



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

16 July 2020*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Insolvency proceedings — Regulation (EU) 2015/848 — Article 3 — International jurisdiction — Centre of a debtor's main interests — Individual not exercising an independent business or professional activity — Rebuttable presumption that the centre of that person's main interests is his or her habitual residence — Rebuttal of the presumption — Situation in which the debtor's sole immovable asset is located outside the Member State of habitual residence)

In Case C-253/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal da Relação de Guimarães (Court of Appeal, Guimarães, Portugal), made by decision of 14 February 2019, received at the Court on 26 March 2019, in the proceedings

MH,

NI

v

OJ,

Novo Banco SA,

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, K. Jürimäe (Rapporteur) and N. Piçarra, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Portuguese Government, by L. Inez Fernandes, P. Lacerda, P. Barros da Costa and L. Medeiros, acting as Agents,
- the European Commission, by M. Wilderspin and P. Costa de Oliveira, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2020,

* Language of the case: Portuguese.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p. 19).
- 2 The request has been made in proceedings between MH and NI, on the one hand, and OJ and Novo Banco SA, on the other, concerning the former's application to open insolvency proceedings.

Legal context

EU law

Regulation (EC) No 1346/2000

- 3 Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) was repealed and replaced by Regulation 2015/848. Recital 13 of the former regulation stated:

'The "centre of main interests" should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.'

- 4 Article 3(1) of Regulation No 1346/2000 provided:

'The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.'

Regulation 2015/848

- 5 Recitals 5, 23 and 27 to 34 of Regulation 2015/848 state:

'(5) It is necessary for the proper functioning of the internal market to avoid incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors (forum shopping).

...

- (23) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor's assets. To protect the diversity of interests, this Regulation permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings. Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary insolvency proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main insolvency proceedings satisfy the need for unity in the Union.

...

- (27) Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction.
- (28) When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests. ...
- (29) This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.
- (30) Accordingly, the presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests should be rebuttable, and the relevant court of a Member State should carefully assess whether the centre of the debtor's main interests is genuinely located in that Member State. In the case of a company, it should be possible to rebut this presumption where the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State. In the case of an individual not exercising an independent business or professional activity, it should be possible to rebut this presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence, or where it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction and where such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.
- (31) With the same objective of preventing fraudulent or abusive forum shopping, the presumption that the centre of main interests is at the place of the registered office, at the individual's principal place of business or at the individual's habitual residence should not apply where, respectively, in the case of a company, legal person or individual exercising an independent business or professional activity, the debtor has relocated its registered office or principal place of business to another Member State within the 3-month period prior to the request for opening insolvency proceedings, or, in the case of an individual not exercising an independent business or professional activity, the debtor has relocated his habitual residence to another Member State within the 6-month period prior to the request for opening insolvency proceedings.
- (32) In all cases, where the circumstances of the matter give rise to doubts about the court's jurisdiction, the court should require the debtor to submit additional evidence to support its assertions and, where the law applicable to the insolvency proceedings so allows, give the debtor's creditors the opportunity to present their views on the question of jurisdiction.
- (33) In the event that the court seised of the request to open insolvency proceedings finds that the centre of main interests is not located on its territory, it should not open main insolvency proceedings.
- (34) In addition, any creditor of the debtor should have an effective remedy against the decision to open insolvency proceedings. The consequences of any challenge to the decision to open insolvency proceedings should be governed by national law.'

- 6 Article 3 of that regulation, entitled ‘International jurisdiction’, provides, in paragraph 1:

‘The courts of the Member State within the territory of which the centre of the debtor’s main interests is situated shall have jurisdiction to open insolvency proceedings (“main insolvency proceedings”). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual’s principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual’s principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual’s habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.’

- 7 Article 4(1) of that regulation provides that:

‘A court seised of a request to open insolvency proceedings shall of its own motion examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).’

- 8 Article 7(1) of that regulation provides:

‘Save as otherwise provided in this Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened (“the State of the opening of proceedings”).’

