

Case C-21/24

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:

12 January 2024

Referring court:

Juzgado de lo Mercantil n.º 1 de Zaragoza (Spain)

Date of the decision to refer:

10 January 2024

Applicant:

CP

Defendant:

Nissan Iberia S.A.

Subject matter of the main proceedings

Reference for a preliminary ruling – Cartel agreements – Article 101 TFEU – Directive 2014/104/EU – Compensation for harm caused by an infringement of competition law – Limitation period for bringing an action for compensation of harm – Limitation

Subject matter and legal basis of the request

Compensation for harm caused by an infringement of competition law – Application of the national legislation transposing a European Directive to actions for damages brought after transposition but relating to events occurring prior to transposition – Mandatory nature of action for damages – Limitation period – Start of the limitation period – Precedence of decisions imposing an administrative penalty – Issue of publication

Question referred for a preliminary ruling

- 1) Is there a legal basis in EU law for a distinction between the possibility and the obligation to bring an action for damages in respect of an infringement of competition or, conversely, once the injured party is aware or could reasonably have been aware both of the fact that he, she or it has suffered damage as a result of that infringement and of the identity of the perpetrator of the infringement, must that party bring such an action, and does the limitation period begin to run?
- 2) For an action for damages to be brought before the judicial authority, must the party wishing to bring that action wait until the penalty has become final before the courts or, conversely, if the decision of the competition authority, published in full, contains information about the identity of the perpetrators of the infringement in question, its exact duration and the products concerned by that infringement, must it be assumed that an action for damages may be brought before the courts and the limitation period begins to run?
- 3) Should the publication of the full penalty on the official, public website of the competition authority be treated as equivalent to the publication of the summary of the European Commission's decision in the Official Journal of the European Union for the purposes of the limitation period, given that the decisions of the competition authority are only published on the official website?

Provisions of European Union law relied on

TFEU, Articles 101, 102 and 267

Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, in particular Article 22(1)

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

Judgments of the Court of Justice of the European Union in cases C-637/17, C-267/20, C-453/99, C-557/12, C-295/04 and C-298/04, Order of the Court of Justice of the European Union in case C-199/22, and opinion in case C-605/21

Provisions of national law relied on

Constitución Española (Spanish Constitution), Articles 9.3, 24.1 and 117.1

Ley de Enjuiciamiento Civil (Law on civil procedure), Articles 22, 43 and 455.1

Ley de Defensa de la Competencia (Law on the protection of competition), Articles 13 and 74, and the first transitional provision

Código Civil (Civil Code), Articles 1902 and 1968(2)

Real Decreto-ley 9/2017, de 26 de mayo, por el que se transponen directivas de la Unión Europea en los ámbitos financiero, mercantil y sanitario, y sobre el desplazamiento de trabajadores (Royal Decree-Law No 9/2017 of 26 May 2017 transposing EU directives in the financial, commercial and health fields and on the posting of workers)

Judgments of the Tribunal Constitucional (Constitutional Court) 19/2008 and 192/2009

Judgments of the Tribunal Supremo (Supreme Court) 651/2013, 926/2023, 947/2023, 528/2013, 511/2018, 112/2022, 434/2021 and 780/2021

Judgment of the Audiencia Provincial de Zaragoza (Zaragoza Provincial Court) 118/2023

Succinct presentation of the facts and procedure in the main proceedings

- 1 CP brought an action against Nissan Iberia S.A. for damages for the purchase of a vehicle, pursuant to the penalty imposed on the defendant by the national competition authority, the Comisión Nacional de los Mercados y la Competencia (National Commission on Markets and Competition; CNMC).
- 2 The referring court has held that such actions were time-barred, considering that the action should have been brought as soon as the CNMC's full decision was published on its official website, without waiting for it to become final.
- 3 The Zaragoza Provincial Court partially upheld the appeal against that court's decision, ruling that the action was not time-barred and considering that the limitation period should begin to run from the point when the CNMC's decision became final through a Supreme Court ruling.

