Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

24 November 2022 *

(Reference for a preliminary ruling – Article 47 of the Charter of Fundamental Rights of the European Union – Effective judicial protection – National procedural rule providing that an action seeking to dispute the compatibility of a national provision with EU law is devoid of purpose where the provision is repealed in the course of proceedings)

In Case C-289/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria) made by decision of 5 April 2021, received at the Court on 5 May 2021, in the proceedings

IG

v

Varhoven administrativen sad,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, D. Gratsias (Rapporteur), M. Ilešič, I. Jarukaitis and Z. Csehi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 6 April 2022,

after considering the observations submitted on behalf of:

– IG, by G. Chernicherska and A. Slavchev, advokati,

– the Varhoven administrativen sad, by A. Adamova-Petkova, T. Kutsarova-Hristova and M. Semov,

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

– the European Commission, by F. Erlbacher and G. Koleva, acting as Agents,

* Language of the case: Bulgarian.

after hearing the Opinion of the Advocate General at the sitting on 16 June 2022,

gives the following

Judgment

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

2 The request has been made in proceedings between IG and the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) seeking compensation for the harm allegedly sustained by IG due to a decision of that national court, having found that the action brought by IG against a national regulatory provision became devoid of purpose as a result of the amendment of the contested provision.

Legal context

European Union law

3 Article 9 ('Metering') of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ 2012 L 315, p. 1) provides:

'1. Member States shall ensure that, in so far as it is technically possible, financially reasonable and proportionate in relation to the potential energy savings, final customers for electricity, natural gas, district heating, district cooling and domestic hot water are provided with competitively priced individual meters that accurately reflect the final customer's actual energy consumption and that provide information on actual time of use.

Such a competitively priced individual meter shall always be provided when:

(a) an existing meter is replaced, unless this is technically impossible or not cost-effective in relation to the estimated potential savings in the long term;

(b) a new connection is made in a new building or a building undergoes major renovations, as set out in Directive 2010/31/EU [of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ 2010 L 153, p. 13)].

…

3. …

Where multi-apartment buildings are supplied from district heating or cooling, or where own common heating or cooling systems for such buildings are prevalent, Member States may introduce transparent rules on the allocation of the cost of thermal or hot water consumption in such buildings to ensure transparency and accuracy of accounting for individual consumption. Where appropriate, such rules shall include guidelines on the way to allocate costs for heat and/or hot water that is used as follows:

(a) hot water for domestic needs;

(b) heat radiated from the building installation and for the purpose of heating the common areas (where staircases and corridors are equipped with radiators);

(c) for the purpose of heating apartments.'

4 Article 10 of that directive concerns 'Billing information', as indicated by its title.

Bulgarian law

The Law on Energy

5 Article 155 of the zakon za energetikata (Law on Energy, DV No 107 of 9 December 2003), in its version applicable to the dispute in the main proceedings, provides:

'(1) … Customers consuming thermal energy in a building in co-ownership shall pay for the thermal energy consumed in one of the following ways, as they choose:

1. … in 11 flat-rate monthly instalments and an adjustment instalment;

2. in monthly instalments calculated on the basis of the expected consumption for the building, and an adjustment instalment;

3. according to actual consumption.

(2) … The heat distribution undertaking or the thermal energy supplier shall charge the quantity of thermal energy consumed on the basis of actual consumption at least once a year.

(3) … The rules for determining the expected consumption and the offsetting of the sums paid against the thermal energy actually consumed by each customer shall be laid down by [decree] …'

Decree on district heating

6 Article 61(1) of naredba nº 16-334 g. za toplocnabdyavaneto (Decree No 16-334 on district heating) of 6 April 2007 (DV No 34 of 24 April 2007), in its version applicable to the dispute in the main proceedings ('the Decree on district heating'), provided:

'… The allocation of thermal energy consumption in a building in co-ownership shall be carried out … in accordance with the requirements of this Decree and the Annex thereto.'

