

Supreme Court of Latvia: Final Outcome of “flyLAL Lithuanian Airlines”

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On 23 October 2014 the European Court of Justice (hereinafter referred to as the “ECJ”) delivered its judgment in the case “flyLAL Lithuanian Airlines AS v. Starptautiska lidosta Rīga VAS (Rīga International Airport)” (C-302/13). The request for a preliminary ruling was made by the Supreme Court of Latvia (*Latvijas Republikas Augstākā tiesa*) in proceedings concerning recognition and enforcement of a Lithuanian court’s judgment (ordering provisional and protective measures) in the territory of Latvia. This request concerned the interpretation of Articles 1, 22(2), 34(1) and 35(1) of the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation).

The ECJ answered the questions in the following way:

- Article 1(1) of the Brussels I Regulation must be interpreted as meaning that an action seeking legal redress for damage resulting from alleged infringements for EU competition law, **comes within the notion of “civil and commercial matters”**;
- Article 22(1) must be interpreted as meaning that an action seeking legal redress for damage resulting from alleged infringements of EU competition law, **does not constitute proceedings** having as their object the validity of the decisions of organs of companies within the meaning of that provision;
- Article 34(1) must be interpreted as meaning that **neither** the detailed rules for determining the amount of

the sums which are the subject of the provisional and protective measures granted by a judgment in respect of which recognition and enforcement are requested, **nor** the mere invocation of serious economic consequences constitute grounds for refusal of recognition and enforcement of a judgment based on **public policy** of the Member State in which recognition is sought.

On 20 October 2015 the Supreme Court of Latvia delivered its decision (which is final) in this case (No SKC 5/2015) deciding neither to recognise nor to enforce the judgment of the Lithuanian court in Latvia (two lower courts of Latvia had previously decided to recognise and to enforce the judgment). The legal ground for the non-recognition was the *public policy* clause of Article 34(1) of the Regulation.

Let us look at the main reasoning of the Supreme Court of Latvia in this case.

Reasoning No 1 (Article 1 of the Constitution of the Republic of Latvia): **State security**. The defendant, “*Starptautiska lidosta Riga*” (“Riga International Airport”), also owns a property which is necessary for the purpose of the Latvian state security. If the judgment of the Lithuanian court is recognised and enforced in Latvia, then the preventive attachment order regarding this property will probably be enforced. From Article 1 of the Constitution of the Republic of Latvia it follows that property which is necessary for the state security interests cannot be transferred or subject to a private law burden that might, even hypothetically, hinder, weaken or otherwise threaten the fulfilment of the State functions in guaranteeing the security of the State and the society.

Reasoning No 2 (Article 91 and 105 of the Constitution of the Republic of Latvia): **the insolvent Lithuanian company**. The Lithuanian company “flyLAL Lithuanian Airlines” is an insolvent company which has lodged a claim for an amount of

EUR 58,003,824. This company has no property or assets to compensate the defendant's possible losses in the case if the claim later appears to be unsubstantiated. This creates an important disproportion of rights and of the provisional and protective measures applied in the case. Such possible damages sustained by the defendant may seriously endanger not only its economic activities but even its existence as a company.

Additional reasoning (Article 91 and 105 of the Constitution of the Republic of Latvia): **the length of the main proceedings before the Lithuanian court.** The Lithuanian court had issued an order for sequestration, on a provisional and protective basis, of the movable/immovable assets and property rights of "Air Baltic" and "*Starptautiska lidosta Riga*" ("Riga International Airport") seven years ago; until now the case has not yet been resolved and there is no further information about when this case could be resolved. For the provisional and protective measures this period of time is too long and might aggravate the violation of the defendant's property rights in this case. As the Lithuanian company is insolvent, there cannot be an adequate protective measure to secure the payment of damages. It can be considered as a potentially disproportionate interference with the defendant's property rights within the meaning of Articles 91 and 105 of the Latvian Constitution

In this case, the Supreme Court of Latvia has established that, **firstly**, state security constitutes one of the most important elements of the public policy of Latvia (Article 1 of the Constitution); **secondly**, fundamental rights laid down in the Constitution of the Republic of Latvia also is a part of the Latvian public policy. In this case these were the equal rights of the parties before the law and the courts (Articles 91 and 105 of the Constitution). For this reason such a judgment of the Lithuanian court is manifestly contrary to the Latvian public policy. Therefore the recognition and enforcement of the Lithuanian judgment in Latvia must be

denied on the basis of Article 34(1) of the Brussels I Regulation.

For information:

Constitution of the Republic of Latvia:

Article 1 – “Latvia is an independent democratic republic”.

Article 91 – “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind”.

Article 105 – “Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation”.