



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

22 October 2015*

(Reference for a preliminary ruling — Area of freedom, security and justice — Regulation (EC) No 1896/2006 — European order for payment procedure — Late statement of opposition — Article 20(2) — Application for review of the European order for payment — Objection to the jurisdiction of the court of origin — European order for payment wrongly issued having regard to the requirements laid down in the regulation — Not ‘clearly’ wrongly issued — No ‘exceptional’ circumstances)

In Case C-245/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Handelsgericht Wien (Commercial Court, Vienna, Austria), made by decision of 8 April 2014, received at the Court on 21 May 2014, in the proceedings

Thomas Cook Belgium NV

v

Turner Hotel GmbH,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan, A. Prechal and K. Jürimäe, Judges,

Advocate General: P. Cruz Villalón,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 16 April 2015,

after considering the observations submitted on behalf of:

- Turner Hotel GmbH, by C. Linser and P. Linser, Rechtsanwälte,
- the Austrian Government, by G. Eberhard, acting as Agent,
- the German Government, by T. Henze and J. Kemper, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes and E. Pedrosa, acting as Agents,
- the European Commission, by M. Wilderspin, acting as Agent,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 2 July 2015,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 20(2) 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), as amended by Commission Regulation (EU) No 936/2012 of 4 October 2012 (OJ 2012 L 283, p. 1) ('Regulation No 1896/2006').
- 2 The request has been made in proceedings between Thomas Cook Belgium NV ('Thomas Cook'), a company established in Belgium, and Thurner Hotel GmbH ('Thurner Hotel'), a company established in Austria, concerning a European order for payment procedure.

Legal context

Regulation No 1896/2006

- 3 Recital 9 in the preamble to Regulation No 1896/2006 is worded as follows:

'The purpose of this Regulation 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 Recital 16 in the preamble to that regulation provides:

'The court should examine the application, including the issue of jurisdiction and the description of evidence, on the basis of the information provided in the application form. This would allow the court to examine prima facie the merits of the claim and inter alia to exclude clearly unfounded claims or inadmissible applications. The examination should not need to be carried out by a judge.'

- 5 Recital 25 in the preamble to the regulation states:

'After the expiry of the time-limit for submitting the statement of opposition, in certain exceptional cases the defendant should be entitled to apply for a review of the European order for payment. Review in exceptional cases should not mean that the defendant is given a second opportunity to oppose the claim. During the review procedure the merits of the claim should not be evaluated beyond the grounds resulting from the exceptional circumstances invoked by the defendant. The other exceptional circumstances could include a situation where the European order for payment was based on false information provided in the application form.'

- 6 Recital 29 in the preamble to the regulation states that the objective of the regulation is 'to establish a uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims throughout the European Union'.

- 7 Article 1(1) of Regulation No 1896/2006 provides:

'The purpose of this Regulation is:

- (a) 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;

...'

8 Article 5 of that regulation defines the 'court of origin' as the 'court which issues a European order for payment'.

9 Under the heading 'Jurisdiction', Article 6(1) of the regulation provides:

'For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular [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)].'

10 Article 7(2) of the regulation provides:

'The application [for a European order for payment] shall state:

(a) the names and addresses of the parties, and, where applicable, their representatives, and of the court to which the application is made;

...

(e) a description of evidence supporting the claim;

(f) the grounds for jurisdiction;

...'

11 Article 8 of Regulation No 1896/2006, entitled 'Examination of the application', is worded as follows:

'The court seised of an application for a European order for payment shall examine, as soon as possible and on the basis of the application form, whether the requirements set out in [Articles 6 and 7] are met and whether the claim appears to be founded. This examination may take the form of an automated procedure.'

12 Article 12(1) and (3) to (5) of Regulation No 1896/2006 is worded as follows:

'1. If the requirements referred to in Article 8 are met, the court shall issue, as soon as possible and normally within 30 days of the lodging of the application, a European order for payment using standard form E as set out in Annex V.

...

3. In the European order for payment, the defendant shall be advised of his options to:

(a) pay the amount indicated in the order to the claimant;

or

(b) oppose the order by lodging with the court of origin a statement of opposition, to be sent within 30 days of service of the order on him.

4. In the European order for payment, the defendant shall be informed that:

- (a) the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court;
- (b) the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16;

...

