December 2023, the sealing order had not yet been executed.

31. The Court did not consider it necessary to hold a hearing.

IV. Analysis

A. Admissibility

32. The Bulgarian Government has raised two pleas of inadmissibility against the reference for a preliminary ruling:

– First, it denies the existence of the provisional order for enforcement of the sealing measure. [7]

– Second, it argues that, since sealing has not been executed, the proceedings for a stay of enforcement are devoid of purpose. [8]

33. In my view, both pleas should be dismissed.

34. As regards the first plea, the proceedings before the referring court are for a stay of provisional enforcement of the sealing of the business premises. Whether or not the enforcement order exists and what its contents are is a matter for the referring court to examine.

[7] The Bulgarian Government claims that the sealing order confirms only the date of notification of that order, which does not state that provisional enforcement has been ordered.

[8] Paragraph 47 of the Bulgarian Government's written observations.

35. The Court must proceed on the basis of the summary of the facts provided to it by the referring court. That summary explicitly states that provisional enforcement was authorised when the sealing measure was adopted and 'forms part of the content of the order'. Moreover, in a subsequent letter to the Court of Justice, the referring court emphasised that the competent administrative authority had authorised provisional enforcement of the sealing measure. [9]

36. As regards the second plea, all the indications are that the sealing measure had not been executed several months after the reference for a preliminary ruling was lodged. However, it does not follow from this that the national proceedings or, consequently, the reference itself are (allegedly) devoid of purpose.

37. The fact that enforcement has not yet been carried out does not deprive of purpose the proceedings before the referring court, which is required to determine whether or not provisional enforcement should be suspended. As long as the sealing measure does not become unenforceable, its enforcement is an imminent possibility, the (future) realisation of which in itself affects the interests of the person at whom it is directed. That person therefore has legal standing to apply to the referring court for an order suspending the provisional enforcement of sealing, while that court has jurisdiction to give a ruling in that regard (where appropriate, before any reference for a preliminary ruling that it considers necessary) in the context of the national proceedings on which it is required to adjudicate.

B. The effect on this case of the judgment of the Court of Justice of 4 May 2023, MV – 98 [10]

38. The referring court has cited the judgment in *MV – 98*, which was given by the Court in reply to another reference for a preliminary ruling submitted by the same court in 2021.

39. In *MV – 98*, the facts were similar to those in this case: during an inspection carried out at business premises, the Bulgarian tax authorities found that MV – 98 had failed to record the sale of an item and to issue the fiscal cash register receipt relating to that sale.

40. Based on those facts, in summary, the tax authorities:

– Imposed a financial penalty on MV – 98, under Article 185 of the Law on VAT.

– Adopted an administrative measure involving sealing the premises in question for a period of 14 days, under Article 186 of the Law on VAT.

– By order made under Article 60 of the CAP, issued 'a provisional authorisation for enforcement [of that measure] …, those authorities having taken the view that such provisional enforcement was essential in order to protect the interests of the State and, in particular, those of the State Treasury.' [11]

[9] Respectively, paragraph 44 of the order for reference and paragraph 3 of the letter from the referring court received at the Registry of the Court on 28 December 2023.

[10] Case C-97/21 (EU:C:2023:371; 'the judgment in MV – 98').

[11] The judgment in *MV – 98*, paragraph 20.

41. In the judgment in *MV – 98*, the Court dealt only with the interpretation of Article 273 of the VAT Directive and Article 50 of the Charter in order to adjudicate on the application of the principle *ne bis in idem* to the combination of the financial penalty and the measure involving sealing of the premises.

42. The Court did not actually consider the third question referred for a preliminary ruling in *MV – 98*,[12] which concerned the relationship between Article 47 of the Charter and the national provisions on the provisional enforcement of the sealing of business premises. The wording of that unanswered question was the same as that of the single question referred in the present case.

43. Although, I repeat, it did not rule on the arrangements for provisional enforcement of the sealing measure, the judgment in *MV – 98* is of some relevance to the present case: it led the referring court to classify sealing as a criminal penalty. That classification may have a bearing on the treatment of the substantive issue now in dispute.

