

Case C-208/20**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

14 May 2020

Referring court:

Sofiyski rayonen sad (Sofia District Court, Bulgaria)

Date of the decision to refer:

14 May 2020

Applicants:

‘Toplofikatsia Sofia’ EAD

‘Chez Elektro Balgaria’ AD

‘Agentsia za kontrol na prosrocheni zadalzhenia’ EOOD

Subject matter of the case in the main proceedings

Three civil cases in which the respective opposing party is not yet able to acquire the status of party to the proceedings, because it is impossible to serve judicial documents on the defendants personally, and where their neighbours or relatives have stated that they live in other Member States of the European Union.

Subject matter and legal basis of the reference

Request for a preliminary ruling under Article 267 TFEU on the interpretation of Article 20(2)(a) TFEU, Article 1(1)(a) of Regulation (EC) No 1206/2001 and Article 5(1) of Regulation No 1215/2012.

Questions referred

- 1 Must Article 20(2)(a) of the Treaty on the Functioning of the European Union, in conjunction with the second paragraph of Article 47 of the Charter of Fundamental Rights, the principles of non-discrimination and the equivalence of

procedural measures in national judicial proceedings and Article 1[(1)](a) of Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters be interpreted as meaning that, where the national law of the court seised provides that the latter is to obtain, of its own motion, information regarding the defendant's address in its own State and it is established that the defendant is in another State of the European Union, the national court seised is obliged to obtain information regarding the defendant's address from the competent authorities of the State in which he resides?

- 2 Must Article 5(1) of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in conjunction with the principle that the national court must guarantee procedural rights for the effective protection of rights arising from EU law, be interpreted as meaning that, when determining the habitual residence of a debtor as a condition required under national law for the conduct of unilateral formal proceedings in which evidence is not taken, such as order for payment procedures, the national court is obliged to interpret any reasonable suspicion that the debtor is habitually resident in another State of the European Union as a lack of a legal basis for issuing an order for payment or as a basis for the order for payment not acquiring the force of *res judicata*?
- 3 Must Article 5(1) of Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in conjunction with the principle that the national court must guarantee procedural rights for the effective protection of rights deriving from EU law, be interpreted as meaning that a national court, which, after having issued an order for payment against a particular debtor, has established that that debtor is unlikely to be habitually resident in the State of the court and, provided that this constitutes an obstacle to the issuing of an order for payment against such a debtor under national law, is obliged to annul, of its own motion, the order for payment issued, despite the absence of an express statutory provision to that effect?
- 4 If the third question is answered in the negative, are the provisions referred to in that question to be interpreted as obliging the national court to annul the order for payment issued where it has carried out a check and established with certainty that the debtor is not habitually resident in the State of the court seised?

Legislation and case-law of the European Union

Treaty on the Functioning of the European Union Article 18 and 20(2)(a).

Charter of Fundamental Rights of the European Union: second paragraph of Article 47.

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters: Article 60(1).

Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters: Article 1(1)(a).

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000: Article 1(1) and (2).

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters: Article 5(1).

Judgment of the Court of Justice of 16 December 1976, *Rewe-Zentralfinanz*, 33-76, EU:C:1976:188.

Judgment of the Court of Justice of 19 December 2012, *Alder*, C-325/11, EU:C:2012:824.

Judgment of the Court of Justice of 16 September 2015, *Alpha Bank Cyprus*, C-519/13, EU:C:2015:603.

Order of the Court of Justice of 28 April 2016, *Alta Realitat*, C-384/14, EU:C:2016:316.

National provisions

Zakon za zadalzheniata i dogovorite (Law on obligations and contracts): Article 68(a).

- 5 Grazhdanski protsesualen kodeks (Code of Civil Procedure): Articles 38, 40 and 41, Article 42(1), Article 43, Article 44(1), Article 45, Article 46(1) and (2), Article 47(1), (2), (3), (5), (6) and (7), Articles 48, 53 and 246, Article 282(2), Article 410(1)(1) and (2), Article 411, Article 413(1), Articles 414-416, 419 and 423.
- 6 Kodeks na mezhdunarodnoto chastno pravo (Code on private international law): Articles 4(1) and 48.
- 7 Zakon za grazhdanskata registratsia (Law on the registration of citizens): Articles 90(1), 93, 94 and 96(1).

