Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

14 December 2017*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 805/2004 — Scope — European Enforcement Order for uncontested claims — Enforcement orders capable of being certified as European Enforcement Orders — Decision on the amount of costs related to the court proceedings in a judgment not concerning an uncontested claim — Excluded)

In Case C-66/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy Poznań-Grunwald i Jeżyce w Poznaniu (District Court, Poznań-Grunwald and Jeżyce, sitting in Poznań, Poland), made by decision of 31 January 2017, received at the Court on 7 February 2017, in the proceedings

Grzegorz Chudaś,

Irena Chudaś

v

DA Deutsche Allgemeine Versicherung Aktiengesellschaft,

THE COURT (Seventh Chamber),

composed of A. Rosas, President of the Chamber, C. Toader (Rapporteur) and A. Prechal, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by M. Wilderspin and A. Stobiecka-Kuik, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Polish.

Judgment

1 The present request for a preliminary ruling concerns the interpretation of Article 4(1) and Article 7 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15).

2 The request has been made in proceedings between Mr Grzegorz Chudaś and Mrs Irena Chudaś, on the one hand, and DA Deutsche Allgemeine Versicherung Aktiengesellschaft, on the other, concerning a request for certification as a European Enforcement Order of a decision on the amount of the costs of court proceedings in a judgment not concerning an uncontested claim.

Legal context

European Union law

3 Under recitals 4 to 7 of Regulation No 805/2004:

‘(4) On 30 November 2000, the Council adopted a programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters [OJ 2001 C 12, p. 1]. This programme includes in its first stage the abolition of *exequatur*, that is to say, the creation of a European Enforcement Order for uncontested claims.

(5) The concept of “uncontested claims” should cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor’s express consent, be it a court settlement or an authentic instrument.

(6) The absence of objections from the debtor as stipulated in Article 3(1)(b) can take the shape of default of appearance at a court hearing or of failure to comply with an invitation by the court to give written notice of an intention to defend the case.

(7) This Regulation should apply to judgments, court settlements and authentic instruments on uncontested claims and to decisions delivered following challenges to judgments, court settlements and authentic instruments certified as European Enforcement Orders.’

4 Paragraph 1 of Article 2 of that regulation, headed ‘Scope’, provides:

‘This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (“*acta jure imperii*”).’

5 Paragraph 1(b) of Article 3 of that regulation, headed ‘Enforcement titles to be certified as a European Enforcement Order’, states:

‘This Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims.

A claim shall be regarded as uncontested if:

…

(b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; …'

6 Article 4 of Regulation No 805/2004 provides:

'For the purposes of this Regulation, the following definitions shall apply:

1. "judgment": any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court;

2. "claim": a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument;

…'

7 Under the heading 'Requirements for certification as a European Enforcement Order', Article 6(1)(a) of Regulation No 805/2004 provides:

'A judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as a European Enforcement Order if:

(a) the judgment is enforceable in the Member State of origin'.

8 Article 7 of that regulation, headed 'Costs related to court proceedings', reads as follows:

'Where a judgment includes an enforceable decision on the amount of costs related to the court proceedings, including the interest rates, it shall be certified as a European Enforcement Order also with regard to the costs unless the debtor has specifically objected to his obligation to bear such costs in the course of the court proceedings, in accordance with the law of the Member State of origin.'

9 Article 16 of that regulation, headed 'Provision to the debtor of due information about the claim', provides as follows:

'In order to ensure that the debtor was provided with due information about the claim, the document instituting the proceedings or the equivalent document must have contained the following:

…

(b) the amount of the claim;

…'

10 Under Chapter VII of Regulation No 805/2004, headed 'Relationship with other community instruments', Article 27 of that regulation, itself headed 'Relationship with Regulation (EC) No 44/2001', provides:

'This Regulation shall not affect the possibility of seeking recognition and enforcement, in accordance with [Council] Regulation (EC) No 44/2001 [of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1)], of a judgment, a court settlement or an authentic instrument on an uncontested claim.'

Polish Law

11 In accordance with Article 189 of the Ustawa — Kodeks postępowania cywilnego (Law enacting the Code of Civil Procedure) of 17 November 1964 (Dz. U. No 43, heading 296), as amended (consolidated version Dz. U. of 2016, item 1822, consolidated version) ('Code of Civil Procedure'), an applicant may bring a declaratory action before a court in order to establish the existence of a legal relationship or right, provided that the applicant has a legitimate interest.

