

Case C-7/21

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:

8 January 2021

Referring court:

Bezirksgericht Bleiburg (Austria)

Date of the decision to refer:

6 November 2020

Applicant:

LKW WALTER Internationale Transportorganisation AG

Defendants:

CB

DF

GH

Subject matter of the main proceedings

Slovenian provision which provides for, as the sole remedy against a decision on enforcement issued without an instrument permitting enforcement, a reasoned objection, which must be lodged in Slovenian within eight days – Failure to comply with that time limit by a debtor established in Austria, whose Austrian law firm lodged the reasoned objection in Slovenian within twelve days of service of the decision – Lawyers' liability – Whether the provision is compatible with EU law

Subject matter and legal basis of the request

Interpretation of EU law under Article 267 TFEU

Questions referred

- a) Are Articles 36 and 39 of 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, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and the principles of effectiveness and equivalence (principle of sincere cooperation under Article 4(3) TEU), to be interpreted as precluding a provision of a Member State which provides for, as the sole remedy against a decision on enforcement issued by the court without prior adversarial proceedings and without an instrument permitting enforcement, and solely on the basis of the allegations of the party seeking enforcement, an objection, which must be lodged within eight days in the language of that Member State, even if the decision on enforcement is served in another Member State in a language which the addressee does not understand, and the objection is already rejected as being out of time if it is lodged within twelve days?
- b) Is Article 8 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service of documents, read in conjunction with the principles of effectiveness and equivalence, to be interpreted as precluding a national measure which provides that, upon service of the standard form set out in Annex II informing the addressee of his or her right to refuse to accept the document within a period of one week, the period also begins to run in respect of bringing the appeal provided for against the decision on enforcement served at the same time, for which a period of eight days is laid down?
- c) Is Article 18(1) of the Treaty on the Functioning of the European Union to be interpreted as precluding a provision of a Member State which provides for, as the remedy against a decision on enforcement, an objection, which must be lodged within eight days, and that time limit also applies where the addressee of the decision on enforcement is established in another Member State and the decision on enforcement is not written either in the official language of the Member State in which the decision on enforcement is served or in a language which the addressee of the decision understands?

Provisions of EU law cited

Charter of Fundamental Rights of the European Union ('the Charter'), Article 47

Article 4(3) TEU, Article 18(1) TFEU

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 ('Regulation 1215/2012'), Articles 36 and 39

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 ('Regulation 1393/2007'), Article 8

Provisions of national law cited

Zakon o izvršbi in zavarovanju (Slovenian Law on enforcement and protective measures; 'the ZIZ'), Articles 9, 53, 58, 61

Brief summary of the facts and procedure

- 1 The applicant, LKW WALTER internationale Transportorganisation AG, is a company registered in the Austrian commercial register which operates in the field of international carriage of goods.
- 2 On 30 October 2019, the District Court, Ljubljana, Slovenia, served on the applicant, by post, a decision on enforcement, in Slovenian, regarding EUR 17 610.00 plus interest and costs, by which the company Transport Gaj d.o.o. attached debts owed to the applicant by numerous Slovenian undertakings. The document was not received by the legal department of the applicant company until 4 November 2019, as 1 November was a public holiday in Austria, followed by a weekend. On that same day, the legal department sent the law firm that was representing the undertaking in a dispute in Slovenia an email, to which the decision was attached, asking it to review the document. After the lawyers – now the defendant lawyers – had stated that a reasoned objection had to be raised within eight days of service, the applicant requested that the defendants do so as its representatives, after which the objection was filed on 11 November 2019. It should also be noted that the decision on enforcement had not been made on the basis of a final and enforceable instrument permitting enforcement, but rather only on the basis of invoices. Articles 9(3), 53(2) and 61(2) of the ZIZ provide, in respect of enforcement on the basis of a trustworthy document, that an objection to a decision on enforcement by which the application for enforcement is granted must be lodged within eight days of service of the decision, in which the facts justifying the objection must be set out and the corresponding evidence must be submitted.
- 3 On 10 December 2019, after the applicant had paid the required court fee in due time, the District Court, Ljubljana, rejected the objection as being out of time because it had been lodged more than eight days after the decision on enforcement had been served on the applicant.
- 4 The defendants brought an appeal on behalf of the applicant against the rejection decision on the grounds that the latter was unconstitutional and contrary to EU law, but the appeal was dismissed by the Higher Court of Maribor. The decision

on enforcement therefore became final and enforceable, as a result of which the applicant settled the claim in full.

- 5 By an action before the Bezirksgericht Bleiburg (District Court, Bleiburg, Austria) the applicant now claims EUR 22 168.09 plus interest and costs from the defendants on the ground of lawyers' liability, because the defendants had failed to comply with the time limit. The defendants filed an objection to the order for payment issued on 10 July 2020. It is in those proceedings that the request for a preliminary ruling is made.

Principal arguments of the parties to the main proceedings and brief summary of the grounds for the request