5. The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15.’

13 Article 16(1) to (3) of the regulation is worded as follows:

‘1. The defendant may lodge a statement of opposition to the European order for payment with the court of origin ...

2. The statement of opposition shall be sent within 30 days of service of the order on the defendant.

3. The defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this.’

14 Under the heading ‘Review in exceptional cases’, Article 20(2) of the regulation provides:

‘After expiry of the time-limit laid down in Article 16(2) the defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances.’

Regulation No 44/2001

15 Article 5 of Regulation No 44/2001 states:

‘A person domiciled in a Member State may, in another Member State, be sued:

- 1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
- (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— ...

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

...’

16 Article 23 of the regulation is worded as follows:

‘1. If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise ...

...’

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

- 17 On 3 September 2009, the travel agency, Thomas Cook, concluded a contract with Thurner Hotel for the provision of hotel accommodation.
- 18 Thurner Hotel applied to the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) for a European order for payment to be issued against Thomas Cook in the amount of EUR 15232.28 concerning payment of invoices for services provided by Thurner Hotel under the contract. Thurner Hotel claimed that the court seised had jurisdiction on the basis of the place where the services were provided.
- 19 On 26 June 2013, the European order for payment was served on Thomas Cook in accordance with Regulation No 1896/2006.
- 20 Thomas Cook lodged a statement of opposition on 25 September 2013, thus after the expiry of the time-limit of 30 days for doing so laid down in Article 16(2) of Regulation No 1896/2006. It also applied to the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) to review the European order for payment in accordance with Article 20(2) of that regulation.
- 21 In that regard, Thomas Cook submitted that Thurner Hotel had not provided it, at least in sufficient time, with the relevant invoices and that the debt at issue was based on false claims. Moreover, Thomas Cook raised objection to the jurisdiction of the Austrian courts on the basis of a clause in the general terms and conditions of the contract conferring jurisdiction on the Belgian courts. In reliance on Article 20(2) of Regulation No 1896/2006, Thomas Cook claimed that the fact that the court of origin lacked jurisdiction constituted a ground for review within the meaning of that provision.
- 22 By order of 28 October 2013, the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) rejected that application on the ground that the possibility of review laid down in Article 20(2) of Regulation No 1896/2006 must be interpreted strictly. According to that court, the fact that a European order for payment is issued by a court lacking jurisdiction does not entitle the debtor to request that the order for payment be reviewed on the basis of that provision.
- 23 Thomas Cook appealed before the referring court against that order alleging that the case before the court of first instance had been the subject of an incorrect legal assessment and that Article 20(2) of Regulation No 1896/2006 should allow it to apply for the European order for payment to be reviewed.
- 24 According to the referring court, Austrian academic writings support a strict interpretation of Article 20(2) of Regulation No 1896/2006, although they are divided on the question whether the fact that a European order for payment has been issued by a court lacking jurisdiction constitutes a legitimate ground for review within the meaning of that provision. In addition, the referring court states that ‘exceptional circumstances’, which are required by Article 20(2) for there to be entitlement to a review of a European order for payment, are not defined in that regulation.

25 In those circumstances, the Handelsgericht Wien (Commercial Court, Vienna) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

- (1) Is Regulation No 1896/2006 to be interpreted as meaning that a defendant may apply for a review by the competent court of the European order for payment in accordance with Article 20(2) of [that regulation] also where the order for payment was effectively served on him but was issued by a court which lacks jurisdiction on the basis of the information relating to jurisdiction provided in the application form?
- (2) If the answer to Question 1 is in the affirmative, do exceptional circumstances within the meaning of Article 20(2) of Regulation No 1896/2006 already exist in accordance with recital 25 [in the preamble to Amended proposal for a Regulation of the European Parliament and of the Council creating a European order for payment procedure (presented by the Commission pursuant to Article 250(2) of the EC Treaty) (COM(2006) 57 final)] where the European order for payment was issued on the basis of information provided in the application form which may subsequently prove to be inaccurate, particularly where the jurisdiction of the court depends on that information?

