

Case C-222/23**Summary of the request for a preliminary ruling under Article 98(1) of the Rules of Procedure of the Court****Date lodged:**

7 April 2023

Referring court:

Sofiyski rayonen sad (Bulgaria)

Date of the decision to refer:

7 April 2023

Applicant in the order for payment proceedings:

‘Toplofikatsia Sofia’ EAD

Subject matter of the main proceedings

Application addressed to the referring court for an order for payment relating to a pecuniary claim

Subject matter and legal basis of the request

Request for a preliminary ruling under Article 267 TFEU on the interpretation of Article 18(1) TFEU and of Articles 4(1), 5(1) and 62(1) of Regulation No 1215/2012

Questions referred for a preliminary ruling

1. Is Article 62(1) of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Articles 18(1) and 21 TFEU, to be interpreted as

precluding the concept of a natural person’s ‘domicile’ from being derived from national legislation which provides that the permanent address of nationals of the forum State is always situated in that State and cannot be transferred to another place in the European Union?

2. Is Article 5(1) of Regulation (EU) No 1215/2012, read in conjunction with Articles 18(1) and 21 TFEU, to be interpreted as permitting national legislation and national case-law under which a court of a State may not refuse to issue an order for payment against a debtor who is a national of that State and in respect of whom there is a reasonable presumption that the court lacks international jurisdiction because

the debtor is likely to be domiciled in another EU State, which is apparent from the debtor's declaration to the competent authority that he has a registered address in that State? In such a case, is the date on which that declaration was made relevant?

3. Where the international jurisdiction of the court seised is derived from a provision other than Article 5(1) of Regulation (EU) No 1215/2012, must Article 18(1) TFEU, read in conjunction with Article 47(2) of the Charter of Fundamental Rights, be interpreted as

precluding national legislation and national case-law under which an order for payment may be issued only against a natural person who is habitually resident in the forum State, but a finding that the debtor, if a national of that State, has established that he is resident in another State cannot be based solely on the fact that he has given the first State a registered address ('current' address) that is in another State of the European Union, if the debtor is unable to demonstrate that he has entirely moved to that other State and has no address in the territory of the forum State? In this case, is the date on which the declaration concerning the current address was made relevant?

4. If the answer to the first part of the third question is that the issue of an order for payment is permissible, is it permissible under Article 4(1) of Regulation (EU) No 1215/2012, read in conjunction with Article 22(1) and (2) of Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, as interpreted in the judgment in Case C-325/11, *Alder*, and in conjunction with the principle of effective application of EU law in the exercise of national procedural autonomy,

for a national court of a State in which nationals cannot give up their registered addresses in the territory of that State and cannot transfer them to another State, when it receives an application for an order for payment in proceedings in which the debtor is not involved, to obtain information in accordance with Article 7 of Regulation (EU) 2020/1784 from the authorities of the State in which the debtor has a registered address about the debtor's address in that State and the date of registration there, in order to determine the debtor's actual habitual residence before the final decision is given in the case?

EU legislation and case-law

Treaty on the Functioning of the European Union, Articles 18(1) and 21

Charter of Fundamental Rights of the European Union, Article 47(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, Articles 4(1), 5(1) and 62(1)

Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), Articles 7 and 22

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 9 September 2021, *Toplofikatsia Sofia and Others*, C-208/20 and C-256/20, EU:C:2021:719; the questions referred for a preliminary ruling in the present case have some similarities with the questions referred in Joined Cases C-208/20 and C-256/20 as regards the possibility for the court to determine whether it has jurisdiction after having already issued the order for payment. The essential difference in the present case is that the court intends to base its jurisdiction on information obtained *before* the order for payment is issued.

National legislation and case-law

Zakon za zadalzheniata i dogovorite (Law on obligations and contracts; ‘the ZZD’), Article 68(a)

Grazhdanski protsesualen kodeks (Code of civil procedure; ‘the GPK’), Articles 38, 40 to 48, 53, 246, 282, 410, 411, 413 to 416, 419 and 423

Kodeks na mezhdunarodnoto chastno pravo (Code of private international law; ‘the KMChP’), Articles 4 and 48

Zakon za grazhdanskata registratsia (Law on the registration of citizens; ‘the ZGR’), Articles 3, 90, 93, 94 and 96

Interpretative decision No 4/2013 of the Obshto sabranie na grazhdanskata i targovskata kolegii (General Assembly of Civil and Commercial Chambers; ‘the OSGTK’) of the Varhoven kasatsionen sad (Supreme Court of Cassation; ‘the VKS’) of 18 June 2014

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicant in the order for payment proceedings is ‘Toplofikatsia Sofia’ EAD, a company registered under Bulgarian law.
- 2 The debtor is not yet a party to the order for payment proceedings, as he only becomes a party after the court, if competent, has issued the order for payment. The proceedings, however, are to be brought against V.Z.A., a Bulgarian national.
- 3 On 6 March 2023, the applicant applied to the referring court for an order for payment against the debtor for a pecuniary claim arising from the fact that the debtor was the owner of immovable property heated by the district heating network (an apartment located in a co-owned building) and had not paid for the energy supplied. The applicant claims a debt of 700.61 leva (BGN) for energy supplied between 15 September 2020 and 22 February 2023, together with interest.
- 4 The court, of its own motion, requested information from the population register in March 2023. According to this information, V.Z.A., the debtor, has a permanent address registered in 2000 in Sofia (Bulgaria) and, since 6 March 2010, has had a current address registered with the Bulgarian authorities that is in another Member State of the European Union. Bulgarian law does not provide for the possibility of registering a particular current address abroad but merely for indicating the other State in which it is located.

