

JUDGMENT OF THE COURT (Second Chamber)

26 April 2018 (*)

(Reference for a preliminary ruling — Mutual assistance for the recovery of claims — Directive 2010/24/EU — Article 14 — Right to an effective remedy — Charter of Fundamental Rights of the European Union — Article 47 — Possibility for the requested authority to refuse recovery assistance on the basis that the claim was not duly notified)

In Case C-34/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 16 January 2017, received at the Court on 24 January 2017, in the proceedings

Eamonn Donnellan

v

The Revenue Commissioners,

THE COURT (Second Chamber),

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

Advocate General: E. Tanchev,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 18 January 2018,

after considering the observations submitted on behalf of:

- Mr Donnellan, by L. Glennon and E. Silke, Solicitors, P. McGarry, Senior Counsel, and R. Maguire, Barrister,
- the Revenue Commissioners, by M.-C. Maney, Solicitor, N. Travers, Senior Counsel, B. Ó Floinn, Barrister-at-Law, and M. Corry, Advocate,
- the Greek Government, by E. Tsaousi, M. Tassopoulou and K. Georgiadis, acting as Agents,
- the European Commission, by M. Wilderspin, H. Krämer and F. Tomat, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 March 2018,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 14(1) and (2) of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ 2010 L 84, p. 1).

2 The request has been made in proceedings between Mr Eamonn Donnellan and the Revenue Commissioners ('the Commissioners'), concerning the recovery of a claim consisting of a fine imposed on Mr Donnellan by a Greek customs authority and the interest, costs or penalties relating to that fine.

Legal context

Directive 2010/24

3 Directive 2010/24 was adopted on the basis of Articles 113 and 115 TFEU. Recitals 1, 7, 17, 20 and 21 of that directive state as follows:

'(1) Mutual assistance between the Member States for the recovery of each others' claims and those of the Union with respect to certain taxes and other measures contributes to the proper functioning of the internal market. ...

...

(7) Mutual assistance may consist of the following: the requested authority may supply the applicant authority with the information which the latter needs in order to recover claims arising in the applicant Member State and notify to the debtor all documents relating to such claims emanating from the applicant Member State. The requested authority may also recover, at the request of the applicant authority, the claims arising in the applicant Member State, or take precautionary measures to guarantee the recovery of these claims.

...

(17) This Directive should not prevent the fulfilment of any obligation to provide wider assistance ensuing from bilateral or multilateral agreements or arrangements.

...

(20) Since the objectives of this Directive, namely the provision of a uniform system of recovery assistance within the internal market, cannot be sufficiently achieved by the Member States and can therefore ... be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity ...

(21) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union.'

4 Article 1 of that directive, entitled 'Subject matter', states that the directive 'lays down the rules under which the Member States are to provide assistance for the recovery in a Member State of any claims referred to in Article 2 which arise in another Member State'.

5 Article 2 of that directive, entitled 'Scope', provides:

'1. This Directive shall apply to claims relating to the following:

(a) all taxes and duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions, including the local authorities, or on behalf of the Union;

...

2. The scope of this Directive shall include:

- (a) administrative penalties, fines, fees and surcharges relating to the claims for which mutual assistance may be requested in accordance with paragraph 1, imposed by the administrative authorities that are competent to levy the taxes or duties concerned or carry out administrative enquiries with regard to them, or confirmed by administrative or judicial bodies at the request of those administrative authorities;

...

- (c) interest and costs relating to the claims for which mutual assistance may be requested in accordance with paragraph 1 or point (a) or (b) of this paragraph.

...'

6 Article 8 of that directive, entitled 'Request for notification of certain documents relating to claims', states:

'1. At the request of the applicant authority, the requested authority shall notify to the addressee all documents, including those of a judicial nature, which emanate from the applicant Member State and which relate to a claim as referred to in Article 2 or to its recovery.

...'

7 Article 10 of Directive 2010/24, entitled 'Request for recovery', provides, in paragraph 1:

'At the request of the applicant authority, the requested authority shall recover claims which are the subject of an instrument permitting enforcement in the applicant Member State.'

