

Case C-6/23

Request for a preliminary ruling

Date lodged:

2 January 2023

Referring court:

Kúria (Hungary)

Date of the decision to refer:

13 December 2022

Applicant and appellant on a point of law:

X

Defendant and respondent in the appeal on a point of law:

Agrárminiszter

Decision of the Kúria (Supreme Court, Hungary)

hearing an appeal on a point of law

[...]

Applicant: X

[...]

Defendant:

Agrárminiszter (Minister for Agriculture,
Hungary)
([...] Budapest [...])

[...]

Subject matter of the proceedings: administrative-law action concerning financial support

Appellant on a point of law: the applicant [...]

[...]

Operative part

Pursuant to Article 267(b) of the Treaty on the Functioning of the European Union ('TFEU'), the Supreme Court [...] refers the following questions to the Court of Justice of the European Union for a preliminary ruling:

1. Must Article 50(3) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 ('Regulation No 1307/2013') be interpreted as allowing a Member State to lay down, as an eligibility criterion, the requirement that the beneficiary of the support must work continuously as a farmer, as his or her main activity and as a sole trader, from the date of submission of the application for payment of 90% of the support until the end of the operating period?
2. If the first question is answered in the negative, is that eligibility criterion to be construed as a commitment by the beneficiary?
3. If the second question is answered in the affirmative, must Articles 64(1) and 77(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 be interpreted as meaning that, in the event of non-compliance with the commitment, an administrative penalty may be imposed, the amount of which is to be determined, having regard to the principle of proportionality, on the basis of Articles 64(4)(b) and 77(4)(b) of that regulation, that is to say, that those provisions must be interpreted as precluding national legislation which provides for recovery of the support in full, without account being taken of the period concerned by the non-compliance?
4. Must Articles 64(2)(e) and 77(2)(e) [of Regulation No 1306/2013] be interpreted as meaning that 'non-compliance ... of a minor nature' includes a situation in which the beneficiary of the support failed to comply for 176 days, over the 5-year period of the commitment, with the requirement relating to the continued exercise of the activity as his or her main activity, taking into account the fact that, throughout that period, he or she exercised only an agricultural activity, from which his or her income was derived?

[...] [procedural aspects of national law]

Grounds

Background to the appeal on a point of law

- 1 As a preliminary point, the Supreme Court draws the Court of Justice's attention to the fact that the appellant on a point of law, in response to a question put by the Supreme Court, has expressed the wish to remain anonymous in the preliminary ruling procedure. Accordingly, the Supreme Court will refer to the appellant on a point of law as 'X'.
- 2 On 1 June 2015, the appellant on a point of law submitted an application for support under az Európai Mezőgazdasági Vidékfejlesztési Alapból (EMVA) a fiatal mezőgazdasági termelők indulásához 2015. évben igényelhető támogatások részletes feltételeiről szóló 24/2015. (IV.28.) MVM rendelet (Decree 24/2015 of the Minister for Agriculture and Rural Development of 28 April 2015 on the detailed conditions for the provision of support in 2015 to the new intake of young farmers, financed by the European Agricultural Fund for Rural Development (EAFRD); 'the Decree') to the Mezőgazdasági és Vidékfejlesztési Hivatal (Office for Agriculture and Rural Development, Hungary), predecessor of the Magyar Államkincstár ('the Hungarian State Treasury'). In her application, the appellant on a point of law undertook to set up a new agricultural holding, to manage it personally and to work as a farmer, as her main activity and as a sole trader, from the date of submission of the application for payment of 90% of the support, namely 20 October 2015, until the end of the operating period,¹ namely 31 December 2020.
- 3 On the basis of the application for support, the first-tier administrative authority determined by decision [...] that the appellant on a point of law was entitled to support in the amount of EUR 40 000. That authority approved the application for payment of 90% of that support and disbursed 11 359 440 Hungarian forints (HUF). On 28 August 2020, the appellant on a point of law submitted an application for payment of the remaining 10% of the amount of support granted. That application was refused by decision of the first-tier administrative authority [...], which ordered the appellant on a point of law to reimburse the HUF 11 359 440 of support wrongly paid out. That authority stated that the appellant on a point of law had not exercised an agricultural activity as her main activity throughout the period to which the support related, since, between 12 September 2017 and 7 March 2018, her main activity had been registered on the register of sole traders under the heading [of the Hungarian classification of homogeneous sectors of economic activities] TEÁOR 821902 'Photocopying and reproduction'. The first-tier administrative authority concluded that the appellant on a point of law had infringed Article 4(1)(b) of the Decree with the result that,