The dispute in the main proceedings and the question referred for a preliminary ruling

- 9 MH and NI, a married couple who, since 2016, have been resident in Norfolk (United Kingdom) where they pursue an activity as employed persons, applied to the Portuguese courts to open insolvency proceedings against themselves. The court of first instance hearing the application declined international jurisdiction to hear that application on the ground that, under the fourth subparagraph of Article 3(1) of Regulation 2015/848, the centre of the main interests of the applicants in the main proceedings was their habitual residence, which was in the United Kingdom, and that consequently the courts of that Member State had jurisdiction to open insolvency proceedings.
- 10 MH and NI lodged an appeal against the judgment given at first instance before the referring court claiming that that judgment was based on a misinterpretation of the rules laid down in Regulation 2015/848. They claim that the centre of their main interests is not their habitual residence in the United Kingdom, but rather it is in Portugal, the Member State where the sole immovable asset which they own is located and where all the transactions and all the contracts leading to their insolvency were

conducted and concluded. Furthermore, there is no connection between their place of habitual residence and the events that led to their insolvency, which occurred entirely in Portugal. MH and NI therefore ask that the Portuguese authorities be recognised as having international jurisdiction.

- 11 The referring court is unsure about the correct interpretation of Article 3(1) of Regulation 2015/848, and more particularly about the criteria for rebutting the simple presumption laid down in that provision for individuals not exercising an independent business or professional activity.
- 12 That court states that, as regards individuals, recital 30 of that regulation states that it should be possible to rebut this presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence.
- 13 In those circumstances, the Tribunal da Relação de Guimarães (Court of Appeal, Guimarães, Portugal) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Under Regulation [2015/848], do the courts of a Member State have jurisdiction to open main insolvency proceedings in respect of a citizen whose sole immovable asset is located in that State, whereas he, along with his family unit, is habitually resident in another Member State where he is in paid employment?'

Consideration of the question referred

- 14 By its question, the referring court asks in essence whether the fourth subparagraph of Article 3(1) of Regulation 2015/848 must be interpreted as meaning that the presumption established in that provision for determining international jurisdiction for the purposes of opening insolvency proceedings, according to which the centre of the main interests of an individual not exercising an independent business or professional activity is his or her habitual residence, is rebutted solely because the only immovable property of that person is located outside the Member State of habitual residence.
- 15 As is apparent from the first subparagraph of Article 3(1) of Regulation 2015/848, the general connecting factor for determining international jurisdiction for the purposes of opening insolvency proceedings is the centre of the debtor's main interests. In the particular case where the debtor is an individual not exercising an independent business or professional activity, the fourth subparagraph of Article 3(1) of that regulation establishes a rebuttable presumption that the centre of that person's main interests is his or her habitual residence.
- 16 In order to provide an answer to the referring court, it is appropriate, in the first place, to clarify the meaning and the scope of the term 'centre of main interests'.
- 17 In that regard, it should be recalled first that, according to settled case-law, the need for a uniform application of EU law and the principle of equality require that the wording of a provision of EU law which does not expressly refer to the law of Member States in order for its meaning and scope to be determined must normally be given an independent and uniform interpretation throughout the European Union; that interpretation must take into account the context of the provision and the objective pursued by the relevant legislation (judgment of 20 October 2011, *Interedil*, C-396/09, EU:C:2011:671, paragraph 42 and the case-law cited).

- 18 Thus, since Article 3(1) of Regulation 2015/848 contains no reference to the law of the Member States, the terms contained in that provision must be given an autonomous and uniform interpretation. In particular, since the term ‘centre of main interests’ is specific to that regulation, it must be interpreted in a uniform way, independently of national legislation (see, by analogy, judgment of 20 October 2011, *Interedil*, C-396/09, EU:C:2011:671, paragraph 43 and the case-law cited).
- 19 Secondly, as regards the term ‘centre of main interests’ in Article 3(1) of Regulation No 1346/2000, the Court has held that the scope of that term is clarified in recital 13 of that regulation, which states that ‘the “centre of main interests” should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties’. The Court has concluded that that definition shows that the centre of main interests must be identified by reference to criteria that are both objective and ascertainable by third parties. That objectivity and that possibility of ascertainment by third parties are necessary in order to ensure legal certainty and foreseeability concerning the determination of the court with jurisdiction to open main insolvency proceedings (order of 24 May 2016, *Leonmobili and Leone*, C-353/15, not published, EU:C:2016:374, paragraph 33 and the case-law cited).
- 20 The same interpretation must be used to determine the meaning and the scope of the term ‘centre of main interests’ for the purposes of Regulation 2015/848. As the Advocate General stated in point 29 of his Opinion, in the context of the regulation which repealed and replaced Regulation No 1346/2000, the use of objective criteria remains essential in order to ensure legal certainty and predictability as regards the determination of the court having jurisdiction. In addition, the rules on international jurisdiction laid down in Regulation 2015/848, as is stated in recital 5, aim to avoid incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors.
- 21 Recital 28 of that regulation also provides useful clarification in that respect by stating that, when determining whether the centre of the debtor’s main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of his or her interests. The use of objective criteria which can be ascertained by third parties in order to determine the centre of the debtor’s main interests must make it possible to determine the jurisdiction with which the debtor has a genuine connection and thus meet the legitimate expectations of the creditors.
- 22 Therefore, the centre of the debtor’s main interests must be determined following an overall assessment of all the objective criteria ascertainable by third parties, in particular the creditors, and which are capable of determining the actual place where the debtor conducts the administration of his or her interests on a regular basis.
- 23 Thirdly, it follows from the actual wording of the first subparagraph of Article 3(1) of Regulation 2015/848 that the above considerations apply without distinction to all debtors, whether they are companies, legal persons or individuals. That general connecting factor for determining international jurisdiction for the purposes of opening insolvency proceedings and the approach based on objective criteria, ascertainable by third parties, which should be adopted for its application therefore apply a fortiori for individuals not exercising an independent business or professional activity.
- 24 That being so, it should be made clear, as the Advocate General stated, in essence, in points 45 and 49 of his Opinion, that the relevant criteria for determining the centre of the main interests of individuals not exercising an independent business or professional activity are those connected with their financial and economic situation which corresponds to the place where they conduct the administration of their economic interests or the majority of their revenue is earned and spent, or the place where the greater part of their assets is located.