C. Application of the Charter

44. Pursuant to Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing European Union law.[13]

45. It follows from Articles 2 and 273 of the VAT Directive, read together with Article 4(3) TEU and Article 325(1) TFEU, that the Member States are required to take all legislative and administrative measures appropriate for ensuring collection of all VAT due on their territory and for preventing tax evasion.[14]

46. Article 325 TFEU 'obliges the Member States to counter illegal activities affecting the financial interests of the European Union through effective deterrent measures and, in particular, obliges them to take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own interests'.[15]

47. The national legislation with which the reference for a preliminary ruling is concerned, in so far as it is aimed at ensuring the proper collection of VAT and the prevention of tax evasion, complies, in principle, with the obligations flowing from European Union law.

48. From that perspective, the administrative measure of sealing premises on which infringements of the Law on VAT have been identified implements Articles 2 and 273 of the VAT Directive and, therefore, European Union law, within the meaning of Article 51(1) of the Charter.

49. Consequently, the imposition of that sealing measure must comply with the fundamental right guaranteed by the first paragraph of Article 47 of the Charter. It is therefore necessary to examine the substance of the reference for a preliminary ruling, which concerns the interpretation of that provision.

[12] The Court was unable to give a ruling on the third question referred for a preliminary ruling in *MV – 98* because it did not satisfy the requirements of Article 94(c) of the Rules of Procedure. The judgment in *MV – 98*, paragraphs 65 to 70.

[13] For example, judgment of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105), paragraph 17.

[14] Judgment of 13 October 2022, *Direktor na Direktsia Obzhalvane i danachno-osiguritelna praktika* (C-1/21, EU:C:2022:788, paragraph 60), and the case-law cited.

[15] The judgment of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105), paragraph 26.

D. The substance

1. Definition of the dispute

50. The measure of sealing the business premises was adopted in accordance with Article 186(1) of the Law on VAT. Pursuant to Article 188(1) of that law, the measure was open to provisional enforcement in accordance with the CAP.

51. According to the order for reference, national case-law lacks uniformity as regards the need to substantiate, in every case, the existence of a public interest which justifies provisional enforcement. It appears that a number of Bulgarian courts are of the opinion that such an interest must always be assumed. [16]

52. In any event, as the order for reference explains, once provisional enforcement of an individual administrative act has been ordered, it is possible to take action against it in two ways:

– By challenging provisional enforcement, that is, by appealing against the order authorising provisional enforcement (Article 60(5) of the CAP). In that appeal, an application may be made for annulment of the order.

– By applying for a stay of provisional enforcement of the administrative act, in accordance with Article 166 of the CAP.

53. It follows from the order for reference that Ati-19 lodged the action for annulment provided for in Article 60 of the CAP outside the time limit for doing so. Following the dismissal of that action, Ati-19 applied for a stay of provisional enforcement, relying on the remedy laid down in Article 166 of the CAP. The application for that remedy led to the proceedings which gave rise to the reference for a preliminary ruling.

54. The referring court states that 'it is precisely the scope of the judicial review pursuant to Article 166(2) of the CAP that raises the question of whether that application [for a stay] is valid in the light of the first paragraph of Article 47 of the Charter.' [17]

55. More specifically, the referring court explains that it is necessary to determine:

– '… whether, with regard to the sealing, the judicial protection against such enforcement prior to the court's decision on the lawfulness of the order itself provides sufficient guarantees against arbitrary and disproportionate intervention in the company's activities.' [18]

– '… whether a procedure such as the one at issue here pursuant to Article 166(2) and (3) of the CAP, which excludes an examination of the facts and limits the scope of judicial review only to the existence of damage suffered, constitutes an effective remedy in the light of Article 47 of the Charter.' [19]

[16] Paragraphs 61 to 63 of the order for reference.

[17] Paragraph 51 of the order for reference.

[18] Paragraph 52 of the order for reference.

[19] Paragraph 67 of the order for reference.

56. The fact that the uncertainty has been expressed in those terms restricts the reference for a preliminary ruling to the same terms. The question whether the combined imposition of a sealing measure and a financial penalty is compatible with EU law is outside the scope of the reference.

