JUDGMENT OF THE COURT (First Chamber)

11 September 2008 *

In Case C-265/07,

REFERENCE for a preliminary ruling under Article 234 EC, by the Tribunale civile di Roma (Italy), made by decision of 21 May 2007, received at the Court on 4 June 2007, in the proceedings

Caffaro Srl

v

Azienda Unità Sanitaria Locale RM/C,

Third party:

Banca di Roma SpA,

* Language of the case: Italian.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, A. Tizzano, A. Borg Barthet, M. Ilešič and E. Levits (Rapporteur), Judges,

Advocate General: V. Trstenjak,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 March 2008,

after considering the observations submitted on behalf of:

— Caffaro Srl, by G. Barcellona and R. Crincoli, avvocati,

— the Italian Government, by I. M. Braguglia, acting as Agent, and by S. Fiorentino, avvocato dello Stato,

— the Commission of the European Communities, by C. Zadra and S. Schønberg, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 April 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35).

2 The reference was made in the course of proceedings between Caffaro Srl ('Caffaro'), the creditor, and Azienda Unità Sanitaria Locale RM/C ('Azienda'), an Italian public authority, the debtor, concerning forced execution by way of the attachment of assets that the debtor held at Banca di Roma SpA ('Banca di Roma'), the third party in the hands of which the attachment was effected.

Legal background

Community legislation

3 Recital 15 in the preamble to Directive 2000/35 states:

'This Directive only defines the term "enforceable title" but does not regulate the various procedures of forced execution of such a title and the conditions under which forced execution of such a title can be stopped or suspended.'

4 Article 2 of Directive 2000/35 provides:

‘For the purposes of this Directive:

…

(5) “enforceable title” means any decision, judgment or order for payment issued by a court or other competent authority, whether for immediate payment or payment by instalments, which permits the creditor to have his claim against the debtor collected by means of forced execution; it shall include a decision, judgment or order for payment that is provisionally enforceable and remains so even if the debtor appeals against it.’

5 Recital 23 in the preamble to the directive states:

‘Article 5 of this Directive requires that the recovery procedure for unchallenged claims be completed within a short period of time in conformity with national legislation, but does not require Member States to adopt a specific procedure or to amend their existing legal procedures in a specific way.’

6 Article 5 of the directive provides:

‘1. Member States shall ensure that an enforceable title can be obtained, irrespective of the amount of the debt, normally within 90 calendar days of the lodging of the creditor’s action or application at the court or other competent authority, provided that the debt or aspects of the procedure are not disputed. This duty shall be carried out by Member States in conformity with their respective national legislation, regulations and administrative provisions.

2. The respective national legislation, regulations and administrative provisions shall apply the same conditions for all creditors who are established in the European Community.

…

4. This Article shall be without prejudice to the provisions of the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters.’

National legislation

7 Article 14 of Decree-Law No 669 of 31 December 1996, converted into a law, after amendment, by Law No 30 of 28 February 1997, as amended by Article 147 of Law No 388 of 23 December 2000 (Ordinary Supplement to the GURI No 302 of 29 December 2000) ('Decree-Law No 669/1996'), provides:

'State authorities and non-economic public bodies shall complete the procedures for the execution of court rulings and arbitration awards having executive effect and entailing an obligation to pay sums of money within 120 days of service of the enforceable title. Before expiry of that period the creditor shall not be entitled to proceed to forced execution against the said authorities and bodies nor may enforcement orders be put in place.'

The dispute in the main proceedings and the question referred for a preliminary ruling

8 Caffaro, which had an enforceable title issued in accordance with the Italian rules transposing Directive 2000/35 into national law, brought enforcement proceedings against Azienda.

9 The forced execution took the form of an attachment of Azienda's assets held at the Banca di Roma, the third party, on the basis of a writ of summons to appear before the referring court, notified to the third party and the debtor.

10 At the hearing on 13 June 2006, the Banca di Roma appeared before the referring court to which it confirmed that it held funds belonging to Azienda and declared that those funds had been frozen.

11 Also at that hearing the referring court noted that forced execution had been initiated before the expiry of the period of 120 days, calculated from service of the enforceable title and provided for by Article 14 of Decree-Law No 669/1996.

12 Taking the view that Article 14 of Decree-Law No 669/1996 does not comply with Directive 2000/35, Caffaro requested that that provision should not be applied or, alternatively, that a reference be made to the Court of Justice for a preliminary ruling on the compatibility of that national provision with the directive.

