



Reports of Cases

ORDER OF THE COURT (Fifth Chamber)

9 September 2014*

(Reference for a preliminary ruling — Regulation (EC) No 1896/2006 — Definition of ‘uncontested pecuniary claims’ — Insolvency proceedings — Extra-judicial enforcement order relating to a contested claim — Claim for payment out of the insolvency estate, on the basis of such an enforcement order — Situation falling outside the scope of Regulation No 1896/2006 — Court clearly lacking jurisdiction)

In Case C-488/13,

REQUEST for preliminary ruling under Article 267 TFEU from the Okrazhen sad — Targovishte (Bulgaria), made by decision of 2 September 2013, received at the Court on 9 September 2013, in the proceedings

‘Parva Investitsionna Banka’ AD,

‘UniKredit Bulbank’ AD,

‘Siyk Faundeyshan’ LLS,

v

‘Ear Proparti Developmant — v nesastoyatelnost’ AD,

Sindik na ‘Ear Proparti Developmant — v nesastoyatelnost’ AD,

intervening parties:

Natsionalna agentsia za prihodite,

‘Aset Menidzhmant’ EAD,

‘Ol Siyz Balgaria’ OOD,

‘Si Dzhi Ef — aktsionerna obshtnost’ AD,

‘Silvar Biych’ EAD,

‘Rudersdal’ EOOD,

‘Kota Enerdzhi’ EAD,

Chavdar Angelov Angelov,

* Language of the case: Bulgarian.

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, E. Juhász, A. Rosas, D. Šváby and C. Vajda, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- ‘Parva Investitsionna Banka’ AD, by I. Dermendzhiev, advokat,
- ‘UniKredit Bulbank’ AD, by M. Fezliyska, A. Kazini and L.K. Hampartsumyan,
- ‘Siyk Faundeyshan’ LLS, by Z. Tomov, advokat,
- ‘Ear Proparti Developmant — v nesastoyatelnost’ AD, by G. Nakova, advokat,
- the Sindik na ‘Ear Proparti Developmant — v nesastoyatelnost’ AD, by G.Y. Kolyovska,
- ‘Aset Menidzhmant’ EAD, by D. Ianakiev, advokat,
- ‘Ol Siyz Balgaria’ OOD, by V. Skochev, advokat,
- ‘Silvar Biych’ EAD, by D. Ianakiev, advokat,
- ‘Rudersdal’ EOOD, by V. Goshev, advokat,
- ‘Kota Enerdzhi’ EAD, by M. Nikolova, advokat,
- the European Commission, by S. Petrova and M. Wilderspin, acting as Agents,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 53(2) of the Rules of Procedure of the Court of Justice,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1).
- 2 The request has been made in proceedings between ‘Parva Investitsionna Banka’ AD, ‘UniKredit Bulbank’ AD, and ‘Siyk Faundeyshan’ LLS, on the one hand, and ‘Ear Proparti Developmant — v nesastoyatelnost’ AD and the Sindik na ‘Ear Proparti Developmant — v nesastoyatelnost’ AD, on the other, concerning insolvency proceedings initiated against ‘Ear Proparti Developmant — v nesastoyatelnost’ AD.

Legal context

European Union law

- 3 According to Article 1(1)(a), the purpose of Regulation No 1896/2006 is to ‘simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure’.
- 4 Article 2 of that regulation, entitled ‘Scope’, provides:
- ‘1. This Regulation shall apply to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (“*acta iure imperii*”).
2. This Regulation shall not apply to:
- ...
- (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- ...’
- 5 Article 3 of that regulation defines cross-border cases as follows:
- ‘1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.
2. Domicile shall be determined in accordance with Articles 59 and 60 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [(OJ 2001 L 12, p. 1)].
3. The relevant moment for determining whether there is a cross-border case shall be the time when the application for a European order for payment is submitted in accordance with this Regulation.’
- 6 The first subparagraph of Article 21(1) of Regulation No 1896/2006, entitled ‘Enforcement’, provides:
- ‘Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement.’
- 7 Under Article 26 of Regulation No 1896/2006, entitled ‘Relationship with national procedural law’:
- ‘All procedural issues not specifically dealt with in this Regulation shall be governed by national law.’

Bulgarian law

Constitution

- 8 Article 5(4) of the Constitution provides:

‘International treaties ratified in accordance with the constitutional procedure, published and having entered into force in relation to the Republic of Bulgaria shall form part of the national law of the State. They shall have primacy over any conflicting provision of domestic legislation.’

Commercial Law Act

- 9 Article 717n of the Law on Commerce (Targovski zakon) (‘the TZ’) provides:

‘On the sale of property mortgaged by the debtor in order to provide security for the debt of another, the receiver shall send the mortgagee notice of the sale. The amount owing to the mortgagee shall be retained by the receiver and shall be delivered to the mortgagee upon production of an order for the enforcement of his claim.’