57. The referring court's uncertainties therefore concern the limitations imposed by Article 166(2) and (3) of the CAP on the judicial review of provisional enforcement orders. Inter alia, the referring court states that:

– The court seised of the judicial review does not make any enquiries into the facts that were the basis for issuing such an order.

– Nor does that court examine the possible merits of the *ordinary* grounds of appeal listed in Article 146 of the CAP (which include procedural and formal defects and the breach of provisions of substantive law).

– The protection under Article 166(2) and (3) of the CAP can be based solely on 'damage which is serious or reparable only with difficulty' that provisional enforcement may cause to the person concerned. [20]

58. Nevertheless, it is by no means clear which of those limitations is of relevance to the main proceedings. The referring court appears to focus on the fact that 'an examination of the facts is excluded' (see paragraph 67 of the order for reference), an assertion which may be immaterial to these proceedings, given that, according to the order for reference, Ati-19 has not challenged the facts. [21] However, in successive passages of that order for reference, the national court refers to the other limitations laid down by Article 166 of the CAP.

59. The obstacles to judicial review which the referring court sets out may, in its opinion, mean that the national legislation is incompatible with the first paragraph of Article 47 of the Charter.

60. In the Commission's submission, the national legislation at issue, in so far as it limits the jurisdiction of the courts to examining whether the damage suffered by the addressee of the administrative act exists and the nature of that damage, is contrary to the first paragraph of Article 47 of the Charter. The right to an effective remedy enshrined in that provision requires the national court to be in a position to conduct a full judicial review for the purposes of examining the facts pertaining to the adoption of the contested administrative act or the coercive administrative measure. [22]

61. The Bulgarian Government points out [23] that the addressees of an administrative measure such as sealing have a number of remedies available to them, by means of which they may:

– Bring an appeal as to the merits, under Article 145 et seq. of the CAP. That appeal suspends enforcement of the contested administrative act, pursuant to Article 166(1) of the CAP.

[20] Paragraph 58 of the order for reference.

[21] The summary of the arguments put forward by Ati-19 in paragraphs 19 and 20 of the order for reference does not indicate that that undertaking has disputed the accuracy of the facts as recorded during the tax inspection of the premises.

[22] Paragraph 40 of the Commission's observations.

[23] Paragraph 59 of the Bulgarian Government's observations.

– Bring an appeal under Article 60 of the CAP, if a provisional enforcement order has been issued. In that appeal, the addressee of the order may apply for its annulment.

– Apply for a stay of a provisional enforcement order under Article 166(2) of the CAP.

62. The Bulgarian Government acknowledges that, in the proceedings governed by Article 166(2) of the CAP, the court does not review the lawfulness of the provisional enforcement order but rather only whether enforcement would cause for the addressee damage which is serious or reparable only with difficulty. The Bulgarian Government adds that this is because the CAP provides for other remedies (specifically, Article 60(5)) against that order which include an assessment of its lawfulness. [24]

2. The first paragraph of Article 47 of the Charter and interim judicial protection

63. The first paragraph of Article 47 of the Charter lays down the right to an effective remedy, reflecting in that wording the case-law of the Court preceding the Charter. [25]

64. It follows from that same case-law that the right to an effective remedy includes the right to obtain, where appropriate, an interim measure (suspending an act or another provisional measure) in proceedings in which rights derived from EU provisions are resolved.

65. The application of the first paragraph of Article 47 of the Charter, in so far as it concerns interim relief, can be considered from a twofold perspective:

– Interim judicial protection against acts of the EU institutions. This type of judicial protection is provided for in Articles 278 and 279 TFEU, and in Article 256(1) TFEU, and must be entrusted to the Court of Justice or the General Court. [26] There is abundant case-law of the Court of Justice on the exercise of that protection. [27]

– Interim judicial protection against acts of the State authorities, for the protection of rights derived from EU law. This must be entrusted to national courts in accordance with the rules of procedure adopted by each State, provided that they do not conflict with Article 47 of the Charter.

66. In this reference for a preliminary ruling, the second perspective must be taken into account because the dispute concerns the suspension of an administrative act (the order for enforcement of the sealing of business premises) adopted under legislation aimed at countering VAT fraud, which places the dispute within the scope of Union law.

