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Judgment of the Court in Case C-118/23 | Getin Holding and Others

The Court clarifies the rules concerning the independence of a national resolution authority and actions against its decisions in respect of failing financial institutions

In December 2021, the financial supervision authority in Poland appointed a temporary administrator¹ to Getin Noble Bank with the aim of improving that bank's situation. That function was entrusted to the Polish Bank Guarantee Fund (BGF). According to the national legislation, the BGF is primarily responsible for performing resolution and bank deposit guarantee functions.

In September 2022, in response to the risk of Getin Noble Bank becoming insolvent, the BGF, as resolution authority, decided to take a crisis management measure intended fundamentally to place that bank under resolution.² The Supervisory Board of Getin Noble Bank brought an action against that decision before the Polish administrative court with jurisdiction. The legality of the decision is also being challenged by other persons, including shareholders of the bank, holders of bonds issued by it and private persons who had concluded loan agreements the validity of which was disputed due to the presence of potentially unfair terms. In total, more than 8 000 actions have been brought, equivalent to the average number of actions received by that court in two years.

In the context of those proceedings, the administrative court has referred questions to the Court of Justice expressing uncertainties regarding matters which are, on the one hand, procedural and, on the other, substantive.

First, it states that it is obliged, by a procedural provision, to join all the actions for the purposes of hearing and ruling on them together. As a result, it would be excessively difficult, if not impossible, to give judgment within a reasonable time.³ In that context, the referring court questions whether it is strictly necessary, in order to protect the rights conferred on them by EU law, that all the persons affected by the decision at issue should be able to bring proceedings before an administrative court.⁴

Asked to rule in that regard, the Court notes that a decision to take a crisis management measure against a bank is liable to affect a considerable number of persons and, therefore, to give rise to numerous actions. **The joinder of those actions risks infringing the right to a hearing within a reasonable time.**

The national court must, if necessary, **disapply the provisions that would prevent it from disjoining the actions in question.** Furthermore, it must be able to take the measures necessary in order to determine the dispute within a reasonable time while preventing the risk of irreconcilable judgments delivered by different judges.

The Court also notes that EU law⁵ gives all persons affected by the decision at issue the right to challenge it in legal proceedings. **They may not be deprived of the right to rely on their own pleas in support of their actions, in an exchange of arguments.** The substantive hearing of only the action brought by the bank's Supervisory Board and the fact that a judgment ruling on that action will have effects with regard to all persons affected⁶ do not permit the inference that the right to an effective remedy of any other person affected would be upheld.

Second, as regards the making of the decision at issue, the national court wishes to ascertain the requirements relating to the independence of the resolution authority where it also performed the function of temporary administrator of the bank concerned and has also been entrusted with bank deposit guarantee functions.

The Court observes that, where a national resolution authority performs more than one function, EU law provides that, when it performs the resolution task, that authority's decision making must be protected against any influence external to that task. In relation to its other functions, **EU law requires structural arrangements to be made in order to ensure the operational independence of the resolution authority and to avoid any conflict of interest.**

Where there are no written internal rules intended to ensure that independence, **there can be compliance with that requirement as the result of organisational and other measures that are sufficient for that purpose.** Furthermore, the non-publication of such rules does not automatically invalidate the resolution decision. However, it is for the resolution authority to establish that those rules were complied with, and that its decision was accordingly made exclusively in order to achieve resolution objectives.⁷

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text, and, as the case may be, an abstract](#), of the judgment is published on the CURIA website on the day of delivery.

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¹ Within the meaning of Article 29 of [Directive 2014/59/EU](#) of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

² The resolution of a failing bank makes it possible, inter alia, to arrange for its business to be continued or transferred to a purchaser, while reducing to a minimum the impact of the failure on the economy and the financial system.

³ The right to a hearing within a reasonable time forms part of the right to an effective remedy enshrined by Article 47 of the Charter of Fundamental Rights of the European Union.

⁴ In that regard, the administrative court explains that the Polish administrative courts perform a comprehensive review of the legality of the contested decision, in which they are not bound by the pleas in law, forms of order sought and legal basis contained in the application. The final judgment will have '*erga omnes*' effect, that is to say, it may be relied on by any person affected by that decision, whether or not that person has brought a judicial action disputing the legality of the decision.

⁵ Article 85(3) of Directive 2014/59.

⁶ '*Erga omnes*' effect, see footnote 4.

⁷ Those objectives are laid down by Article 31 of Directive 2014/59.