Consideration of the questions referred

- 26 By its two questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 20(2) of Regulation No 1896/2006 must be interpreted as precluding, in circumstances such as those at issue in the main proceedings, a defendant on whom a European order for payment has been served in accordance with that regulation from being entitled to apply for a review of that order by claiming that the court of origin incorrectly held that it had jurisdiction on the basis of allegedly false information provided by the claimant in the application form for that order for payment.
- 27 The Court notes, at the outset, that, as is clear from Article 12(3) of Regulation No 1896/2006, once the European order for payment has been served on the defendant in accordance with the regulation, the defendant is advised of his options of either paying the claimant the amount indicated in the order or lodging a statement of opposition in accordance with Article 16 of the regulation with the court of origin within 30 days of service of the order for payment.
- 28 As the Court held in paragraph 30 of the judgment in *Goldbet Sportwetten* (C-144/12, EU:C:2013:393), the defendant's option of lodging a statement of opposition is designed to compensate for the fact that the system established by Regulation No 1896/2006 does not provide for the defendant's participation in the European order for payment procedure by enabling him to contest the claim after the European order for payment has been issued.
- 29 As regards the possibility of reviewing a European order for payment, once the time-limit for submitting a statement of opposition has elapsed, there can be no review, as is clear from the very heading of Article 20 of the regulation, save in 'exceptional circumstances'.
- 30 In that regard, it is clear from the wording of Article 20(2) of Regulation No 1896/2006 that there can be a review of the European order for payment in the event that the time-limit for submitting a statement of opposition has not been complied with where, having regard to the requirements laid down in the regulation or due to other exceptional circumstances, the order for payment was clearly wrongly issued.
- 31 Since the EU legislature intended to limit the review procedure to exceptional circumstances, the provision must necessarily be interpreted strictly (see, by analogy, judgment in *Commission v Council*, C-111/10, EU:C:2013:785, paragraph 39 and the case-law cited).

- 32 In the first place, it must be ascertained whether, in a situation such as that at issue in the main proceedings, the order was ‘clearly’ wrongly issued, having regard the requirements laid down in Regulation No 1896/2006.
- 33 Under Article 7(2) of that regulation, the application for a European order for payment is to state, *inter alia*, the court to which the application for an order for payment is made and the ground on which that court’s jurisdiction is based.
- 34 Under Article 8 of the regulation, that court is to examine, as soon as possible and on the basis of the European order for payment application form (‘the application form’), whether the requirements laid down in particular in Article 6 of the regulation are satisfied, under which jurisdiction is to be determined in accordance with the relevant rules of EU law, especially those of Regulation No 44/2001, and whether the claim appears to be founded. If the requirements referred to in Article 8 of Regulation No 1896/2006 are met, the court is to issue, as soon as possible and normally within 30 days of the lodging of the application, a European order for payment using standard form E as set out in Annex V to the regulation, in accordance with Article 12(1) of the regulation.
- 35 In the present case, the order for reference states that Thomas Cook has raised objection to the jurisdiction of the court of origin on the basis of there being a clause in the general terms and conditions of the contract at issue concluded with Thurner Hotel conferring jurisdiction on the Belgian courts.
- 36 In that regard, the Court notes that Article 23 of Regulation No 44/2001 provides that, if the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts are to have jurisdiction, which is to be exclusive unless the parties have agreed otherwise.
- 37 Nevertheless, assuming that that article does apply in a situation such as the one at issue in the main proceedings, it must be pointed out, as is clear from recital 16 in the preamble to Regulation No 1896/2006, that the court seised should examine the application, including the issue of jurisdiction and the description of evidence, on the basis of the information provided in the application form. In accordance with Article 8 of that regulation, that court is to examine, as soon as possible and on the basis of the application form, whether the requirements set out, *inter alia*, in Articles 6 and 7 of the regulation are met and whether the claim appears to be founded.
- 38 Furthermore, Article 12(4)(a) of Regulation No 1896/2006 states that the defendant is to be informed in the European order for payment, in particular, of the fact that the order has been issued solely on the basis of the information which was provided by the claimant and has not been verified by the court and Article 12(4)(b) of that regulation specifies that that order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16. This is also clear from the service on the defendant of the European order for payment made using standard form E in Annex V to Regulation No 1896/2006.
- 39 Accordingly, in circumstances such as those at issue in the main proceedings, where the defendant wishes to raise objection to the jurisdiction of the court of origin on the ground of the allegation that the information provided by the claimant in the application form was false, it is for the defendant to act within the time-limit for contesting the claim laid down in Article 16 of Regulation No 1896/2006.
- 40 In that regard, it must be recalled that the possibility of taking action is facilitated by the fact that, in accordance with Article 16(3) of the regulation, the defendant need not specify the reasons for contesting the claim and can simply contest it.

