ECLI:EU:C:2017:452

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

14 June 2017 (*)

(Reference for a preliminary ruling — Article 49 TFEU — Freedom of establishment — Article 56 TFEU — Freedom to provide services — Games of chance — Restrictive legislation of a Member State — Penal administrative sanctions — Overriding reasons in the public interest — Proportionality — Charter of Fundamental Rights of the European Union — Article 47 — Right to effective judicial protection — National legislation laying down the requirement for the court to examine of its own motion the facts of the case before it in the context of the prosecution of administrative offences — Compliance)

In Case C-685/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesverwaltungsgericht Oberösterreich (Upper Austria Regional Administrative Court, Austria), made by decision of 14 December 2015, received at the Court on 18 December 2015, in the proceedings

Online Games Handels GmbH,

Frank Breuer,

Nicole Enter,

Astrid Walden

v

Landespolizeidirektion Oberösterreich,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal, A. Rosas, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 10 November 2016,

after considering the observations submitted on behalf of:

– Online Games Handels GmbH, by P. Ruth and D. Pinzger, Rechtsanwälte,

– Mr Breuer, Ms Enter and Ms Walden, by F. Maschke, Rechtsanwalt,

– the Austrian Government, by C. Pesendorfer, F. Herbst and G. Trefil, acting as Agents,

– the Belgian Government, by L. Van den Broeck and M. Jacobs, acting as Agents, and P. Vlaemminck and R. Verbeke, advocaten,

– the European Commission, by H. Tserepa-Lacombe and G. Braun, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 March 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 49 and 56 TFEU, as interpreted in particular in the judgment of 30 April 2014, *Pfleger and Others* (C-390/12, EU: C:2014:281), read in the light of Article 47 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings between Online Games Handels GmbH (‘Online Games’), Mr Frank Breue, Ms Nicole Enter and Ms Astrid Walden, on the one hand, and the Landespolizeidirektion Oberösterreich (Upper Austria Regional Police Directorate, ‘the Police Directorate’), on the other, concerning penal administrative sanctions imposed on them by the Police Directorate for the unauthorised use of gaming machines.

Austrian law

The Federal Constitutional Law

3 Under the heading ‘Implementation of the Federal State’, Chapter 3 of the Bundes-Verfassungsgesetz (Federal Constitutional Law, BGBl. 1/1930), as amended (BGBl. I, 102/2014) (‘the B-VG’), includes in particular Articles 90 and 94 of the B-VG. Under Paragraph 90 of the B-VG:

‘(1) Hearings in civil and criminal cases before the ordinary courts are oral and public. Exceptions are to be laid down by law.

(2) Criminal proceedings are subject to the adversarial principle.’

4 Article 94(1) of the B-VG is worded as follows:

‘The courts are independent of the executive at all levels.’

5 Chapter 7 of the B-VG is entitled ‘Constitutional and administrative guarantees’. It includes Article 130 of the B-VG, which provides:

‘(1) The administrative courts [Verwaltungsgerichte] shall hear actions

1. against decisions of the administrative authorities, on the ground of unlawfulness;

…

(4) The administrative court must itself rule on the merits of the actions referred to in paragraph 1(1) in administrative offence cases. …

…’

The Federal Law on games of chance

6 Paragraph 50 of the Glücksspielgesetz (Law on games of chance, BGBl. 620/1989), in the version following the amendment published in BGBl. I, 76/2011) (‘the GSpG 2011’), provided:

‘(1) Jurisdiction over criminal proceedings and the closure of undertakings under the present Federal law shall lie, at first instance, with the district (Bezirk) administrative authorities … and, at second instance, with the independent administrative tribunals referred to in Paragraph 51(1) of the Verwaltungsstrafgesetz [(Law on administrative offences)].

(2) Those authorities shall be able to make use of the cooperation of the public supervisory authorities and, in order to settle questions of fact in connection with the provisions of the present Federal law, that of the official experts referred to in Paragraph 1(3). The public supervisory authorities include in any event the public security authorities and the tax offices.

