Request for a preliminary ruling from the Cour de cassation (France) lodged on 26 July 2018 — UB v VA, Tiger SCI, WZ, as UB's trustee in bankruptcy, Banque patrimoine et immobilier SA

(Case C-493/18)

(2018/C 364/04)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant in cassation: UB

Respondents in cassation: VA, Tiger SCI, WZ, as UB's trustee in bankruptcy, Banque patrimoine et immobilier SA

Questions referred

1. Does the action brought by the trustee in bankruptcy appointed by the court of the Member State which opened the insolvency proceedings seeking a declaration that mortgages registered over immovable property of the debtor located in another Member State and the sale of that immovable property in that State are ineffective as against the trustee, with a view to the restitution of those assets to the debtor's estate, derive directly from the insolvency proceedings and is it closely linked to them?

2. If so, do the courts of the Member State in which the insolvency proceedings were opened have exclusive jurisdiction to hear and determine the action brought by the trustee in bankruptcy or, on the contrary, do the courts of the Member State in which the immovable property is located alone have jurisdiction for that purpose, or is there concurrent jurisdiction between those various courts, and, if so, under what conditions?

3. Can the judgment by which the court of the Member State which opened the insolvency proceedings authorises the trustee in bankruptcy to bring, in another Member State, an action falling, in principle, within the jurisdiction of the court which opened the proceedings, have the effect of imposing the jurisdiction of that other State, in so far as, inter alia, that judgment could be classified as a judgment concerning the course of insolvency proceedings within the meaning of Article 25(1) of Regulation [No 1346/2000] ([1]) which may, on that basis, be recognised with no further formalities, pursuant to that article?

([1]) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 30 July 2018 — BT v Balgarska narodna banka

(Case C-501/18)

(2018/C 364/05)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: BT

Defendant: Balgarska narodna banka

Questions referred

1. Does it follow from the principles of EU law of equivalence and effectiveness that a national court is obliged to regard, of its own motion, an action as having been brought on the ground of a breach of an obligation arising from Article 4(3) of the Treaty on European Union (TEU) by a Member State if the action relates to the non-contractual liability of the Member State for losses arising from an infringement of EU law that were allegedly caused by an authority of a Member State, and

   — Article 4(3) TEU was not expressly specified as a legal basis in the application, but it is clear from the grounds for the action that the loss is asserted on the ground of an infringement of provisions of EU law;

   — the claim for damages was based on a national provision regarding State liability for losses that arise in the performance of administrative activity, and that liability is strict and was incurred under the following conditions: unlawfulness of a legal act, act or omission of an authority or official in the course of or in connection with the performance of administrative activity; material or non-material loss incurred; direct and immediate causal link between the loss and the unlawful conduct of the authority;

   — under the law of the Member State, the court must determine, of its own motion, the legal basis for State liability for the activity of the judicial authorities on the basis of the circumstances on which the action is based?

2. Does it follow from recital 27 of Regulation (EU) No 1093/201[0] ([1]) of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) that, under circumstances such as those of the main proceedings, the recommendation issued on the basis of Article 17(3) of the regulation, in which an infringement of EU law by the central bank of a Member State in connection with the deadlines for paying out guaranteed deposits to the depositors in the respective credit institution has been established:

   — confers on the depositors at that credit institution the right to invoke the recommendation before a national court in order to substantiate an action for damages on the ground of that infringement of EU law, if account is taken of the European Banking Authority's express power to establish infringements of EU law, and if it is considered that the depositors are not, and cannot be, the addressees of the recommendation and the latter does not establish any direct legal consequences for them;

   — is valid, having regard to the requirement that the infringed provision must provide for clear and unconditional obligations, if consideration is given to the fact that point (i) of Article 1(3) of Directive 94/19/EC ([2]) on deposit-guarantee schemes, if it is interpreted in conjunction with recitals 12 and 13 of that directive, does not contain all the elements required to establish a clear and unconditional obligation for the Member States and does not confer direct rights on depositors, and taking account of the fact that that directive provides for only minimum harmonisation that does not cover the indications by means of which unavailable deposits are determined, and that the recommendation has not been substantiated by other clear and unconditional provisions of EU law in relation to those indications, in particular the assessment of the lack of liquidity and the current lack of prospects of payout; an existing obligation to order early intervention measures and to maintain the business activity of the credit institution;

