

Case C-246/24**Request for a preliminary ruling****Date lodged:**

5 April 2024

Referring court:

Oberlandesgericht Frankfurt am Main (Germany)

Date of the decision to refer:

2 April 2024

Criminal proceedings against:

ZZ

1 ORs 61/23

943 Cs 7140 Js 230982/22

AG Frankfurt am Main (Local Court, Frankfurt am Main, Germany)

**OBERLANDESGERICHT FRANKFURT AM MAIN (HIGHER
REGIONAL COURT, FRANKFURT AM MAIN, GERMANY)****ORDER**

In the criminal proceedings

a g a i n s t Z Z

c o n c e r n i n g attempted unlawful export of banknotes,

the First Criminal Chamber of the Higher Regional Court, Frankfurt am Main,

on 2 April 2024, has o r d e r e d:

- I. The following question is referred to the Court of Justice of the European Union pursuant to Article 267 TFEU for a preliminary ruling on the interpretation of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2014 L 229, p. 1):

Is the export of banknotes denominated in any official currency of a Member State necessary for the personal use of a natural person travelling to Russia, within the meaning of Article 5i(2)(a) of Regulation (EU) No 833/2014, where such banknotes are intended to be used for that person's medical treatment (in this case dental treatment, hormone therapy in a fertility clinic and follow-up treatment due to breast surgery in a plastic surgery clinic) in Russia?

- II. The proceedings relating to the appeal on a point of law (*Revision*) are stayed pending the decision of the Court of Justice of the European Union on the question referred.

Grounds:

- 1 The First Criminal Chamber of the Higher Regional Court, Frankfurt am Main, has to decide on the appeal on a point of law (*Revision*) brought by the accused against a judgment of the Local Court, Frankfurt am Main, which sentenced the accused to 120 day-fines in the amount of € 150.00 for attempted unlawful export of banknotes.

I.

- 2 1. The preliminary ruling procedure is based on the following facts established by the Local Court:

‘On 31 May 2022, the accused went to Frankfurt Airport in order to travel to Istanbul on flight TK 1594. From there, the accused intended to continue directly, that is to say without a stopover, on flight TK0419 to Moscow. The accused was carrying a total of EUR 14 855 and RUB 99 150 in savings. The accused wanted to go on holiday in Russia from 31 May to 21 June 2022. The money was intended firstly to cover travel costs, but above all to receive dental treatment (veneers), hormone therapy in a fertility clinic and follow-up treatment due to breast surgery in a plastic surgery clinic in Russia. The treatments would have cost the accused many times more from a doctor established in Germany. The accused underwent a customs inspection in the aviation security control area B East, Hall B, Terminal 1, whereby the abovementioned cash was discovered. The accused had not made a prior declaration of the planned transfer of the money to customs in accordance with the Cash Regulation. Euro banknotes in the amount of EUR 13 800 were seized. The remaining euro banknotes in the amount of EUR 1 055 were left to the accused for personal use in order to cover her travel costs. The accused did not make the journey.’

- 3 Those facts established by the Local Court are binding on this Chamber.

- 4 2. The relevant legal framework is as follows:

