

Case C-285/23 [Linte] ¹

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:

3 May 2023

Referring court:

Ekonomisko lietu tiesa (Latvia)

Date of the decision to refer:

21 April 2023

Criminal proceedings against:

A

B

C

Z

F

AS Latgales Invest Holding

SIA METEOR HOLDING

METEOR Kettenfabrik GmbH

SIA Tool Industry

AS Ditton pievadķēžu rūpnīca

Intervener:

Latvijas Investīciju un attīstības aģentūra

¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Subject matter of the main proceedings

Criminal proceedings in which the possibility is envisaged of an accused person participating in the trial by videoconference from a different Member State

Subject matter and legal basis of the request

Pursuant to Article 267 TFEU, this court seeks an interpretation of certain provisions of European Union law in order to clarify: (i) whether the possibility of hearing an accused person by videoconference, under Article 24(1) of Directive 2014/41/EU, may also be used to ensure the participation of the accused person in the trial in criminal proceedings in general; (ii) whether the rights of accused persons established in Article 8(1) of Directive (EU) 2016/343 are ensured in such a situation; (iii) whether participation by the accused person in that way in the trial of the case equates to that person's physical presence at the hearing; and (iv) if the answer to the foregoing is in the affirmative, whether the videoconference may only be held via the competent authorities of the Member State; or, if the answer to the foregoing is in the negative, (v) whether, for that purpose, the court may enter directly into contact with the accused person who is in a different Member State; and (vi) whether, in the area of freedom, security and justice of the Union, a videoconference may be held in a Member State otherwise than via the competent authorities of that Member State.

Questions referred for a preliminary ruling

(1) Must Article 24(1) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters be interpreted as meaning that the hearing of an accused person by videoconference includes the situation where the accused person participates in the trial in a criminal case in a different Member State by videoconference from that person's Member State of residence?

(2) Must Article 8(1) of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings be interpreted as meaning that the right of accused persons to attend the oral procedure may also be ensured by an accused person participating in the trial in a criminal case taking place in a different Member State by videoconference from that person's Member State of residence?

(3) Does participation by an accused person in the trial in a case that takes place in a different Member State by videoconference from the Member State of residence equate to that person's physical presence at the hearing before the court in the Member State which is hearing the case?

(4) Where the reply to the first and/or second questions is in the affirmative, may the videoconference be arranged only via the competent authorities of the Member State?

(5) Where the reply to the fourth question is in the negative, may the court in the Member State which is hearing the case enter into contact directly with an accused person who is in a different Member State and send that person the link in order to join the videoconference?

(6) Is it compatible with maintenance of the single area of freedom, security and justice of the Union to arrange such a videoconference otherwise than via the competent authorities of the Member State?

Provisions of EU law and case-law relied on

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, which provides as follows in the second subparagraph of Article 24(1): ‘The issuing authority may also issue [a European Investigation Order] for the purpose of hearing a suspected or accused person by videoconference or other audiovisual transmission.’

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, which provides as follows in Article 8(1): ‘Member States shall ensure that suspects and accused persons have the right to be present at their trial.’

Judgment of 6 December 2018, *IK (Enforcement of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraphs 34 and 35

Provisions of international law relied on

Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union: Articles 5 and 10

European Convention for the Protection of Human Rights and Fundamental Freedoms: Article 6

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959

Provisions of national law relied on

Section 463 of the Kriminālprocesa likums (Law on Criminal Procedure):

‘(1) Participation by the accused person at the trial in criminal proceedings shall be mandatory.

(2) If the accused person does not attend the hearing, the trial shall be adjourned.

...’.

Section 464 of the Law on Criminal Procedure:

‘(1) In relation to criminal violations, less serious crimes and serious crimes punishable by a term of imprisonment not exceeding five years, a court may try a case *in absentia* if the accused person repeatedly fails to attend hearings without showing good cause or has submitted a request to the court for the case to be tried *in absentia*.

...

(3) A criminal trial with more than one accused person may be conducted in the absence of an accused person where the charges examined at the hearing are against other accused persons, if the attendance of that accused person is not necessary at that hearing and that accused person does not wish to participate in the hearing in question and has informed the court of that fact.’

Section 465 of the Law on Criminal Procedure:

‘(1) The court may conduct a criminal trial *in absentia* in any of the following situations:

...

(ii) if the accused person is in a foreign country and that person’s attendance before the court cannot be ensured.

...’.

Section 140 of the Law on Criminal Procedure:

‘(1) The person directing the proceedings may perform procedural acts using technical means (teleconference, videoconference) if the interests of the criminal proceedings so require.

(2) During the course of a procedural act using technical means, it shall be ensured that the person directing the proceedings and the persons participating in the procedural act, where they are in different places or buildings, can hear each other during a teleconference and see and hear each other during a videoconference.

(2¹) In the situation referred to in Paragraph 2 of this section, the person directing the proceedings shall authorise a person at the second place where the procedural

act is taking place to ensure the conduct of the procedural act at that location (“the authorised person”), or shall assign the task of authorising such a person to the head of the institution located in that place.

...