Brief summary of the facts and procedure

- 8 Three civil cases have been brought before the referring court, in which the opposing party is not yet able to acquire the status of party to the proceedings, because it is not possible to serve judicial documents on the defendants.
- 9 In the first set of (litigation) proceedings, the applicant ‘Toplofikatsia Sofia’ EAD brought an action against the defendant DP, a natural person, consumer and Bulgarian citizen, seeking to establish a claim in respect of thermal energy that had been supplied to a property in Sofia, together with the related services and statutory interest.
- 10 The proceedings were initiated after the debtor DP was not found at her registered addresses in an order for payment procedure. The court ordered a notice to be affixed to the front door, but, once again, the documents were not delivered. The court therefore indicated that an action could be brought to establish the existence of the claims set out in the order for payment.
- 11 A copy of the application initiating proceedings was sent to DP at the address in Sofia specified in that document, but DP was not found there. The court obtained, of its own motion, information regarding the address from the population register and employer register kept by the state authorities. It is clear from those registers that DP’s permanent and current address of residence is that specified in the application initiating proceedings, but that DP has officially not been working in Bulgaria since January 2013. The Court ordered that she be summoned to appear at her registered address by affixing a notice [to the front door]. In October 2019, the officer of the court responsible for serving notices visited the address and noted that, according to a neighbour, DP had been living in France for seven years.
- 12 In the second set of proceedings (concerning an order for payment procedure), the applicant in that procedure, ‘Chez Elektro Balcaria’ AD, a municipal utility company, brought an action for the issue of an order for payment against EQ, a natural person and a consumer, due to his failure to pay for the electricity supplied to a property in Sofia.
- 13 The court issued an order for payment and ordered that it be served on the debtor EQ so as to enable him to state his position as to whether he would file a statement of opposition. The officer of the court visited the address specified by the applicant in the order for payment procedure, which matched the debtor’s permanent and current address of residence in the population register. The officer of the court did not find anyone at that address and affixed a notice to the front door. He learned from a neighbour that the debtor had been living in Germany for one year. The information obtained by the court of its own motion showed that the debtor has not been insured in Bulgaria since January 2010.
- 14 In the third set of proceedings (concerning an order for payment procedure), ‘Agentsia za kontrol na prosrocheni zadalzhenia’ EOOD, a debt collection agency,

brought an action for the issue of an order for payment against FR, a natural person and a consumer, who has not repaid a loan to a financial institution based in Sofia.

- 15 The court issued an order for payment and ordered that it be served on the debtor FR so as to enable him to state his position as to whether he would file a statement of opposition. On two occasions the officer of the court visited the address specified by the applicant in the order for payment procedure, which matched the debtor's permanent and current address of residence in the population register, and established that the debtor's mother lives there. She refused to accept the document on behalf of her son and stated that he had been living in Germany for three years but she did not know his exact address. She provided two Bulgarian mobile phone numbers on which to contact the debtor, but nobody answered the calls made to those numbers.

Brief summary of the basis for the reference

- 16 The referring court has doubts as to whether, in cases where the addressee of judicial documents is located in another State, the national law governing the procedure for bringing an action provides for measures for effecting service which are compatible with the requirements of EU law. In particular, it is necessary to establish whether the principle of equivalence of procedural rules established in the case-law of the Court of Justice requires that the address of persons residing abroad also be located, as is done in the case of persons with a registered address in Bulgaria.
- 17 However, in the order for payment procedure — which is conducted formally and in which the claims asserted by the applicant in the procedure are not subject to the standards of proof of litigation proceedings — national law links the jurisdiction of the court to the debtor's place of habitual residence. Therefore, the question of how service is effected in such proceedings is also relevant to the international jurisdiction of the court.
- 18 The request for a preliminary ruling concerns the application of the principle of procedural autonomy of the Member States and the limitations on that principle that have been introduced into the case-law of the Court of Justice. According to the judgment of the Court of Justice in Case [33-76], *Rewe-Zentralfinanz*, Member States must apply their procedural conditions under national law equally to rights arising from national law and those conferred by EU law.
- 19 Article 18 TFEU, which prohibits discrimination on grounds of nationality, is also related to the question of locating the address of a particular addressee of judicial documents abroad. Article 20(2)(a) TFEU, which provides for the right to reside freely throughout the territory of the European Union, is also relevant. Regulation 1206/2001 is also applicable, because the civil court in the present case wants to know whether it must locate the address of the parties abroad.

- 20 As regards the question of the national court's jurisdiction to issue orders for payment against persons habitually resident outside the territory of the State of the court, the provision of Article 5(1) of Regulation No 1215/2002 applies. This provision prohibits persons domiciled in a Member State from being sued in the courts of another Member State if the conditions laid down in Articles 7 to 26 of the regulation are not met. Under Article 62(1) of that regulation, the concept of 'domicile' is governed by the national law of the court seised.
- 21 According to the interpretation given in the judgment in the *Alder* case, C-325/11, Article 1(1) of Regulation No 1393/2007 precludes national legislation which requires a citizen of the European Union to designate a representative who is authorised to accept service in the State of the court before which he is a party to judicial proceedings. Article 1(2) of that regulation provides that the latter does not apply to persons whose address is not known.

