Case C-480/24

Request for a preliminary ruling

Date lodged:

9 July 2024

Referring court:

Augstākā tiesa (Senāts) (Latvia)

Date of the decision to refer:

4 July 2024

Appellant in the appeal by way of protest in cassation (available only to the Public Prosecutor's Office):

Ģenerālprokuratūra (Principal Public Prosecutor's Office)

Other parties in the proceedings:

SIA ČIEKURI-SHISHKI (applicant at first instance)

SIA COUNTRY HELI (defendant at first instance)

[…] [procedural information]

Civillietu departaments (Civil Chamber)

Latvijas Republikas Senāts (Supreme Court (Senate) of the Republic of Latvia)

DECISION

In Riga, on 4 July 2024

The Senate, […] [composition of the court]

[…], in the course of proceedings in cassation being conducted before that court further to an appeal by way of protest in cassation (available only to the Public Prosecutor's Office) brought by the acting principal public prosecutor of the Republic of Latvia against the judgment of the Rīgas rajona tiesa (Riga District Court) of 13 September 2023, has examined the question of the possibility of making a reference for a preliminary ruling to the Court of Justice of the European

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Union in a civil case arising from the action brought by SIA ČIEKURI-SHISHKI against SIA COUNTRY HELI for repayment of the debt connected with, and interest for the use of, a loan.

Subject matter and relevant facts of the dispute in the main proceedings

1 On 19 May 2015, SIA ČIEKURI-SHISHKI and SIA COUNTRY HELI concluded a loan agreement to which additions and amendments were subsequently made by mutual agreement between the parties. Under that agreement, the lender handed over EUR 3 407 347.10 to the borrower.

On 19 January 2023, SIA ČIEKURI-SHISHKI brought an action against SIA COUNTRY HELI for recovery of a debt of EUR 3 587 415.46, which is the sum of adding to the principal of the loan, in the amount of EUR 3 407 347.10, interest for use of the loan of EUR 180 068.36. The application states that SIA COUNTRY HELI is formed of two members, 50% of the shares being owned by SIA ČIEKURI-SHISHKI, the other 50% of the shares being owned by a company registered in the Republic of Cyprus by the name of ABACUS (CYPRUS) LIMITED, the beneficial owner of which is [person D] […].

2 In its judgment of 13 September 2023, Riga District Court upheld that action and ordered SIA COUNTRY HELI to repay to SIA ČIEKURI-SHISHKI a debt of EUR 3 407 347,10, interest for use of the loan of EUR 180 068.36, calculated in respect of the period from 22 May 2015 to 22 May 2021, and court costs of EUR 25 970.88, making a total of EUR 3 613 386.34.

After assessing the evidence submitted by the applicant, together with the statement of settlement of reciprocal accounts drawn up by the parties as at 31 December 2022, Riga District Court considered that it was apparent from the case that the applicant had handed over to the defendant the sum of EUR 3 407 347.10, that the defendant had failed to meet the deadline laid down in the loan agreement for repayment of that money and that the defendant had not shown that it had paid the applicant the amount loaned and the interest for use of the loan or any part thereof.

Riga District Court did not examine whether the restrictive measures adopted by the European Union in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine were applicable to the applicant or the defendant.

3 That judgment was not appealed and became final on 4 October 2023.

On 12 October 2023, an enforcement order was issued in the civil case and was sent to the Register of Enforcement Cases.

4 Exercising the rights recognised in Articles 483 to 484 of the Civilprocesa likums (Law of Civil Procedure), the acting principal public prosecutor lodged an appeal by way of protest in cassation (available only to the Public Prosecutor's Office)

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against the judgment of Riga District Court of 23 September 2023, claiming that that judgment should be set aside and its enforcement suspended for the duration of the appeal proceedings. The appeal by way of protest in cassation (available only to the Public Prosecutor's Office) states the following:

[4.1] In its analysis of the case, Riga District Court failed to assess the applicability of the EU legislation on the adoption of restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine to the specific circumstances of that case. It follows from the documents in the civil case that the provisions of Regulation No 269/2014 are allegedly applicable to the defendant. Furthermore, the applicant, as owner of part of the defendant's share capital, is also a person associated with the defendant and its shareholder ABACUS (CYPRUS) LIMITED.