8 Article 11 of that directive, entitled 'Conditions governing a request for recovery', provides, in paragraph 1:

'The applicant authority may not make a request for recovery if and as long as the claim and/or the instrument permitting its enforcement in the applicant Member State are contested in that Member State, except in cases where the third subparagraph of Article 14(4) applies.'

9 Article 12 of that directive, entitled 'Instrument permitting enforcement in the requested Member State and other accompanying documents', provides:

'1. Any request for recovery shall be accompanied by a uniform instrument permitting enforcement in the requested Member State.

This uniform instrument permitting enforcement in the requested Member State shall reflect the substantial contents of the initial instrument permitting enforcement, and constitute the sole basis for the recovery and precautionary measures taken in the requested Member State. It shall not be subject to any act of recognition, supplementing or replacement in that Member State.

The uniform instrument permitting enforcement shall contain at least the following information:

- (a) information relevant to the identification of the initial instrument permitting enforcement, a description of the claim, including its nature, the period covered by the claim, any dates of relevance to the enforcement process, and the amount of the claim and its different components such as principal, interest accrued, etc.;
- (b) name and other data relevant to the identification of the debtor;
- (c) name, address and other contact details regarding:

- (i) the office responsible for the assessment of the claim, and, if different;
- (ii) the office where further information can be obtained concerning the claim or the possibilities for contesting the payment obligation.

...'

10 Article 13 of Directive 2010/24, entitled 'Execution of the request for recovery', provides:

'1. For the purpose of the recovery in the requested Member State, any claim in respect of which a request for recovery has been made shall be treated as if it was a claim of the requested Member State, except where otherwise provided for in this Directive. The requested authority shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State applying to claims concerning the same or, in the absence of the same, a similar tax or duty, except where otherwise provided for in this Directive.

...

3. From the date on which the recovery request is received, the requested authority shall charge interest for late payment in accordance with the laws, regulations and administrative provisions in force in the requested Member State.

...'

11 Article 14 of Directive 2010/24, entitled 'Disputes', provides:

'1. Disputes concerning the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State and disputes concerning the validity of a notification made by a competent authority of the applicant Member State shall fall within the competence of the competent bodies of the applicant Member State. If, in the course of the recovery procedure, the claim, the initial instrument permitting enforcement in the applicant Member State or the uniform instrument permitting enforcement in the requested Member State is contested by an interested party, the requested authority shall inform that party that such an action must be brought by the latter before the competent body of the applicant Member State in accordance with the laws in force there.

2. Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by a competent authority of the requested Member State shall be brought before the competent body of that Member State in accordance with its laws and regulations.

3. Where an action as referred to in paragraph 1 has been brought before the competent body of the applicant Member State, the applicant authority shall inform the requested authority thereof and shall indicate the extent to which the claim is not contested.

4. As soon as the requested authority has received the information referred to in paragraph 3, either from the applicant authority or from the interested party, it shall suspend the enforcement procedure, as far as the contested part of the claim is concerned, pending the decision of the body competent in the matter, unless the applicant authority requests otherwise in accordance with the third subparagraph of this paragraph.

At the request of the applicant authority, or where otherwise deemed to be necessary by the requested authority, ... the requested authority may take precautionary measures to guarantee recovery in so far as the laws or regulations in force in the requested Member State allow such action.

The applicant authority may, in accordance with the laws, regulations and administrative practices in force in the applicant Member State, ask the requested authority to recover a contested claim or the contested

part of a claim, in so far as the relevant laws, regulations and administrative practices in force in the requested Member State allow such action. Any such request shall be reasoned. If the result of contestation is subsequently favourable to the debtor, the applicant authority shall be liable for reimbursing any sums recovered, together with any compensation due, in accordance with the laws in force in the requested Member State.

... ’

12 Under Article 28 of that directive, Member States were required to adopt and publish, by 31 December 2011, the laws, regulations and administrative provisions necessary to comply with that directive and to apply those provisions from 1 January 2012.