- 6 The defendants submit that the eight-day time limit for lodging a reasoned objection is not compatible with EU law. Had the Slovenian courts applied the latter correctly, the objection would have been lodged in due time and the applicant would not have suffered any harm. In addition, the defendants claim that service was not effected properly, as the information to the addressee about the right to refuse to accept a document pursuant to Article 8 of Regulation 1393/2007 (Form II), which was enclosed with the letter, in German, was located between the other twelve pages of the Slovenian decision and had therefore not been noticed by the applicant. Furthermore, the decision is not enforceable outside Slovenia because it does not meet the basic conditions for the confirmation of enforceability pursuant to Articles 36 and 39 of Regulation 1215/12. The applicant takes the view that the fact that the decision is enforceable on the territory of the Republic of Slovenia constitutes, in the view of the applicant, discrimination against the applicant on grounds of establishment or nationality within the meaning of Article 18(1) TFEU.
- 7 **With regard to the first question**, the referring court explains that, having regard to the principle of effectiveness, the short time limit for lodging an objection may not be in conformity with Articles 36 and 39 of Regulation 1215/2012, read in conjunction with Article 47 of the Charter, and refers to the judgment of the Court of Justice of 13 September 2018 (*Profi Credit Polska*, C-176/17, EU:C:2018:711), in which the Court of Justice has already held that a national procedural provision providing for a time limit of two weeks affects the right to an effective remedy. In contrast to that case, the present case concerns neither a consumer contract nor a promissory note, but the essential findings from the judgment cited above, in particular those from paragraphs 64-67, are nevertheless also applicable in the present proceedings, because, in the present proceedings it is also that case that a reasoned objection must be lodged within the time limit and the fee must be paid in due time. The Slovenian legal literature also expresses the view that the short time limit for lodging an objection affects or infringes the defendant's rights under Article 6 ECHR or Article 47 of the Charter, especially if he or she is established in another Member State. He or she has to react even more quickly than a debtor established in Slovenia, as he or she has to arrange for a translation of the

decision, the documents submitted as evidence, and the objection, which is very time-consuming. The decision could also be recognised and enforced in Austria pursuant to Articles 36 and 39 of Regulation 1215/2012, whereby the Austrian courts would be precluded from reviewing its content.

- 8 **With regard to the second question**, the referring court states that it has concerns as to the correct interpretation of the running of the time limit in relation to the right to refuse to accept a document pursuant to Article 8 of Regulation 1393/2007, pursuant to which the addressee is to be informed, using the standard form set out in Annex II, that he or she may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in a language which he or she understands. While the Slovenian court apparently assumed that the one-week time limits for returning a document and refusing acceptance, on the one hand, and for lodging the objection against the decision, on the other hand, begin to run in parallel, the referring court interprets Article 8 to the effect that the time limit for lodging a possible objection does not begin to run until the one-week time limit for exercising the refusal of acceptance has expired. This is because were that not the case, a debtor who does not understand the language in which the court document is drafted, as will be the case more often for a debtor established in another Member State, would be in a worse position than a debtor who understands the language of the decision on enforcement and would lose valuable time due to the necessary translation. The Court of Justice has already held that it will be necessary to interpret Regulation 1393/2007 so as to guarantee a fair balance between the interests of the applicant and those of the defendant, the addressee of the document, by reconciling the objectives of efficiency and speed of the service of the procedural documents with the need to ensure that the rights of the defence of the addressee of those documents are adequately protected (see judgment of 16 September 2015, *Alpha Bank Cyprus Ltd*, C-519/13, EU:C:2015:603, paragraph 33). The referring court takes the view that if the two time limits start to run in parallel, the rights of defence of the addressee of the document are in no way adequately protected and his or her rights to exercise discretion as to whether he or she wishes to refuse to accept the document or to bring an appeal are infringed. Returning the document would entail procedural delays of a number of weeks, if not months, as the Slovenian court would first have to instruct the creditor to submit translations of the decision granting enforcement, and only then could the court effect service in the other Member State once more. However, if addressee wants the matter to be dealt with quickly, he or she should have the possibility to accept the foreign-language procedural document without a translation, despite his or her lack of knowledge of the foreign language, and to obtain a translation themselves instead of exercising their right to refuse acceptance. The referring court takes the view that, owing to the need to guarantee the right to an effective remedy within the meaning of Article 47 of the Charter, Article 8 of Regulation 1393/2007 must be interpreted as meaning that the addressee may exercise his or her discretion within a period of one week before the time limit for lodging an objection begins to run. It is left to the Member States to set reasonable periods for exercising the right to an effective remedy. In

doing so, however, the principles of equivalence and effectiveness must be observed. However, the requirements of the principle of effectiveness are only met if that period is sufficient to prepare and bring an effective action (see judgments of 28 July 2011, *Samba Diouf*, C-69/10, EU:C:2011:524, paragraph 66, of 26 September 2013, *Texdata Software*, C-418/11, EU:C:2013:588, paragraph 80, and of 9 September 2020, *JP*, C-651/19, EU:C:2020:681, paragraph 57). In the light of the Court of Justice's case-law on the principle of effectiveness, a period of one week, or eight days, in which to decide simultaneously whether to refuse to accept a foreign-language document or whether to have it translated and, at the same time, have a reasoned objection drafted therefore appears to be too short for the purpose of preparing and bringing an effective action.

- 9 **With regard to the third question**, the referring court explains that it has doubts as to whether Article 18 TFEU precludes the Slovenian provision on the eight-day time limit for lodging an objection to a decision on enforcement in cases where the latter is sent to a debtor established in another Member State. Article 18 TFEU prohibits any discrimination on grounds of nationality. Citizens of a Member State that provides for a time limit of only eight days for lodging objections to decisions on enforcement will usually be familiar with those short time limits and, moreover, will have a thorough knowledge of the language in which the decision on enforcement is issued. Parties established in another Member State do not have to deal with such a short time limit, especially if substantially longer time limits are provided for in their own Member State (the time limit for objecting to an order for payment in Austria is four weeks) and, moreover, provision is made for a 30-day time limit for opposing a European order for payment. In addition, a debtor in another Member State must first have the decision on enforcement translated in order to understand its content and decide whether to challenge it, which usually takes some time and further shortens an already short time limit for lodging an objection. Moreover, the provision allows the creditor to use, against debtors established in another Member State, the Slovenian procedure for issuing a decision on enforcement instead of the procedure for issuing a European order for payment because the creditor could expect that the debtor might not be able to comply with such a short time limit.

District Court, Bleiburg

Bleiburg, 6 November 2020