Code of Civil Procedure

- 10 Article 417 of the Code of Civil Procedure (Grazhdanski protsesualen kodeks) (‘the GPK’) provides:

‘The applicant may also request the grant of an enforcement order if the claim, regardless of its amount, is based upon:

- (1) an act of an administrative body, enforcement of which the civil courts are required to authorise;
- (2) an accounting document or statement of accounts establishing the claim of an organ of the State, a municipality or a bank;
- (3) an authentic instrument, an arrangement or other agreement bearing notarised signatures, concerning obligations set out therein to pay sums of money or other fungible items, and obligations to transfer specific assets;

...’

- 11 Article 418 of the Code of Civil Procedure provides:

‘1. If the claim is accompanied by a document referred to in Article 417 on which the claim is based, the creditor may ask the court to issue an enforcement order for immediate payment.

2. The enforcement order shall be granted after the court has determined the formal validity of the document and established that there is a claim enforceable against the debtor. To issue the enforcement order, the court shall append a note to that effect to the document produced and to the order for payment.

3. If, according to the document produced, the issue of whether the debt has fallen due depends on consideration being provided or on something else occurring, that provision or occurrence must be established by an official document or by a document from the debtor.

4. An appeal may be brought against a decision rejecting in whole or in part the application for an enforcement order within the period of one week from the notification of that order, by way of an interlocutory appeal no copy of which need be produced for service.

...'

Law on Legislative Acts

12 Article 46 of the Law on Legislative Acts (Zakon za normativnite aktove) ('the ZNA'), concerning the interpretation of legislative acts, provides:

'1. Provisions of legislative acts shall be applied according to their strict sense; if they are unclear, they shall be given the meaning that best corresponds to the other provisions, to the purpose of the act interpreted and to the general principles of Bulgarian law.

2. If a legislative act is incomplete, the cases not regulated by it shall be subject to the provisions applicable to similar cases, provided that that is consistent with the purpose of the act. Failing any such provisions, relations shall be governed by the general principles of Bulgarian law ...'

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

13 By judgment of 30 May 2011, the Okrazhen sad - Targovishte (District Court, Targovishte), which has jurisdiction in insolvency cases, opened insolvency proceedings against 'Ear Proparti Developmant — v nesastoytelnost' AD and, by judgment of 15 June 2012, ordered the attachment and realisation of the property forming part of the assets of the company in liquidation.

14 The Sindik na 'Ear Proparti Developmant — v nesastoyatelnost' AD (the liquidator appointed in the insolvency proceedings opened against 'Ear Proparti Developmant — v nesastoytelnost' AD) sold several immovable properties forming part of the insolvency estate and encumbered with mortgages in favour of 'Parva Investitsionna Banka' AD ('Parva Investitsionna Banka'). Those mortgages had been created in order to secure loan agreements concluded by Parva Investitsionna Banka and third parties, namely: 'Port Investmant Developmant — Balgaria 2' EAD and 'Aset Menidzhmant' EAD.

15 Parva Investitsionna Banka obtained several extra-judicial enforcement orders for the claims relating to those mortgage loans. It made an application on the basis of Article 717n of the TZ for provisional, immediate enforcement of those orders under Articles 417 and 418 of the GPK. It claimed payment of the sum for which the immovable property forming part of the insolvency estate had been sold. Those claims being contested by, inter alios, the debtors, the receiver of 'Ear Proparti Developmant — v nesastoyatelnost' AD requested the referring court to give a ruling on, inter alia, the conditions for the application of Article 717n of the TZ when a creditor seeks to have a contested claim paid out of the insolvency estate.

16 According to the referring court, that application asks, in essence, whether payment, out of the insolvency estate and in accordance with Article 717n of the TZ, of a contested claim, provisional immediate enforcement of which was authorised on the basis of extra-judicial orders, may be considered to be lawful.

17 In that regard, the referring court cited a judgment of the Konstitutsionen sad (Constitutional Court) of 2 October 2012 (Case 4/2012) confirming that Articles 417 and 418 of the GPK empowering banks, on the basis of a loan account statement, to obtain immediate enforcement were compatible with the Constitution. The Konstitutsionen sad's assessment took account of Regulation No 1896/2006 because

the latter forms part of internal national law and, pursuant to Article 5(4) of the Constitution, has primacy over any conflicting provisions of domestic legislation that are contrary to the legal principles and solutions adopted in that regulation.