   — in view of the subject matter, the deposit guarantee, and the power of the European Banking Authority to issue recommendations on the deposit guarantee scheme pursuant to Article 26(2) of Regulation (EU) No 1093/2010, is valid in relation to the national central bank, which has no connection with the national deposit guarantee scheme and is not a competent authority pursuant to point [iii] of Article 4(2) of that regulation?

3. Having regard also to the current state of the EU law relevant to the main proceedings, does it follow from the judgments of the Court of Justice of the European Union of 12 October 2004, *Paul and Others* (C-222/02, EU:C:2004:606, paragraphs 38, 39, 43 and 49 to 51), of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 42 and 51), of 15 June 2000, *Dorsch Consult* v *Council and Commission* (C-237/98 P, EU:C:2000:321, paragraph 19), and of 2 December 1971, *Zuckerfabrik Schöppenstedt* v *Council* (5/71, EU:C:1971:116 paragraph 11) that:

   A) the provisions of Directive 94/19, particularly Article 7(6), confer on depositors the right to assert claims for compensation against a Member State for defective supervision regarding the credit institution that administers their deposits, and are those rights restricted to the guaranteed amount of the deposits or is the term 'rights to compensation' in that provision to be interpreted broadly?

B) the supervisory measures adopted by the central bank of a Member State to reorganise a credit institution, such as those in the main proceedings, including the suspension of payments, which are provided for, in particular, in the seventh indent of Article 2 of Directive 2001/24/EC ([3]), constitute an unjustified and unreasonable infringement of the depositors' right to property that incurs liability for losses arising from an infringement of EU law if, having regard to Article 116(5) of the Law on credit institutions and Article 4(2)(1) and Article 94(1)(4) of the Law on bank insolvency, the law of the respective Member State provides that contractual interest is calculated for the duration of the measures and the claims that exceed the guaranteed amount of the deposits can be satisfied in general insolvency proceedings, and provides that interest can be paid?

C) the requirements provided for in the national law of a Member State for non-contractual liability for losses arising from an act or omission in connection with the exercise by a Member State's central bank of the supervisory powers covered by the scope of application of Article 65(1)(b) TFEU must not run counter to the requirements and principles of that liability that apply under EU law, specifically: the principle according to which actions for damages are independent of actions for annulment and the established illegality of a requirement under national law that a legal act or an omission on the basis of which compensation is sought must be annulled beforehand; the illegality of a requirement under national law regarding the culpability of authorities or officials for whose conduct compensation is sought; the requirement in respect of actions for damages to compensate for material harm whereby the plaintiff must have suffered actual and certain damage at the time the action was brought?

D) on the basis of the principle of EU law according to which actions for damages are independent of actions for annulment, the requirement that the relevant conduct of the authority be unlawful must be met, which is equivalent to the requirement under the national law of the Member State according to which the legal act or the omission on the basis of which compensation is sought, namely the measures to reorganise a credit institution, must be annulled, if consideration is given to the circumstances of the main proceedings and it is considered that:

— these measures are not directed at the applicant, which is a depositor at a credit institution, and that it is not entitled under national law and in accordance with the national case-law to apply for the annulment of the individual decisions by means of which these measures were ordered, and that those decisions have become final;

— EU law, specifically Directive 2001/24 in this area, does not impose an express obligation on the Member States to provide for the possibility of challenging the supervisory measures for the benefit of all creditors in order to establish the validity of the measures;

— the law of a Member State does not provide for non-contractual liability for losses incurred due to lawful conduct on the part of authorities or officials?