13 Article 29 of Directive 2010/24 repealed, with effect from 1 January 2012, Council Directive 2008/55/EC of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ 2008 L 150, p. 28).

14 Directive 2008/55 had codified Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (OJ 1976 L 73, p. 18) and the acts amending it.

Implementing Regulation (EU) No 1189/2011

15 Commission Implementing Regulation (EU) No 1189/2011 of 18 November 2011 laying down detailed rules in relation to certain provisions of Directive 2010/24 (OJ 2011 L 302, p. 16) states, in Article 15(1):

‘Requests for recovery or for precautionary measures shall include a declaration that the conditions laid down in Directive 2010/24/EU for initiating the mutual assistance procedure have been fulfilled.’

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

16 Mr Donnellan, who is an Irish national, was recruited in 2002 as a driver of heavy goods vehicles by TLT International Ltd, a transport undertaking established under Irish law.

17 In July 2002, Mr Donnellan, on the instructions of that undertaking, collected, from a trader established in Greece, 23 pallets of olive oil. The consignment note relating to those goods indicated that the consignee of those goods was an undertaking operating supermarkets in Ireland.

18 On 26 July 2002, Mr Donnellan presented that consignment note to the customs office of the port of Patras (Greece). On that occasion, a customs agent, during an inspection of those goods, discovered, in addition to the olive oil, 171 800 packets of contraband cigarettes. Following that discovery, Mr Donnellan was arrested and the vehicle and its cargo were seized.

19 On 29 July 2002, Mr Donnellan was found guilty at first instance of smuggling and issuing fictitious tax data. Those offences led to the sentencing of Mr Donnellan to prison sentences of three years and one year respectively. Mr Donnellan was imprisoned immediately.

20 On 17 October 2002, Mr Donnellan was acquitted of both charges on appeal and was released immediately.

21 On 27 April 2009, the customs office of Patras issued a notice for the imposition on Mr Donnellan of an administrative penalty of EUR 1 097 505 on the basis that the cargo seized in July 2002 contained 171 800 packets of contraband cigarettes.

22 On 19 June 2009, the Greek Embassy in Ireland sent a letter by recorded delivery to ‘Mr Donnellan Eamonn Ballyhaunis, Ireland’, inviting him to make contact with the embassy’s services as soon as

possible so that he could come to receive and sign important documents concerning him.

23 By decision of 15 July 2009, by way of a follow-up to the notice of 27 April 2009, the customs office of Patras imposed a fine of EUR 1 097 505 on Mr Donnellan. The same day, that fine was published in the *Official Journal of the Hellenic Republic*.

24 On 14 November 2012, the Greek authorities sent to the Commissioners, in English, a request for recovery, within the meaning of Article 10 of Directive 2010/24, relating to that fine of EUR 1 097 505, increased by interest of EUR 384 126.76 and costs or penalties of EUR 26 340.12.

25 That request contained, inter alia, by way of a declaration, as required by Article 15 of Implementing Regulation No 1189/2011, that the conditions laid down in Directive 2010/24 for initiating the mutual assistance procedure had been fulfilled, the following information:

- ‘The claim(s) is (are) not contested’;
- ‘The claim(s) may no longer be contested by an administrative appeal/by an appeal to the courts’;
- ‘Appropriate recovery procedures have been applied in the State of the applicant authority but will not result in the payment in full of the claim’.

26 On 15 November 2012, Mr Donnellan received a letter from the Commissioners, dated 14 November 2012, reclaiming from him, within 30 days, the amount of EUR 1 507 971.88 by way of recovery of the fine, interest and costs or penalties which formed the subject matter of the request made by the Greek authorities.

27 Attached to that letter, in English, was the ‘uniform instrument’ referred to in Article 12 of Directive 2010/24. That instrument made reference to the abovementioned decision of the customs office of Patras and described the claim in question as follows: ‘Multiple duties for illegal cigarette trading’.