[4.2] In adjudicating on the merits of the action, Riga District Court should have examined the circumstances relating both to the fact of the imposition of sanctions and to the content of the restrictions established and their applicability to the defendant. In deciding whether to uphold the heads of claim contained in the application, Riga District Court did not assess whether the real purpose of bringing the action could have been to evade the sanctions, given that the action was brought after the inclusion of [person D] in the list of persons affected by the sanctions. Riga District Court should have considered the possibility of upholding the claims contained in the application at the stage of hearing and determining the civil case, given that, at the stage of enforcing the judgment, the bailiff does not have that power.

5 By decision […] of 8 February 2024 […], the Senate decided to initiate proceedings in the appeal by way of protest in cassation (available only to the Public Prosecutor's Office) brought by the acting principal public prosecutor, and to suspend enforcement of the judgment of Riga District Court of 13 September 2023 for the duration of those proceedings.

Applicable provisions of European Union law and national law

6 European Union law:

Charter of Fundamental Rights of the European Union, Articles 7, 8, 17 and 47(1).

Article 2(1) and (2) and Article 11(1)(a) and (b) of Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ('Regulation No 269/2014').

Article 1 and point 674 of part 1 of the annex to Council Implementing Regulation (EU) 2022/336 of 28 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ('Implementing Regulation 2022/336').

Article 2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

7 Latvian law:

Civilprocesa likums (Law of Civil Procedure) (available at: *https://likumi.lv/ta/id/50500-civilprocesa-likums*)

Article 132 Grounds for non-acceptance of the application

(1) The judge shall not accept the application where: […]

5) in a dispute between the same parties, concerning the same subject matter and pursued on the same grounds, there is a final judgment given by a court […]

8) the application is submitted by a person lacking capacity to bring civil actions […]

Article 204.[1] Voluntary enforcement of a judgment

(1) When giving judgment ordering the reimbursement of a sum of money, […] the court shall fix a time limit for the voluntary enforcement of the judgment, other than in cases where the judgment is immediately enforceable.

Article 214 Obligation on the court to stay the proceedings

The court shall stay the proceedings where […]

Article 222 Effects in the event of the inadmissibility of an action

If an action is declared inadmissible, the applicant shall have the right to bring it again before a court in accordance with the procedure laid down by law.

Article 225 Effects of the termination of proceedings

If proceedings are terminated, it shall not be permissible to bring before the courts again a dispute between the same parties, concerning the same subject matter and pursued on the same grounds.

Article 552.[1] Initiation of enforcement proceedings

(7) Where the bailiff establishes that the creditor is subject to sanctions, […] he shall not initiate enforcement proceedings and shall return the enforceable title to the applicant, except in cases where the enforcement of a specific decision does not have the effect of causing that person to infringe the requirements imposed by the sanctions, to evade them or to avoid complying with them.

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Ministru kabineta 2009. gada 10. februāra noteikumi Nr. 123 „Noteikumi par tiesu informācijas publicēšanu mājaslapā internetā un tiesu nolēmumu apstrādi pirms to izsniegšanas" (Council of Ministers Decree No 123 of 10 February 2009, 'Decree on the publication of judicial information online and the processing of judicial decisions before they are delivered') (available at: *https://likumi.lv/ta/id/187832-noteikumi-par-tiesu-informacijas-publicesanu-majaslapa-interneta-un-tiesu-nolemumu-apstradi-pirms-to-izsniegsanas*)

12.1. In the course of preparations for the publication of decisions, data by which natural persons may be identified shall be deleted and replaced with a suitable reference: in the case of the first name and the surname of the person concerned, with a freely chosen capital letter from the Latvian alphabet […]

Reasons why the referring court has doubts about the application and interpretation of European Union law

8 Article 2 of Regulation (EU) No 269/2014 does not provide a clear answer to the question of how to determine whether a legal person is to be regarded as an associated legal person within the meaning of that provision where its capital structure comprises several members and where it is established that the beneficial owner of a specific member is a natural person listed in Annex I to Regulation (EU) No 269/2014 or in the annex to Implementing Regulation (EU) No 2022/336.