The essential arguments of the parties in the main proceedings

- 5 The referring court does not state whether the applicant in the main proceedings has taken a position on the request for a preliminary ruling.

Succinct presentation of the reasoning in the request for a preliminary ruling

The first and second questions referred

- 6 The request for a preliminary ruling seeks to clarify the requirements of EU law to which national courts are subject (in particular the provisions of Article 4(1) and Article 5(1) of Regulation (EU) No 1215/2012, according to which persons domiciled in a Member State may be sued only where they are domiciled), if the opposing party, in unilateral proceedings, cannot contest or expressly recognise the jurisdiction of the court seised before the final judgment is delivered. The present case concerns an order for payment procedure in which the court seised examines the arguments of the applicant (creditor) primarily from a formal point of view and invites the defendant (debtor) to declare whether or not he contests the claim. If the debtor does not contest the claim, he is in the position of a person ordered to make payment.

- 7 According to the referring court, the Court of Justice has previously held, in its judgment of 9 September 2021, *Toplofikatsia Sofia and Others* (C-208/20 and C-256/20, EU:C:2021:719), that the court which issued the order for payment cannot set it aside if it finds that the debtor had no address in the forum State. In such a case, enforcement would have to be undertaken and, if the debtor became aware of the order in the course of the enforcement proceedings, he could defend himself by means of the remedy provided by national law which is referred to in interpretative decision No 4/2013 of the VKS OSGTK.
- 8 According to the aforementioned interpretative decision No 4/2013 of the VKS OSGTK, although the circumstances referred to in Article 411(2), point 4 (permanent address in Bulgaria) and point 5 (habitual residence in Bulgaria), of the GPK are conditions for the issue of an order for payment, by their nature they are not to be examined prior to service of the order already made. If it transpires that the order was made against a debtor who has no permanent address at all in the Republic of Bulgaria, the order must be set aside by the issuing court of its own motion. However, if the debtor has a permanent address but is not habitually resident in the national territory, the order cannot be set aside by the court that issued it. The court issuing the order for payment checks only whether the debtor has a permanent address in the Republic of Bulgaria; if that is the case, service may be effected either through another person or by affixing a notice, so that there is no need to check whether the person is habitually resident in the national territory.
- 9 According to the referring court, the solution adopted by the VKS with regard to the determination of the debtor's habitual residence as a specific condition of national law for the issue of an order for payment is problematic because it is extremely restrictive and fails to take account of the effective application of the absolute condition laid down in Article 5(1) of Regulation No 1215/2012, according to which, save in special cases, a debtor domiciled in the European Union may be sued only in the State in which he is domiciled.
- 10 The difficulty lies in the fact that an order for payment against a debtor with a registered address in Bulgaria is almost always issued, regardless of whether or not he has also provided an address abroad. This is because under national law (Article 411(1) of the GPK, read in conjunction with Article 93(1) and (2) of the ZGR), the domicile of the debtor against whom a Bulgarian court may issue an order for payment is determined by whether a permanent address of the debtor can be ascertained, and under Article 93(2) and (4) of the ZGR a Bulgarian national always has his permanent address in Bulgaria and cannot change it even if he moves to another Member State. This makes it considerably more difficult for Bulgarian nationals to exercise the right to free movement and freedom of residence conferred by Article 21 TFEU, since, when exercising their freedom of establishment in another State, Bulgarian nationals remain tied to Bulgarian territory and are still required to have someone in Bulgaria who receives their correspondence there. Otherwise, they could become 'victims' of an order for

payment issued against them, against which they would have difficulty defending themselves.