- 25 In the second place, it is necessary to clarify the scope of the presumption established in the fourth subparagraph of Article 3(1) of Regulation 2015/848. It follows from the actual wording of that provision, read in the light of the first subparagraph of Article 3(1) of that regulation, that individuals not exercising an independent business or professional activity are presumed, in the absence of proof to the contrary, to conduct the administration of their interests on a regular basis in the place of their habitual residence, since there is a strong possibility that that place corresponds to the centre of their main economic interests. It follows that, as long as that presumption is not rebutted, the courts of the Member States where that residence is located have international jurisdiction to open insolvency proceedings against that individual.
- 26 However, the fourth subparagraph of Article 3(1) of Regulation 2015/848 provides that that presumption applies only until there is proof to the contrary, and recital 30 of that regulation states that it should be possible to rebut that presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence, or where it can be established that the principal reason for moving was to file for insolvency proceedings in the new jurisdiction and where such filing would materially impair the interests of creditors whose dealings with the debtor took place prior to the relocation.
- 27 As the Advocate General stated in point 55 of his Opinion, the mere fact that circumstances referred to in that recital are present is not sufficient to rebut the presumption set out in the fourth subparagraph of Article 3(1) of Regulation 2015/848.
- 28 Although the location of the debtor's assets is one of the objective criteria, ascertainable by third parties, to be taken into consideration when determining the place where the debtor conducts the administration of his or her interests on a regular basis, that presumption may be reversed only following an overall assessment of all the objective criteria. It follows that the fact that the only immovable property of an individual not exercising an independent business or professional activity is located outside the Member State of his or her habitual residence is not sufficient on its own to rebut that presumption.
- 29 In the present case, the applicants in the main proceedings also argue before the referring court that Portugal is not only the Member State where their only immovable property is located but also the Member State where all the transactions and all the contracts leading to their insolvency were conducted and concluded.
- 30 In that regard, although the cause of the insolvency is not, as such, a relevant factor for determining the centre of the main interests of an individual not exercising an independent business or professional activity, it nevertheless falls to the referring court to take into consideration all objective factors, ascertainable by third parties, which are connected with that person's financial and economic situation. In a case such as the one in the main proceedings, as was observed in paragraph 24 above, that insolvency situation is located in the place where the applicants in the main proceedings conduct the administration of their economic interests on a regular basis or the majority of their revenue is earned and spent, or the place where the greater part of their assets is located.
- 31 In view of all of the foregoing factors, the answer to the question is that the first and fourth subparagraphs of Article 3(1) of Regulation 2015/848 must be interpreted as meaning that the presumption established in that provision for determining international jurisdiction for the purposes of opening insolvency proceedings, according to which the centre of the main interests of an individual not exercising an independent business or professional activity is his or her habitual residence, is not rebutted solely because the only immovable property of that person is located outside the Member State of habitual residence.

Costs

- ³² Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

The first and fourth subparagraphs of Article 3(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings must be interpreted as meaning that the presumption established in that provision for determining international jurisdiction for the purposes of opening insolvency proceedings, according to which the centre of the main interests of an individual not exercising an independent business or professional activity is his or her habitual residence, is not rebutted solely because the only immovable property of that person is located outside the Member State of habitual residence.

[Signatures]