More specifically, the applicant in the main proceedings (SIA COUNTRY HELI) is a legal person having its principal place of business in Latvia 50% of whose shares belong to a legal person registered in Cyprus [ABACUS (CYPRUS) LIMITED] the beneficial owner of which is a natural person listed in the annex to Implementing Regulation (EU) 2022/336 ([person D]). It is reasonable to assume that the defendant is owned and possibly also controlled by that natural person (see EU Best Practices for the effective implementation of restrictive measures, 04.05.2018, 8519/18, paragraph 62 et seq.). In such circumstances, the defendant may be capable of being regarded as an associated legal person within the meaning of Article 2 of Regulation (EU) No 269/2014 (first question referred for a preliminary ruling).

For its part, the applicant in the main proceedings (SIA ČIEKURI-SHISHKI) is a legal person holding 50% of the shares in the defendant. For the purposes of freezing the funds and economic resources of the natural persons listed in Annex I to Regulation (EU) No 269/2014 or in the annex to Implementing Regulation (EU) 2022/336, in a situation in which the applicant and the defendant have a linked ownership structure, the applicant might also be regarded as an associated legal person within the meaning of Article 2 of Regulation (EU) No 269/2014 (second question referred for a preliminary ruling).

9 Article 2 of Regulation (EU) No 269/2014 refers to natural or legal persons, entities or bodies 'associated' with the persons listed in Annex I to that regulation.

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On the other hand, Article 11(1)(b) of the aforementioned regulation refers to natural or legal persons, entities or bodies acting 'through or on behalf of' one of the persons, entities or bodies listed in Annex I to that regulation.

In the opinion of the Senate, Regulation (EU) No 269/2014 does not provide a clear answer to the question as to whether, in the case where a natural or legal person, entity or body is considered to be 'associated', within the meaning of Article 2 of that regulation, [with a natural or legal person, entity or body listed in Annex I to that regulation], which would be grounds for freezing the funds and economic resources of the former, the former should also be considered to be acting 'through or on behalf of' the latter, within the meaning of Article 11(1) of that regulation, which would be grounds for not '[satisfying any] claims' by the former (third question referred for a preliminary ruling).

10 Its examination of the circumstances referred to in paragraph 8 of this decision requires the court to carry out certain actions not directly related to the hearing and determination of the substance of a civil case. Although the national legislation governing civil procedure currently supports the inference of an obligation on the part of the court to carry out a limited examination to determine the capacity of the parties to the dispute to act in civil proceedings (namely, in the case of a legal person, to examine whether it is registered and has not been deregistered [Article 132(1), point 8, of the Civilprocesa likums (Law of Civil Procedure)]), the Senate nonetheless takes the view that conducting an exhaustive examination to determine whether the applicant, and, in circumstances such as those of the present case, possibly the defendant too, might be considered to be a person associated with or controlled by the person affected by the sanctions, or to determine whether, as a result of the transfer of funds or assets that will take place at the stage of enforcing a court judgment, the funds might remain available to those persons, is not a function to be performed by the court as part of its hearing and determination of a case.

In the main proceedings, the applicant stated in its application that the shares in the defendant are owned by a legal person the beneficial owner of which is a natural person on whom a sanction was imposed. However, the parties to the proceedings do not always report those circumstances. In this regard, the Senate must ascertain to what extent Regulation (EU) No 269/2014 imposes on the court an obligation to verify on its own initiative whether any of the parties to the proceedings in a civil case is one of the persons mentioned in Article 2 or in Article 11(1)(a) or (b) of Regulation No 269/2014 (fourth question referred for a preliminary ruling).

11 The Latvian version of Article 11(1) of Regulation (EU) No 269/2014 provides that 'prasības neapmierina', in other of words, that 'no[ne of the] claims' referred to in that paragraph 'shall be satisfied' if they are made by any of the persons mentioned in points (a) and (b) of that same paragraph. The expression 'no claims … shall be satisfied', which could be recognised as being an autonomous concept of EU law, since it does not contain any reference to the law of the

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Member States, is expressed in French as *il n'est fait droit à aucune demande*, in English as *no claims [...] shall be satisfied* and in German as *Forderungen [...] wird nicht stattgegeben*. The Senate's analysis of this concept shows that the relevant languages refer more to the substantiation of the claim and not so much to a specific procedural solution when the courts hear the merits of the case.

