

4. Does the concept of ‘unforeseeable circumstances’ within the meaning of Directive 2014/24 cover only circumstances which arose after the award of the contract (as provided for in the national provision of Paragraph 2(27) of the Dopolnitelni razporedbi na Zakona za obshtestvenite porachki [Additional Provisions for the Law on public procurement]) and which could not have been foreseen even with reasonably diligent preparation and are not attributable to acts or omissions of the parties, but render performance under the agreed conditions impossible? Or does that directive not require that such circumstances arise after the award of the contract?
5. Do ordinary weather conditions, which do not constitute ‘unforeseeable circumstances’ within the meaning of recital [109] of Directive 2014/24, and a statutory prohibition — announced prior to the award of the contract — of construction works during a certain period constitute objective justification for failure to perform the contract within the time frame? In that context, is a participant obliged (for the purposes of exercising due diligence and acting in good faith) to take ordinary risks relevant to the performance of the contract within the time frame into account in his or her calculation of the time frame proposed in the tender?
6. Does Article 72(1)(e) of Directive 2014/24, in conjunction with Article 72(4)(a) and (b) thereof, permit a national rule, or practice of interpreting and applying that rule, according to which unlawful modification of a public contract may take place in a case such as that in the main proceedings, where the time frame for performance of the contract within certain limits constitutes a condition of participation in the award procedure (and the participant is excluded if those limits are not complied with); the contract was not performed within the time frame on account of ordinary weather conditions and a statutory prohibition of activities, which was announced prior to the award of the contract, whereby those circumstances are covered by the subject matter and time frame of the contract and do not constitute unforeseeable circumstances; performance of the contract was accepted without any objections regarding the time frame, and no contractual penalty for delay was asserted, with the result that a material condition in the contract documents which determined the competitive environment was modified and the economic balance of the contract was shifted in favour of the contractor?

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(<sup>1</sup>) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

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**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 6 July 2022 —  
Caixabank, SA and Others v ADICAE and Others**

**(Case C-450/22)**

**(2022/C 408/42)**

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

**Appellants:** Caixabank SA, Caixa Ontinyent SA, Banco Santander SA, successor to the rights and obligations of Banco Popular Español SA y Banco Pastor SA, Targobank, SA, Credifimo SAU, Caja Rural de Teruel SCC, Caja Rural de Navarra SCC, Cajasiete Caja Rural SCC, Liberbank SA, Banco Castilla La Mancha SA, Bankia SA, successor to the rights and obligations of Banco Mare Nostrum SA, Unicaja Banco, SA, Caja Rural de Asturias SA, Caja de Arquitectos SCC (Arquia Bank SA), Nueva Caja Rural de Aragón SC, Caja Rural de Granada SCC SA, Caja Rural del Sur SCC, Caja Rural de Jaén, Barcelona y Madrid SCC, Caja Rural de Albacete, Ciudad Real y Cuenca SCC (Globalcaja), Caja Laboral Popular SCC (Kutxa), Caja Rural Central SCC, Caja Rural de Extremadura SCC, Caja Rural de Zamora SCC, Banco Sabadell SA, Banca March SA, Ibercaja, Banca Pueyo SA

**Respondents:** ADICAE, M.A.G.G., M.R.E.M., A.B.C., Óptica Claravisión, S.L., A.T.M., F.A.C., A.P.O., P.S.C., J.V.M.B., legal successor of C.M.R.

### Questions referred

1. For the purposes of a review of transparency in the context of a collective action, is an abstract assessment of terms used by more than one hundred financial institutions in millions of banking contracts, without taking into account the level of pre-contractual information offered on the legal and financial burden of the term or the other circumstances occurring in each case at the time when the contract was concluded, covered by Article 4(1) of Directive 93/13/EEC, <sup>(1)</sup> where it refers to the circumstances attending the conclusion of the contract, and by Article 7(3) of that directive, where it refers to similar terms?
2. Is the possibility of conducting an abstract review of transparency from the perspective of the average consumer, where a number of the contracts offered are aimed at different specific groups of consumers or where numerous financial institutions having, economically and geographically, very different business areas were using standard terms and conditions over a very long period of time during which public awareness of such terms was developing, compatible with Articles 4(2) and 7(3) of Directive 93/13/EEC?

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<sup>(1)</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

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### **Request for a preliminary ruling from the Spetsialisiran nakazatelen sad (Bulgaria) lodged on 13 July 2022 — Criminal proceedings against VB**

**(Case C-468/22)**

(2022/C 408/43)

*Language of the case: Bulgarian*

### **Referring court**

Spetsialisiran nakazatelen sad

### **Accused person**

VB

### **Question referred**

Is it compatible with Article 9 of Directive 2016/343 <sup>(1)</sup> and the principle of effectiveness for a national provision such as Article 423(3) of the NPK to oblige a person who makes a request for a new trial, because he or she had been absent from the first trial and neither of the cases in Article 8(2) [of that directive] applied, to appear before the court in person in order to have that request examined on the merits?

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<sup>(1)</sup> 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).

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### **Appeal brought on 10 August 2022 by Roberto Aquino against the judgment of the General Court (First Chamber) delivered on 1 June 2022 in Case T-253/21, Aquino v Parliament**

**(Case C-534/22 P)**

(2022/C 408/44)

*Language of the case: French*

### **Parties**

*Appellant:* Roberto Aquino (represented by: L. Levi, S. Rodrigues, avocats)