

Anonymised version

Translation

C-434/24 - 1

Case C-434/24

Request for a preliminary ruling

Date lodged:

18 June 2024

Referring court:

Curtea de Apel Cluj (Romania)

Date of the decision to refer:

13 May 2024

Appellant

JD

Respondent

Ministerul Agriculturii și Dezvoltării Rurale – Agenția de Plăți și
Intervenție pentru Agricultură – Centrul Județean Bistrița-Năsăud

[...]

CURTEA DE APEL CLUJ

SECȚIA A III-A CONTENCIOS ADMINISTRATIV ȘI FISCAL

**(COURT OF APPEAL, CLUJ, ROMANIA, THIRD DIVISION FOR
ADMINISTRATIVE AND TAX MATTERS)**

[...]

ORDER

Public hearing of 13 May 2024

[...]

The referring court has examined the appeal lodged by the appellant JD against Civil Judgment No 197/2023 delivered on 15 June 2023 by the Tribunalul Bistrița-Năsăud (Bistrița-Năsăud Regional Court, Romania) [...] in the proceedings between the appellant and the respondent, the Ministerul Agriculturii și Dezvoltării Rurale – Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Bistrița-Năsăud (Ministry of Agriculture and Rural Development – Payments and Intervention Agency for Agriculture (APIA) – Bistrița-Năsăud District Centre), seeking the annulment of an administrative act (Decision No 1/05.01.2023).

[...]

The Registrar of the referring court indicates that the case at hand has been re-registered in order to invite the parties to reflect on the need to refer questions to the Court of Justice of the European Union for a preliminary ruling [...]

[...] [indication of the questions referred for a preliminary ruling, reproduced in the operative part of the request for a preliminary ruling]

[...]

The referring court, having regard to the need to include in the record the response by [the Court of Justice of the European Union] to the questions referred for a preliminary ruling, submits the questions [to the Court of Justice] for a preliminary ruling, [...].

THE REFERRING COURT

I. Subject matter of the case, position of the parties and facts established by the referring court

The [appellant] JD applied for financial support for agriculture for the year 2019 and indeed received financial support from the European funds EAGF and EAFRD, as well as from national funds, for a total area of 41.69 hectares (ha) of municipal meadows.

The grazing area regarding which the [appellant] applied for support had been allocated to her by means of Lease Agreement No 1125/24.05.2018, concluded with the municipality of Chiochiș, concerning the lease of an area of 58.32 ha ('the lease agreement').

[The lease agreement] was cancelled by Civil Judgment No 151/2019 handed down at a public hearing on 10 May 2019. The appeal filed against that judgment was dismissed by the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania) in Civil Decision No 286/2020 as having been filed out of time.

The judgment cancelling [the lease agreement] was essentially based on the fact that there had been no publication of a call for tenders by direct negotiation within the 5-day period laid down in Article 25 of Annex 2 to Resolution No 23/19.04.2018 of the Municipality of Chiochiș' Municipal Council approving the lease of the municipal meadows of the Municipality of Chiochiș by open public tender, the lease regulation and the tender documents, with the result that the evaluation committee could not lawfully proceed with the award by direct negotiation of the meadows [to the appellant], making it necessary to annul the award procedure and to cancel the resulting measures, including the lease agreement concluded with the [appellant].

It was held, in essence, that the cancellation [of the lease agreement], on which the [appellant's] application for support was based, had been ordered as a result of the local authority's failure to fulfil an obligation, without any fault being found on the part of the [appellant].

Under national legislation, cancellation of a contract has retroactive effect. Indeed, pursuant to Article 1254 of the Codul civil (Romanian Civil Code): 'A contract which is rendered null and void or which is cancelled is deemed never to have been concluded'.

Accordingly, by Statement No 10796/24.11.2022 finding irregularities and settling budgetary claims, it was established that, as [the lease agreement] had been cancelled, it was necessary to refund the sum given in aid that had been granted for the plots of land under that agreement, and it was therefore established that the beneficiary had received the undue sum of 83 334.01 Romanian lei (RON).