28 That instrument stated Mr Donnellan’s passport number and described his address as ‘known’.

29 As soon as he had received that letter of 14 November 2012, Mr Donnellan engaged the services of a solicitor with a view to seeking clarifications regarding the decision of the customs office of Patras.

30 On 11 June 2014, Mr Donnellan brought proceedings before the High Court (Ireland) seeking relief from the demand for enforcement of the request for recovery of the amounts claimed.

31 On 12 December 2014, an interlocutory injunction order restraining enforcement was granted by that court, pending a ruling on the substance of the case.

32 The Commissioners argue before the High Court that, in the absence of an action brought by Mr Donnellan in Greece with regard to the claim in question, they are required to give a positive response to the request for recovery and to proceed with enforcement of that request.

33 Mr Donnellan argues that he was deprived of his right to an effective remedy in Greece and that, in those circumstances, a positive response to that request for recovery cannot be given by the Commissioners.

34 In that regard, Mr Donnellan produced, inter alia, before the referring court a report drawn up by Mr Siaperas, an expert in Greek law. According to that report, the last date on which Mr Donnellan could have brought an action against the decision of the customs office of Patras was 13 October 2009, that is to say, 90 days following the publication of the fine in the *Official Journal of the Hellenic Republic*.

35 The referring court infers from all of the documents in the case file, first, that the registered letter of 19 June 2009, addressed by the Greek Embassy to Mr Donnellan, was not delivered to him, secondly, that Mr Donnellan became aware of the existence of the decision imposing the fine on him on 15 November

2012, and, thirdly, that he was informed of the content of, and the reasons for, that decision only by subsequent letters, inter alia by letters of 31 March 2014 and of 29 December 2015 from the Greek Ministry of Finance.

36 According to the referring court, it is apparent from the settled case-law of the Irish courts, the Irish Constitution and Ireland's obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), that no Irish court could authorise the enforcement of a decision, such as that at issue in the main proceedings, which was not notified to the person concerned and which is, moreover, based on facts in respect of which that person was found to be innocent. The enforcement of such a decision would, in the referring court's view, be contrary to public policy in Ireland.

37 While finding that Directive 2010/24 does not permit the legality of the decision of the Greek authorities to be contested before the Irish courts, the referring court takes the view that the principles of EU law, as set out in the judgment of 14 January 2010, *Kyrian* (C-233/08, EU:C:2010:11), suggest nonetheless that exceptional circumstances may allow the referring court to rely on the Charter of Fundamental Rights of the European Union ('the Charter') in order to refuse enforcement of a request for recovery such as that at issue in the main proceedings.

38 In those circumstances, the High Court decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is the High Court of Ireland precluded by Article 14(1) and (2) of Directive 2010/24 when determining the enforceability in Ireland of a "uniform instrument permitting enforcement" issued on 14 November 2012 by the customs office of Patras for administrative penalties and fines in the sum of EUR 1 097 505 imposed on 15 July 2009 for alleged smuggling on 26 July 2002 [increased to EUR 1 507 971.88 by virtue of interest and penalties] from:

- applying the right to an effective remedy and to a fair trial within a reasonable time for a citizen of Ireland and of the European Union in relation to the enforcement request [Article 47 of the Charter and Articles 6 and 13 of the ECHR, which correspond with rights for citizens under Articles 34, 38 and 40.3 of the Irish Constitution, in circumstances where the procedure involved was only first explained to [the person concerned] in a "non-official translation" to English ... in a letter dated [29 December 2015] from the Ministry of Finance of the Hellenic Republic ... to the Irish Revenue and the solicitors in Ireland for [the person concerned]];
- taking account of the objectives of Directive 2010/24 to provide mutual assistance (recital 20 of Directive 2010/24) and to abide by the obligation to provide wider assistance ensuing from the ECHR (recital 17 of Directive 2010/24) such as the right to an effective remedy for citizens under Article 47 of the Charter and Article 13 of the ECHR;
- considering the full effectiveness of EU law for its citizens [having regard, in particular, to paragraph 63 of the judgment of 14 January 2010, *Kyrian*, C-233/08, [EU:C:2010:11]]?'