¹ Translator's note: Article 1(11) of the Decree defines the operating period ('működtetési időszak') as the period between 1 January of the year following the date on which the decision to grant the application for support became final and the end of the fifth calendar year calculated from that start date.

pursuant to Article 11(1) thereof, her entitlement to participate in the support scheme had been extinguished and the support in its entirety was deemed to have been applied for in error.

- 4 Hearing the administrative complaint brought before it by the appellant on a point of law, the respondent in the appeal on a point of law issued a decision [...] confirming the decision of the first-tier administrative authority. The respondent in the appeal on a point of law declined to uphold the argument put forward by the appellant on a point of law that ‘main activity’ should be interpreted as the activity from which most of the taxpayer’s income derives, provided that it accounts for at least 30% of that income. It also dismissed the argument of force majeure raised by the appellant on a point of law in her complaint.

Administrative-law action and defence

- 5 In her administrative-law action, the appellant on a point of law sought the annulment of the decision of the respondent in the appeal on a point of law, the extension of that annulment to cover the decision of the first-tier administrative authority, and an order requiring the respondent in the appeal on a point of law to pay the costs.
- 6 The appellant on a point of law claimed that, as a result of an administrative error, the activities of photocopying and reproduction had been registered as her main activity, when her intention had been to register them as a separate activity. She asserted that her income did not derive from the activities of photocopying and reproduction, activities which she did not even carry on. She denied that she had intended to register them as her main activity, stating that they had been registered as such in error by her accountant and that, when she realised that they had been registered in that way, the Nemzeti Adó- és Vámhivatal (National Tax and Customs Authority, Hungary) was not yet responsible for keeping the register of sole traders, so that she was unable to seek assistance from that authority.
- 7 The appellant on a point of law stressed that the erroneous main activity relied on by the respondent in the appeal on a point of law continued for a total of 176 days over the five-year period, that is to say, 10% of that period, with the result that the provision applied by the respondent in the appeal on a point of law, which requires reimbursement in respect of the entire period, was disproportionate. She stated that, throughout the operating period, she had engaged in agricultural production which was the source of her proven income. She disputed the argument made by the respondent in the appeal on a point of law that executive bodies have no discretion because that is what the Decree provides for. The appellant on a point of law submitted that that is precluded by recital 39 and Articles 91 and 97 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, and by Article 63 and recitals 54, 88 and

27 of Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance. According to those provisions, first, the imposition of penalties is possible only where the non-compliance is directly attributable and, second, the rules of EU law relied on by the appellant on a point of law provide that the penalty must be proportionate. The appellant on a point of law claimed that the penalty was disproportionately high and that the respondent in the appeal on a point of law did not even examine the severity of the non-compliance.

- 8 In its defence in the administrative-law action, the respondent in the appeal on a point of law contended that that action should be dismissed and confirmed the reasons set out in its decision.
- 9 The court of first instance dismissed the administrative-law action brought by the appellant on a point of law. Relying on Article 4(1)(b) and Article 11(1) of the Decree and on Articles 46(2) and 56/C(6) of a mezőgazdasági, agrár-vidékfejlesztési, valamint halászati támogatásokhoz és egyéb intézkedésekhez kapcsolódó eljárás egyes kérdéseiről szóló 2007. évi XVII. törvény (Law XVII of 2007 on specific aspects of the procedure for granting support and other measures relating to agriculture, rural development and fisheries; ‘the Procedure Law’), it found that the actions of the accountant of the appellant on a point of law, which were the result of an administrative error, and the fact that the online assistant was automated were foreseeable circumstances for the appellant on a point of law, the consequences of which could have been avoided had the appellant on a point of law, by taking steps which could not be regarded as disproportionate, exercised the level of diligence required by the situation at hand. As regards reimbursement of the support, the court of first instance referred to the fact that, in the event of a finding of wrongful participation in the support scheme, neither the Decree nor the Procedure Law confers on the respondent in the appeal on a point of law the power to conduct a weighing-up exercise or to take account of the circumstances of the case. Article 56/C(6) of the Procedure Law expressly prohibits, subject to the provisions of Article 56/B, the total or partial remission of the debt of the person concerned.
- 10 The court of first instance also considered the argument made by the appellant on a point of law based on EU law to be unfounded and referred to Article 22 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), which clearly lists the persons eligible to receive support. The court stated, in that regard, that it had to assess whether the fact that, between 12 September 2017 and 7 March 2018, the appellant on a point of law was not a sole trader exercising an agricultural activity as her main activity entitled the national authority to claim reimbursement of the support in full. Weighing up the circumstances, it concluded that the non-compliance by the appellant on a point of