By the action [...] [brought in the present proceedings], the [appellant JD (then the applicant)], bringing proceedings against [the respondent (then the defendant)], the Ministerul Agriculturii și Dezvoltării Rurale – Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Bistrița-Năsăud, sought (i) the annulment of Decision No 1/05.01.2023 concerning the ruling on the complaint lodged by JD and registered with the Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Bistrița-Năsăud [...], (ii) the upholding of the complaint lodged and, consequently, (iii) the annulment of the claim consisting in Statement No 10796/24.11.2022 finding irregularities and settling budgetary claims, concerning Single Payment Application No BN- 28061/10.05.2019 [under the Single Area Payment Scheme (SAPS)] – with the European funds EAGF and EAFRD, as well as with national funds[,] in addition to the costs of the proceedings.

By Civil Judgment No 197/2023, the Tribunalul Bistrița-Năsăud [...] held, in essence, that no administrative penalty had been imposed on the appellant, as only the restitution of the sums considered to have been wrongfully received by her for the areas of land covered by the commitment had been ordered; accordingly, that court considered that the criterion of absence of fault/guilt, omission/direct action

not attributable to the [appellant] as beneficiary of the payments could not be applicable. The Tribunalul [Bistrița-Năsăud] held that the cancellation of the lease agreement that had formed the basis for granting the requested payments for the 2019 campaign was governed, in terms of the effects of nullity, by the provisions of Article 1254(1) [of the] Codul civil: *‘A contract which is rendered null and void or which is cancelled is deemed never to have been concluded, with regard to Article 8(1)(n) of [Ordonanța de urgență a Guvernului (Government Emergency Order; ‘OUG’)] No 3/2015 requiring applicant farmers to comply with the general eligibility requirements, including the existence of a valid document under which the agricultural land is in their disposal, [and] according to Article 6(1) of OUG No 66/2011[,] the authorities responsible for managing the European funds are obliged to exclude, in whole or in part, from the reimbursement/payment of the expenses incurred and declared by beneficiaries, any expenditure that does not comply with the conditions of lawfulness or conformity laid down by the provisions of the national and Community legislation in force, in a situation where – in the payment claim verification process – they determine that such expenditure does indeed exist.*

The [appellant] filed an appeal against that judgment, requesting that the judgment under appeal be set aside and that, after being referred back for fresh adjudication, the action as originally filed be upheld.

At the appeal stage, the referring court invited the parties to reflect on the need to put forward the following questions [for a preliminary ruling]:

[...] [indication of the questions referred for a preliminary ruling, reproduced in the operative part of the request for a preliminary ruling]

By written observations placed in the case file, the [appellant] [...] has stated that she considers that putting forward the questions for a preliminary ruling indicated by the court is necessary.

By written observations placed in the case file [...], the [respondent], the Agenția de Plăți și Intervenție pentru Agricultură – Centrul Județean Bistrița-Năsăud, has stated that it objects to putting forward the questions referred for a preliminary ruling, as it considers that they are not necessary.

II. Relevant legal provisions in the case at hand regarding the first question referred for a preliminary ruling

Under Article 63(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council [of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008]: ‘1. Where it is found that a beneficiary does not comply with the eligibility criteria, commitments or other obligations relating to the conditions for the granting of the aid or support,

as provided for in the sectoral agricultural legislation, the aid shall not be paid or shall be withdrawn in full or in part and, where relevant, the corresponding payment entitlements as referred to in Article 21 of Regulation (EU) No 1307/2013 [of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009] shall not be allocated or shall be withdrawn.’

Pursuant to Article 6(1) of [OUG] nr. 66/2011 privind prevenirea, constatarea și sancționarea neregulilor apărute în obținerea și utilizarea fondurilor europene și/sau a fondurilor publice naționale aferente acestora (Government Emergency Order No 66/2011 concerning the prevention and detection of, and penalties for, irregularities encountered in the allocation and use of European funds and/or national public funds relating thereto), ‘1. The authorities responsible for the European funds shall be obliged to exclude, in whole or in part, from the reimbursement/payment of the expenses incurred and declared by the beneficiaries any expenditure that does not comply with the conditions of lawfulness or conformity laid down by the provisions of the national and Community legislation in force, in a situation where – in the payment claim verification process – they determine that such expenditure does indeed exist’.