…’

7 Paragraph 52 of the GSpG 2011, entitled ‘Provisions on administrative offences’, provided:

‘(1) An administrative offence for which a fine of up to EUR 22 000 is to be imposed by the administrative authorities is committed where:

1. a person, for the purpose of participation from national territory, arranges, organises or makes available in the course of business prohibited lotteries within the meaning of Paragraph 2(4), or participates in them as an operator within the meaning of Paragraph 2(2);

…

(2) Where, in connection with participation in lotteries, payments of more than EUR 10 per game are made by gamblers or other persons, those are no longer regarded as minor amounts, and in that respect any liability under the present Federal law gives way to any liability under Paragraph 168 of the Strafgesetzbuch [(Criminal Code)]. …

…’

8 Paragraph 53 of the GSpG 2011 was worded as follows:

‘(1) The administrative authorities may order the confiscation of automatic gaming machines … where

1. it is suspected that

(a) there is a continuing infringement of one or more provisions of Paragraph 52(1) by means of automatic gaming machines whereby the Federal State’s monopoly over games of chance is infringed, or

…’

9 An amendment to the Federal Law on games of chance was published in BGBl. I, 13/2014 (as amended, ‘the GSpG 2014’).

10 Under Paragraph 50(1) of the GSpG 2014:

‘Jurisdiction over criminal proceedings and the closure of undertakings under the present Federal law shall lie with the district (Bezirk) administrative authorities … Their decisions shall be subject to an action before an administrative court of the province.’

11 Paragraph 52 of the GSpG 2014 reads as follows:

‘(1) An administrative offence for which a fine of up to EUR 60 000 in the cases in point 1 and up to EUR 22 000 in the cases in points 2 to 11 is to be imposed by the administrative authorities is committed where:

1. a person, for the purpose of participation from national territory, arranges, organises or makes available in the course of business prohibited lotteries within the meaning of Paragraph 2(4), or participates in them as an operator within the meaning of Paragraph 2(2);

…

(3) Where an act contains both the constituent elements of an administrative offence within the meaning of Paragraph 52 and the constituent elements of Paragraph 168 of the Criminal Code, it shall be punishable only under the administrative offence provisions of Paragraph 52.

…’

The Law on procedure before the administrative courts

12 The Verwaltungsgerichtverfahrengesetz (Law on procedure before the administrative courts, BGBl. I, 33/2013), in the version following the amendment published in BGBl. I, 122/2013 (‘the VwGVG’), provides in Paragraph 18:

‘The defendant authority shall also be a party.’

13 Under Paragraph 38 of the VwGVG:

‘Except as otherwise provided in the present Federal law, the provisions of the 1991 Law on administrative offences shall apply by analogy to actions brought under Paragraph 130(1) of the B-VG in administrative offence cases ... and, as to the remainder, the provisions of procedural law laid down in Federal or provincial laws which the authorities applied or ought to have applied in the procedure which took place prior to the proceedings before the Verwaltungsgericht [(Administrative Court)].’

14 Paragraph 46(1) of the VwGVG is worded as follows:

‘The Verwaltungsgericht [(Administrative Court)] must take the evidence necessary to decide the case.’

15 According to Paragraph 50 of the VwGVG:

‘In so far as the action need not be dismissed or the proceedings need not be discontinued, the Verwaltungsgericht [(Administrative Court)] must itself rule on the merits of the actions referred to in Paragraph 130(1)(1) of the B-VG.’

The General Law on administrative procedure

16 Under Paragraph 8 of the Allgemeines Verwaltungsverfahrengesetz (General Law on administrative procedure, BGBl. I, 51/1991), in the version following the amendment published in the BGBl. I, 161/2013 ('the AVG'):

'Persons who apply to the authorities or to whom an act of the authorities is addressed are concerned by the proceedings and, to the extent that they are concerned in the case by way of a right or legal interest, are parties.'