[11.1] In the opinion of the Senate, that provision of the regulation does not provide a clear answer to the question of its legal effects, that is to say how a court must act in cases where the claim is made by a person referred to in points (a) or (b) of that paragraph.

For example, the Latvian national legislation on civil procedure provides for the possibility of dismissing an action, declaring the application to be inadmissible or terminating the proceedings. Each one of those procedural actions creates different legal effects: if the application is declared inadmissible, the applicant is entitled to bring the same action before the courts again [Article 222 of the *Civilprocesa likums* (Law of Civil Procedure)]; if the proceedings are stayed, they will be resumed when the circumstances prompting the stay of proceedings cease to exist [Article 218 of the *Civilprocesa likums* (Law of Civil Procedure)]; if, however, the action is dismissed or the hearing and determination of a case is terminated, the applicant will no longer be entitled to bring the same action before the courts again [Article 132(1)(5) and Article 225 of the *Civilprocesa likums* (Law of Civil Procedure)]. It follows from the foregoing in particular that applying different legal effects may produce a different impact on the fundamental rights of the parties to a civil case, including the right to property and the right to a fair trial.

[11.2] The Senate considers that it is appropriate to separate the resolution of a dispute relating to rights from the possibility of effective enforcement of a judgment. Given that sanctions are provisional, it would be unreasonable to deny the possibility of the dispute being heard or to postpone its hearing and determination solely because the applicant appears in the relevant list of persons affected by sanctions.

The Latvian rules on civil procedure state that, if it is established that the applicant is a person affected by sanctions, the bailiff has an obligation not to enforce the judgment [Article 552.[1], point 7, of the *Civilprocesa likums* (Law of Civil Procedure)], which might ensure compliance with the provision in Article 11(1) of Regulation (EU) No 269/2014 to the effect that 'no claims' made by that person 'shall be satisfied'. Nonetheless, the national legislation also provides for the voluntary enforcement of a judgment [Article 204(1) of the *Civilprocesa likums* (Law of Civil Procedure)], in which event there would be no guarantee of compliance with the requirements of the aforementioned provision of the regulation.

In order to ensure that a judgment given in relation to a claim made by a person affected by sanctions is not enforced even at the stage of the voluntary

enforcement of judgments, […] the [Senate] proposes that consideration be given to the following solution. The court could include in the operative part of the judgment a statement to the effect that the judgment may not be enforced while that person appears on the list in question. If a person were to object to that statement in the operative part, that challenge would have to prevent the remaining part of the judgment from becoming final, thus ensuring that there is no possibility of the judgment being voluntarily or compulsorily enforced before the sanctions issue is definitively resolved. Once the judgment – the operative part of which contains the statement in question – became final, it would not be enforceable, either voluntarily or compulsorily, until the relevant sanctions were lifted.

[11.3] In such circumstances, the Senate considers there to be justification for asking the Court of Justice of the European Union for an interpretation of the expression 'no claims … shall be satisfied' that is used in Article 11(1) of Regulation (EU) No 269/2014 and to clarify what legal effects arise from the application of that paragraph, in particular in the light of the broad interpretation of assets and restrictive measures adopted by the Court of Justice of the European Union in its case-law (on these issues, see the judgments of the Court of Justice of the European Union of 11 November 2021, *Bank Sepah*, C-340/20, EU:C:2021:903, and of 17 January 2019, *SH*, C-168/17, EU:C:2019:36), and the fact that sanctions are by their nature a temporary and reversible preventive measure which is not intended to deprive the persons affected of their property (see the judgment of the Court of Justice of the European Union of 15 December 2022, *Instrubel*, Joined Cases C-753/21 and C-754/21, EU:C:2022:987, paragraph 50) (fifth question referred for a preliminary ruling).

12 Article 2 of Regulation (EU) No 269/2014 provides that the funds and economic resources of the persons mentioned in that article are to be frozen. Article 1(e) and (f) of that regulation defines 'freezing of economic resources' and 'freezing of funds'. In order for the freezing of economic resources and funds to be effective, it might be justifiable to apply the provision contained in Article 11(1) of Regulation (EU) No 269/2014 – to the effect that 'no claims … shall be satisfied' – not only where the person referred to in that provision is the applicant but also, albeit in certain circumstances, where that person is the defendant.