law could be regarded as being of sufficient severity to find that reimbursement of the support in full was justified and proportionate.

Appeal on a point of law and response

- 11 In her appeal on a point of law, the appellant on a point of law challenges only the refusal to refer the case to the Court of Justice for a preliminary ruling, asking that the appeal on a point of law examine the non-application of EU law. She submits that the penalty imposed, namely reimbursement of the support in full, is not proportionate to her non-compliance.
- 12 In its response to the appeal on a point of law, the respondent in the appeal on a point of law seeks confirmation of the final judgment.

Relevant provisions of European Union law

Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009

Article 50(2) and (3)

‘2. For the purposes of this Chapter, “young farmers”, means natural persons:

(a) who are setting up for the first time an agricultural holding as head of the holding, or who have already set up such a holding during the five years preceding the first submission of an application under the basic payment scheme or the single area payment scheme referred to in Article 72(1) of Regulation (EU) No 1306/2013; and

(b) who are no more than 40 years of age in the year of submission of the application referred to in point (a).

3. Member States may define further objective and non-discriminatory eligibility criteria for young farmers applying for the payment for young farmers as regards appropriate skills and/or training requirements.’

Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008

Article 56

‘Provisions specific to the EAFRD

Where irregularities or negligence are detected in rural development operations or programmes, Member States shall make financial adjustments by totally or partially cancelling the Union financing concerned. Member States shall take into consideration the nature and gravity of the irregularities detected and the level of the financial loss to the EAFRD.

...

Article 63

‘Undue payments and administrative penalties

1. Where it is found that a beneficiary does not comply with the eligibility criteria, commitments or other obligations relating to the conditions for the granting of the aid or support, as provided for in the sectoral agricultural legislation, the aid shall not be paid or shall be withdrawn in full or in part and, where relevant, the corresponding payment entitlements as referred to in Article 21 of Regulation (EU) No 1307/2013 shall not be allocated or shall be withdrawn.

2. Moreover, where sectoral agricultural legislation so provides, Member States shall also impose administrative penalties, in accordance with the rules laid down in Article 64 and Article 77. This shall be without prejudice to the provisions set out in Articles 91 to 101 of Title VI.

...

Article 64

‘Application of administrative penalties

1. As regards the administrative penalties referred to in Article 63(2), this Article shall apply in cases of non-compliance in relation to eligibility criteria, commitments or other obligations resulting from the application of sectoral agricultural legislation, with the exception of those referred to in Articles 67 to 78 of Chapter II of this Title and in Articles 91 to 101 of Title VI and of those subject to the penalties provided for in Article 89(3) and 89(4).

2. No administrative penalties shall be imposed:

...

(e) where the non-compliance is of a minor nature, including where expressed in the form of a threshold, to be set by the Commission in accordance with point (b) of paragraph 7;

...