(5) The authorised person shall verify and certify the identity of any persons who participate in a procedural act but are not located in the same place as the person directing the proceedings.

...

(7) The authorised person shall draw up a certificate indicating the place, date and time of the procedural act, the position, given name and surname of the authorised person and the identifying particulars and address of each person present at that venue of the procedural act and the warning given to those persons, where the law provides that they are liable for failure to comply with their obligations. Any such warning shall be signed by the persons receiving it. The certificate shall also indicate any interruptions during the procedural act and the time at which the procedural act concluded. The certificate shall be signed by all persons present at that venue of the procedural act and shall be sent to the person directing the proceedings to be incorporated in the record of the procedural act.

(7¹) The provisions of Paragraphs 2,¹ 5 and 7 of this section may be disapplied if the person directing the proceedings is able, using technical means, to verify the identity of the persons located in other places or buildings. ...

...’.

International cooperation in criminal matters is governed, inter alia, by Sections 876 and 877 of the Law on Criminal Procedure, contained in Part C, which provide that, in foreign countries, the persons directing the proceedings may perform the procedural act via the relevant foreign competent authorities, including by requesting that those authorities allow a Latvian official to take part in performing the procedural act or allow the procedural act to be performed by technical means.

Succinct presentation of the facts and procedure in the main proceedings

- 1 The referring court is hearing criminal proceedings with five accused persons, including a German national residing in Germany (‘A’), who is charged with organised large-scale fraud and money laundering.
- 2 At the current stage of the proceedings it is necessary to carry out a time-consuming examination of evidence and it is therefore expected that examination of the case is going to take a lengthy period of time. Of the 40 hearings scheduled

(which are taking place once or twice a month), only seven have been held, and A took part in only four.

- 3 Since A is charged with especially serious crimes and since the requirements set out in Article 465 of the Law on Criminal Procedure for a criminal case to be tried *in absentia* are not satisfied, it is found that, according to Articles 463 and 464 of the Law on Criminal Procedure, the criminal case cannot be tried *in absentia* and A's participation in that case is mandatory.
- 4 However, it is now particularly difficult for A to be present during the trial in the case, as a result of his age and family circumstances: he is a 71-year-old pensioner who does not have sufficient income to pay his travel costs and who, with his wife, cares for his 92-year-old mother-in-law, who lives with them and needs care as a person with disability. A has never lived in Latvia and does not speak Latvian. Under those circumstances, it is unreasonable to expect him to move to Latvia in order to be present throughout the proceedings. A nevertheless wishes to participate in the trial by videoconference from Germany.
- 5 The referring court attempted to arrange that remote participation, by sending a European investigation order to the German competent authority on 2 December 2021, requesting it to ensure A's participation in the hearings by videoconference. The request was refused, on the grounds that it was impossible to execute the European investigation order because the participation in question was not an investigative measure and because no consent had been obtained from the accused person to the trial being conducted by that means. The competent authority did not change its view even when informed that A had given the consent it had required.
- 6 At the request of the referring court, the Latvian Ministry of Justice consulted with the German Federal Ministry of Justice about the options for A to participate remotely in the proceedings (with or without the involvement of the German courts), in accordance with the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. The German competent authority responded that A could not participate by videoconference in the trial stage because there was no legal basis for doing so. To hold a videoconference with the accused person during an ongoing hearing would be contrary to the fundamental principles of German law. Under German law, the physical presence of the accused person during the trial stage is strictly necessary.
- 7 According to the clarification issued by the general assembly of judges of the department of criminal cases of the Senāts (Supreme Court (Senate), Latvia) in its decision of 4 November 2021 on the interpretation of Section 140, Paragraph 7.¹, of the Law on Criminal Procedure, the jurisdiction of the Republic of Latvia is limited to national territory and, therefore, the procedure for holding a videoconference established in that provision may only be applied if the procedural act is taking place in national territory. In contrast, any evidence in the territory of another State may be gathered in accordance with the procedure laid

down in Part C of the Law on Criminal Procedure, entitled ‘International cooperation in criminal matters’, that is to say, through recourse to an instrument of judicial cooperation.

- 8 The four other accused persons reside permanently in Latvia and three of them are participating in the trial in the case by videoconference. A, on the other hand, is required to be present during the trial because he is in Germany and the German competent authority has not given him consent for a videoconference to be held, either with the involvement of that competent authority or otherwise.

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

- 9 The referring court observes that, in the EU rules on criminal proceedings with a cross-border dimension, videoconferences are envisaged only for hearing witnesses, experts and suspected or accused persons (Article 24 of Directive 2014/41 and Article 10 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union).
- 10 Nevertheless, the European Commission Communication of 2 December 2020 on digitalisation of justice in the European Union states that access to justice and facilitating cooperation between Member States are among the main objectives of the EU’s area of freedom, security and justice enshrined in the Treaty on the Functioning of the European Union. Access to justice needs to be maintained and to keep pace with change, including the digital transformation affecting all aspects of our lives. Furthermore, whenever possible, Member States should recur to the use of videoconferencing. The use of videoconferencing in judicial proceedings, where permissible by law, substantially reduces the need for burdensome and cost-intensive travel and may facilitate proceedings. The use of videoconferencing should not infringe the right to a fair trial and the rights of defence, such as the rights to attend one’s trial, to communicate confidentially with the lawyer, to put questions to witnesses and to challenge evidence (introduction and paragraph 3.4 of Commission Communication COM(2020) 710 final of 2 December 2020 on digitalisation of justice in the European Union). The use of videoconferencing as one of the means to facilitate secure communication between citizens and judicial authorities is acknowledged in EU policy planning documents (for example, paragraph 17 of the *2019-2023 Action Plan European e-Justice* (OJ 2019 C 96)).
- 11 In addition, according to the case-law of the Court, EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore that the EU law that implements them will be respected. Both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area