7 The annex to the Decree on district heating laid down the method for calculating the allocation of thermal energy consumption in buildings in co-ownership.

Code of administrative procedure

8 Article 156 of the administrativnoprotsesualen kodeks (Code of administrative procedure) (DV No 30 of 11 April 2006), in its version applicable to the dispute in the main proceedings ('the Code of administrative procedure'), provides:

'(1) … In agreement with the other defendants and the interested parties who benefit from the act at issue, the administrative authority may withdraw that act in whole or in part, or adopt the act which it had refused to adopt.

(2) The consent of the applicant is also required in order to withdraw the act after the first hearing has been held.

(3) Once an act has been withdrawn it may be reissued only if new circumstances arise.

(4) Where an action against an act is accompanied by a claim for damages, the proceedings in respect of that claim shall continue.'

9 Article 187 of the Code of administrative procedure provides:

'(1) There shall be no time limit on actions brought against implementing regulatory acts.

(2) An action may not be brought against a regulatory act following an earlier action founded on the same grounds.'

10 Under Article 195 of that code:

'(1) An implementing regulatory act shall be deemed to be annulled from the date on which the judicial decision comes into force.

(2) The legal consequences of a regulatory act that has been declared void or voidable shall be adopted by the competent authority of its own motion within a maximum period of three months from the entry into force of the judicial decision.'

11 Under Article 204(3) of that code, where the loss or damage is caused by an administrative act which has been withdrawn, the court before which the claim for damages has been lodged has jurisdiction to establish whether the act is unlawful.

12 Article 221(4) of that code is worded as follows:

'Where the administrative authority, with the consent of the other defendants, withdraws the administrative act or adopts the act which it had refused to adopt, the [Varhoven administrativen sad (Supreme Administrative Court)] shall set aside the judicial decision issued in respect of that act or refusal, on the grounds of procedural irregularity, and shall close the case.'

Law on liability of the State and of municipalities for loss or damage

13 Article 1 of the Zakon za otgovornostta na darzhavata i na obshtinite za vredi (Law on liability of the State and of municipalities for loss or damage, DV No 60 of 5 August 1988) provides:

'1. … The State and the municipalities shall be liable for loss or damage caused to natural or legal persons by unlawful legal acts and unlawful acts and omissions performed by State or municipal bodies or officials in the exercise of their administrative functions …

2. … Actions brought pursuant to paragraph 1 shall be heard under the procedure established by the [Code of administrative procedure] …'

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

14 IG brought an action before the Varhoven administrativen sad (Supreme Administrative Court) against point 6.1.1 of the annex to the Decree on district heating ('the national provision at issue').

15 By decision of 13 April 2018, the Varhoven administrativen sad (Supreme Administrative Court), sitting in a three-judge formation, upheld the action and annulled the national provision at issue on the ground that it did not achieve the objective, deriving from Articles 9 and 10 of Directive 2012/27, transposed into Bulgarian law by Article 155(2) of the Law on Energy, in its version applicable to the dispute in the main proceedings, of ensuring that thermal energy is charged according to actual consumption.

16 The ministar na energetikata (Minister for Energy, Bulgaria) brought an action before the Varhoven administrativen sad (Supreme Administrative Court), sitting in a five-judge formation, against the decision referred to in the preceding paragraph.

17 By decree published in the *Darzhaven vestnik* of 20 September 2019, the Bulgarian legislature amended the national provision at issue.

18 By decision of 11 February 2020, the Varhoven administrativen sad (Supreme Administrative Court), sitting in a five-judge formation, found that the national provision at issue had been amended by a subsequent provision governing the same relationship. For that reason, that court annulled its decision of 13 April 2018 and held that the dispute brought before it had become devoid of purpose. According to that court, under Bulgarian law, the possibility of bringing an action against implementing regulatory acts is not subject to any time limit, and concerns solely regulatory acts in force rather than those that have been repealed or amended, which are no longer covered by the law in force at the time when the court decides on the merits. The decision of 11 February 2020 is final.