The essential arguments of the parties in the main proceedings

- 4 The defendant raises the question as to whether it is contrary to EU law and case-law to interpret a national provision as meaning that the limitation period in respect of actions for damages arising from anti-competitive actions does not begin with the official publication in full of the administrative decision imposing a penalty issued by the national competition authority, even where that decision imposing a penalty is challenged before the courts.
- 5 It also asks, with respect to the principles of legal certainty and non-retroactivity of rules of law, which rule must be applied in the case of actions for damages brought after the entry into force of Directive 2014/104/EU and the legislation transposing it (the Law on the protection of competition) relating to facts and

administrative decisions that pre-date the entry into force of that legislation, when the time limit for such actions under the earlier legislation had not expired.

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

- 6 Following the case-law of the Court of Justice of the European Union in relation to the lorry cartel, doctrinal and jurisprudential differences have arisen in Spain regarding the retroactive application of the Damages Directive and the limitation periods, and in relation to the possibility of invoking the Damages Directive illegally (*contra legem*).
- 7 According to the referring court, the solution would be to make a distinction as to the precedence of the competition authority's prior decision and the limitation period. On this point, the court considers that, following judgment C-267/20, with regard to the limitation period for actions for damages in the case of anti-competitive conduct, the limitation period cannot begin to run until the injured party is aware or could have been aware of: a) the existence of the infringement; b) the existence of the damage; c) the causal link between the two; and d) the identity of the perpetrator of the infringement. Although Spanish case-law holds that there is a time limit of five years for bringing an action following publication of the decision imposing a penalty in the Official Gazette, the court disagrees with that time limit.
- 8 In any event, it highlights certain obstacles to the application of that limitation period. First, there is no legal rule stipulating that the competition authority's prior decision must have become final before the action can be initiated. Moreover, following the amendment to the Law on the protection of competition in 2007, it is no longer necessary for there to be a prior administrative decision declaring an anti-competitive action in order for a legal action to be brought. Persons who have been harmed by infringements of the prohibitions on anti-competitive conduct can now bring actions against infringers to enforce their rights directly before the courts, independently of any investigations or decisions by the competition authorities.
- 9 Second, there is the issue of the injured parties' knowledge of the decision. In actions for damages caused by the car manufacturers' cartel, the starting point (*dies a quo*) should theoretically be set at the time when the administrative decision was made public. At that moment when the existence of the infringement is known, the infringers are specifically identified, the duration of the unlawful conduct is specified and the cause of damage can be determined. However, in view of the many actions initiated throughout Spain, separate from disciplinary proceedings brought by the CNMC, what point in time should be taken as the reference point for bringing an action: the publication of the decision on the CNMC's website, the issue of a press release by the CNMC, the extensive coverage in the national media, or the judgment of the Supreme Court upholding the penalty becoming final? It should also be borne in mind that the judgment

confirming the sanction is not communicated by means of a press release, or in an official newspaper, or on a freely accessible website, but in a judicial database the existence of which is unknown to the public.

- 10 With regard to the point when the limitation period for bringing an action for damages begins to run, the question arises as to whether this should be the date of publication of the administrative decision imposing the penalty – which will not always exist, since damages can be sought in an independent civil proceeding – or the date on which that decision has become final.
- 11 The Zaragoza Provincial Court has decided that the limitation period for bringing legal action for damages begins with the publication of the decision imposing the penalty, without prejudice to the fact that, once civil proceedings have begun, they may be stayed in order to ascertain the consequences of subsequent judgements that may be delivered by order of the administrative courts.
- 12 Another option would be to consider that the limitation period begins on the date on which the decision imposing the penalty becomes final. But here the problem arises that two different jurisdictions are involved: the civil court, before which the action for damages is brought, and the administrative court, before which the administrative penalty is appealed, with the consequent risk that contradictory judicial decisions could be imposed in relation to the same facts.
- 13 On the other hand, the question arises as to which provisions should govern the statute of limitations in relation to actions for damages brought after the legislation transposing Directive 2014/104/EU has entered into force, but relating to events or decisions occurring or taken prior before it entered into force.