17 Paragraph 37 of the AVG provides that:

'The purpose of the investigative procedure is to ascertain the facts required for the settlement of an administrative case and to afford the parties an opportunity to assert their rights and legal interests.

…'

18 Paragraph 39 of the AVG is worded as follows:

'(1) The investigative procedure shall be conducted in accordance with the administrative rules.

(2) To the extent that the administrative rules contain no provision in this respect, the authority shall act *ex officio* and determine the course of the investigative procedure in accordance with the provisions of the present chapter. In particular, it is entitled to hold a hearing, of its own motion or on request, and to join several administrative cases with a view to common treatment and decision or to split them again. When adopting all such procedural decisions, the authority must be guided by considerations of the greatest possible efficiency, speed, simplicity and economy.

…'

The Law on administrative offences

19 Paragraph 24 of the Verwaltungsstrafgesetz (Law on administrative offences, BGBl. 52/1991), in the version following the amendment published in the BGBl. I, 33/2013 ('the VStG'), provides:

'Except as otherwise provided in the present Federal Law, the [AVG] shall also apply to administrative offence proceedings. …'

20 Under Paragraph 25 of the VStG:

'(1) Administrative offences shall be prosecuted *ex officio* …

(2) Exonerating circumstances must be taken into consideration in the same way as incriminating circumstances.

…'

The disputes in the main proceedings and the question referred for a preliminary ruling

21 Two cases have been brought before the Landesverwaltungsgericht Oberösterreich (Regional Administrative Court, Upper Austria). The first relates to the lawfulness of the seizure of equipment whose use may infringe the Federal State's monopoly of games of chance, and the second to the lawfulness of fines imposed for having organised games of chance with such machines or having allowed them to be organised.

22 The first case follows an investigation carried out on 8 March 2012, at the request of the Police Directorate, by the tax authorities at the establishment 'SJ-Bet Sportbar' in Wels (Austria).

23 Having found that there were eight pieces of equipment which were suspected of having been used in contravention of the Austrian Federal State's monopoly of games of chance, the tax authorities seized them. During that investigation, it was alleged that one of these devices belonged to Online Games.

24 By decision of 17 April 2012, the Police Directorate ordered the permanent confiscation of the equipment alleged to belong to Online Games, in accordance with Paragraph 53(1)(1)(a) of the GSpG 2011.

25 Online Games brought an action against that decision before the Unabhängiger Verwaltungssenat Oberösterreich (Independent Administrative Tribunal for Upper Austria), now the Landesverwaltungsgericht Oberösterreich (Regional Administrative Court, Upper Austria). By decision of 21 May 2012, that action was dismissed as unfounded.

26 By decision of 1 October 2015, the Verwaltungsgerichtshof (Administrative Court, Austria) upheld Online Games's appeal against the decision of 21 May 2012 by setting aside that decision on the ground that the maximum stakes that could be placed by players by means of the confiscated equipment had not been established sufficiently precisely to establish the jurisdiction of the ordinary criminal or administrative courts to hear the case at issue. The case was therefore referred back to the Landesverwaltungsgericht Oberösterreich (Regional Administrative Court, Upper Austria).

27 It emerged that, in that first case, the organiser of the games of chance in which the players could participate by means of the confiscated equipment was a limited liability company established in Brno, in the Czech Republic.

28 In the second case, on 14 August 2014, the tax authorities carried out an investigation of the establishment ‘Café Vegas’ in Linz (Austria).

29 Having established the presence of eight pieces of equipment and considered that they were used in contravention of the Federal State’s monopoly of games of chance, the tax authorities seized that equipment.

30 By decision of 24 September 2015, the Police Directorate imposed, in accordance with Paragraph 52(1)(1) of the GSpG 2014, fines of EUR 24 000 each on Mr Breuer, Ms Enter and Ms Walden for the organisation of or participation in the organisation of games of chance at the establishment ‘Café Vegas’.