- 18 The referring court considers that the assessment of national law has revealed the existence of a legal vacuum, in that Article 717n of the TZ makes no provision for the case in which an application brought pursuant to that article is contested. The referring court maintains that, under Article 46(2) of the ZNA, it is obliged, when such a lacuna is noted, to take account of the general scheme of the law and of the general principles of law in order to rule on the dispute before it. Regulation No 1896/2006, even if it concerns the European order for payment procedure exclusively, is, according to the referring court, the only legislation providing legal solutions sufficiently similar in their subject-matter to that of the dispute pending before it. That regulation lays down rules and principles relevant for the purposes of answering questions on the conflict between the individual enforcement procedure and the insolvency procedure.
- 19 In accordance with Article 5(4) of the Constitution, Regulation No 1896/2006 forms part of national law. It must therefore be taken into account when general principles of law are interpreted and the general scheme of the law assessed.
- 20 It was in those circumstances that the Okrazhen sad — Targovishte decided to stay the proceedings and to refer to the following questions to the Court of Justice for a preliminary ruling:
- ‘1. How is the criterion of the uncontested nature of an enforceable pecuniary claim within the meaning of recital 6 in the preamble to, and Article 1 of, Regulation [No 1896/2006] to be interpreted?
 2. In cases in which the national legislation of a Member State of the European Union, in whose territory the pecuniary claim is being enforced, is silent as to the application of the order enforcing a pecuniary claim in insolvency proceedings brought in respect of the person against whose property enforcement is sought, must the prohibition laid down in Article 2(2)(b) of [Regulation No 1896/2006] be interpreted strictly as applying only to the contested pecuniary claims of which enforcement is sought, or does it relate also to the uncontested pecuniary claims of which enforcement is sought?
 3. On a proper construction of Article 2(2)(b) of [Regulation No 1896/2006], which provides that the regulation is not to apply to bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings, does that restriction concern only the opening of the proceedings referred to, or does that restriction also cover the whole course of the proceedings in terms of the procedural stages provided for by the national legislation of the Member State of the European Union concerned?
 4. In accordance with the doctrine of the primacy of Community law and given a lacuna in the national legislation of a Member State of the European Union, may the national court of the Member State concerned, before which insolvency proceedings have been brought in respect of a person against whose property enforcement is sought, adopt in an interpretative decision a different solution that is contrary to the basic principles of [Regulation No 1896/2006], on the basis of recital 10 in the preamble to, and Article 26 of, the Regulation?’

Jurisdiction of the Court

- 21 Regulation No 1896/2006, according to Article 1 thereof, institutes a European order for payment procedure in cross-border cases concerning uncontested pecuniary claims.

- 22 It is apparent from the order for reference that the case in the main proceedings concerns neither a European order for payment procedure, provided for under Regulation No 1896/2006, nor the enforcement of a European order for payment, issued on the basis of that regulation, but rather concerns the enforcement of an extra-judicial order, the provisional, immediate enforcement of which has been applied for on the basis of national law in the context of insolvency proceedings.
- 23 It is therefore clear that the situation at issue in the main proceedings falls outside the scope of Regulation No 1896/2006, interpretation of which is requested by the referring court.
- 24 It is apparent from the decision to refer that, by its questions, the referring court seeks the interpretation of Regulation No 1896/2006 in order to fill the lacuna it has discovered in the national legislation applicable to a situation, such as that at issue in the main proceedings, not falling within the scope of that regulation.
- 25 In that regard, it should be borne in mind that, under Article 94(c) of the Rules of Procedure of the Court of Justice, a request for a preliminary ruling must contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings. That statement of reasons, like the summary of the relevant findings of fact required under Article 94(a) of those rules, must be of such a kind as to enable the Court to ascertain, not only whether the request for a preliminary ruling is admissible, but also whether it has jurisdiction to answer the question referred (judgment in *Siragusa*, C-206/13, EU:C:2014:126, paragraph 19).
- 26 Moreover, the Court does not, in principle, have jurisdiction to reply to a question referred for a preliminary ruling where it is obvious that the provision of EU law referred to the Court for interpretation is incapable of applying (see, to that effect, judgment in *Caixa d'Estalvis i Pensions de Barcelona*, C-139/12, EU:C:2014:174, paragraph 41 and the case-law cited).
- 27 However, in a situation such as that at issue in the main proceedings in which the facts of the case fall outside the scope of the provisions of EU law referred to the Court for interpretation, the Court has jurisdiction to give a preliminary ruling, if the domestic law makes a reference to the content of those provisions of EU law in order to determine the rules applicable to a situation purely internal to the Member State concerned (see, in particular, judgments in *Poseidon Chartering*, C-3/04, EU:C:2006:176, paragraph 15; *ETI and Others*, C-280/06, EU:C:2007:775, paragraphs 22 and 26; *Salahadin Abdulla and Others*, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraph 48; *Cicala*, C-482/10, EU:C:2011:868, paragraph 17; *Nolan*, C-583/10, EU:C:2012:638, paragraph 45; and *Romeo*, C-313/12, EU:C:2013:718, paragraph 21).
- 28 Indeed, it is clearly in the European Union's interests that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly, when, in regulating situations outside the scope of the EU measure concerned, national legislation seeks to adopt the same solutions as those adopted in that measure, in order to ensure that internal situations and situations governed by EU law are treated in the same way, irrespective of the circumstances in which the provisions or concepts taken from EU law are to apply (see, in particular, judgments in *Salahadin Abdulla and Others*, EU:C:2010:105, paragraph 48; *SC Volksbank România*, C-602/10, EU:C:2012:443, paragraphs 87 and 88; *Nolan*, EU:C:2012:638, paragraph 46; *Allianz Hungária Biztosító and Others*, C-32/11, EU:C:2013:160, paragraphs 20 and 21; and *Romeo*, EU:C:2013:718, paragraph 22).
- 29 Such is the case when the provisions of EU law at issue have been made directly and unconditionally applicable by national law to such situations (judgments in *Cicala*, EU:C:2011:868, paragraph 19; *Nolan*, EU:C:2012:638, paragraph 47; and *Romeo*, EU:C:2013:718, paragraph 23). On the other hand, that is not the case when the provisions of national law allow the national court to depart from the