E) In the event of an interpretation to the effect that, under the circumstances of the main proceedings, the requirement that the respective conduct of the authority be unlawful is not applicable to actions of depositors at a credit institution for compensation due to acts and omissions of the central bank of a Member State and, in particular, for the payment of interest for guaranteed deposits not having been paid out within the deadline and for the payment of deposits exceeding the guaranteed amount, which are brought to seek compensation for an infringement of Articles 63 to 65 and 120 TFEU, Article 3 TEU and Article 17 of the Charter of Fundamental Rights of the European Union, are the requirements established by the Court of Justice of the European Union for non-contractual liability applicable to losses:

— that arose due to lawful conduct on the part of an authority, specifically the three cumulative requirements, namely the existence of actual loss, a causal link between that loss and the act concerned, and the abnormal and special nature of the loss, particularly in the case of actions for the payment of interest for guaranteed deposits not being paid out within the deadline, or

— in the domain of economic policy, particularly the requirement 'only if there has been a sufficiently serious breach of a superior rule of law for the protection of individuals', particularly in actions of depositors for the payment of deposits exceeding the guaranteed amount, which are asserted as a loss and to which the procedure provided for by national law is applicable, if account is taken of the wide discretion enjoyed by the Member States in connection with Article 65(1)(b) TFEU and the measures under Directive 2001/24 and if the circumstances pertaining to the credit institution and the person seeking compensation relate to only one Member State but the same provisions and the constitutional principle of equality before the law apply to all depositors?

4. Does it follow from the interpretation of Article 10(1) in conjunction with point (i) of Article 1(3) and Article 7(6) of Directive 94/19 and the legal considerations in the judgment of the Court of Justice of the European Union of 21 December 2016, *Vervloet and Others* (C-76/15, EU:C:2016:975, paragraphs 82 to 84), that the scope of application of the provisions of the directive cover depositors

— whose deposits were not repayable on the basis of contracts and statutory provisions during the period running from the suspension of payments of the credit institution to the withdrawal of its authorisation for banking business, and the respective depositor has not expressed that he seeks repayment,

— who have agreed to a clause that provides for the guaranteed amount of the deposits to be paid out in accordance with the procedure governed in the law of a Member State, and specifically after the withdrawal of the authorisation of the credit institution that manages the deposits, and that requirement has been met, and

— the aforementioned clause of the deposit contract has the force of law between the contracting parties under the law of the Member State?

Does it follow from the provisions of that directive or from other provisions of EU law that the national court may not take such a clause in the deposit contract into consideration and may not examine the action of a depositor for the payment of interest due to failure to pay out the guaranteed amount of deposits within the deadline pursuant to that contract on the basis of the requirements for non-contractual liability for loss arising from an infringement of EU law and on the basis of Article 7(6) of Directive 94/19?

(1) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ 2010 L 331, p. 12).
(2) Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ 1994 L 135, p. 5).
(3) Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ 2001 L 125, p. 15).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 30 July 2018 — COPEBI SCA v Etablissement national des produits de l'agriculture et de la mer (FranceAgriMer)

(Case C-505/18)

(2018/C 364/06)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: COPEBI SCA

Respondent: Etablissement national des produits de l'agriculture et de la mer (FranceAgriMer)

Other party: Ministre de l'Agriculture et de l'Alimentation

Question referred

Is European Commission Decision 2009/402/EC of 28 January 2009 concerning the 'contingency plans' in the fruit and vegetable sector implemented by France (C 29/05 (ex NN 57/05)) (1) to be interpreted as covering aid paid by the office national interprofessionnel des fruits et légumes et de l'horticulture) (ONIFLHOR) (National Fruit, Vegetables and Horticulture Trade Board) to the comité économique agricole du bigarreau d'industrie (CEBI) (Economic Committee for the Whiteheart Cherry Industry) and allocated to producers of whiteheart cherries for industrial uses by the producer groups which are members of that committee, even though CEBI is not one of the eight economic agricultural committees referred to in paragraph 15 of the decision and the aid in question, unlike the financing mechanism described in paragraphs 24 to 28 of that decision, was financed only by subsidies from ONIFLHOR and not also by voluntary contributions from producers, known as sectoral contributions?

(1) OJ 2009 L 127, p. 11.