19 IG then brought an action before the referring court, the Administrativen sad Sofia-grad (Administrative Court, Sofia, Bulgaria), against the Varhoven administrativen sad (Supreme Administrative Court), seeking compensation for the material and non-material harm allegedly caused to him by the decision of 11 February 2020 of the latter court. In support of his action, IG submits that, by that decision, the Varhoven administrativen sad (Supreme Administrative Court) held that the national provision at issue was in force and should produce its effects for the period between the date on which the action was brought and that on which that provision was repealed. IG submits that he was thus deprived of his right to effective judicial protection, guaranteed by

Article 47 of the Charter, and of the right to benefit from the application of the principles of effectiveness and equivalence. IG also disputes the validity of the case-law of the Varhoven administrativen sad (Supreme Administrative Court) according to which the amendment of a regulatory act is equivalent to its withdrawal.

20 For its part, the Varhoven administrativen sad (Supreme Administrative Court) argues that a decision, such as its decision of 11 February 2020, finding that the dispute brought before it has become devoid of purpose, does not preclude the act in question from being subject to a review of legality. It argues that it is possible to apply Article 204(3) of the Code of administrative procedure, according to which, where the loss or damage is caused by an administrative act which has been withdrawn, the court before which the claim for damages has been lodged has jurisdiction to establish whether that act is unlawful. Consequently, IG's right to effective judicial protection is guaranteed in so far as IG can still seek compensation for the harm allegedly sustained as a result of the adoption of the national provision at issue.

21 The referring court requires an interpretation of Article 47 of the Charter to rule on the dispute before it. In particular, that court asks whether the amendment of a provision of a national regulatory act which, prior to its amendment, was the subject of a judicial decision finding that it is contrary to EU law relieves the court reviewing that decision of its obligation to assess whether that provision, in the version prior to its amendment, is consistent with EU law. It should also be clarified whether the presumption that, in such circumstances, the national provision in question has been withdrawn leads to the conclusion that a person who has challenged its legality before that withdrawal has enjoyed an effective judicial remedy and whether the possibility, provided for by national law, of assessing whether that national provision is consistent with EU law only in the context of an action for compensation for the harm allegedly sustained as a result of the adoption of that national provision constitutes such an effective judicial remedy. The referring court harbours doubts in that regard, since the same national provision, in the version prior to its amendment, will continue to govern legal relationships that arose during the period in which it was in force, whereas an administrative act which has been withdrawn has no legal effect.

22 In those circumstances, the Administrativen sad Sofia-grad (Administrative Court, Sofia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the amendment of a provision of a national normative legal act previously declared by a court of appeal to be incompatible with an applicable provision of EU law relieve the Court of Cassation of the obligation to examine the legality of the provision applicable in the version prior to the amendment and accordingly to assess whether it is compatible with EU law?

(2) Does the presumption that the provision at issue has been withdrawn constitute an effective remedy with regard to rights and freedoms guaranteed by EU law (*in casu*, Articles 9 and 10 of Directive [2012/27]), or does the possibility provided for in national law to examine whether the national provision in question was compatible with EU law before it was amended constitute such a remedy if it exists only if the competent court is seised of a specific action for damages on account of that provision and only in relation to the person who brought the action?

(3) If Question 2 is answered in the affirmative, is it permissible for the provision in question to continue to regulate, during the period between its adoption and its amendment, legal relationships in respect of an unlimited group of persons who have not brought actions for damages on account of that provision, or for the assessment of the compatibility of the national rule with the EU law provision in respect of the period prior to the amendment not to have been carried out in relation to those persons?'

Admissibility of the request for a preliminary ruling

23 In its written observations, the Varhoven administrativen sad (Supreme Administrative Court) submits, first, that the request for a preliminary ruling is inadmissible on the ground that, contrary to the requirements of Article 94(c) of the Rules of Procedure of the Court of Justice, it does not contain a statement of the reasons which prompted the referring court to inquire about the interpretation of certain provisions of EU law, or the relationship between those provisions and the national legislation applicable to the main proceedings, there being no such relationship in any event.