4. The administrative penalties may take one of the following forms:

- (a) a reduction in the amount of aid or support to be paid in relation to the aid application or payment claim affected by the non-compliance or further applications; however as regards rural development support, this shall be without prejudice to the possibility of suspending the support where it can be expected that the non-compliance can be addressed by the beneficiary within a reasonable time;
- (b) payment of an amount calculated on the basis of the quantity and/or the period concerned by the non-compliance;
- (c) suspension or withdrawal of an approval, recognition or authorisation;
- (d) exclusion from the right to participate in or benefit from the aid scheme or support measure or other measure concerned;

5. The administrative penalties shall be proportionate and graduated according to the severity, extent, duration and reoccurrence of the non-compliance found, and shall respect the following limits:

- (a) the amount of the administrative penalty as referred to in point (a) of paragraph 4 shall not exceed 200% of the amount of the aid application or payment claim;
- (b) notwithstanding point (a), as regards rural development, the amount of the administrative penalty, as referred to in point (a) of paragraph 4, shall not exceed 100% of the eligible amount;
- (c) the amount of the administrative penalty, as referred to in point (b) of paragraph 4, shall not exceed an amount comparable to the percentage referred to in point (a) of this paragraph;

...'

Article 77

'Application of administrative penalties

1. As regards the administrative penalties referred to in Article 63(2), this Article shall apply in the case of non-compliance with relation to eligibility criteria, commitments or other obligations resulting from the application of the rules on support referred to in Article 67(2).

2. No administrative penalty shall be imposed:

...

- (e) where the non-compliance is of a minor nature, including where expressed in the form of a threshold, to be set by the Commission in accordance with point (b) of paragraph 7;

...

4. The administrative penalties may take the following forms:

- (a) a reduction in the amount of aid or support paid or to be paid in relation to the aid applications or payment claims affected by the non-compliance and/or in relation to aid applications or payment claims for previous or subsequent years;
- (b) payment of an amount calculated on the basis of the quantity and/or the period concerned by the non-compliance;
- (c) exclusion from the right to participate in the aid scheme or support measure concerned.

5. The administrative penalties shall be proportionate and graduated according to the severity, extent, duration and reoccurrence of the non-compliance found and shall respect the following limits:

- (a) the amount of the administrative penalty for a given year, as referred to in point (a) of paragraph 4, shall not exceed 100% of the amounts of the aid applications or payment claims;
- (b) the amount of the administrative penalty for a given year, as referred to in point (b) of paragraph 4, shall not exceed 100% of the amount of the aid applications or payment claims to which the penalty is applied;
- (c) the exclusion referred to in point (c) of paragraph 4 may be set at a maximum of three consecutive years, which may apply again in the case of any new non-compliance.

...

National legislation

Az Európai Mezőgazdasági Vidékfejlesztési Alapból a fiatal mezőgazdasági termelők indulásához a 2015. évben igényelhető támogatások részletes feltételeiről szóló 24/2015. (IV.28.) MVM rendelet (Decree 24/2015 of the Minister for Agriculture and Rural Development of 28 April 2015 on the detailed conditions for the provision of support in 2015 to the new intake of young farmers, financed by the European Agricultural Fund for Rural Development)

Article 3

‘(1) An application for support may be made by a natural person who:

- (a) at the time of submission of the application for support, is over 18 but less than 40 years of age;

- (b) at the time of submission of the application for support, is in possession of:
- (ba) at least one of the professional qualifications referred to in Annex 1,
- (bb) at least one of the degrees obtained upon completion of the courses referred to in Annex 2, or
- (bc) a qualification or diploma obtained abroad which attests to a professional qualification or degree within the meaning of points (ba) or (bb) and which has been recognised or validated in accordance with the külföldi bizonyítványok és oklevelek elismeréséről szóló törvény (Law on the recognition of foreign qualifications and diplomas);
- (c) submits to the Mezőgazdasági és Vidékfejlesztési Hivatal (Office for Agriculture and Rural Development; “the Office”) a business plan for the implementation of his or her agricultural activities, including an agricultural census form and a financial plan; and
- (d) undertakes to set up an agricultural holding for the first time and to manage it personally as head of the holding, irrespective of the operating period.

...’

Article 4

‘(1) The person concerned shall:

- (a) manage the holding and contribute personally to such management;
- (b) work continuously as a farmer, as his or her main activity and as a sole trader, from the date of submission of the application for payment of 90% of the support until the end of the operating period;

...’

Article 11

‘(1) If, following an inspection, the State Treasury finds that the beneficiary of the support does not comply with Article 4(1)(a) or (b), his or her entitlement to participate in the support scheme shall be extinguished and the support in its entirety shall be deemed to have been applied for in error.

