

Case C-256/20

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:

10 June 2020

Referring court:

Sofiyski rayonen sad (Bulgaria)

Date of the decision to refer:

10 June 2020

Applicant:

Toplofikatsia Sofia EAD

Subject matter of the main proceedings

An order for payment procedure in which it is impossible to serve an order for payment on a debtor whose neighbour states that she lives in another Member State of the European Union.

Subject matter and legal basis of the request for a preliminary ruling

Request on the basis of Article 267 TFEU for interpretation of Article 5(1) of Regulation (EC) No 1215/2012.

Questions referred

- 1 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*?

- 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 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?
- 3 If the [second] 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?

Legal provisions and case-law of the European Union

Article 20 of the Treaty on the Functioning of the European Union.

Article 5(1) 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:

National provisions

Zakon za zadalzheniata i dogovorite (Law on Obligations and Contracts) — Article 68(a).

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 to 416, 419 and 423.

Kodeks na mezhdunarodnoto chastno pravo (Code of Private International Law)— Article 4(1) and Article 48.

Zakon za grazhdanskata registratsia (Law on civil registration) — Article 90(1), Articles 93 and 94, Article 96(1).

Brief summary of the facts and procedure

- 4 Toplofikatsia Sofia EAD is a commercial company registered in Bulgaria for public utility services. It brought an action before the referring court seeking an order for payment against the debtor, a Bulgarian national, concerning payment of a sum for the supply of thermal energy and related services to an apartment in Sofia, Bulgaria, which is alleged to be owned by the debtor.
- 5 Having upheld that application, the referring court, on 19 September 2019, issued an order for payment to be served on the debtor by an officer of the court.
- 6 The referring court obtained the debtor's registered address and established that the permanent and current address are one and the same in Sofia. The officer of the court visited the address but found that it was incomplete; the number stated was that of a 15-storey apartment block, but no specific residence (apartment) was indicated.
- 7 The referring court ordered a search for information relating to the debtor's employer and mobile telephone numbers, but that information was not registered in Bulgaria and could not be traced. A further visit by an officer of the court to the same address was therefore ordered.
- 8 During that visit, the officer of the court identified a particular apartment in which, according to information from the building manager, the debtor lived. According to the building manager, the debtor is, however, rarely in the apartment and lives, in practice, in Germany.
- 9 On the basis of the information collected in the case on the change of the debtor's last name, the referring court suggests that she has married a German citizen, since she has a German last name, which is not typical for a person of Bulgarian origin. Until 1995, the debtor had a typically Bulgarian last name.

Brief summary of the grounds for the request for a preliminary ruling

The referring court refers in full to the grounds in its request for a preliminary ruling entered in the register of the Court of Justice of the European Union as Case C-208/20.