[24] Paragraph 68 of the Bulgarian Government's observations.

[25] Judgment of 13 March 2007, *Unibet* (C-432/05, EU:C:2007:163, paragraph 37): 'the principle of effective judicial protection is a general principle of Community law stemming from the constitutional traditions common to the Member States, … and which has also been *reaffirmed* by Article 47 of the Charter …'. Emphasis added.

[26] Without prejudice to the power of national courts to suspend the enforcement of an administrative measure adopted on the basis of a regulation, as referred to in the judgment of 21 February 1991, *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* (C-143/88 and C-92/89, EU:C:1991:65), operative part, point 1.

[27] See, for example, order of the Vice-President of the Court of 27 March 2024, *Commission* v *Amazon Services Europe* (C-639/23 P(R), EU:C:2024:277, paragraph 66): 'the court hearing an application for interim relief may order the suspension of operation of an act, or other interim measures, if it is established that such an order is justified, prima facie, in fact and in law and that it is urgent in so far as, in order to avoid serious and irreparable damage to the interests of the party making the application, it must be made and produce its effects before a decision is reached in the main action. … The court hearing an application for interim relief must also, where appropriate, weigh up the interests involved'.

67. In relation to the powers of national courts to grant interim relief, the Court has held that:

– As a general rule, 'a national court seised of a dispute governed by European Union law must be in a position to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under European Union law'. [28]

– 'The principle of effective judicial protection of an individual's rights under Community law must be interpreted as requiring it to be possible in the legal order of a Member State for interim relief to be granted until the competent court has given a ruling on whether national provisions are compatible with Community law, where the grant of such relief is necessary to ensure the full effectiveness of the judgment to be given on the existence of such rights.' [29]

68. Those declarations of the Court may be applied to proceedings brought before national courts challenging an individual measure or disputing the validity of a national provision on the grounds that one or other are incompatible with Union law.

69. Accordingly, the laws of the Member States must establish procedural routes to enable their courts, where appropriate, to suspend an administrative act which has been challenged on the basis of its alleged incompatibility with the EU law applicable to the dispute.

70. Against that background, the system of interim relief created in the CAP, taken as a whole, appears to satisfy the requirements of the first paragraph of Article 47 of the Charter, in so far as it provides applicants with the right to apply for the suspension of acts which have been challenged. That right applies to orders for the provisional enforcement of measures such as the sealing of business premises.

71. It is for the referring court to interpret national law and to determine, therefore, whether Article 166(2) of the CAP applies. independently of the other remedies which, the Bulgarian Government submits, would make it possible to stay the order for provisional enforcement of the sealing measure.

72. In particular, the referring court is required to examine whether, by means of the procedural mechanism referred to in Article 60 of the CAP, persons affected by a provisional enforcement order are able to challenge that order effectively, by pleading grounds which call into question the lawfulness of that administrative act. The considerations which the referring court sets out in that connection in paragraph 60 of the order for reference [30] do not enable that matter to be clarified with certainty.

73. For its part, the Bulgarian Government argues that 'the matters as a whole which are subject to the assessment of the referring court under Article 60(1) of the CAP enable a complex scrutiny and, at the same time, an individual consideration of the instant case'. [31] In that connection, the

[28] Judgment of 14 May 2020, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* (C-924/19 PPU and C-925/19 PPU, EU:C:2020:367, paragraph 297), citing judgments of 19 June 1990, *Factortame and Others* (C-213/89, EU:C:1990:257, paragraph 21), and of 15 January 2013, *Križan and Others* (C-416/10, EU:C:2013:8, paragraph 107).

[29] Judgment of 13 March 2007, *Unibet* (C-432/05, EU:C:2007:163, paragraph 77 and operative part, point 2).

[30] 'The scope of judicial review pursuant to Article 60(5) to (7) of the [CAP] against the administrative decision to authorise provisional enforcement pursuant to Article 188(1) of the [Law on VAT] does not differ significantly from that pursuant to Article 166(2) of the [CAP]. If there are differences, *those lie in the wider scope of judicial review pursuant to Article 60(5) of the [CAP]*, in the context of which the court may review the authority's assessment of whether the conditions have been satisfied under Article 60(1) (issuing the administrative decision to authorise provisional enforcement). However, the provision of Article 188(1) of the [Law on VAT] is not interpreted and applied uniformly.' Emphasis added.

