

By order of 12 April 2018, the Court of Justice (Sixth Chamber) dismissed the appeal and ordered Grupo Osborne S.A. to bear its own costs.

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**Appeal brought on 24 November 2017 by RF against the order of the General Court (Sixth Chamber)  
delivered on 13 September 2017 in Case T-880/16, RF v Commission**

**(Case C-660/17 P)**

(2018/C 190/07)

*Language of the case: Polish*

### **Parties**

*Appellant:* RF (represented by: K. Komar-Komarowski, legal adviser)

*Other party to the proceedings:* European Commission

### **Form of order sought**

The appellant claims that the Court should:

- set aside the order under appeal and refer the case back to the General Court in order that it may re-examine the case and give a ruling on the merits, subject to appeal;
- alternatively — if the Court finds that the conditions for giving final judgment are satisfied in the present case — set aside the order under appeal and uphold the forms of order sought at first instance in their entirety;
- order the Commission to pay the costs.

### **Grounds of appeal and main arguments**

- (1) The General Court infringed the second paragraph of Article 45 of the Statute of the Court of Justice of the European Union, read in conjunction with Article 53 thereof, through misinterpretation of those provisions. In finding that the concepts of ‘force majeure’ and ‘unforeseeable circumstances’ were identical in terms of their meaning, the General Court infringed the principle of the reasonable legislator. Such a reading of those concepts also runs counter to the aim of Article 45 of the Statute, which is intended to compensate for any differences arising as a result of distance (between the place of residence of the parties and the location of the Court). Consequently, the General Court unreasonably failed to take account of the unforeseeable circumstances preventing the appellant from delivering the (original) paper version of the application on time.
- (2) The General Court infringed Article 126 of its Rules of Procedure of 4 March 2015 by misapplying that provision. Despite there being no grounds for doing so, the General Court applied Article 126 of those Rules, unreasonably declaring the appellant’s action manifestly inadmissible. The General Court’s infringement of that provision was the inevitable and obvious result of its infringement of Article 45 of the Statute, read in conjunction with Article 53 thereof.
- (3) The General Court incorrectly found that the appellant had not proved the existence of unforeseeable circumstances as referred to in the second paragraph of Article 45 of the Statute. The appellant proved the existence of unforeseeable circumstances. It not only submitted more evidence of those circumstances than was necessary but submitted all the evidence available to it in general. As regards ensuring the timely delivery of the parcel containing the application, the appellant exercised all the diligence that could reasonably be required of it. From the moment of sending the parcel, the appellant ceased to have any influence on its delivery process; from that point, any circumstances affecting the date of delivery were wholly outside the appellant’s control.

- (4) The General Court infringed Article 1, Article 6(1) and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, by hindering access to the Court and discriminating between the parties on the basis of their place of residence or establishment. The adoption by the General Court of a single extension on account of distance for all the Member States of the European Union has the effect of hindering access to the Court for parties residing or established at a considerable distance from the location of the Court, including in the provinces of their countries, and consequently constitutes discrimination between parties to proceedings depending on their place of residence.

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**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 20 February 2018 — Logistik XXL GmbH v CMR Transport & Logistik**

(Case C-135/18)

(2018/C 190/08)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Applicant:* Logistik XXL GmbH

*Defendant:* CMR Transport & Logistik

**Questions referred**

1. In the case of a judgment which orders the defendant, without restriction and unconditionally, to make a payment and against which an ordinary appeal has been lodged in the Member State of origin, or in the case of which the time limit for bringing such an appeal has not yet expired, does the order of the court of origin to the effect that that judgment is provisionally enforceable only on provision of a security constitute a condition within the meaning of point 4.4 of the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(1)</sup>?
2. If Question 1 is answered in the affirmative, is this also the case where, in the Member State of origin, the judgment declared to be provisionally enforceable may be the subject of protective enforcement even though no security has been provided?
3. If Question 2 is answered in the affirmative:
  - (a) How is the court of origin to proceed, in the case of a judgment which contains an enforceable obligation and against which an ordinary appeal has been lodged in the Member State of origin, or in the case of which the time limit for bringing such an appeal has not yet expired, with regard to the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, where that judgment, pursuant to its operative part or pursuant to a statutory provision, may not be enforced until after a security has been provided?
  - (b) In those circumstances, must the court of origin issue the certificate, using the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, without furnishing the particulars stipulated in points 4.4.1. to 4.4.4 of that form?
  - (c) In those circumstances, may the court of origin issue the certificate, using the form set out in Annex I to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in such a way as to include — in point 4.4.1. or point 4.4.3. of that form, for example — additional information on the required provision of a security and to attach to that form the text of the relevant statutory provision?