Consideration of the question referred

39 By its question, the referring court asks, in essence, whether Article 14(1) and (2) of Directive 2010/24 must be interpreted as precluding an authority of a Member State from refusing to enforce a request for recovery concerning a claim relating to a fine imposed in another Member State on grounds connected to the right of the person concerned to an effective remedy before a court or tribunal.

40 It should be noted at the outset that the principle of mutual trust between the Member States is of fundamental importance in EU law, given that it allows an area without internal borders to be created and maintained. That principle requires, particularly with regard to the area of freedom, security and justice,

each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (Opinion 2/13 (Accession of the European Union to the ECHR) of 18 December 2014, EU:C:2014:2454, paragraph 191 and the case-law cited).

- 41 While coming within the area of the internal market, and not that of freedom, security and justice, Directive 2010/24 is also based on the principle of mutual trust referred to above. The implementation of the system of mutual assistance established by that directive depends on the existence of such trust between the national authorities concerned.
- 42 It is apparent, in particular, from Article 12(1) of that directive that recovery of the claim in the requested Member State is based on the 'uniform instrument' by which the applicant authority sends to the requested authority information contained in the original instrument permitting enforcement in the applicant Member State. That uniform instrument is not subject to any act of recognition, supplementing or replacement in the requested Member State.
- 43 Moreover, it follows from Article 14(1) of Directive 2010/24 that any contestation of that claim, initial instrument, uniform instrument or notification made by a competent authority of the applicant Member State must be brought before the competent bodies of that Member State and not before those of the requested Member State.
- 44 Far from giving the bodies of the requested Member State the power to review the acts of the applicant Member State, Article 14(2) of Directive 2010/24 explicitly limits the power of review of those bodies to acts of the requested Member State.
- 45 Even though the acts taken by Member States pursuant to the system of mutual assistance established by Directive 2010/24 must be in accordance with the fundamental rights of the European Union, which include the right to an effective remedy enshrined in Article 47 of the Charter, it does not in any way follow that the acts of the applicant Member State must be capable of being challenged both before the courts of that Member State and before those of the requested Member State. On the contrary, that system of mutual assistance, as it is based, in particular, on the principle of mutual trust, increases legal certainty with regard to the determination of the Member State in which disputes are settled and thus makes it possible to avoid forum shopping (see, by analogy, judgment of 21 November 2011, *N.S. and Others*, C-411/10 and C-493/10, EU:C:2011:865, paragraph 79).
- 46 It follows that the action which the person concerned brings in the requested Member State, seeking rejection of the demand for payment addressed to him by the authority of that Member State which is competent for the recovery of the claim made in the applicant Member State, cannot lead to an assessment of the legality of that claim.
- 47 By contrast, as the Court has previously held, it cannot be ruled out that the requested authority may, exceptionally, decide not to grant its assistance to the applicant authority. Enforcement of the request for recovery of the claim may thus, inter alia, be refused if it is shown that such enforcement is liable to be contrary to the public policy of the Member State of the requested authority (see, with regard to Article 12 of Directive 76/308, to which, in essence, Article 14 of Directive 2010/24 corresponds, judgment of 14 January 2010, *Kyrian*, C-233/08, EU:C:2010:11, paragraph 42).
- 48 In this regard, it is important to point out that, in accordance with Article 13(1) of Directive 2010/24, the claim in respect of which a request for recovery has been made is to be treated as if it were a claim of the requested Member State, that latter Member State being thus required to make use of the powers and procedures provided for under the laws, regulations or administrative provisions applying to claims concerning identical or similar taxes or duties in its legal system. It is difficult to imagine that an instrument permitting enforcement of an identical or similar claim of the requested Member State would be enforced by that State if that enforcement were liable to be contrary to its own public policy (see, by

analogy, with regard to Directive 76/308, judgment of 14 January 2010, *Kyrian*, C-233/08, EU:C:2010:11, paragraph 43).