[31] The Bulgarian Government's observations, paragraph 22.

Bulgarian Government points out that, when it examines the application for annulment of the provisional enforcement order pursuant to Article 60 of the CAP, the court 'examines the admissibility and the basis of the action, the formal and substantive conditions of the expression of the will of the administrative authority which issued the order … and whether the conditions for authorising provisional enforcement are fulfilled …'.[32]

74. If the Bulgarian Government's stance were accepted, the Bulgarian legal system would offer the applicant a suitable procedural route to enable the court to carry out an unlimited review of the validity of the provisional enforcement order.[33]

75. If, as the order for reference states, the examination must focus exclusively on Article 166(2) of the CAP, as such, its wording admittedly reduces the possibility of suspension to the existence of 'damage which is serious or reparable only with difficulty'.

76. Even from an *isolated* perspective, I do not rule out that Article 166(2) of the CAP is open to an interpretation to the effect that the court may examine the damage referred to in the provision by including in its assessment factors of a different kind. In particular, where a complaint concerns a serious defect in the enforcement order (such as the clear lack of competence of the authority which issued it or the non-existence or clear distortion of its factual basis), I find it difficult to accept that a court can *turn a blind eye* to those claims.

77. In that examination, the court may also assess whether the general rule in Article 6(5) of the CAP has been complied with, to the effect that the administrative act must not cause damage which is manifestly disproportionate in view of the aim pursued.

78. The considerations set out above apply a fortiori if, as the referring court's reading of the judgment in *MV – 98* appears to suggest, the provisional enforcement order was adopted in respect of an act (the measure involving sealing of the premises) which, substantively, has the status of an administrative penalty of a criminal nature.

79. In those circumstances, the mere possibility of enforcement of a punitive measure of a criminal nature issued by an authority that clearly lacks competence, or on the basis of non-existent or manifestly distorted facts, would, in itself, cause *damage* to the person suffering it that is sufficiently serious that the judicial authority must adjudicate on it.

80. For the purposes of assessing the respective significance of the competing interests, account must be taken, as regards the interests of the administrative authorities, of whether the purpose served by provisional enforcement is simply exemplary prevention, immediate and effective punishment or the avoidance of greater damage. As regards the interests of the person concerned, account must be taken, naturally, of the extent of the damage resulting from provisional enforcement and the possibility of effective reparation of that damage. However, regard must also clearly be had to the probability that that person's objection to enforcement is well founded.

[32] The Bulgarian Government's observations, paragraph 65.

[33] It is a different matter where a party bringing those proceedings does so out of time. As already pointed out, the order for reference states that Ati-19 was late using that mechanism and therefore its application was dismissed. The shortness of the period for bringing the appeal provided for in Article 60(5) of the CAP (three days) may, possibly, be excessive but no uncertainty is raised about this issue in the order for reference.

81. Only if the referring court were to find that that inclusive interpretation of Article 166(2) of the CAP is impossible because it is *contra legem*, would it be necessary to consider its compatibility with the first paragraph of Article 47 of the Charter. In other words, it would be necessary to determine whether, under that provision of the Charter, an effective legal remedy of a provisional nature may be ordered by a court which is precluded from taking into consideration other factors (apart from the damage) which clearly have a negative effect on the compatibility of the act itself with EU law.

82. Subject to the reservations which I have set out, I believe that the effectiveness of the remedy required under the first paragraph of Article 47 of the Charter would be undermined if the interpretation of the national legislation, considered as a whole, in so far as it implements EU law:

– Were to confine a judicial review of the activities of administrative authorities involving the imposition of penalties of a substantively criminal nature (in the context of proceedings in which a stay of the order for provisional enforcement of the sealing of business premises is sought) to an assessment solely of the damage which is serious or reparable only with difficulty, and

– were also to exclude any possibility that the court might examine, for the purposes of reaching its conclusion, whether the application for a stay is prima facie substantiated, in fact and in law, by arguments that will probably be upheld.