Connection with EU law and the need for interpretation

- 22 First of all, it should be noted that the cases involved are civil matters that display a cross-border element, as it is likely that one of the parties is residing abroad. In view of the subject matter of the disputes — payment obligations in respect of goods and services supplied in Bulgaria — the Bulgarian courts are to be regarded as having jurisdiction in accordance with the general rules laid down in Regulation 1215/2012, regardless of whether the defendants are domiciled in Bulgaria.
- 23 In the first case, the court must — based on the facts described above relating to the service of documents on the defendant — consider the action by asking the applicant whether it knew that the defendant was registered at a [different] address known to the applicant. It is very likely that the applicant will state that it was not aware of such an address, bearing in mind that the application initiating proceedings also specified only one registered address for the defendant. Under these circumstances, the court will have to publish a notice in the 'Darzhaven vestnik' (Bulgarian Official Journal) and, if the defendant does not appear (which is also likely, because she is not in Bulgaria and has no possibility of reading the printed version of the official publication of that country), appoint a special authorised representative for her.
- 24 This would deprive the defendant of the possibility of participating in the proceedings if the facts of the case were such that she lives abroad — in another Member State. If this were not the case and the defendant were at a different address in Bulgaria, the court would have the possibility of carrying out further investigations into registered addresses or into employers. Under national law, there is no possibility of specifying a current address abroad and, accordingly, the defendant is unable to specify her address abroad in the present case.
- 25 Thus, national law creates unequal conditions for persons temporarily living at another address in Bulgaria and those living at another address abroad. At the

same time, Bulgarian citizens must always be sought at their registered address in Bulgaria if judicial proceedings are brought against them. Thus, persons who have exercised their right to free movement under Article 20(2)(a) TFEU are treated differently with regard to their rights to participate in judicial proceedings [guaranteed under the second paragraph of Article 47 of the Charter of Fundamental Rights].

- 26 The question is whether this difference in treatment is justified in the light of the criteria established by the Court of Justice (albeit on other grounds) in paragraph 58 of the order in the *Alta Realitat* case, C-384/14 — according to which the effective exchange of documents in cross-border cases must be weighed against the protection of the procedural rights of the addressee (a principle also established in paragraph 41 of the judgment in the *Alpha Bank Cyprus* case, C-519/13). If the summoning of a citizen without a registered address abroad and without the possibility of him specifying such a specific address is contrary to EU law, it is also necessary to answer the question as to whether, in this case, the national court may request data concerning the registration of the defendant's address from her State of residence — the French Republic. The court has another instrument of EU law available to it for this purpose, namely the possibility for it to request courts in other States of the European Union to take evidence under Regulation 1206/2001. However, that approach can only be applied where it is considered that EU law imposes an obligation on the national court, in the light of the measures available under national law, to determine the addresses of the parties in other Member States also.
- 27 In the two order for payment procedures in which final acts have already been adopted — orders for payment have been issued under the formal procedures, but it is necessary to examine whether those acts can acquire the force of res judicata — it is possible, according to the national court, that the acts in question were adopted even though there is no international jurisdiction.
- 28 Under Article 5(1) of Regulation No 1215/2015, a court of a Member State may not give judgment on a person domiciled in another Member State, other than in the circumstances set out in that regulation. The concept of 'domicile' is determined by the law of each State.
- 29 The Bulgarian legislature has not explicitly defined or referred to a legal concept under national law that is to be generally interpreted as corresponding to the concept of 'domicile'. According to the case-law of the Varhoven kasatsionen sad (VKS, Supreme Court of Cassation, Bulgaria), this cannot be the permanent address of residence, as this address can only be located within the territory of Bulgaria.
- 30 Consequently, under Bulgarian law, the category of 'domicile' is defined according to two criteria — the current registered address or the habitual residence. Regarding the order for payment procedure, however, the legislature categorically prohibits the issuing of an order for payment if the person against

whom such an order is to be issued is habitually resident in the territory of a State outside Bulgaria.