49 That being said, it is for the Court to review the limits within which the authorities of a Member State may refuse, by reference to national views such as those relating to the public policy of that State, to grant their assistance to another Member State within the context of a system of cooperation established by the EU legislature (see, to that effect, judgments of 28 April 2009, *Apostolides*, C-420/07, EU:C:2009:271, paragraphs 56 and 57, and of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraphs 39 and 40).

50 It has also consistently been held that limitations on the principle of mutual trust must be interpreted strictly (see, inter alia, judgments of 14 November 2013, *Baláž*, C-60/12, EU:C:2013:733, paragraph 29; of 16 July 2015, *Diageo Brands*, C-681/13, EU:C:2015:471, paragraph 41; of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraph 38; and of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraph 48).

51 In the present case, notwithstanding the statement, contained in the request for recovery, that recovery procedures were applied in the applicant Member State, it is not disputed, according to the order for reference, that it was only on the date on which the competent authority of the requested Member State sent the person concerned the request for payment accompanied by the uniform instrument that that person became aware of the fact that, several years earlier, a fine had been imposed on him in the applicant Member State. The referring court finds, moreover, that it was a long time after becoming aware of the existence of that fine that the person concerned received more specific information on the content of and the reasons for the decision imposing that fine on him.

52 In those circumstances, the referring court takes the view that a refusal to enforce the request for recovery could be justified on grounds connected to the right to an effective judicial remedy and to the fact that, in Ireland, enforcement of a fine which has not been notified to the person concerned is contrary to public policy.

53 In order to assess whether circumstances such as those referred to by the national court may, without disregarding the principle of mutual trust, lead to a refusal to enforce, it is necessary to note, first of all, that the function of the uniform instrument, addressed by the applicant authority to the requested authority for the purposes of the recovery of a claim and sent by the requested authority to the person concerned attached to a request for payment, is not to notify the person concerned of the decision, adopted in the Member State of the applicant authority, on which that claim is based. That instrument, which, as was noted in paragraph 9 above, refers to, inter alia, the type and quantum of the claim and the personal data of the person concerned, is intended to allow the authorities of the requested Member State to adopt enforcement measures and thus to assist in the recovery. By contrast, the communication of that instrument, without the decision imposing the fine and the reasoning for that decision being sent to the person concerned, does not constitute a notification of that decision.

54 Next, it should be noted that the system of mutual assistance for the recovery of claims seeks, inter alia, to ensure the effective notification of all instruments and decisions which emanate from the Member State in which the applicant authority is situated and which relate to a claim or to its recovery (see, with regard to Directive 76/308, judgment of 14 January 2010, *Kyrian*, C-233/08, EU:C:2010:11, paragraph 57). Article 8 of Directive 2010/24 provides, in that regard, for the possibility for the authority which issued the claim to seek assistance, from the competent authority in the Member State of residence of the person concerned, with the notification of the documents relating to that claim.

55 Lastly, it should be noted that, in order to be able to exercise his right to an effective legal remedy, within the meaning of Article 47 of the Charter, against a decision adversely affecting his interests, the person concerned must know the reasons upon which the decision taken in relation to him is based, either by reading the decision itself or by requesting and obtaining notification of those reasons, in order that he may defend his rights in the best possible conditions and decide, with full knowledge of the relevant facts,

whether there is any point in his applying to the court with jurisdiction (judgment of 4 June 2013, ZZ, C-300/11, EU:C:2013:363, paragraph 53 and the case-law cited).