- 5 (a) European Union law
- 6 Article 5i(1) and (2)(a) of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine is relevant in the context of EU law to the question referred ('Regulation (EU) No 833/2014').
- 7 Under Article 5i(1) of Regulation (EU) No 833/2014, it is to be prohibited to sell, supply, transfer or export banknotes denominated in any official currency of a Member State to Russia or to any natural or legal person, entity or body in Russia, including the government and the Central Bank of Russia, or for use in Russia.
- 8 Exceptions to that prohibition are provided for in Article 5i(2) of Regulation (EU) No 833/2014. According to Article 5i(2)(a) of Regulation (EU) No 833/2014, the prohibition in paragraph 1 of that article is not to apply to the sale, supply, transfer or export of banknotes denominated in any official currency of a Member State provided that such sale, supply, transfer or export is necessary for the personal use of natural persons travelling to Russia or members of their immediate families travelling with them.
- 9 (b) National (German) law
- 10 The relevant penal provision is Paragraph 18 of the Außenwirtschaftsgesetz (German Law on Foreign Trade; 'the AWG'). Under point 1(a) of Paragraph 18(1) of the AWG, anyone who infringes a prohibition on export, import, transit, transfer, sale, purchase, supply, provision, transmission or investment laid down in a directly applicable legal act of the European Communities or of the European Union published in the Official Journal of the European Communities or of the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of the Common Foreign and Security Policy, is to be liable to a custodial sentence of three months to five years. Any attempt to do so is punishable under Paragraph 18(6) of the AWG.
- 11 3. The Local Court, Frankfurt am Main, found the accused guilty of attempted unlawful export of banknotes under point 1(a) of Paragraph 18(1) and Paragraph 18(6) of the AWG in conjunction with Article 5i(1) of Regulation (EU) No 833/2014. In its legal assessment, the Local Court did not consider the euro banknotes carried by the accused when she left the country for intended medical treatment in Russia to be covered by the exception provided for under Article 5i(2)(a) of Regulation (EU) No 833/2014. In order to interpret the term 'personal use' contained in Article 5i(2)(a) of Regulation (EU) No 833/2014, it relied on the recitals of that regulation set out under section 2 and the 'Frequently Asked Questions' on 'Banknotes (Article 5i)' available on the European Commission's website (https://finance.ec.europa.eu/system/files/2022-08/faqs-sanctions-russia-euro-banknotes_en.pdf).

- 12 4. By her leap-frog appeal on a point of law, the accused contests her conviction and alleges an infringement of substantive law.

II.

- 13 The Chamber has referred the question to the Court of Justice of the European Union for a preliminary ruling pursuant to the third paragraph of Article 267 TFEU. It considers that an answer to the question referred is necessary for its decision on the appeal on a point of law within the meaning of the second paragraph of Article 267 TFEU.
- 14 1. The decision on the accused’s appeal on a point of law depends on the answer to the question referred. The question whether the accused has committed an offence under point 1(a) of Paragraph 18(1) and Paragraph 18(6) of the AWG on the ground that she has infringed an export prohibition laid down in a directly applicable legal act of the European Union published in the Official Journal of the European Union which serves to implement an economic sanction adopted by the Council of the European Union in the field of the Common Foreign and Security Policy, must be assessed in the present case in the light of how the concept of ‘personal use’ under Article 5i(2)(a) of Regulation (EU) No 833/2014 is to be interpreted.
- 15 (a) Under point 1 of Paragraph 18(1) of the AWG, Regulation (EU) No 833/2014 is a directly applicable legal act of the European Union published in the Official Journal of the European Union which serves to implement an economic sanction against Russia adopted by the Council of the European Union. The accused has committed an offence under point 1(a) of Paragraph 18(1) and Paragraph 18(6) of the AWG if she has infringed a prohibition laid down in that regulation. Such an infringement arises under Article 5i(1) of Regulation (EU) No 833/2014 only if the accused’s intended export of the euro-denominated banknotes was not necessary for her personal use. In this respect, the decision on the accused’s appeal on a point of law hinges on whether a person travelling from Germany to Russia infringes the prohibition laid down in Art. 5i(1) of Regulation (EU) No 833/2014 where that person exports banknotes denominated in any official currency of a Member State in order to use them for dental treatment, hormone therapy in a fertility clinic and follow-up treatment due to breast surgery in a plastic surgery clinic in Russia.
- 16 (b) The interpretation of Article 5i(2)(a) of Regulation (EU) No 833/2014 is a matter for the Court of Justice of the European Union alone. That court has not yet ruled on this question. There is also no preliminary ruling from the Court of Justice of the European Union in a similar case (*‘acte éclairé’*).
- 17 (c) Nor is the interpretation so obvious as to leave no scope for any reasonable doubt in the sense of an *‘acte clair’*. The term ‘personal use’ is not explained in more detail in Regulation (EU) No 833/2014. In the ‘Frequently Asked Questions’ available on the European Commission’s website

(https://finance.ec.europa.eu/system/files/2022-08/faqs-sanctions-russia-euro-banknotes_en.pdf) in that regard, it is explained that the non-commercial character is decisive for the determination of personal use. Therefore, the personal use of banknotes is distinguished from their commercial use. The purposes for which the exported banknotes may be used on the journey to and within Russia are not apparent in this respect. Nor does the use of the term ‘necessary’ enable any conclusions to be drawn as to the intended use of the cash being carried that is permitted by the exception.

[...]

WORKING DOCUMENT