- 31 However, by interpretative judgment No 4/2013, the VKS obliged national courts to apply this rule restrictively, since there is no taking of evidence in the order for payment procedure and it is presumed that the national court in the procedure is unable to investigate whether the statutory requirement that the debtor be habitually resident in Bulgaria is met. The court therefore has to issue an order for payment and if no statement of opposition is filed against it (for which no grounds are required) and that order for payment is served on a person having the addressee's registered address, the order for payment acquires the force of res judicata. Based on the order for payment that has acquired the force of res judicata, enforcement proceedings can be initiated and enforcement can be carried out against the debtor's assets, even if his habitual residence is outside of Bulgaria.
- 32 At the same time, according to the interpretative judgment cited, the court does not assess whether or not the current registered address in another State constitutes a ground for the national court to assume that the habitual residence is in that State.
- 33 Although the national case-law provides for protection against an order for payment issued against a debtor habitually resident in another State via the possibility of filing a statement of opposition with the court of appeal, this protection is not effective. This is the case because the opposition before the court of appeal does not temporarily suspend the enforcement proceedings that have been initiated. The debtor may apply for temporary suspension only if he pays a deposit.
- 34 The referring court has serious doubts as to whether such an interpretation deprives the rule in Article 5(1) of Regulation No 1215/2012 of its [practical] effectiveness as regards the concept of 'domicile'. Accordingly, the question arises as to whether the VKS's interpretation of the way in which the court in the order for payment procedure conducts investigations into the habitual residence of the debtor — without verifying it and without relying on the information obtained by the officers of the court that are responsible for serving notices — is compatible with EU law. In particular, there are doubts as to whether the principle of providing effective measures to protect the rights arising from EU law, as established in the judgment in the *Rewe-Zentralfinanz* case, [33-76], is complied with.
- 35 The national court also seeks an assessment of the case where the debtor's habitual residence has not been established with certainty, but there is a suspicion that he is not in Bulgaria.

Considerations of the referring court:

- 36 By its first question, the referring court asks the Court of Justice to assess whether, under certain conditions, the principle of effective judicial protection in national legal proceedings established in the judgment in *Rewe-Zentralfinanz*, [33-76], should be extended. According to that judgment and the settled case-law of the Court of Justice, the principle of procedural autonomy obliges Member States to designate courts and procedures that effectively and uniformly (in relation to rights arising from national law) protect the rights conferred by EU law.
- 37 In the present case, it is clear that a national law, namely the obligation of the court to seek the registered address of the defendant, is not applied equally to citizens residing in another Member State of the EU. For these citizens, it is not clear whether the court is obliged to take evidence regarding their address if sufficient information as to which State of the European Union they are residing in is available during the proceedings. At the same time, Article 1(2) of Regulation 1393/2007, or the Regulation on the service of documents, explicitly excludes the application of the latter to persons whose address is not known.
- 38 In these circumstances, the methods for ensuring the participation of Bulgarian citizens living in another State in civil proceedings before the Bulgarian courts are extremely ineffective. In practice, they depend on the applicant's good faith in providing the address of these citizens in the other State.
- 39 It should be noted that this situation is brought about partly by the rules for registering an address in Bulgaria. The Bulgarian Law on the registration of citizens does not permit the registration of a specific address of a Bulgarian citizen abroad. Accordingly, if only the State of residence is registered, this cannot be used to serve notices on the addressee either. The referring court takes the view that this circumstance has a significant bearing on the question of whether the national court is required to locate the addresses of Bulgarian nationals in other Member States.
- 40 The referring court cannot propose a specific answer to the first question in the light of the criterion of weighing the speed of service against the protection of the procedural rights of the parties. On the one hand, locating a person in other countries is a procedure that delays the court proceedings, which are ultimately conducted against Bulgarian citizens with certain obligations towards their country of origin, including the obligation to register their address and have a contact person available for maintaining contact with the state authorities. On the other hand, this obligation is significantly facilitated under EU law (see paragraphs 39-41 of the judgment in the *Alder* case, C-325/11). It is also true that the defendants in the proceedings suspended by the national court did not report that they lived outside the State of their nationality, but even if they had fulfilled that obligation, that would not make it possible to establish their address unambiguously.

- 41 As regards the second group of questions — or the way in which habitual residence is established in the order for payment procedure — the referring court considers that the national authorities must ensure the effective application of EU law. This requires that persons domiciled in a Member State of the European Union not be the subject of a judgment given in the other States. In order to ensure that this objective is achieved in the order for payment procedure, the national legislature has prohibited the issuing of orders for payment against persons having their habitual residence outside Bulgaria.
- 42 However, the case-law has limited this obligation by requiring the court to establish a negative circumstance — that the citizen is not habitually resident in Bulgaria, and, moreover, the proceedings are fundamentally unilateral in nature and no evidence is taken in those proceedings. In that context, the VKS prohibited the courts from relying on indirect and incomplete evidence, such as information provided by neighbours or relatives, for example, stating that the debtor lives abroad.

According to the referring court, if it is suspected that the debtor in the order for payment procedure is not habitually resident in Bulgaria, the order for payment issued must be annulled by the court that issued it.