31 Mr Breuer, Ms Enter and Ms Walden brought an action against those decisions before the referring court. On that occasion, they stated that the equipment at issue was powered by a server for gaming programmes in Slovakia.

32 As is stated in the order for reference, the subject matter of the cases in the main proceedings is limited to the question whether the permanent confiscation of the equipment belonging to Online Games and the fines imposed on Mr Breuer, Ms Enter and Ms Walden comply with the law, including EU law.

33 The referring court held two hearings, one on 11 November 2015, in the first case, and the other on 11 December 2015, in the second case.

34 A representative of Online Games and a representative of the tax authorities of the City of Linz participated in the hearing on 11 November 2015. The Police Directorate was not represented. The hearing of 11 December 2015 took place in the presence of the Police Directorate and the tax authorities. The counsel for Mr Breuer, Ms Enter and Ms Walden, who was not present at the latter hearing, nevertheless provided the referring court with the evidence on which their defence was based. In both the first and the second case, the tax authorities and the Police Directorate raised various grounds to justify compliance of the relevant national legislation, namely the GSpG 2011 and the GSpG 2014, with EU law.

35 It is apparent from the order for reference that there are differences of opinion between the referring court and the Verwaltungsgerichtshof (Administrative Court) concerning the scope of the principle governing administrative offence proceedings which confers on the court ruling on the substance an active role in establishing the truth and according to which it is for that court to remedy the shortcomings and omissions of the prosecution authorities.

36 In that regard, the referring court states that, following the Court of Justice’s judgment of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281), the referring court hearing the case which gave rise to that judgment found, by decision of 9 May 2014, that the Austrian State’s monopoly of games of chance was incompatible with Article 56 TFEU. Following an appeal on a point of law by the Federal Ministry of

Finance, the Verwaltungsgerichtshof (Administrative Court) quashed that decision, on 15 December 2014, the case being referred back to the referring court. On 29 May 2015, the referring court reaffirmed the incompatibility of the Austrian State's monopoly of games of chance with EU law. That decision was in turn the subject of an appeal to the Verwaltungsgerichtshof (Administrative Court).

37 The referring court questions the compatibility with Article 47 of the Charter and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), of the principle that it is for the court hearing the case to examine of its own motion the facts which may constitute administrative offenses, as laid down in Paragraph 38 of the VwGVG, read in conjunction with Paragraphs 24 and 25 of the VStG and Paragraph 39(1) of the AVG.

38 According to the referring court, such an obligation may affect the impartiality of the court, whose role could be confused with that of the body responsible for the prosecution. That obligation would therefore be incompatible with Article 47 of the Charter, read in the light of Article 6 of the ECHR.

39 That court takes the view that it follows from the judgment in *Pfleger and Others* (C-390/12, EU:C:2014:281) that it is for the competent authorities to establish that the national measures designed to give the State a monopoly of games of chance are justified by the objective of reducing gambling opportunities or fighting crime, and to provide the court ruling on the substance with evidence that criminality or gambling addiction was in fact a considerable problem at the material time, so that any obligation on the administrative court to conduct specific investigations in that regard would be contrary to that case-law.

40 In those circumstances the Landesverwaltungsgericht Oberösterreich (Regional Administrative Court, Upper Austria) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 56 TFEU or Article 49 et seq. TFEU, in the light of Article 6 of the ECHR read in conjunction with Article 47 of the Charter, to be interpreted, having regard to the judicial objectivity and impartiality required by the case-law of the European Court of Human Rights (in particular with regard to its judgment of 18 May 2010, [*Ozerov* v *Russia*, EC:ECHR:2010:0518JUD006496201,] paragraph 54), as precluding, in the light of the case-law of the Court of Justice of the European Union (in particular its judgment of 30 April 2014, *Pfleger and Others*, C-390/12, EU:C:2014:281), a national rule according to which, in the case of administrative offence proceedings, it is not for the State prosecution services (or other State prosecution bodies) in their function of representing the prosecution but rather for the court called upon to rule on the legality of the criminal measure against which an action has been brought, of its own motion and independently of the conduct of the parties to the proceedings, (in one and the same person/function) to state and delimit wholly independently the evidence justifying the

criminal law protection of the quasi-monopoly regulation of the national gambling market and then autonomously to investigate and evaluate it?'