without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgment of 6 December 2018, *IK (Enforcement of an additional sentence)*, C-551/18 PPU, EU:C:2018:991).

- 12 Having regard to the single area of freedom security and justice of the European Union and since the use of videoconferencing in criminal proceedings with a cross-border dimension enables EU citizens to effectively exercise their freedom of movement, the referring court is uncertain whether the use of videoconferencing is limited under EU law to the hearing of witnesses, experts and suspected or accused persons. It therefore enquires whether the hearing of an accused person by videoconference, as established in Article 24(1) of Directive 2014/41, includes only the giving of evidence by an accused person or also that person's participation in the trial in a criminal case in general, that is to say, the accused person's right to be present during the trial and to hear and follow the course of the proceedings.
- 13 Furthermore, the referring court considers that the right of accused persons to attend the oral procedure, established in Article 8(1) of Directive 2016/343, includes the right of accused persons to participate effectively in the trial in a criminal case in a different Member State by videoconference from the Member State of residence. That interpretation of Article 8(1) would fit well with the prevailing emphasis on facilitating and accelerating court proceedings. In addition, each Member State is already able to send procedural documents intended for persons who are in the territory of another Member State to them directly by post, otherwise than via the competent authorities (Article 5 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union), and to use videoconferencing at the evidence-gathering stage (Article 24 of Directive 2014/41).
- 14 The European Court of Human Rights case-law on videoconferencing likewise establishes that an accused person's participation in proceedings by videoconference is not as such contrary to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, although recourse to that measure in any given case must serve a legitimate aim. The holding of a videoconference is furthermore acknowledged to pursue a legitimate aim where it is to simplify and accelerate criminal proceedings in order to uphold the right to criminal proceedings concluded within a reasonable time (*KEY THEME, Article 6 (criminal limb) Hearings via video link*, <https://ks.echr.coe.int/documents/d/echr-ks/hearings-via-video-link>). It is clear from the judgment of the European Court of Human Rights of 18 December 2018, *Murtazaliyeva v. Russia*, that Article 6 of that convention, in essence, guarantees the right of an accused person to participate effectively in a criminal trial, which includes, inter alia, not only his or her right to be present at the trial, but also to

hear and follow the proceedings. The accused person must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party (judgment of the European Court of Human Rights of 18 December 2018, *Murtazaliyeva v. Russia*, EC:ECHR:2018:1218JUD003665805, § 91).

- 15 In the event that the right of an accused person to attend the oral procedure includes the right to participate in the trial in a different Member State by videoconference from that person's Member State of residence, the referring court wishes to clarify whether that participation may only be arranged via the competent authorities of that other Member State or may be arranged in another way; whether the holding of a videoconference otherwise than via the competent authorities of the Member State is contrary to maintenance of the single area of freedom, security and justice of the European Union; and whether participation by an accused person in the trial by videoconference equates to that person's physical presence at the hearing.
- 16 An interpretation of Article 24(1) of Directive 2014/41 and of Article 8(1) of Directive 2016/343 is necessary to enable the referring court to determine whether A is entitled to participate in the oral stage of the hearing of the case before a Latvian court by videoconference from Germany (via the competent authority or otherwise).

Main proceedings not to be stayed

- 17 Since the issues to be clarified in a preliminary ruling relate only to how the accused person participates in the proceedings (through physical presence or by videoconference), the referring court finds that it can continue to examine the main proceedings as hitherto (with A physically present), in order to safeguard the right of all the accused persons to have their case heard within a reasonable time, enshrined in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.
- 18 Accordingly, relying on Case C-176/22, *BK and ZhP (Partial stay of the main proceedings)*, pending before the Court of Justice, the referring court refrains from staying the main proceedings, but expresses its willingness to grant a stay in the event that the Court of Justice finds itself unable to commence preliminary ruling proceedings if the main proceedings continue to be heard.

Application for an expedited procedure

- 19 The referring court requests that the expedited procedure under Article 105 of the Rules of Procedure of the Court of Justice be used, because the procedural issue to be dealt with materially affects A, who currently has to be physically present at the trial, which is particularly burdensome for him as a result of his age and family circumstances. A prompt answer would contribute to dispelling that uncertainty more quickly and enable the criminal case to be heard within a reasonable time. That the issue raised is current and relevant to the single area of justice of the

European Union is confirmed by the fact that a similar issue was raised in Case C-760/22, *FP and Others*, pending before the Court of Justice.

WORKING DOCUMENT