...’

Article 13

‘This Decree lays down the provisions necessary for the implementation of Article 22 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on

support for rural development by the European Agricultural Fund for Rural Development.’

Grounds for the request for a preliminary ruling and the Supreme Court’s view

- 13 The Supreme Court considers that guidance on the interpretation of EU law is necessary for the resolution of the dispute between the parties. It has already examined whether the correct application of EU law is not so obvious as to leave no scope for any reasonable doubt. It has concluded that the correct interpretation of EU law is unclear, since the respective legal interpretations of the respondent and the appellant in the appeal on a point of law – based, in the case of the former, on national legislation, but which also touches on the application of EU law, and, in the case of the latter, on EU legislation, but which also determines the application of national law – are liable to lead to completely opposing interpretations of the same rules, rules which must be applied in the present case. The Supreme Court is unsure whether a national provision or practice which frames as an eligibility criterion the continued exercise by a person of an agricultural activity as his or her main activity and which requires, in the event of non-compliance, reimbursement of the support in full, instead of applying a reduction proportionate to the severity of the non-compliance, is compatible with the correct interpretation of EU law.
- 14 First of all, the Supreme Court considers that the reference in Article 13 of the Decree, on which the respondent in the appeal on a point of law relies, to the implementation of Article 22 of Regulation (EC) No 1698/2005 is incorrect: that regulation was repealed with effect from 1 January 2014 by Article 88 of Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 and, since that date, has continued to apply only to operations implemented pursuant to programmes approved by the Commission under that regulation before 1 January 2014.
- 15 That cannot be said to be the case of the appellant on a point of law, as she submitted her application in June 2015, when the rules applicable from 2014 onwards were already in force. Therefore, pursuant to the second paragraph of Article 288 TFEU, the eligibility criteria are those set out in Article 50(2) of Regulation (EU) No 1305/2013. Even though, under Article 50(3) of that regulation, Member States may establish further objective and non-discriminatory eligibility criteria as regards the appropriate skills which young farmers must have or the training requirements they must meet, the Supreme Court considers that the wording of Article 4(1)(b) of the Decree does not appear to reflect that possibility.
- 16 The Supreme Court observes that the requirement that the applicant for support must work continuously as a farmer, as his or her main activity and as a sole trader, until the end of the operating period, cannot be regarded as a criterion relating to knowledge or training for the purposes of Article 50(3) of Regulation

(EU) No 130[7]/2013. It cannot therefore feature as one of the eligibility criteria and can be construed only as a commitment by the person concerned. However, the respondent in the appeal on a point of law stated in its decision that an eligibility criterion had not been complied with in accordance with Article 11(1) of the Decree and ordered recovery of the support in full.

- 17 Article 56 of Regulation (EU) No 1306/2013 establishes, as one of the provisions specific to the EAFRD, that Member States are to take into consideration the nature and gravity of the irregularities detected and the level of the financial loss to the EAFRD. In addition to those provisions, that regulation contains detailed rules concerning undue payments and the application of administrative penalties, in particular in Articles 64(5) and 77(5), which provide that administrative penalties must be proportionate and graduated according to the severity, extent, duration and reoccurrence of the non-compliance found.
- 18 The Supreme Court considers that, since the infringement committed by the appellant on a point of law relates exclusively to compliance with an administrative provision, it cannot be regarded as being so extensive as to require the imposition of a penalty. It could be classified as non-compliance of a minor nature within the meaning of Article 77(2)(e) of Regulation No 1306/2013. However, even if that were not the case, the provisions of Articles 64(4) and 77(4), in particular point (b) thereof, would have to apply, that is to say, the amount of the penalty should be determined on the basis of the period concerned by the non-compliance. It is not disputed that the non-compliance lasted 176 days over the required five years (1 825 days), which is 10% of the total period of the commitment.
- 19 In the light of the foregoing considerations, the Supreme Court harbours doubts as to whether, in the light of EU law, the relevant Hungarian legislation is consistent with the requirements of EU law.
- 20 [...] [aspects of national procedural law]

Budapest, 13 December 2022

[...] [signatures]