ORDER OF THE COURT (Eighth Chamber)

12 November 2010 *

In Case C-339/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Varhoven administrativen sad (Bulgaria), made by decision of 14 June 2010, received at the Court on 7 July 2010, in the proceedings

Krasimir Asparuhov Estov,

Monika Lyusien Ivanova,

Kemko International EAD

v

Ministerski savet na Republika Bulgaria,

* Language of the case: Bulgarian.

THE COURT (Eighth Chamber),

composed of K. Schiemann, President of the Chamber, L. Bay Larsen and C. Toader (Rapporteur), Judges,

Advocate General: J. Kokott,
Registrar: A. Calot Escobar,

after hearing the Advocate General,

makes the following

Order

1 This reference for a preliminary ruling concerns the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The reference has been made in proceedings between Mr Estov, Ms Ivanova and Kemko International EAD, on the one hand, and the Ministerski savet na Republika Bulgaria (Council of Ministers of the Republic of Bulgaria), on the other.

Legal context

European Union Law

3 The declaration concerning the Charter of Fundamental Rights of the European Union, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, signed on 13 December 2007 (OJ 2010 C 83, p. 335), reads as follows:

'The Charter …, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.

The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.'

National Law

4 Article 103 of the Law on development of the territory (Zakon za ustroystvo na teritoriata) provides:

'…

2. General plans for development shall specify the main intended purpose and the type of construction of structural parts particular to the territories falling within the plan.

3. Detailed plans for development shall specify the specific purpose and type of construction particular to the plots of land falling within the plan.

…'

5 Article 127 of that law states:

'…

6. The general plan for development shall be approved by the municipal council following submission by the mayor. The decision approving the plan shall be published in the Official Journal. It shall be definitive and may not be challenged.

7. … The standards and rules specific to development of the territory of the capital shall be the object of a particular law.

8. … The new general plan for development of the capital, as well as modifications to the general plan for development already in place, shall be adopted by the Council of Ministers, in accordance with this law and in compliance with the rules and standards of development and construction determined by the law on the development and construction of the capital.

…

10. … The general plan for development of an urban area of national importance shall be approved by order of the Minister for Regional Development and Public Works, given following consultation with the municipal council, which shall be published in the Official Journal. The order shall be definitive and may not be challenged.

…'

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

6 By decision of 16 December 2009, the Ministerski savet na Republika Bulgaria modified the general plan for development of the city of Sofia in respect of two plots of land with a restricted purpose. According to that plan, those two plots fell within a 'community service activities' zone and, according to the detailed plan for development, they were designated for the construction of shops and offices. As a result of that decision, those plots are now included in a 'green spaces' zone, within which constructions designated for an economic activity are no longer authorised.

7 The applicants in the main proceedings challenged that decision before the Varhoven administrativen sad (Supreme Administrative Court) (Bulgaria). By an order of 20 April 2010 made by a three-member formation, the court dismissed the action, stating that, in accordance with Article 127(6) and (10) of the Law on development of the territory, general plans for development approved by the municipal council and by the Minister for Regional Development and Public Works may not be challenged.

8 The applicants in the main proceedings challenged that order before the same court sitting in a five-member formation, which is uncertain whether the non-recognition, under national law, of a right to challenge a decision relating to the general plan for development of the capital is incompatible with the right established in Article 47 of the Charter.

9 In those circumstances, the Varhoven administrativen sad decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is it possible to exclude administrative acts adversely affecting the rights and freedoms guaranteed by European Union law from the judicial review provided for in Article 47 of the Charter...?

2. If this possibility is admissible, do criteria exist for determining the types of administrative act in accordance with Article 47 of the Charter … with regard to which it is possible to exclude judicial review, and what are those criteria?

3. Is it possible to exclude judicial review as regards general plans for development adversely affecting the right to property?'

The jurisdiction of the Court

10 Under Article 92(1) of its Rules of Procedure, where it is clear that the Court has no jurisdiction to take cognisance of an action, the Court may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action.

11 Under Article 267 TFEU, the Court is to have jurisdiction to rule on the interpretation of the FEU Treaty as well as on the validity and interpretation of acts of the institutions of the Union. The jurisdiction of the Court is confined to considering provisions of European Union law only (see order of 16 January 2008 in Case C-361/07 *Polier*, paragraph 9 and the case-law cited).

12 However, as regards the present case, it must be borne in mind that, under Article 51(1) of the Charter, its provisions are addressed 'to the Member States only when they are implementing Union law' and that, under Article 6(1) TEU, which gives the Charter binding force, and as is apparent from the declaration on the Charter of Fundamental Rights of the European Union, annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, the Charter does not establish any new power for the Union or modify its powers.

13 Moreover, it is settled case-law that the requirements flowing from the protection of fundamental rights are binding on Member States whenever they implement European Union law, and they are bound, to the fullest extent possible, to apply the law in accordance with those requirements (see, to that effect, Case C-117/06 *Möllendorf and Möllendorf-Niehuus* [2007] ECR I-8361, paragraph 78 and the case-law cited).

14 Given that the order for reference does not contain any specific information to show that the decision of the Ministerski savet na Republika Bulgaria of 16 December 2009 would constitute a measure implementing European Union law or would be connected in any other way with that law, the jurisdiction of the Court to rule on the present reference for a preliminary ruling is not established.

15 Under these circumstances, on the basis of Article 92(1) of the Rules of Procedure, the Court clearly has no jurisdiction to answer the questions referred by the Varhoven administrativen sad.

Costs

16 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.

On those grounds, the Court (Eighth Chamber) hereby orders:

The Court of Justice of the European Union clearly has no jurisdiction to answer the questions referred by the Varhoven administrativen sad (Bulgaria), by decision of 14 June 2010.

[Signatures]