Consideration of the question referred

Admissibility

41 The Austrian Government submits that the request for a preliminary ruling is inadmissible on the grounds that, in the first place, the question is hypothetical, since it is the result of a misinterpretation of national law, and that, in the second place, the order for reference does not sufficiently present the factual framework of the case in the main proceedings to enable the Court to provide a useful answer.

42 In that regard, it should be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred by a national court for a preliminary ruling, under Article 267 TFEU, only where, for instance, the requirements concerning the content of a request for a preliminary ruling, set out in Article 94 of the Rules of Procedure of the Court of Justice, are not satisfied or where it is quite obvious that the interpretation of a provision of European Union law, or the assessment of its validity, which is sought by the national court, bears no relation to the actual facts of the main action or to its purpose or where the problem is hypothetical (judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 50 and the case-law cited).

43 It is also settled case-law that the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for that court to define the factual and legal context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. The order for reference must also set out the precise reasons why the national court is unsure as to the interpretation of EU law and considers it necessary to refer a question to the Court for a preliminary ruling (judgment of 18 April 2013, *Mulders*, C-548/11, EU:C:2013:249, paragraph 28 and the case-law cited).

44 In the present case, the order for reference sets out in sufficient detail the legal and factual context of the cases in the main proceedings and the information provided by the referring court makes it possible to determine the scope of the question.

45 As regards the argument that the question is hypothetical, it is based on the assumption that the referring court erred in interpreting the national legislation. It must be borne in mind, however, that it is not for the Court to rule on the interpretation of national provisions, as such an interpretation falls within the exclusive jurisdiction of the national courts. Thus, the Court, when a question is referred to it by a national court, must base itself on the interpretation of national law as described to it by that court (see, in particular, judgment of 27 October 2009, *ČEZ*, C-115/08, EU:C:2009:660, paragraph 57

and the case-law cited). Moreover, it cannot be disputed that compliance with EU law of the judgments to be delivered by the referring court depends on the answer to the question referred.

46 In those circumstances, the request for a preliminary ruling must be held to be admissible.

Substance

47 By its question, the referring court asks, in essence, whether Articles 49 and 56 TFEU, as interpreted in particular in the judgment of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281), read in light of Article 47 of the Charter, must be interpreted as precluding a national procedural system according to which, in administrative offence proceedings, the court called upon to rule on the compliance with EU law of legislation restricting the exercise of a fundamental freedom of the European Union, such as the freedom of establishment or the freedom to provide services within the Union, is required to examine of its own motion the facts of the case before it in the context of examining whether administrative offences arise.

48 As a preliminary point, it must be observed that in the judgment of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281), the Court analysed the questions referred solely in consideration of the freedom to provides services laid down in Article 56 TFEU, without examining them from the perspective of the freedom of establishment laid down in Article 49 TFEU. However, as the Advocate General stated in point 34 of her Opinion, having regard to Article 62 TFEU, the grounds of that judgment relating to the freedom to provide services apply equally to the freedom of establishment.

49 It is appropriate, next, to bear in mind that it follows from the judgment of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281), that Article 56 TFEU precludes national legislation which prohibits the operation of gaming machines in the absence of the prior authorisation of the administrative authorities, where that legislation does not actually pursue the purported objective of protecting gamblers or fighting crime and does not genuinely meet the concern to reduce opportunities for gambling or to fight gambling-related crime in a consistent and systematic manner (see, to that effect, judgment of 30 April 2014, *Pfleger and Others,* C-390/12, EU:C:2014:281, paragraph 56).