24 In that regard, it should be borne in mind that, in accordance with settled case-law, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the judicial decision to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (judgment of 17 May 2022, *SPV Project 1503 and Others*, C-693/19 and C-831/19, EU:C:2022:395, paragraph 43 and the case-law cited).

25 Thus, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 17 May 2022, *SPV Project 1503 and Others*, C-693/19 and C-831/19, EU:C:2022:395, paragraph 44 and the case-law cited).

26 In the present case, it is apparent from the information provided by the referring court, summarised in paragraphs 14 to 21 above, that that court has before it an action for damages brought by IG seeking compensation for the harm allegedly sustained by IG as a result of the failure of the Varhoven administrativen sad (Supreme Administrative Court) to rule at last instance on IG's action for annulment of the national provision at issue.

27 According to the same information, in support of that action for annulment, IG had argued that the national provision at issue was inconsistent with the provisions of Directive 2012/27, as decided, moreover, by the Varhoven administrativen sad (Supreme Administrative Court), sitting in a three-judge formation, in its decision of 13 April 2018 which upheld that action. The referring court also states that, in support of his action for damages, IG submits that, by holding, in accordance with Bulgarian procedural law, that the action for annulment had become devoid of purpose following the repeal of the national provision at issue, the Varhoven administrativen sad (Supreme Administrative Court), sitting in a five-judge formation, infringed EU law, since it

disregarded IG's right to effective judicial protection, enshrined in Article 47 of the Charter. That infringement of EU law gave rise to the harm allegedly sustained by IG, for which he seeks compensation before the referring court.

28 That information makes it possible to understand the reasons which prompted the referring court to inquire about the interpretation of EU law, and the relationship between EU law and, in particular, the Bulgarian procedural rules which led the Varhoven administrativen sad (Supreme Administrative Court), sitting in a five-judge formation, to rule that IG's action for annulment had become devoid of purpose, which, according to the latter, caused him harm.

29 It follows that the request for a preliminary ruling meets the requirements of Article 94(c) of the Rules of Procedure.

30 Secondly, as regards the argument of the Varhoven administrativen sad (Supreme Administrative Court) that, in essence, the request for a preliminary ruling is inadmissible since it seeks to call in question that court's decision of 11 February 2020 as *res judicata*, suffice it to note that the dispute in the main proceedings seeks compensation for the harm allegedly sustained by IG as a result of that decision, which, according to IG, infringes EU law. Recognition of the principle of State liability for a breach of EU law for a decision of a court adjudicating at last instance does not in itself have the consequence of calling in question that decision as *res judicata* (judgment of 30 September 2003, *Köbler*, C-224/01, EU:C:2003:513, paragraph 39).

31 It follows that the request for a preliminary ruling is admissible.

Consideration of the questions referred

The first and second questions

32 By its first and second questions, which it is appropriate to examine together, the referring court seeks, in essence, to ascertain whether Article 47 of the Charter and the principles of equivalence and effectiveness must be interpreted as precluding a procedural rule of a Member State according to which, where a provision of domestic law challenged by an action for annulment on the ground that it is contrary to EU law is repealed and therefore ceases to have any effect for the future, the dispute is deemed to have become devoid of purpose, with the result that there is no longer any need to adjudicate on it.

33 In accordance with the Court's settled case-law, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of procedural autonomy, on condition, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (judgment of 15 April 2021, *État belge (Circumstances subsequent to a transfer decision)*, C-194/19, EU:C:2021:270, paragraph 42 and the case-law cited).

34 As the Advocate General noted in point 34 of his Opinion, it is also apparent from the Court's case-law that the principle of effective judicial protection guaranteed by Article 47 of the Charter does not require it to be possible, as such, to bring a free-standing action which seeks primarily to dispute the compatibility of national provisions with EU law, provided one or more legal remedies

exist, which make it possible to ensure, indirectly, respect for an individual's rights under EU law (judgments of 13 March 2007, *Unibet*, C-432/05, EU:C:2007:163, paragraph 47, and of 24 September 2020, *YS (Occupational pensions of managerial staff)*, C-223/19, EU:C:2020:753, paragraph 96).