Pursuant to Article 8(1)(n) of OUG nr. 3/2015 pentru aprobarea schemelor de plăți care se aplică în agricultură în perioada 2015-2020 și pentru modificarea articolului 2 din Legea nr. 36/1991 privind societățile agricole și alte forme de asociere în agricultură (Government Emergency Order No 3/2015 for the approval of payment schemes that apply in agriculture in the period 2015-2020 and for the amendment of Article 2 of Law No 36/1991 on agricultural companies and other types of agricultural association), ‘In order to benefit from the direct payments provided for in Article 1(2), farmers must: ... present, when submitting a single payment application or amendments thereto, the necessary documents proving the legal use of the agricultural land, including land containing areas of environmental interest, and of animals. These documents must be signed prior to the filing of the single payment application and must be valid at least until 1 December of the application year’.

Pursuant to Article 1254 of the Codul civil, ‘a contract which is rendered null and void or which is cancelled is deemed never to have been concluded’.

III. Grounds for referring the first question for a preliminary ruling

The referring court considers that the question arises as to whether or not the concept of non-compliance with the eligibility criteria includes a situation in which, for reasons independent of any fault on the part of the beneficiary, a contract that was valid at the time the conditions for eligibility were assessed is cancelled.

The difficulty in interpretation arises from the fact that, in the case of the cancellation of a contract with retroactive effect, the beneficiary has indeed complied with the eligibility criterion relating to the legal possession of land at the time of filing the application, and indeed subsequently, until the time of the cancellation of the contract, without any other irregularity relating to the application for payment or the use of the land being attributable to it; on the other hand, irrespective of the beneficiary's fault, the cancellation of the contract produces retroactive effects, including with regard to the time of filing of the application for payment.

As a consequence, the Court of Justice of the European Union is asked to issue a preliminary ruling on the following question:

[...] [indication of the first question referred for a preliminary ruling, reproduced in the operative part of the request for a preliminary ruling]

In the referring court's view, this does not include a situation where the contract is cancelled with retroactive effect. This is because the referring court considers [that] Article 63(1) of [Regulation No 1306/2013] must be interpreted as taking into account concrete compliance with the eligibility criteria when these are assessed, the cancellation of the contract with retroactive effect not being relevant. It considers that such a situation should be taken into account from the moment of cancellation when assessing the title to the land in dispute. It considers that this position is the correct one because, otherwise, a beneficiary may find itself in a situation where it is asked to repay the sums received when it is in no way at fault and indeed, until the time of the cancellation, all the eligibility criteria were complied with and all the conditions relating to the use of the land were satisfied.

To the extent, however, that the Court of Justice of the European Union were to hold that, in the interpretation of Article 63(1) of [Regulation No 1306/2013], a situation in which a beneficiary does not satisfy the conditions for eligibility must also include the situation in which a contract that was valid at the time of the assessment of the conditions for eligibility is cancelled with retroactive effect, in accordance with national legislation, regardless of the time at which such cancellation occurs, the referring court puts forward a second question for a preliminary ruling.

IV. Relevant legal provisions in the case at hand regarding the second question referred for a preliminary ruling

[...] [quoting the text of Article 63(1) of Regulation No 1306/2013, reproduced above in section II]

Pursuant to Article 63(2) of [Regulation No 1306/2013], [...] 'moreover, where sectoral agricultural legislation so provides, Member States shall also impose administrative penalties, in accordance with the rules laid down in Article 64 and

Article 77. This shall be without prejudice to the provisions set out in Articles 91 to 101 of Title VI.[’]

Pursuant to Article 64(1) of [Regulation No 1306/2013], ‘as regards the administrative penalties referred to in Article 63(2), this Article shall apply in cases of non-compliance in relation to eligibility criteria, commitments or other obligations resulting from the application of sectoral agricultural legislation, with the exception of those referred to in Articles 67 to 78 of Chapter II of this Title and in Articles 91 to 101 of Title VI and of those subject to the penalties provided for in Article 89(3) and 89(4).’

