

Appeal brought on 21 December 2022 by the European Central Bank against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 12 October 2022 in Case T-502/19, Francesca v ECB

(Case C-777/22 P)

(2023/C 63/31)

Language of the case: Italian

Parties

Appellant: European Central Bank (represented by: C. Hernández Saseta, A. Pizzolla, acting as Agents, M. Lamandini, lawyer)

Other parties to the proceedings: Francesca Corneli, European Commission

Form of order sought

The appellant claims that the Court should:

- (1) set aside the judgment of the General Court delivered on 12 October 2022 in Case T-502/19, *Francesca Corneli v ECB* (T-502/19, not published, EU:T:2022:627), in so far as it annulled the decisions of the ECB of 1 January 2019 and 29 March 2019, and, to that end,
- (2) declare the action brought by Francesca Corneli before the General Court inadmissible under the fourth paragraph of Article 263 TFEU and, consequently, dismiss it in its entirety;
- (3) in the alternative, declare that the decisions of the ECB, in so far as they are the subject matter of the present proceedings, are lawful and, if necessary, refer the case back to the General Court for a ruling on the pleas in the action that were not examined in the judgment under appeal; and
- (4) order Francesca Corneli to pay the costs incurred by the ECB at both instances.

Grounds of appeal and main arguments

In support of its appeal, the European Central Bank raises two grounds.

By the first ground of appeal, the ECB claims that the General Court committed several errors of law, based in part on distortion of the facts in the assessment of Francesca Corneli's standing to bring proceedings and interest in bringing proceedings, which does not meet the requirements of the fourth paragraph of Article 263 TFEU. More specifically, the ECB claims that the Court:

- i. distorted the relevant facts in holding that the annulled decisions affected the most essential 'rights' that Francesca Corneli allegedly has as a shareholder of Banca Carige, which do not, in actual fact, exist or are not affected by those decisions;
- ii. erred in law in attributing to those decisions a direct effect on the legal position of Francesca Corneli, one of the 35 000 small shareholders of Banca Carige at the time when the action was brought;
- iii. erred in law in holding that the annulled decisions were of individual concern to Francesca Corneli in her capacity as a shareholder of Banca Carige, which, according to the General Court, identified her individually, and that the annulled decisions were therefore of individual concern to her;
- iv. erred in law in finding that Francesca Corneli's interest in the annulment of the annulled decisions was separate from that of the person to whom the decisions were addressed, that is, Banca Carige, in so far as that finding runs counter to settled case-law relating to exceptional cases in which a shareholder's interest in bringing proceedings can be recognised.

By the second ground of appeal, the ECB claims that the General Court erred in law in its assessment of the legal basis used by the ECB for the adoption of the annulled decisions, as the 'significant deterioration of a credit institution', the expression of the serious circumstances described analytically in the annulled decisions, is among the conditions for the adoption of a temporary administration measure. More specifically, the ECB submits that the General Court:

- i. failed to have regard to the interpretation given by the national courts to Article 70 of the Consolidated Law on Banking and therefore committed an error of law in the interpretation of that article and the scope of reference of that article to Article 69*octiesdecies*(1)(b) of the Consolidated Law on Banking;
- ii. erred in law in failing to take into consideration Italian law as a whole, from which it is clearly apparent that the Italian legislature intended to transpose Directive 2014/59/EU ⁽¹⁾ in its entirety and correctly;
- iii. erred in law in failing to take into consideration the contextual and teleological interpretation of Articles 69*octiesdecies*(1)(b) and 70 of the Consolidated Law on Banking in the light of the scope of the early intervention measures, including temporary administration;
- iv. erred in law in holding that the interpretation of Article 70 of the Consolidated Law on Banking in the light of Article 29 of Directive 2014/59/EU is an interpretation *contra legem* of Italian law.

⁽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 (OJ 2014 L 173, p. 190).

Appeal brought on 23 December 2022 by LE against the judgment of the General Court (First Chamber) delivered on 26 October 2022 in Case T-475/20, LE v Commission

(Case C-781/22 P)

(2023/C 63/32)

Language of the case: English

Parties

Appellant: LE (represented by: M. Straus, advocaat)

Other party to the proceedings: European Commission

Form of order sought

The Appellant claims that the Court should:

- set aside the judgement of the General Court on the request for annulment of or another ruling concerning the dispute in relation to the Decision C(2020)3988 final;
- refer the case back to the General Court for further proceedings on pleas and objections raised by LE, also on behalf of its linked parties, against and in relation to the contested Decision;

Alternatively

- rule or take an interlocutory judgement for hearing witnesses or providing evidence supporting the case prior to adjudicate in the main claims;
- set aside the judgement of the General Court on the request for annulment of or another ruling concerning the dispute in relation to the Decision C(2020)3988 final, and if so ascertained and adjudicated by the Court, to refer the case back to the General Court for further proceedings on pleas and objections against and in relation to the contested Decision;