Party to the main proceedings

DK

Question referred

Is a national law that, during the trial stage of criminal proceedings, requires a change in circumstances as a condition for granting the defence's application for the release of the accused person from detention, consistent with Article 6 and recital 22 of Directive 2016/343 ([1]) and with Articles 6 and 47 of the Charter of Fundamental Rights of the European Union?

([1]) 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 (OJ 2016 L 65, p. 1).

Appeal brought on 4 September 2019 by NRW.Bank against the judgment delivered on 26 June 2019 in Case T-466/16 NRW.Bank v SRB

(Case C-662/19 P)

(2019/C 399/35)

Language of the case: German

Parties

Appellant: NRW.Bank (represented by: J. Seitz, J. Witte and D. Flore, lawyers)

Other parties to the proceedings: Single Resolution Board (SRB), Council of the European Union, European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 26 June 2019 in Case T-466/16 and annul the decision of the defendant at first instance and the respondent to the appeal relating to the applicant's annual contribution to the restructuring fund for the contribution period 2016;

— in the alternative, set aside the judgment referred to in point 1 and refer to case back to the General Court;

— order the defendant to pay the costs.

Pleas in law and main arguments

The appellant invokes two grounds of appeal:

Firstly, contrary to what is concluded by the General Court, the appellant's action for annulment was not out of time for the purpose of the sixth indent of Article 263 TFEU. The defendant's decision relating to the applicant's annual contribution to the restructuring fund for 2016 is based on two successive decisions of the defendant, namely the 'first SRB decision' and the 'second SRB decision'. The two SRB decisions were addressed solely to the national resolution authority ('the FMSA') and the appellant was neither directly informed thereof nor were those decisions sent to it. The appellant only learned of the existence of the SRB decisions (and not of their contents) by means of the FMSA's recovery notices, namely the 'first FMSA notice' and the 'second FMSA notice'.

Contrary to what is concluded by the General Court, the decisive event for the purposes of calculating the time limit for bringing an action for annulment is solely the date on which the second FMSA notice reached the appellant. The second SRB decision replaced the first SRB decision.

But even assuming that the second SRB decision did not entirely replace the first SRB decision, but only modified it, the beginning of the time limit for bringing an action to be taken into account is also, in accordance with the case-law, solely the date on which the second FMSA notice was received.

The appellant considers moreover that, contrary to what is concluded by the General Court, it was not obliged, in view of the particularities of the present case, to request the first SRB decision and to thus gain knowledge of its contents and its reasoning. Such an obligation in any event does not exist where, as in the present case, there is uncertainty regarding both the status of the person concerned and the purpose of the alleged requirement to formulate a request.

Finally, it must be noted that the time limit for bringing an action was respected, if only for reasons of legitimate expectations, but also, in any event, on the basis of excusable error.

Secondly, the General Court errs in law where it considers that the appellant put forward neither grounds nor arguments relating to the second SRB decision. That conclusion breaches the appellant's right to be heard in accordance with the second indent of Article 47 of the Charter of Fundamental Rights of the European Union. The General Court overlooked several of the appellant's submissions and failed to take them into consideration in its decision, thus depriving the appellant of a fair trial.

Request for a preliminary ruling from the Landgericht Gera (Germany) lodged on 6 September 2019 — MM v Volkswagen AG

(Case C-663/19)

(2019/C 399/36)

Language of the case: German

Referring court

Landgericht Gera

Parties to the main proceedings

Applicant: MM

Defendant: Volkswagen AG

Questions referred

1. Are Paragraphs 6(1) and 27(1) of the EG-Fahrzeuggenehmigungsverordnung (EC Vehicle Approval Regulation; EG-FGV) ([1]) and/or Articles 18(1) and 26(1) of Directive 2007/46/EC ([2]) to be interpreted as meaning that the manufacturer is in breach of its obligation to issue a valid certificate pursuant to Paragraph 6(1) of the EG-FGV (and/or of its obligation to deliver a certificate of conformity pursuant to Article 18(1) of Directive 2007/46/EC), if it has installed in the vehicle an impermissible defeat device within the meaning of Articles 5(2) and 3.10 of Regulation (EC) No 715/2007 ([3]), and that the placing of such a vehicle on the market is in breach of the prohibition on placing a vehicle on the market without a valid certificate of conformity pursuant to Paragraph 27(1) of the EG-FGV (and/or of the prohibition of sale without a valid certificate of conformity pursuant to Article 26(1) of Directive 2007/46/EC)?