

Anonymised version

Translation

C-18/21 – 1

Case C-18/21

Request for a preliminary ruling

Date lodged:

12 January 2021

Referring court:

Oberster Gerichtshof (Austria)

Date of the decision to refer:

27 November 2020

Appellant on a point of law:

Uniqa Versicherungen AG

Respondent in the appeal on a point of law:

VU

[...]

In the case of the applicant, Uniqa Versicherungen AG, Vienna[...] against the defendant VU, Kirchweidach,[...] Germany, [...] concerning the amount of EUR 37 820.91, the Oberster Gerichtshof (Supreme Court, Austria) [...] has made, in closed session, in relation to the appeal on a point of law brought by the applicant against the order of the Handelsgericht Wien (Commercial Court, Vienna, Austria), sitting as the court ruling on appeals on the merits, of 16 September 2020 [...], by which the contested order of the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna, Austria) of 9 June 2020[...] was set aside, the following

O r d e r:

I. The following question is referred to the Court of Justice of the European Union for a preliminary ruling pursuant to Article 267 TFEU: **[Or. 2]**

Are Articles 20 and 26 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 to be interpreted as meaning that those provisions preclude an interruption of the 30-day period for lodging a statement of opposition to a European order for payment, as provided for in Article 16(2) of that regulation, by Paragraph 1(1) of the Austrian Bundesgesetz betreffend Begleitmaßnahmen zu COVID-19 in der Justiz (Federal Law on accompanying measures for COVID-19 in the administration of justice), pursuant to which all procedural periods in proceedings in civil cases for which the event triggering the period occurs after 21 March 2020 or which have not yet expired by that date are to be interrupted until the end of 30 April 2020 and are to begin to run anew from 1 May 2020?

II. [...] [stay of proceedings]

Grounds:

1 **1. Facts and procedure**

2 The District Court for Commercial Matters, Vienna, as the court of first instance, issued a European order for payment on 6 March 2020, which was served on the defendant, who is resident in the Federal Republic of Germany, on 4 April 2020. The latter lodged a statement of opposition thereto in a written submission posted on 18 May 2020. The court of first instance rejected the opposition as being out of time, on the ground that the objection had not been filed within the 30-day period for lodging a statement of opposition pursuant to Article 16(2) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 [Or. 3] creating a European order for payment procedure ('Regulation No 1896/2006').

3 The Commercial Court, Vienna, ruling on the appeal on the merits, set that order aside. It held that the period for lodging a statement of opposition under Article 16(2) of Regulation No 1896/2006 had been interrupted pursuant to Paragraph 1(1) of the Austrian Bundesgesetz betreffend Begleitmaßnahmen zu COVID-19 in der Justiz (Federal Law on accompanying measures for COVID-19 in the administration of justice; '1st COVID-19-JuBG'; BGBl. I 16/2020). That provision provides that all procedural periods in judicial proceedings that had started to run on 22 March 2020 or thereafter, up until the end of 30 April 2020, are to be interrupted and are to begin to run anew on 1 May 2020.

4 The applicant's appeal on a point of law is directed against that decision, and seeks to have the order of the court of first instance restored.

5 The Supreme Court has ordered that the proceedings in the appeal on a point of law be stayed and that a question of EU law, which concerns the interpretation of Regulation No 1896/2006 and is material to the decision in the case, be referred to the Court of Justice of the European Union.

6 **2. Legislation:**

2

7 2.1. EU law:

8 Article 16(1) and(2) of Regulation No 1896/2006 reads as follows:

Opposition to the European order for payment

1. *The defendant may lodge a statement of opposition to the European order for payment with the court of origin using standard form F as set out in Annex VI, which shall be supplied to him together with the European order for payment. [Or. 4]*

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

9 Article 20 of Regulation No 1896/2006 reads:

Review in exceptional cases

1. *After the expiry of the time limit laid down in Article 16(2) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where:*

(a) (i) *the order for payment was served by one of the methods provided for in Article 14,*

and

(ii) *service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part,*

or

(b) *the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part,*

provided in either case that he acts promptly.

2. *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. [Or. 5]*

3. *If the court rejects the defendant's application on the basis that none of the grounds for review referred to in paragraphs 1 and 2 apply, the European order for payment shall remain in force.*

If the court decides that the review is justified for one of the reasons laid down in paragraphs 1 and 2, the European order for payment shall be null and void.

10 Article 26 of Regulation No 1896/2006 reads:

Relationship with national procedural law

All procedural issues not specifically dealt with in this Regulation shall be governed by national law.

11 2.2. National law:

12 The first and second sentences of Paragraph 1(1) of the 1st COVID-19-JuBG, published on 21 March 2020, in the version of the 4. COVID-19-Gesetz (4th COVID-19 Law, BGBl. I 24/2020) in force at the time when the European order for payment was served on the defendant on 4 April 2020 and when the statement of opposition was sent by the defendant on 18 May 2020, read as follows:

Proceedings in civil cases

Interruption of periods

Paragraph 1(1) In judicial proceedings, all procedural periods for which the event triggering the period falls in the period after the entry into force of this Federal Law and all procedural periods that have not yet expired before the entry into force of this Federal Law shall be interrupted until the end of 30 April 2020. They shall begin to run anew.