83. The weighing up of the public authority's interests and those of the applicant is an inherent part of the grant of interim measures. Naturally, those measures must take into account any damage which is serious or reparable only with difficulty that the immediate enforcement of the administrative measure would cause to the person concerned. The court may also examine whether there is, nevertheless, an overriding public interest which justifies that provisional enforcement, since the application for provisional enforcement by the citizen concerned does not take place in a vacuum but rather in opposition to that public interest, which is linked to aims that are pursued by any activity carried out by the administrative authorities.

84. However, the public interest is neither unconditional nor absolute and must, where necessary, be consistent with the interests of the person concerned, in accordance with his or her rights and legitimate interests.

85. In order to comply with the principle of the right to effective legal protection in areas governed by EU law, I believe that it may not be sufficient to limit the cognizance of the court merely to the assessment of damage resulting from the provisional enforcement of an administrative measure of a substantially punitive nature.

86. When the competent court adopts its decision on the need to stay enforcement, it must be in a position to examine other potentially relevant matters that have been raised by the applicant and do not require an exhaustive examination (which is part of the subsequent proceedings concerning the lawfulness of the measure), but which indicate prima facie defects rendering that measure incompatible with EU law.

87. Otherwise, the interim judicial relief enshrined in Article 47 would not be effective: a court would be *obliged* to confirm whether the provisional enforcement of a punitive measure is appropriate without being entitled to find, during the suspension stage, that it is manifestly contrary to EU law. In those circumstances, I believe that there would be a (partial) curtailment of the right to an effective remedy, which would prevent it from taking full effect.

88. With these considerations, I do not seek to undermine the provisions, common to many Member States, which limit the jurisdiction of courts with regard to specific procedural mechanisms, such as those related to the grant of interim measures. I simply believe that those limitations may not go so far as to deprive of one of its essential components the role of a court which conducts a review of whether the actions of an administrative authority are compatible with EU law.

3. The level of protection required by the European Court of Human Rights in relation to interim relief

89. Pursuant to Article 52(3) of the Charter, the meaning and scope of the rights contained therein which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 'shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.'

90. The application of that provision means that, in order to interpret the first paragraph of Article 47 of the Charter, which corresponds to Article 13 ECHR,[34] account must be taken of the case-law of the European Court of Human Rights ('ECtHR').

91. The referring court cites two judgments of the ECtHR, which, while accepting that the principle of full jurisdiction may be open to some adjustments,[35] state that the appeal brought before a court must permit it to carry out a certain review of both the facts and the procedure by which the factual findings were arrived at.[36]

92. The Commission elaborates on that by arguing that, according to the ECtHR, the ECHR does not preclude an administrative authority from imposing a 'penalty' in administrative proceedings, although a subsequent review by a court exercising powers of unlimited jurisdiction is essential.[37]

93. In that connection, the Commission submits that, even though a system of reduced guarantees may be acceptable in the case of measures that are enforceable on a provisional basis at the time of their adoption, it is essential that a subsequent judicial review must include an examination of the facts.

94. In my view, in citing the case-law of the ECtHR, it is necessary to determine whether this refers to judicial powers of review (scrutiny) of the actions of the administrative authorities, in general, or to the specific review which courts must conduct in response to claims raised by parties against an order for the provisional enforcement of an administrative measure.

[34] See Explanations relating to the Charter of Fundamental Rights, prepared under the authority of the Praesidium of the Convention which drafted the Charter (OJ 2007 C 303, p. 17). Those explanations are referred to, in relation to the first paragraph of Article 47 of the Charter and Article 13 ECHR, in the judgment of 29 March 2022, *Getin Noble Bank* (C-132/20, EU:C:2022:235, paragraph 116).

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

[36] ECtHR, 20 October 2015, *Fazia Ali v. the United Kingdom* (CE:ECHR:2015:1020JUD004037810), §§ 83 and 84.

[37] Paragraph 35 of the Commission's observations, citing, inter alia, the judgment of the ECtHR of 11 July 2023, *European Air Transport Leipzig Gmbh v. Belgium* (CE:ECHR:2023:0711JUD000126913), § 49.