35 In particular, the Court has held that the full effectiveness of EU law and effective protection of the rights which individuals derive from it may, where appropriate, be ensured by the principle of State liability for loss or damage caused to individuals as a result of breaches of EU law for which the State can be held responsible, as that principle is inherent in the system of the treaties on which the European Union is based (judgment of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, paragraph 54).

36 The referring court's first and second questions concern the situation where a Member State has chosen to provide, in its domestic legal system, for a free-standing legal remedy, allowing the annulment of a national provision to be sought on the ground, inter alia, that it is not consistent with EU law, while providing that, in the event that the provision is repealed, the action for annulment is deemed to have become devoid of purpose, with the result that there is no longer any need to adjudicate on it.

37 Therefore, in order to answer those questions, it is necessary to assess, in the light of the case-law cited in paragraphs 33 to 35 above, whether such national procedural rules are consistent with the principles of equivalence and effectiveness.

38 As regards, in the first place, the principle of equivalence, a national procedural rule such as that at issue in the main proceedings is consistent with that principle in so far as it applies without distinction to any action for annulment of a national provision, whatever its basis, and not solely to actions alleging that the contested provision is contrary to EU law.

39 In the present case, as the Advocate General observed in points 52 and 53 of his Opinion, it is clear from the information provided by the referring court that the procedural rule which led the Varhoven administrativen sad (Supreme Administrative Court) to decide that the action for annulment brought by IG had become devoid of purpose is not exclusively applicable to actions for annulment of a national provision on EU law grounds. It is, however, for the referring court to verify whether that is in fact the case.

40 Subject to that verification, such a national procedural rule appears to be consistent with the principle of equivalence.

41 In the second place, as regards the question whether a national procedural rule such as that at issue in the main proceedings is consistent with the principle of effectiveness, it is true that the effects, in law, will not be the same if a provision of national law is repealed or annulled.

42 While such a provision which has been repealed has effects only for the future (*ex nunc*), so that it does not call in question the acquired legal effects of the repealed provision on existing situations, a provision of national law which has been annulled operates retroactively (*ex tunc*) from the date of its adoption, in principle, so that the effects of that provision on existing situations cease to exist as from that date.

43 That said, it should also be noted that it cannot be ruled out that a provision of national law repealed during proceedings, and which an applicant seeks to have annulled, may produce for that applicant, in the light of his or her particular circumstances, the same legal effects as the annulment sought by the applicant.

44 That will be the case, in particular, if, by his or her action for annulment, the applicant seeks only to ensure that the contested provision does not produce, for the future, legal effects which he or she considers to be detrimental, while any effects already produced by that provision do not concern the applicant.

45 Thus, in the situation envisaged in the two preceding paragraphs, the principle of effectiveness cannot be found to preclude a national rule according to which the court hearing the action for annulment of the repealed provision decides that there is no need to adjudicate on it, on the ground that the action has become devoid of purpose. It would be excessive, in such a situation, to require the competent national court to rule on the substance of the dispute when, as a result the contested provision being repealed, the applicant has already achieved the outcome he or she sought by bringing the action for annulment.

46 However, it is also possible that, in seeking the annulment of a national provision, an applicant may also seek to obtain the annulment of the legal effects arising from the application of that provision which would adversely affect him or her. In that case, the mere repeal of that provision would not result in the disappearance of those past effects and the application, in such a situation, of a national procedural provision under which the dispute is brought to an end, on the ground that it has become devoid of purpose, is liable to deprive the applicant of effective judicial protection.