12 Under Article 108(1) of the Code of Civil Procedure, a court must give a decision regarding the costs of the proceedings in every decision concluding court proceedings.

13 Under Articles 339 and 340 of the Code of Civil Procedure, a court is to deliver a default judgment if the defendant was not present at the hearing set and at the same time did not make oral or written representations. Article 343 of the Code of Civil Procedure provides that a default judgment is to be delivered to the offices of both parties together with information on the avenues of appeal available to them. Under Article 344(1) of the Code of Civil Procedure, a defendant against whom a default judgment has been handed down may lodge an objection within two weeks of the judgment being served on him. In accordance with Article 394(1)(9) and (2) of the Code of Civil Procedure, a party may, if he has not lodged an appeal with regard to the substance of the dispute, lodge a complaint with the appellate court, within a week of delivery, against the judgment of the court of first instance concerning reimbursement of the costs and determination of how the costs of the proceedings are to be apportioned between the parties.

14 It follows from the wording of Article 795^1 of the Code of Civil Procedure that a court which has delivered a judgment is, at the request of a creditor, required to issue a certificate that that judgment constitutes a European Enforcement Order if it satisfies the conditions set out in Regulation No 805/2004.

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

15 Since Mr and Mrs Chudaś had brought a declaratory action before the Sąd Rejonowy Poznań-Grunwald i Jeżyce w Poznaniu (District Court, Poznań-Grunwald and Jeżyce, sitting in Poznań, Poland) to establish whether they had acquired the right of ownership over a motor vehicle, that court summoned DA Deutsche Allgemeine Versicherung Aktiengesellschaft, established in Oberursel (Germany), to appear in the proceedings as defendant.

16 On 30 March 2016, a copy of the claim form, together with a translation into German, was sent to DA Deutsche Allgemeine Versicherung Aktiengesellschaft by post with a notice of the date of the hearing, set for 18 May 2016, in relation to which that company could make representations within 30 days. That company did not make representations and did not appear at the hearing.

17 In those circumstances, on 18 May 2016, the Sąd Rejonowy Poznań-Grunwald i Jeżyce w Poznaniu (District Court, Poznań-Grunwald and Jeżyce, sitting in Poznań) delivered a default judgment, in which it held that Mr and Mrs Chudaś had acquired the right of ownership over the motor vehicle in question and, accordingly, ordered DA Deutsche Allgemeine Versicherung Aktiengesellschaft to pay the costs of the proceedings in the amount of 3 900 Polish Złote (PLN) (approximately EUR 921).

18 On 4 July 2016, a copy of the judgment, translated into German, was sent by post to DA Deutsche Allgemeine Versicherung Aktiengesellschaft at that company's headquarters, together with information regarding the possibility of lodging, within two weeks, an objection and the possibility of lodging, within one week, a complaint in relation to the costs of the proceedings.

19 Since DA Deutsche Allgemeine Versicherung Aktiengesellschaft did not appeal against the judgment of 18 May 2016, that judgment became final on 19 July 2016.

20 On 11 October 2016, Mr and Mrs Chudaś initiated the procedure in the main proceedings designed to have the part of the judgment of 18 May 2016 relating to the costs of the proceedings certified as a European Enforcement Order.

21 The referring court harbours doubts, in essence, as to whether such a request comes within the scope of Regulation No 805/2004.

22 It puts forward the argument, in this regard, that it could be inferred from a literal interpretation of Article 7 of Regulation No 805/2004, in particular from the use of the word 'also', that a European Enforcement Order certificate may be awarded with regard to costs related to court proceedings exclusively in the case where the substantive issue in the judgment relates to an uncontested claim and is capable itself of being certified as a European Enforcement Order.

23 By contrast, it cannot be ruled out, according to the referring court, that a teleological analysis of the provisions of Regulation No 805/2004 might lead to the conclusion that decisions on the costs of court proceedings may be regarded as decisions on uncontested claims justifying their certification as European Enforcement Orders under that regulation.