13 In those circumstances, the Tribunale civile di Roma decided to stay proceedings and to refer a question to the Court for a preliminary ruling, which may be summarised as follows:

'Must Directive 2000/35 be interpreted as meaning that it precludes Article 14 of Decree-Law No 669/1996, pursuant to which a creditor in possession of an enforceable title relating to an unchallenged claim against a public authority as remuneration for a commercial transaction cannot proceed to forced execution against that public authority before a period of 120 days has elapsed since service of the enforceable title on that authority?'

The question referred for a preliminary ruling

14 It must be observed, as a preliminary point, that Directive 2000/35 must be interpreted in the light of the aims pursued by the directive and the system it establishes (see, to that effect, Case C-465/04 *Honyvem Informazioni Commerciali* [2006] ECR I-2879, paragraph 17).

15 In that connection, it is common ground that Directive 2000/35 simply aims to harmonise as far as possible certain payment rules and practices in the Member States in order to combat late payment in commercial transactions.

16 As the Court has already had occasion to observe, the directive governs only certain specific rules intended to combat such delays, namely, rules on interest for late payments (Article 3), retention of title (Article 4) and procedures for recovery of unchallenged claims (Article 5) (see Case C-302/05 *Commission* v *Italy* [2006] ECR I-10597, paragraph 23, and Case C-306/06 *01051 Telecom* [2008] ECR I-1923, paragraph 21).

17 Moreover, that directive refers to a number of areas in which national law is to apply. Such is the case, in particular, as is clear from recital 15 in the preamble, with regard to the various procedures of forced execution of an enforceable title and the conditions under which forced execution of such a title can be stopped or suspended (*Commission* v *Italy*, cited above, paragraph 24).

18 In particular, in the framework of the system established by Directive 2000/35, Article 5 thereof merely requires that the Member States ensure that an enforceable title, as defined in Article 2(5) of the directive, can be obtained normally within 90

calendar days of the lodging of the creditor's action or application at the court or other competent authority, provided that the debt or aspects of the procedure are not disputed. It follows that, as regards the recovery procedures for unchallenged claims, the directive harmonises only the period within which an enforceable title can be obtained, but does not govern forced execution procedures, which remain subject to the national law of the Member States.

19 It is clear that a national provision such as that at issue in the main proceedings has no effect whatever on the period within which an enforceable title can be obtained. To the contrary, such a provision specifically presupposes that the creditor is already in possession of such a title.

20 That conclusion cannot be called into question by the argument of the Commission of the European Communities that Article 14 of Decree-Law No 669/1996, providing for the suspension of forced execution for a period of 120 days, concerns a stage in the procedure for the recovery of the claim prior to forced execution, so that it falls within the scope of Directive 2000/35.

21 Even if, as the Commission maintains, the said Article 14 has the effect of deferring the commencement of the forced execution procedure that would in no way affect the period within which an enforceable title can be obtained. As is clear from paragraph 18 of this judgment, that period is the only aspect of the procedure for recovery of unchallenged debts which is harmonised by Article 5 of the directive.

22 Furthermore, although it is apparent from the foregoing that an enforceable title can, under Article 14 of Decree-Law No 669/1996, be temporarily deprived of its execu-

tive effect, it does not follow however, as the Commission submits, that the effective protection of the creditor is jeopardised in disregard of Directive 2000/35.

23 Not only may the procedures necessary for enforcement of payment follow their course, as the Advocate General pointed out in point 38 of her Opinion, but also, as the Italian Government confirmed at the hearing, the steps required to be taken by Azienda in order to proceed to payment of its debt are not suspended. Quite to the contrary, the public authority debtor is obliged, under Article 14, to do everything possible to ensure that the payment procedure is completed within the period of 120 days.

24 In those circumstances, the answer to the question referred must be that Directive 2000/35 is to be interpreted as not precluding a national provision such as Article 14 of Decree-Law No 669/1996, pursuant to which a creditor in possession of an enforceable title in respect of an unchallenged claim against a public authority as remuneration for a commercial transaction cannot proceed to forced execution against the public authority before a period of 120 days has elapsed since service of the enforceable title on the authority.

Costs

25 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions is to be interpreted as not precluding a national provision such as Article 14 of Decree-Law No 669/1996 of 31 December 1996, converted into a law, after amendment, by Law No 30 of 28 February 1997, as amended by Article 147 of Law No 388 of 23 December 2000, pursuant to which a creditor in possession of an enforceable title in respect of an unchallenged claim against a public authority as remuneration for a commercial transaction cannot proceed to forced execution against the public authority before a period of 120 days has elapsed since service of the enforceable title on the authority.

[Signatures]