95. Of the judgments of the ECtHR cited by the referring court and the Commission:

– The judgment in *Al-Dulimi and Montana Management Inc. v. Switzerland*[38] concerned a determination as to whether a court in the Swiss Confederation had complied with the requirements of Article 6(1) ECHR when examining an action contesting a confiscation of assets ordered by the authorities of that country in order to execute a resolution of the United Nations Security Council. That judgment makes no reference to the scope of the interim measures.

– The judgment in *Fazia Ali v. the United Kingdom*[39] found that there had been no violation of Article 6(1) ECHR in a case in which the applicant claimed that the fact that she was unable to access an independent, impartial tribunal to examine the facts constituted a violation of that provision. Once again, the judgment of the ECtHR did not rule in that case on the scope of the interim measures. The considerations in the judgment regarding a review by a court exercising full jurisdiction are general in content and may be modified depending on the case.

– The judgment in *European Air Transport Leipzig Gmbh v. Belgium*[40] concerns a possible violation of Article 6(1) ECHR on the grounds that the national court did not conduct a review exercising unlimited jurisdiction when it examined the financial penalties imposed on a company. The ECtHR found that there was no such violation and pointed out that, where a 'penalty' is imposed in administrative proceedings by an authority which does not itself satisfy the conditions laid down in that article, that decision must be open to subsequent review by a court exercising full jurisdiction. That judgment does not refer to the difficulties raised by interim measures either.

– The judgment of 3 July 2008, *Družstevní záložna Pria and others v. the Czech Republic*,[41] reiterates that a violation of the right laid down in Article 6(1) ECHR occurs where the applicant is unable to challenge before a court an assessment of facts in a decision adopted by an administrative authority acting within its discretionary power.[42] However, that general statement does not refer to the scope of interim measures intended to stay an order for the enforcement of an administrative act.

96. Those judgments are, therefore, of limited usefulness for the present purposes since they do not deal with the matter specifically in dispute in this case. The requirement that a legal system must, as a whole, provide individuals with the opportunity to bring an appeal against administrative acts before a court having unlimited jurisdiction, in proceedings in which the court must decide on all the substantive issues, is not equivalent to a requirement in the ECHR that that full review must be conducted in all cases and as a matter of principle in relation to each and every specific procedural remedy, such as those which concern interim measures.

38 ECtHR, 21 June 2016, *Al-Dulimi and Montana Management Inc. v. Switzerland* (CE:ECHR:2016:0621JUD000580908), §§ 128 to 130. In that judgment, the ECtHR held that, in principle, Article 6(1) ECHR requires that there must be an action in which a court or tribunal has full jurisdiction (that is to say, an action in which the court or tribunal has jurisdiction to rule on all the questions of fact and law raised), although that right is not absolute and 'the principle of "full jurisdiction" has been qualified in a number of cases by the Court's [the ECtHR] case-law', which has given it a more flexible interpretation, particularly in a number of administrative law cases.

39 ECtHR, 20 October 2015, *Fazia Ali v. the United Kingdom* (CE:ECHR:2015:1020JUD004037810).

40 ECtHR, 11 July 2023, *European Air Transport Leipzig Gmbh v. Belgium* (CE:ECHR:2023:0711JUD000126913).

41 ECtHR, 3 July 2008, *Družstevní záložna Pria and Others v. the Czech Republic* (CE:ECHR:2008:0731JUD007203401).

42 ECtHR, 3 July 2008, *Družstevní záložna Pria and Others v. the Czech Republic* (CE:ECHR:2008:0731JUD007203401), § 111.

97. It must also be borne in mind that, in the judgments cited above, the ECtHR held that the right of access to a court is not absolute [43] and that, in the context of a judicial review of actions of the administrative authorities, Article 6 ECHR does not guarantee access to a level of jurisdiction which makes it possible to substitute a judicial opinion for that of the administrative authorities. [44]

98. In any event, the case-law of the ECtHR set out in the judgments cited does not require that that there must necessarily be a full judicial review of the facts established by the administrative authority but rather 'a certain review' of those facts and of the procedure through which they were established.