- 56 In circumstances such as those established by the referring court in the case in the main proceedings, the person concerned is subject to the enforcement procedure relating to the request for recovery covered by Directive 2010/24, notwithstanding the fact that the fine in question was not notified to him. The person concerned is thus placed in a situation in which payment of the amount of that fine, together with the interest and costs referred to in Article 2(2)(c) of that directive and interest for late payment referred to in Article 13(3) thereof, is claimed from him by the requested authority even though, due to a lack of sufficient knowledge of the content of and the reasoning for the decision imposing the fine on him, he was not in a position to contest that decision in the Member State of the applicant authority.
- 57 As the Advocate General noted, in essence, in point 70 of his Opinion, a situation in which the applicant authority seeks recovery of a claim based on a decision which was not notified to the person concerned does not satisfy the condition governing requests for recovery, laid down in Article 11(1) of Directive 2010/24. Since, according to that provision, a request for recovery within the meaning of that directive cannot be made as long as the claim and/or the instrument permitting enforcement of its recovery in the Member State of transmission is contested in that Member State, it follows that such a request also cannot be made when the person concerned has not been informed of the very existence of that claim, that information being a necessary prerequisite for the ability to contest that claim.
- 58 Moreover, this interpretation is supported by Article 47 of the Charter and by the case-law of the Court concerning the service and notification of judicial documents. It follows in particular from that case-law that, in order to ensure respect for the rights laid down in Article 47 of the Charter, it is important not only to ensure that the addressee of a document actually receives the document in question but also that he is able to know and understand effectively and completely the meaning and scope of the action brought against him abroad, so as to be able effectively to assert his rights in the Member State of transmission (see, to that effect, judgment of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603, paragraphs 31 and 32 and the case-law cited). Such considerations are also relevant in the context of Directive 2010/24.
- 59 Consequently, in the case where a request for recovery is presented, even though the person concerned has not had the opportunity to raise the matter before the courts of the applicant Member State under conditions compatible with the fundamental right to an effective remedy, the rule laid down in Article 14(1) of Directive 210/24, as transposed into national law, cannot reasonably be invoked against that person.
- 60 That is a fortiori so where, as in the present case, the applicant authority itself indicated, in the request for recovery, and therefore at a point in time earlier than that at which the person concerned became aware of the existence of the claim in question, that it was no longer possible to bring administrative or judicial proceedings in the applicant Member State with a view to contesting that claim. Although, admittedly, the Greek Government subsequently, in its observations before the Court, asserted the contrary, submitting that the possibility to bring proceedings was not extinguished following the expiry of the period for bringing an action triggered by the publication of that claim in the *Official Journal of the Hellenic Republic*, the person concerned cannot be criticised for having taken into consideration the information provided by the applicant authority in the request for recovery, information of which the person concerned, after becoming aware of the existence of that claim, had received a copy and which he had caused to be checked by an expert in Greek law, who confirmed it.
- 61 It follows from the foregoing that an exceptional situation such as that at issue in the main proceedings in the present case, in which an authority of a Member State requests an authority of another Member State to recover a claim relating to a fine of which the person concerned was unaware, may legitimately lead to a refusal of assistance with the recovery by that latter authority. The assistance provided for in Directive 2010/24 is, as is indicated by the title and various recitals of that directive, described as ‘mutual’, which implies, in particular, that it is for the applicant authority to create, before it makes a request for recovery,

the conditions under which the requested authority will be able to grant its assistance in a meaningful manner and in conformity with the fundamental principles of EU law.

- 62 In the light of all of the foregoing considerations, the answer to the question referred is that Article 14(1) and (2) of Directive 2010/24, read in the light of Article 47 of the Charter, must be interpreted as not precluding an authority of a Member State from refusing to enforce a request for recovery concerning a claim relating to a fine imposed in another Member State, such as that at issue in the main proceedings, on the ground that the decision imposing that fine was not properly notified to the person concerned before the request for recovery was made to that authority pursuant to that directive.

Costs

- 63 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:

Article 14(1) and (2) of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding an authority of a Member State from refusing to enforce a request for recovery concerning a claim relating to a fine imposed in another Member State, such as that at issue in the main proceedings, on the ground that the decision imposing that fine was not properly notified to the person concerned before the request for recovery was made to that authority pursuant to that directive.

Ilešič

Rosas

Toader

Prechal

Jarašiūnas

Delivered in open court in Luxembourg on 26 April 2018.

A. Calot Escobar

M. Ilešič

Registrar President of the Second Chamber

* Language of the case: English.