In the circumstances of the case in the main proceedings, it may be that it is not the applicant who acts 'through or on behalf of' the natural or legal person, entity or body listed in Annex I to Regulation (EU) No 269/2014, but the defendant who acts in that capacity. The Senate is of the opinion that, where the ownership structures of the applicant and the defendant are linked, there might be justification for the provision contained in Article 11(1) of that regulation – to the effect that 'no claims … shall be satisfied' – to be applied to the defendant too (sixth question referred for a preliminary ruling).

13 As a rule, data relating to natural persons (including first names and surnames) are pseudonymised (anonymised) in court decisions, in accordance with the

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requirements of the General Data Protection Regulation. However, if a court does not disclose the identity of the specific person affected by sanctions, it will not be able to set out the reasoned grounds for its judgment. Moreover, those details are important not only to the parties to the proceedings in a case but also to the public, as a means of providing information and allowing for public scrutiny of the exercise of judicial activities (see the findings on this issue in the case-law of the Court of Justice of the European Union: judgments of 22 November 2022, *Luxembourg Business Registers*, Joined Cases C-37/20 and C-601/20, EU:C:2022:912, and of 24 March 2022, *Autoriteit Persoonsgegevens*, C-245/20, EU:C:2022:216).

The inclusion of a person on the list of persons affected by sanctions would be such as to deprive that person of the rights arising from the General Data Protection Regulation only in certain circumstances where the rights of other persons to obtain relevant information on the person affected by sanctions are considered more important than the data protection rights enjoyed by that person. In that context, it is important to clarify which of the regulations – the one on sanctions or the one on data protection – prevails and whether it would therefore be necessary to disclose data relating to the person affected by sanctions in the legal grounds of the court's decision, and whether those personal data would have to be pseudonymised (anonymised) when the court's decision is published (seventh question referred for a preliminary ruling).

14 The Senate's examination of the case-law of the Court of Justice of the European Union has been inconclusive and has not clarified how the rules on the adoption of restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine are to be applied. Consequently, the Senate considers it necessary to make a reference to the Court of Justice of the European Union.

Operative part

In accordance with Article 267 of the Treaty on the Functioning of the European Union, […] the Senate (Supreme Court, Latvia):

hereby decides

to refer the following questions to the Court of Justice of the European Union for a preliminary ruling:

(1) What circumstances indicate that a person is an associated person within the meaning of Article 2 of Council Regulation (EU) No 269/2014 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ('Regulation No 269/2014')? And must a legal person be regarded as an associated legal person if 50% of its shares belong to a legal person and the beneficial owner of the latter is a natural person appearing on the list in the annex to Council Implementing Regulation (EU) 2022/336 of 28 February 2022 implementing Regulation (EU)

No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine?

(2) If the second part of the first question referred for a preliminary ruling is answered in the affirmative, must a legal person also be regarded as an associated legal person within the meaning of Article 2 of Regulation No 269/2014 if it holds 50% of the shares in the legal person described in the second part of the first question referred for a preliminary ruling?

(3) Do the persons, entities or bodies mentioned in Article 11(1)(b) of Regulation No 269/2014 also include associated legal persons within the meaning of Article 2 of Regulation No 269/2014?

(4) Is a court obliged, when examining any claim, to verify on its own initiative whether any of the parties to the proceedings is one of the persons mentioned in Article 2 or Article 11(1)(a) or (b) of Regulation No 269/2014?

(5) What are the legal effects of Article 11(1) of Regulation No 269/2014, which provides that ‘no claims’ made by the persons mentioned in points (a) or (b) of that paragraph ‘shall be satisfied’? Or would it be permissible for the substance of those claims to be heard and determined if the operative part of the court’s judgment contained a statement that the judgment may not be enforced as long as those persons appear on the list concerned?

(6) Does Article 11(1) of Regulation No 269/2014 produce legal effects where the applicant is not one of the persons mentioned in points (a) or (b) of that paragraph, but the defendant *is* one of the persons mentioned in points (a) or (b) of that paragraph?

(7) Should data relating to the natural person affected by sanctions (first name and surname) be disclosed in the legal grounds of the court’s decision? And should those personal data be pseudonymised when the court’s decision is published?

The proceedings are stayed pending a ruling from the Court of Justice of the European Union.

This decision is not open to appeal.

[…] [signatures and procedural formula]

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