99. In assessing the sufficiency of a judicial review, the ECtHR takes the view that, in addition to having regard to the powers of the judicial authority concerned, an examination must be conducted of factors such as the subject matter of the administrative decision, the procedural guarantees available and the content of the dispute between the administrative authorities and the person concerned. [45]

100. On the other hand, of greater relevance to the question at issue in this case is the judgment of the ECtHR of 5 February 2002, *Čonka v. Belgium*, [46] which ruled on the requirements laid down in Article 13 ECHR in connection with a complaint concerning the conditions relating to the arrest and deportation to Slovakia of a number of citizens of that country who had applied for asylum in Belgium.

101. In that judgment, the ECtHR dealt with the effect of Article 13 ECHR on the execution of measures adopted by national authorities. Specifically, in view of the fact that the expelled individuals complained that no remedy compatible with the requirements laid down in Article 13 ECHR was available to them, the ECtHR examined whether, as the Belgian Government claimed, the mechanisms for challenging the measures and for making an application for a stay of execution under the ordinary procedure and under the extremely urgent procedure before the Conseil d'État (Council of State, Belgium) fulfilled those requirements.

102. Having thus defined the dispute, the ECtHR pointed out that the remedy referred to in Article 13 ECHR must be effective, adding that this means that the remedy may prevent the execution of measures that are contrary to the ECHR and whose effects are potentially irreversible. Accordingly, Article 13 ECHR precludes the execution of such measures before the national authorities have examined whether they are compatible with the ECHR. The ECtHR went on to state that, in any event, the States parties to the ECHR have some discretion as to the manner in which they conform to their obligations under that provision. [47]

103. The application of the judgment in *Čonka v. Belgium* to a situation like that which gave rise to this reference for a preliminary ruling could, at most, result in Bulgarian law having an effective remedy to stay administrative decisions the effects of which are potentially irreversible. If it is accepted that such irreversibility exists in relation to the sealing of business premises for a limited period of time (which is debatable), then it will be necessary to state that the order for enforcement of that measure is open to an appeal, in accordance with the CAP, in the terms set out above.

43 ECtHR, 21 June 2016, *Al-Dulimi and Montana Management Inc. v. Switzerland* (CE:ECHR:2016:0621JUD000580908), § 129.

44 ECtHR, 20 October 2015, *Fazia Ali v. the United Kingdom* (CE:ECHR:2015:1020JUD004037810), § 77.

45 ECtHR, 20 October 2015, *Fazia Ali v. the United Kingdom* (CE:ECHR:2015:1020JUD004037810), § 78.

46 ECtHR, 5 February 2002, *Čonka v. Belgium* (CE:ECHR:2002:0205JUD005156499).

47 ECtHR, 5 February 2002, *Čonka v. Belgium* (CE:ECHR:2002:0205JUD005156499), § 79.

104. In summary, I find it hard to see how, *in a matter as specific as the subject matter of these preliminary ruling proceedings*, it would be possible to find a clear line of case-law of the ECtHR to guide the Court's interpretation of the first paragraph of Article 47 of the Charter.

105. Finally, if the solution which I propose in relation to the application of the first paragraph of Article 47 of the Charter is accepted, the level of protection afforded under that provision by EU law would become broader than that afforded by Articles 6 and 13 ECHR, as interpreted by the ECtHR.

V. Conclusion

106. In the light of the foregoing considerations, I propose that the Court of Justice give the following reply to the Administrativen sad – Blagoevgrad (Administrative Court, Blagoevgrad, Bulgaria):

The first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, in conjunction with Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax,

must be interpreted as meaning that:

In principle, it does not preclude legislation of a Member State which, as a whole, permits a court to stay an order for provisional enforcement of an administrative measure involving the sealing of business premises, adopted before a finding of irregularities in relation to value added tax (VAT), where that provisional enforcement could cause to the applicant damage which is serious or reparable only with difficulty.

However, it does preclude the scope of a judicial review of the application of that national legislation, in proceedings seeking a stay of the provisional enforcement order, from being limited solely to the existence of damage which is serious or reparable only with difficulty, thereby excluding any possibility that the court might examine, for the purposes of reaching its conclusion, whether the application for a stay is substantiated, in law and in fact, by arguments that will probably be upheld and which testify prima facie to defects which render that measure incompatible with European Union law.