13 **3. Reasons for the question referred: [Or. 6]**

14 3.1. The Austrian legal literature contains contrasting views on the question of whether the period interruption prescribed for all procedural periods in civil proceedings in Paragraph 1(1) of the 1st COVID-19-JuBG is also applicable to the 30-day period for lodging a statement of opposition against a European order for payment laid down in Article 16(2) of Regulation No 1896/2006, or whether Article 20 of Regulation No 1896/2006 renders the national provision of Paragraph 1(1) of the 1st COVID-19-JuBG inapplicable to that period.

15 3.2. On the one hand, some take the view that Article 20 of Regulation No 1896/2006 takes account (in the abstract) of situations such as the COVID-19 crisis and, for such situations, has provided for the possibility to have European orders for payment reviewed and, if necessary, declared null and void. According to that view, recourse to national law is therefore not permissible in view of the provision of Article 20 of Regulation No 1896/2006, which was created precisely to address cases of *force majeure* – which can be said to include the COVID-19 crisis [...].

16 3.3. Proponents of the opposing view conclude that Paragraph 1(1) of the 1st COVID-19-JuBG is not ‘superseded’ by the rules on the review procedure under Article 20 of Regulation No 1896/2006. They maintain that Article 16(2) of Regulation No 1896/2006 regulates only the duration of the period within which a

statement of opposition may be lodged. The issue of a possible interruption of that period has remained unregulated at European level, with the result that – pursuant to Article 26 of Regulation No 1896/2006 – recourse is to be had to national law. The COVID-19 pandemic was not taken into consideration when Regulation No 1896/2006 was drafted and brought into force. Article 20(1)(b) of Regulation No 1896/2006 [Or. 7] is intended solely to achieve ‘fairness in individual cases’ and does not contain a general rule for an exceptional situation (such as the current COVID-19 crisis). The general interruption of, in principle, all procedural periods which is laid down in Paragraph 1(1) of the 1st COVID-19-JuBG is therefore not ‘superseded’ by that provision and is thus also applicable in the area covered by Regulation No 1896/2006 [...].

- 17 3.4. According to the *travaux préparatoires* in respect of Paragraph 1(1) of the 1st COVID-19-JuBG [...], the restrictions on public life that have been brought about by COVID-19 also have an impact on [Austrian] court proceedings. On account of absences due to illness or ‘attributable to measures’, both of court staff and of providers of legal advice and the parties, it is not always possible or feasible to take action within the statutory periods, as individuals are required to avoid personal contact to the greatest extent possible. Therefore, all procedural periods (both statutory and judicial periods), with the exception of those beginning or running in proceedings regarding the continuation of a measure involving deprivation of liberty, are to be interrupted for a certain period of time in civil cases. This general arrangement is intended to create legal certainty swiftly for all parties to judicial proceedings and for their representatives.
- 18 3.5. The referring court takes the view that it might be unclear whether all the cases in which, due to the [Or. 8] COVID-19 crisis and its effects on the European order for payment procedure, there is a risk that a defendant, through no fault of his or her own, might fail timeously to lodge a statement of opposition time, or might fail to respect the period available for doing so pursuant to Article 16(2) of Regulation No 1896/2006, are supposed to be conclusively provided for in that regulation to the effect that the only remedy available in such cases is a review of the European order for payment pursuant to Article 20(1)(b) of Regulation No 1896/2006, the initiation of which may lead to the European order for payment being declared null and void pursuant to the second sentence of Article 20(3) of Regulation No 1896/2006. Such an understanding might be supported by the fact that the COVID-19 pandemic is an event of *force majeure* or an extraordinary circumstance within the meaning of Article 20(1)(b) of the regulation and that the purpose of the procedural interruption provided for in Paragraph 1(1) of the 1st COVID-19-JuBG (avoidance of the risk of failing to comply with a time limit due to the COVID-19 crisis) is comparable to that of Article 20(1)(b) of Regulation No 1896/2006 (in so far as such an interruption is provided for, in a very general way, for cases of *force majeure* and extraordinary circumstances which have an adverse effect on the defendant). Accordingly, it might be assumed that, aside from Article 20(1)(b) of Regulation No 1896/2006, the period for lodging a statement of opposition provided for in Article 16(2) of Regulation No 1896/2006 is not intended to be subject to any divergent national

rules which (like Paragraph 1(1) of the 1st COVID-19-JuBG) seek to prevent the risk, resulting from the COVID-19 pandemic, of failing to comply with that period (by means of a general interruption of all procedural periods).

- 19 3.6. On the other hand, however, the view might also be taken that the procedural issue of an interruption – that is to say, a later recommencement – of the period for lodging a statement of opposition provided for in [Or. 9] Article 16(2) of Regulation No 1896/2006 has not been (formally) regulated in that regulation (in particular not in Article 20), with the result that, pursuant to Article 26 of Regulation No 1896/2006, the issue is governed by national law [...].
- 20 3.7. Since it is not possible for this issue to be resolved in a clear and unambiguous manner on the basis of the wording of Articles 20 and 26 of Regulation No 1896/2006, this question of law must be referred to the Court of Justice of the European Union for clarification.
- 21 [...] [interruption of proceedings]
[...]