- 11 This puts Bulgarian nationals who have exercised their right to free movement and freedom of establishment in another EU Member State in a situation of possible ‘reverse’ discrimination on grounds of nationality, contrary to Article 18 TFEU. In accordance with Article 53 of the GPK, nationals of other EU Member States who are permanently resident in Bulgaria are summonsed at the address which they have communicated to the immigration services and which includes a permanent and current address (under Article 3(2)(2) of the ZGR, read in conjunction with Articles 93 and 94 thereof). When those nationals of other Member States cease to reside in Bulgaria, they are deregistered, and so the jurisdiction of the Bulgarian courts to issue orders for payment against them ceases to exist. By contrast, Bulgarian nationals cannot give up their permanent address and remain required to have someone in Bulgaria who is prepared to receive communications. They are thus treated differently from foreign nationals, and the sole reason cited by the law for that treatment is to simplify matters for the administrative authorities.
- 12 Furthermore, in view of Article 94(3) of the ZGR, according to which the current address of Bulgarian nationals living abroad is entered in the population register only with the name of the country in which they live, there is no scope for a Bulgarian national to inform the Bulgarian State of his exact address outside Bulgaria where he resides and can receive correspondence. Nor is there any scope for a telephone number or electronic communication channel to be officially registered. In effect, the Bulgarian State prohibits its nationals from indicating a means of contact with which they can be reached outside its territory.
- 13 For the outcome of an order for payment procedure the initiation of which the debtor cannot foresee, it is of crucial importance that the order for payment actually be served on the debtor in a way which enables him to arrange for his defence. He could thus enforce his rights in court proceedings, but those rights are considerably limited by the restrictive application of the rules on the registration of an address abroad and by interpretative decision No 4/2013 of the VKS OSGTK, in so far as it is not permissible, according to that interpretative decision, for the national court seised to refuse to issue an order for payment where the debtor is a Bulgarian national who has indicated a current address abroad.
- 14 It is therefore necessary to answer, first, the question whether it is compatible with Article 5(1) of Regulation No 1215/2012 that the international jurisdiction of national courts to issue orders for payment is based on the national concept of domicile, which relates to a permanent address that cannot be located abroad. Second, it is necessary to examine whether it is compatible with the said provision that, when determining domicile, the court seised may not rely on information relating to the debtor’s current registered address, as stated in interpretative decision No 4/2013 of the VKS OSGTK.

The third question referred

- 15 It should be noted that, although the rule laid down in Article 5(1) of Regulation No 1215/2012 (persons domiciled in the European Union are to be sued where they are domiciled) is binding on the Member States, it does not apply without exception, since that regulation provides for a number of special jurisdictions to hear disputes arising from certain specific types of legal relationship. In the present case, there is a contract for the supply of thermal energy to a property located in the city of Sofia, which means that, under the second indent of Article 7(1)(b) of Regulation No 1215/2012 (in the alternative, under point (a) thereof), the jurisdiction of the Bulgarian courts is based on the place of contractual performance. This does not mean, however, that the question whether a domicile in Bulgaria exists becomes irrelevant to the outcome of the dispute before the referring court when this circumstance is taken into account.
- 16 This is because, under national law, the issuing of an order for payment is not a general procedure for settling civil disputes but a type of simplification for certain creditors, which can only be invoked if a number of specific conditions are met. One of these conditions under Bulgarian law is that the debtor must be habitually resident in Bulgaria. This condition is not derived from EU law but from national law; in so far as it is introduced by the State, however, it is subject to the principle of non-discrimination laid down in Article 18 TFEU.
- 17 In these circumstances, the second question needs to be answered only in relation to whether the provision of interpretative decision No 4/2013 of the VKS OSGTK prohibiting national courts from considering a current address as an indication that the debtor is not habitually resident in Bulgaria is permissible, given that it leads to 'reverse' discrimination (Article 18 TFEU). In the present case, Bulgarian nationals who leave Bulgaria are placed at a disadvantage in so far as, according to the relevant case-law, they must have a correspondent in the country in order to be able to defend themselves against the issuing of an order for payment against them, since the court is unable to consider of its own motion their declaration that they have transferred their domicile to another Member State. By contrast, no such obligation exists for persons of foreign nationality who are habitually resident in Bulgaria and who leave the country, and as soon as those persons leave Bulgaria the Bulgarian courts also cease to have any jurisdiction to issue orders for payment against them.

The fourth question referred

- 18 If the requirements of interpretative decision No 4/2013 of the VKS OSGTK are met, according to which, if the debtor is a Bulgarian national, the indication of a current registered address in another Member State does not constitute sufficient evidence that he is habitually resident, for the purposes of the procedural conditions for issuing an order for payment, in another State, the question arises for the referring court whether, in the light of its own obligations under EU law, it

may nevertheless examine that procedural condition of its own motion, even though the VKS prohibits it.

- 19 In particular, in its judgment of 19 December 2012, *Alder* (C-325/11, EU:C:2012:824), the Court of Justice held that national legal provisions requiring a party to legal proceedings who is domiciled in a Member State of the Union other than the State of the court seised to designate a recipient in the latter State are inapplicable. In the present case, the scope of such a rule is to be extended, since, under Bulgarian law, an order for payment issued against the debtor is served at his registered address in the national territory.
- 20 In order to ensure effective fulfilment of the requirement that judicial documents not be served only in the forum State, as set out in the judgment in *Alder*, the referring court therefore considers that the provision in Article 22 of Regulation 2020/1784 (if service of the order is also necessary in the present case) could require the referring court, in cases where there is evidence that a debtor who is a Bulgarian national has a current address abroad, to obtain further information concerning the habitual residence of that national.
- 21 The effective application of the rule laid down in Article 4(1) of Regulation No 1215/2012, according to which the debtor must, in principle, be sued where he is domiciled, therefore presupposes that the domicile of the debtor is identified by a national court which should, in principle, issue orders for payment only against persons who are habitually resident in the territory of the State of that court. The referring court considers that, since national law does not provide for the possibility of determining a debtor's address outside Bulgaria, it must exercise the option of address enquiries offered by Article 7 of Regulation 2020/1784 to determine an address abroad.