- 41 Since the purpose of the procedure established by Regulation No 1896/2006 is to reconcile the swiftness and efficiency of court proceedings, whilst observing the rights of the defence, the defendant must therefore exercise his rights within the time-limits laid down and can subsequently only have limited means at his disposal for contesting the enforcement of a European order for payment.
- 42 Furthermore, as the Advocate General has noted in point 33 of his Opinion, the determination as to whether the court of origin has jurisdiction in the context of the European order for payment procedure may give rise to complex points of law, such as the validity of a jurisdiction clause, the assessment of which could require a more thorough examination than that which is required under Article 8 of Regulation No 1896/2006.
- 43 It follows that, in the specific circumstances of the case in the main proceedings, it cannot be considered that the European order for payment issued against the defendant has been clearly wrongly issued, having regard to the requirements laid down in Regulation No 1896/2006.
- 44 In the second place, it must be ascertained whether, in a situation such as that at issue in the main proceedings, it is appropriate to consider that that order for payment has been ‘clearly’ wrongly issued due to other ‘exceptional circumstances’ within the meaning of Article 20(2) of Regulation No 1896/2006.
- 45 In that regard, according to recital 25 in the preamble to that regulation, which reflects recital 25 in the preamble to Amended proposal for a Regulation COM(2006) 57 final, to which the referring court makes reference, such ‘other exceptional circumstances’ could include a situation where the European order for payment was based on false information provided by the claimant in the application form.
- 46 Nevertheless, in the present case, as recalled in paragraph 35 above, the defendant has relied, in support of its application for review, on the lack of jurisdiction of the court of origin, by claiming that both parties to the contract at issue in the main proceedings agreed on conferring jurisdiction on the Belgian courts.
- 47 In those circumstances, once the European order for payment had been served on the defendant in accordance with Regulation No 1896/2006, since it was not possible for it to be unaware of such a jurisdiction clause, the defendant could have considered whether the information provided by the claimant in the application form was false with regard, in this instance, to the jurisdiction of the court of origin. The defendant therefore had the opportunity of raising this under the opposition procedure laid down in Article 16 of Regulation No 1896/2006.
- 48 As is stated in recital 25 in the preamble to that regulation, the possibility, provided for in Article 20 of Regulation 1896/2006, of having the order for payment reviewed must not lead to the defendant being given a second opportunity to oppose the claim.
- 49 It follows that, in a situation such as that at issue in the main proceedings, it cannot be considered that the order for payment was wrongly issued due to other ‘exceptional circumstances’ within the meaning of Article 20(2) of Regulation No 1896/2006.
- 50 Such an interpretation of that provision is corroborated by the objective pursued by the regulation. Recital 9 in the preamble to and Article 1(1)(a) of the regulation state that the purpose of the regulation 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. Recital 29 in the preamble to Regulation No 1896/2006 further states that the objective pursued by the regulation is to establish a uniform rapid and efficient mechanism for the recovery of such claims.

- 51 That objective would be undermined if, in circumstances such as those at issue in the main proceedings, it were necessary to interpret Article 20(2) of Regulation No 1896/2006 as allowing the defendant to apply for the European order for payment to be reviewed.
- 52 In the light of the foregoing, the answer to the questions referred is that Article 20(2) of Regulation No 1896/2006 must be interpreted as precluding, in circumstances such as those at issue in the main proceedings, a defendant on whom a European order for payment has been served in accordance with that regulation from being entitled to apply for a review of that order by claiming that the court of origin incorrectly held that it had jurisdiction on the basis of allegedly false information provided by the claimant in the application form.

Costs

- 53 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 (Fourth Chamber) hereby rules:

Article 20(2) 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, as amended by Commission Regulation (EU) No 936/2012 of 4 October 2012, must be interpreted as precluding, in circumstances such as those at issue in the main proceedings, a defendant on whom a European order for payment has been served in accordance with that regulation from being entitled to apply for a review of that order by claiming that the court of origin incorrectly held that it had jurisdiction on the basis of allegedly false information provided by the claimant in the application form.

[Signatures]