Pursuant to Article 64(2)(d) [of that regulation], no administrative sanctions are to be imposed ‘where the person concerned can demonstrate to the satisfaction of the competent authority that he or she is not at fault for the non-compliance with the obligations referred to in paragraph 1 or if the competent authority is otherwise satisfied that the person concerned is not at fault’.

Pursuant to Article 64(5) of [Regulation No 1306/2013], [...] ‘the administrative penalties shall be proportionate and graduated according to the severity, extent, duration and reoccurrence of the non-compliance found, and shall respect the following limits:

- (a) the amount of the administrative penalty as referred to in point (a) of paragraph 4 shall not exceed 200% of the amount of the aid application or payment claim;
- (b) notwithstanding point (a), as regards rural development, the amount of the administrative penalty, as referred to in point (a) of paragraph 4, shall not exceed 100% of the eligible amount;
- (c) the amount of the administrative penalty, as referred to in point (b) of paragraph 4, shall not exceed an amount comparable to the percentage referred to in point (a) of this paragraph;
- (d) the suspension, withdrawal or exclusion referred to in points (c) and (d) of paragraph 4 may be set at a maximum of three consecutive years which may be renewed in the case of any new non-compliance.’

V. Grounds for referring the second question for a preliminary ruling

The difficulty in interpretation arises from the fact that Article 64(5) of [Regulation No 1306/2013], which lays down the legal regime for the application of penalties, expressly refers to the administrative penalties provided for in Article 63(2) of that regulation, without mentioning the provisions of Article 63(1) thereof.

Moreover, the withdrawal, in full or in part, of the payment made in respect of the aid covered by Article 63(1) of that regulation is a measure similar, in terms of its concrete application, to the administrative penalties provided for in Article 64(4)(a) and (b) thereof: ‘a reduction in the amount of aid or support to be paid in relation to the aid application or payment claim affected by the non-compliance or further applications’ and ‘payment of an amount calculated on the basis of the quantity and/or the period concerned by the non-compliance’, respectively.

Moreover, Article 63(1) [of Regulation No 1306/2013] refers to the withdrawal of the payment made in respect of the aid ‘in full or in part’, without specifying the situations in which [the withdrawal] must be [...] in full or in part.

Consequently, it appears necessary for the Court of Justice of the European Union to clarify whether or not the principle of proportionality applies in the application of Article 63(1) of [Regulation No 1306/2013].

In the referring court’s view, the principle of proportionality does indeed apply in this situation. Therefore, in particular, in a situation such as that in the case at hand (to the extent that the first question is answered in the affirmative), the referring court considers that it is justified to base the withdrawal, in full or in part, of the aid that has been granted both on the time at which the cancellation of the contract with retroactive effect actually occurred and on the degree of fault of the beneficiary with regard to the cause of cancellation of the contract.

On those grounds, pursuant to Article 267 of the Treaty on the Functioning of the European Union, the referring court requests the Court of Justice of the European Union to give a ruling on the questions set out above.

[...] [stay of proceedings]

ON THOSE GROUNDS

IN THE NAME OF THE LAW

ORDERS

that the following questions be referred to the Court of Justice of the European Union for a preliminary ruling:

‘1. In the interpretation of Article 63(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council [of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008], does a situation in which a beneficiary does not satisfy the conditions for eligibility include a situation in which a contract which was valid at the time of the assessment of the conditions for eligibility is cancelled with retroactive effect in accordance with

national legislation, regardless of the time at which that cancellation occurs, or does it not include such a situation?

2. If the answer to the preceding question is in the affirmative, can the principle of proportionality apply with regard to the withdrawal of payment under Article 63(1) of [Regulation No 1306/2013] or not?’

[...] [stay of proceedings, procedural provisions]

[...]

[procedure, signatures]

WORKING DOCUMENT