rules of EU law, as interpreted by the Court of Justice (see, to that effect, judgments in *Kleinwort Benson*, C-346/93, EU:C:1995:85, paragraphs 16 and 18; and *Romeo*, EU:C:2013:718, paragraph 33 and the case-law cited).

- 30 In the present case, the referring court refers to Article 46(2) of the ZNA, in conjunction with Article 5(4) of the Constitution, and explains why it considers that an interpretation of the provisions of Regulation No 1896/2006 is, in a situation such as that at issue in the main proceedings, not falling within the scope of that regulation, necessary for the purposes of resolving the case before it. However, those reasons are not such as to allow the Court to conclude that it has jurisdiction to answer the request for a preliminary ruling.
- 31 Article 5(4) of the Constitution provides: '[i]nternational treaties ratified in accordance with the constitutional procedure, published and having entered into force in relation to the Republic of Bulgaria shall form part of the national law of the State. They shall have primacy over any conflicting provision of domestic legislation.' That provision makes no reference therefore to the provisions of Regulation No 1896/2006, cited in the questions referred, but merely, according to its wording, lays down a rule relating to the hierarchy between international and domestic law.
- 32 Article 46(2) of the ZNA refers in general terms to 'general principles of Bulgarian law' and not specifically to the provisions of Regulation No 1896/2006, mentioned in the questions referred. Although the referring court maintains that Article 46(2) of the ZNA, in conjunction with Article 5(4) of the Constitution, also refers to EU law, it does not indicate at all whether those provisions of Bulgarian law do indeed refer to the provisions of Regulation No 1896/2006 in order to regulate situations not falling within the scope of that regulation so as to ensure that internal situations and situations governed by EU law are treated in the same way.
- 33 As regards the judgment of the *Konstitutsionen sad*, referred to in paragraph 17 above, cited by the referring court in this context, it is by no means apparent from the order for reference that that judgment concerns the question whether Article 5(4) of the Constitution and Article 46(2) of the ZNA make a *renvoi* to EU law to ensure such identical treatment.
- 34 If Article 46(2) of the ZNA, read in conjunction with Article 5(4) of the Constitution, refers in general terms to general principles of law in order to fill a legal vacuum, it is not apparent from the order for reference that the provisions of Regulation No 1896/2006 have been made applicable, as such, directly and unconditionally by those provisions of Bulgarian law to a situation not falling within the scope of the provisions of that regulation whose interpretation is sought. Rather, it appears that those provisions of Bulgarian law merely authorise the court before which the application has been brought to fall back on general principles, national legislation and EU law to fill the lacuna found, by means of the decision it is to adopt and in accordance with its own evaluation of the guidance offered by those rules and principles.
- 35 In those circumstances, it cannot be considered that the provisions of Regulation No 1896/2006, cited in the questions referred, have been made applicable, as such, directly and unconditionally by national law to a situation, such as that in the main proceedings, not falling within the scope of the provisions of that regulation.
- 36 Consequently, it must be held, on the basis of Article 53(2) of the Rules of Procedure, that the Court clearly lacks jurisdiction to answer the questions referred by the *Okrazhen sad — Targovishte*.

Costs

- ³⁷ 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 (Fifth Chamber) hereby orders:

The Court of Justice of the European Union clearly lacks jurisdiction to answer the questions referred by the Okrazhen sad — Targovishte (Bulgaria).

[Signatures]