

Case C-34/23**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

24 January 2023

Referring court:

Sąd Okręgowy w Koszalinie (Poland)

Date of the decision to refer:

30 December 2022

Applicant:

RF

Defendant:

Getin Noble Bank S.A.

Subject matter of the main proceedings

Action for a declaration of invalidity in respect of a mortgage loan agreement denominated in Swiss francs (CHF) concluded with the defendant bank and for payment of a sum of money, and also an application by the applicant to secure a non-pecuniary claim by regulating the rights and obligations of the parties to the proceedings for the duration thereof by suspending the applicant's obligation to repay loan instalments in the amounts and on the dates laid down in that agreement.

Subject matter and legal basis of the request

Interpretation of Article 70(1) of Directive 2014/59 with a view to determining whether the prohibition set out in that provision relates only to the possibility of securing a pecuniary claim by way of enforcement or also to the introduction of any proceedings to secure claims in relation to an entity under special resolution.

Question referred for a preliminary ruling

‘Does the prohibition laid down in Article 70(1) 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 and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, relate only to the possibility of securing a pecuniary claim by way of enforcement or also to the institution of any proceedings to secure claims in relation to an entity under special resolution?’

Provisions of EU law cited

Treaty on the Functioning of the European Union, Articles 12 and 169(1)

Charter of Fundamental Rights of the European Union, Article 38

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, fourth, twenty-first and twenty-fourth recitals, and Articles 6(1) and 7(1)

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 and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, recital 5 and Article 70(1)

Provisions of national law cited

Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland), Article 76

Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Law of 23 April 1964 establishing the Civil Code), Articles 5, 22¹, 43¹, 44, 45, 58(1) to (3), 353¹, 358¹(1) to (4), 359(1) and (2), and 385¹(1) to (4)

Ustawa z dnia 29 sierpnia 1997 r. Prawo bankowe (Law of 29 August 1997 on banking), Article 69(1) and (2) (as it was worded at 31 August 2007)

Ustawa z dnia 10 czerwca 2016 r. o Bankowym Funduszu Gwarancyjnym, systemie gwarantowania depozytów oraz przymusowej restrukturyzacji (Law of 10 June 2016 on the Bank Guarantee Fund, the deposit guarantee scheme and special resolution (‘Law on the Bank Guarantee Fund’), Article 135(1) and (4)

Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Law of 17 November 1964 establishing the Code of Civil Procedure), Articles 13(2), 199(1), 730(1) and (2), 730¹(1), (2), (2¹) and 3, 731, 737, 738, 743(1) and (2), and 755

Succinct presentation of the facts and procedure in the main proceedings

- 1 A case brought by RF against GETIN Noble Bank SA in Warsaw for a declaration and payment is pending before the referring court. The applicant is seeking a declaration that the mortgage loan agreement denominated in CHF concluded with the defendant on 31 August 2007 is invalid. The applicant is further claiming payment to him by the defendant of the amount of PLN 80 657.30, plus ancillary claims. As a subsidiary claim, the applicant has requested a declaration that the provisions of the above agreement, which the applicant describes in detail, constitute unlawful contractual clauses and are not binding on him. Together with that request, the applicant claimed payment of PLN 28 780.01, plus ancillary claims.
- 2 Together with the application, the applicant requested that a non-pecuniary claim be secured by regulating the rights and obligations of the parties to the proceedings for the duration thereof by suspending the applicant's obligation to repay loan instalments in the amounts and on the dates laid down in the agreement from the date on which the claim is secured until the time at which the judgment concluding proceedings in the case becomes final. As grounds for that request, he stated that the legal interest in the claim being secured for the duration of the proceedings arises from the fact that failure to secure the claim could expose him to financial loss, since he pays the capital and interest instalments on a regular basis, which could lead to encumbrance of his assets and unjust enrichment of the defendant.

The essential arguments of the parties in the main proceedings

- 3 The applicant claims that the abovementioned mortgage loan agreement is invalid and contains unlawful contractual clauses which are not binding on him. In his view, he has a legal interest in the above non-pecuniary claim being secured on account of the risk of financial loss.
- 4 The defendant has not yet responded to the application because, at the time when the order for reference was made, it had not yet been served with a copy of the application since it is at first instance that the referring court decides on an application for a non-pecuniary claim to be secured.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 5 With regard to the need to refer the above question for a preliminary ruling, the referring court has noted that it is necessary to interpret EU law in order to enable it to apply correctly the provisions of national law relating to the possibility of securing a non-pecuniary claim in a situation where a special restoration procedure had been initiated against the defendant (on 29 September 2022), as a result of which the bank's business was transferred to a bridge bank set up by the Bank Guarantee Fund.
- 6 In the view of the referring court, the applicant's request for the non-pecuniary claim in the present case to be secured should in principle be granted as he has provided prima facie evidence for the claim and demonstrated the existence of a legal interest in the claim being secured.
- 7 However, under Article 135 of the Law on the Bank Guarantee Fund enforcement proceedings or proceedings to secure claims against the assets of an entity under restoration initiated prior to the initiation of restoration proceedings are to be discontinued (paragraph 1), whilst during the period of special restoration no enforcement proceedings or proceedings to secure claims may be initiated in relation to an entity under restoration (paragraph 4). The latter provision was transposed into Polish law pursuant to Directive 2014/59, on the basis of Article 70(1) thereof.
- 8 When considering the application, the referring court was uncertain as to the construction of Article 70(1) of Directive 2014/59 with regard to the interpretation of whether the prohibition laid down in that provision relates only to the possibility of securing a pecuniary claim by way of enforcement or also to the institution of any proceedings to secure claims in relation to an entity under special resolution.
- 9 The referring court took the view that it is possible to find that the prohibition laid down in Article 70 of Directive 2014/59 can apply only to items which already form part of the assets of an entity under resolution and that any enforcement or securing of claims could result in them being removed from those assets following the enforcement or securing of claims. In its view, the prohibition on initiating proceedings to secure claims cannot therefore apply to items which have not yet become part of those assets. In such a situation, the provision referred to would not preclude the applicant's request from being granted.
- 10 From the point of view of EU law, the referring court has indicated that, in accordance with recital 5 of Directive 2014/59, it is difficult to find any reason why it would not be possible to secure such non-pecuniary claims against a bank under restoration, which, under the directive, are to be conducted in accordance with the principle that no creditor should be worse off than it would have been under normal insolvency proceedings.

- 11 In view of the circumstances set out above, the referring court has proposed that the Court of Justice's answer to its question should be that Article 70(1) of Directive 2014/59 relates only to the possibility of securing a pecuniary claim by way of enforcement.
- 12 The referring court has further pointed out that the past practice of the Court of Justice has focused exclusively on the literal interpretation of Article 70(1) of Directive 2014/59, which, however, makes it impossible to attain the objectives adopted in the provisions of EU law. The referring court has accordingly pointed to the need to ensure the full practical effectiveness of that law.
- 13 Lastly, the referring court has requested that an expedited procedure be applied pursuant to Article 105 of the Rules of Procedure of the Court of Justice since the nature of the case, arising from the need to consider an application for the securing of a non-pecuniary claim, which, under the Code of Civil Procedure, must be heard without delay, requires an immediate decision.

WORKING DOCUMENT