47 Such a conclusion cannot be called in question on the sole ground that, in accordance with the case-law cited in paragraph 34 above, the Member State concerned was not required to provide, in its domestic law, for a free-standing action which seeks to dispute the compatibility of national provisions with EU law, or that that domestic law provides for an action for damages in respect of the harm allegedly sustained as a result of the application of a national provision that is contrary to EU law.

48 It should be noted, in that regard, that individuals must choose, from among several legal remedies which may be available under domestic law, that which they consider to be best suited to their objectives and to which they will devote their resources.

49 Thus, it cannot be ruled out that an individual who considers himself or herself to have been adversely affected as a result of the application of a national provision allegedly contrary to a directive may decide, in order to eliminate those effects, to bring an action for annulment against that provision, where such a legal remedy is available under domestic law, rather than an action for damages against the Member State concerned.

50 The annulment of the national provision contrary to the directive in question will also entail the retroactive elimination of the legal effects which that provision has produced, which that individual may consider preferable to any damages payable by the Member State concerned, by way of compensation for the harm sustained as a result of those legal effects.

51 It is thus apparent from the grounds set out in paragraphs 48 and 49 above that the situation of an applicant who is a national of a Member State whose domestic law does not provide for a free-standing action which seeks, primarily, to dispute the compatibility of a national provision with EU law cannot be compared to that of individuals in another Member State whose domestic procedural law provides for such an action which, however, may be deemed to have become devoid of purpose where the contested provision is repealed.

52 In the latter case, to decide that the action has become devoid of purpose and that there is no longer any need to adjudicate on it where the contested provision is repealed, without it being open to the applicant to show that, despite the provision being repealed, he or she retains an interest in the annulment of that provision, is liable to make it excessively difficult to exercise the rights conferred on that applicant by EU law.

53 The fact that that applicant may bring, in such a situation, a new action for damages against the Member State concerned, seeking compensation for the harm allegedly sustained as a result of the effects arising from the application of the contested provision and, to that end, that it may be held, this time indirectly, that that provision is incompatible with EU law, will not be sufficient to guarantee that applicant's right to effective judicial protection, since, for the reasons set out in paragraph 48 above, it cannot be ruled out that it may result in procedural disadvantages for the applicant, in terms, inter alia, of cost, duration and the rules of representation, such as to make it excessively difficult to exercise the rights conferred by EU law (see, by analogy, judgment of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 51).

54 That is all the more likely to be the case where the contested provision is repealed, and the finding that the action seeking its annulment has become devoid of purpose occurs, at an advanced stage of the proceedings, as was the case here, where it was in cassation proceedings that the action was found to have become devoid of purpose.

55 It follows that, while the principle of effective judicial protection recognised in EU law cannot, in any event, preclude an action for annulment of a national provision allegedly contrary to EU law from being deemed to have become devoid of purpose where the contested provision is repealed, it does, however, preclude proceedings from being closed on such a ground without the parties having first been able to assert any interest they may have in the proceedings being continued and, therefore, without that decision taking account of any such interest.

56 In the light of all the foregoing, the answer to the first and second questions is that the principle of effectiveness as enshrined in Article 47 of the Charter must be interpreted as precluding a procedural rule of a Member State according to which, where a provision of domestic law challenged by an action for annulment on the ground that it is contrary to EU law is repealed and therefore ceases to have any effect for the future, the dispute is deemed to have become devoid of purpose, with the result that there is no longer any need to adjudicate on it, without the parties having first been able to assert any interest they may have in the continuation of the proceedings and without any account having been taken of any such interest.

The third question

57 In the light of the answer given to the first and second questions, there is no need to answer the third question.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action before the referring 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 (Fifth Chamber) hereby rules:

The principle of effectiveness as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding a procedural rule of a Member State according to which, where a provision of domestic law challenged by an action for annulment on the ground that it is contrary to EU law is repealed and therefore ceases to have any effect for the future, the dispute is deemed to have become devoid of purpose with the result that there is no longer any need to adjudicate on it, without the parties having first been able to assert any interest they may have in the continuation of the proceedings and without any account having been taken of any such interest.

[Signatures]