50 In that regard, the Court has held that it is the competent authorities of the Member State wishing to rely on an objective capable of justifying a restriction of the freedom to provide services which must supply the national court called on to rule on that question with all the evidence of such a kind as to enable the court to be satisfied that the measure does indeed comply with the requirements laid down by the Court of Justice to be able to be regarded as justified (see, to that effect, judgment of 30 April 2014, *Pfleger and Others,* C-390/12, EU:C:2014:281, paragraph 50 and the case-law cited).

51 It is subsequently for that national court to determine the objectives actually pursued by the national legislation at issue and whether the restrictions imposed by that legislation satisfy the conditions laid down in the Court's case-law as regards their proportionality. In particular, it is for that court to satisfy itself, having regard inter alia to the actual rules for applying the restrictive legislation concerned, that the legislation genuinely meets the concern to reduce opportunities for gambling, to limit activities in that area and to fight gambling-related crime in a consistent and systematic manner (judgment of 30 April 2014, *Pfleger and Others,* C-390/12, EU:C:2014:281, paragraphs 47 to 49 and the case-law cited).

52 The Court has stated that the national court must carry out a global assessment of the circumstances in which restrictive legislation was adopted and implemented (judgment of 30 April 2014, *Pfleger and Others,* C-390/12, EU:C:2014:281, paragraph 52).

53 Moreover, in a review of proportionality, the approach taken by the national court must be dynamic rather than static in the sense that it must take account of the way in which circumstances have developed following the adoption of the legislation concerned (judgment of 30 June 2016, *Admiral Casinos & Entertainment*, C-464/15, EU:C:2016:500, paragraph 36).

54 Next, it should be recalled that, according to settled case-law, under the principle of sincere cooperation laid down in Article 4(3) TEU, it is for the courts of the Member States to ensure judicial protection of a person's rights under EU law. In addition, Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective legal protection, within the meaning in particular of Article 47 of the Charter, in the fields covered by EU law (see, to that effect, judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 50 and the case-law cited).

55 The scope of Article 47 of the Charter, in so far as the action of the Member States is concerned, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States when they are implementing EU law. That provision confirms the Court's settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 51).

56 As was noted by the Advocate General in point 30 of her Opinion, where a Member State enacts a measure that derogates from a fundamental freedom guaranteed by the FEU Treaty, such as the freedom of establishment or the freedom to provide services, that measure falls within the scope of EU law.

57 The first paragraph of Article 47 of the Charter provides that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article.

58 It is also common ground that, in the context of the cases in the main proceedings, the applicants claim that the rights of freedom to provide services and of freedom of establishment deriving from Articles 56 and 49 TFEU respectively have been infringed by the confiscation measures and the sanctions which they ask to be annulled, on that ground, before the national court. Article 47 of the Charter is therefore applicable to the present case.

59 Although the obligations on national courts, as regards examining the justification for legislation which restricts a fundamental freedom of the Union, have accordingly been defined by the case-law of the Court, it is for the domestic legal system of each Member State to regulate the procedural rules governing actions for the protection of the rights which individuals derive from EU law. In the absence of EU legislation, the Member States have the responsibility for ensuring that those rights are effectively protected in each case and, in particular, for ensuring compliance with the right to an effective remedy and to a fair hearing enshrined in Article 47 of the Charter (see, to that effect, judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 65).

60 As regards the right to an independent and impartial tribunal set out in the second paragraph of Article 47 of the Charter, the concept of 'independence', which is inherent in the court's task, has two aspects. The first aspect, which is external, entails that the body is protected against external intervention or pressure liable to jeopardise the independent judgment of its members as regards proceedings before them (judgment of 9 October 2014, *TDC*, C-222/13, EU:C:2014:2265, paragraph 30 and the case-law cited).

61 The second aspect, which is internal, is linked to 'impartiality' and seeks to ensure a level playing field for the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect, which the referring court fears is not complied with in the present case, requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law (judgment of 9 October 2014, *TDC*, C-222/13, EU:C:2014:2265, paragraph 31 and the case-law cited).

62 Those guarantees of independence and impartiality require rules, particularly statutory and procedural rules, in order to dismiss any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (see, to that effect, judgment of 9 October 2014, *TDC*, C-222/13, EU:C:2014:2265, paragraph 32 and the case-law cited).

63 In the present case, it follows from the provisions of national law referred to in paragraphs 3 to 5 and 12 to 20 of the present judgment that the decisions of the administrative authorities may be subject to an action for illegality before the administrative courts, those courts ruling on the substance of those actions. In the exercise of its jurisdiction, the court is required to examine the facts of the case before it within the limits of the case, taking account in the same way of any exonerating and incriminating circumstances. In the context of those proceedings, the administrative

authority having imposed the sanction for an administrative offence has the status of a party.

64 On the basis of those elements alone, there is no reason to consider that such a procedural system is such as to give rise to doubts as to the impartiality of the national court, in so far as that court is required to investigate the case before it, not in order to support the prosecution, but to establish the truth. Moreover, that system is based, in essence, on the idea that the court is not only the arbiter of a dispute between the parties but represents the general interest of society. It is in the pursuit of that interest that the national court will also have to examine the justification for legislation which restricts a fundamental freedom of the Union within the meaning of the Court's case-law.

65 As regards the question of the link between the requirement under national law for national courts to examine of their own motion the facts of the cases before them and the judgment of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281), it has been reiterated, in paragraphs 50 to 52 of the present judgment, that under EU law it is for those courts to carry out a global assessment of the circumstances in which restrictive legislation was adopted and implemented on the basis of the evidence provided by the competent authorities of the Member State, seeking to demonstrate the existence of objectives capable of justifying a restriction of a fundamental freedom guaranteed by the FEU Treaty and its proportionality.

66 While those courts may be required, under national procedural rules, to take the necessary measures in order to encourage the production of such evidence, they cannot, in contrast, be required, as was pointed out by the Advocate General in points 51 to 56 and 68 of her Opinion, to substitute themselves for those authorities in setting out the justifications which, according to the judgment of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281), it is the duty of the latter to provide. Should such justifications not be provided through absence or passivity of those authorities, the national courts must be able to draw all inferences which result from such failure.

67 In the light of the foregoing considerations, the answer to the question referred is that Articles 49 and 56 TFEU, as interpreted in particular in the judgment of 30 April 2014, *Pfleger and Others* (C-390/12, EU:C:2014:281), read in light of Article 47 of the Charter, must be interpreted as not precluding a national procedural system according to which, in administrative offence proceedings, the court called upon to rule on the compliance with EU law of legislation restricting the exercise of a fundamental freedom of the European Union, such as the freedom of establishment or the freedom to provide services within the Union, is required to examine of its own motion the facts of the case before it in the context of examining whether administrative offences arise, provided that such a system does not have the consequence that that court is required to substitute itself for the competent authorities of the Member State concerned, whose task it is to provide the evidence necessary to enable that court to determine whether that restriction is justified.

Costs

68 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 (Second Chamber) hereby rules:

Articles 49 and 56 TFEU, as interpreted in particular in the judgment of 30 April 2014, *Pfleger and Others* **(C-390/12, EU:C:2014:281), read in light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding a national procedural system according to which, in administrative offence proceedings, the court called upon to rule on the compliance with EU law of legislation restricting the exercise of a fundamental freedom of the European Union, such as the freedom of establishment or the freedom to provide services within the European Union, is required to examine of its own motion the facts of the case before it in the context of examining whether administrative offences arise, provided that such a system does not have the consequence that that court is required to substitute itself for the competent authorities of the Member State concerned, whose task it is to provide the evidence necessary to enable that court to determine whether that restriction is justified.**

[Signatures]

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* Language of the case: German.