24 In those circumstances, the Sąd Rejonowy Poznań-Grunwald i Jeżyce w Poznaniu (District Court, Poznań-Grunwald and Jeżyce, sitting in Poznań) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Article 4(1) of Regulation … No 805/2004 …, read in conjunction with Article 7 of that regulation, be interpreted as meaning that a European Enforcement Order certificate may be issued in respect of a decision concerning reimbursement of the costs of proceedings contained in a judgment in which a court has established the existence of a right?'

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether Article 4(1) and Article 7 of Regulation No 805/2004 must be interpreted as meaning that a final decision on the amount of the costs of court proceedings, appearing in a judgment not relating to an uncontested claim, may be certified as a European Enforcement Order.

26 The referring court is unsure whether the action in the main proceedings comes within the scope of that regulation in so far as the decision which Mr and Mrs Chudaś request should be certified as a European Enforcement Order refers only to the part of a judgment which relates to the costs of the proceedings, in the case where the judgment itself, due to its primary subject matter, namely a declaration on the existence of a right of ownership, cannot be enforced and therefore does not come within the scope of the regulation.

27 The scope *ratione materiae* of Regulation No 805/2004 can be inferred, inter alia, from Article 2(1), read in the light of Article 3(1) and Article 4(2), of that regulation, according to which that regulation is to apply in civil and commercial matters, to judgments, court settlements and authentic instruments on uncontested claims, the latter being defined as claims for payment of a specific sum of money that has fallen due or for which the due date is indicated in such judgments, court settlements or authentic instruments.

28 In order for a judgment to be capable of being certified as a European Enforcement Order, under Article 6 of that regulation, the judgment must relate to an uncontested claim and must satisfy certain conditions laid down by that article. One of the conditions for such certification is that laid down in Article 6(1)(a), namely that the judgment must be enforceable according to the law of the Member State of origin.

29 As far as concerns the costs related to court proceedings, Regulation No 805/2004 lays down specific provisions. Under Article 7 thereof, where a judgment includes an enforceable decision on the amount of costs related to the court proceedings, it is to be certified as a European Enforcement Order also with regard to those costs unless the debtor has specifically objected to his obligation to bear such costs in the course of the court proceedings, in accordance with the law of the Member State of origin.

30 It is clear from the wording of Article 7 of Regulation No 805/2007, as the Polish Government and the European Commission correctly submit, that a decision on the costs of the proceedings is not regarded as an independent judgment for the purposes of Regulation No 805/2004, in so far as that regulation applies to such costs only where they are incidentally included in an actual judgment. The use of the word 'also' in the wording of Article 7 of the regulation indicates that an 'enforceable decision on the amount of costs related to the court proceedings' is to be certified as a European Enforcement Order only in the case where the actual judgment, in keeping with the purpose of the regulation, relates to an uncontested claim.

31 That conclusion cannot be called into question by Article 4 of Regulation No 805/2004, headed 'Definitions'. In that regard, it is true, first, that Article 4(1) of that regulation defines a 'judgment' as encompassing any judgment given by a court or tribunal of a Member State, including 'the determination of costs or expenses by an officer of the court'. Second, an enforceable decision on the amount of costs related to the court proceedings amounts, in principle, to a 'claim' within the meaning of the definition of that term provided by Article 4(2) of the regulation.

32 However, as has been noted in paragraph 29 of the present judgment, under the specific provisions governing costs related to court proceedings laid down in Article 7 of Regulation No 805/2004, a decision on the amount of such costs cannot be certified as a European Enforcement Order independently of a judgment on an uncontested claim. In so far as the decision on those costs is intrinsically linked to the outcome of the principal action, which alone justifies the certification of a judgment as a European Enforcement Order, the definitions laid down in Article 4 of that regulation cannot affect the applicability of the regulation.

33 In so far as the referring court expresses uncertainty as to whether the objectives of Regulation No 805/2004 could lead to a different conclusion, it must be borne in mind that the primary objective of that legislation is, in accordance with Article 1 thereof, to create a European Enforcement Order for uncontested claims in order to permit, by laying down minimum standards, the free circulation of judgments, court settlements and authentic instruments throughout all Member States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition of enforcement. However, given that the conditions for the application of the derogation from the common system of recognition of judgments established by that regulation are to be interpreted strictly (see, to that effect, judgment of 15 March 2012, *G*, C-292/10, EU:C:2012:142, paragraph 64), that objective cannot call into question the interpretation of the scope of that regulation which follows from the wording of Article 7 thereof.

34 In the present case, according to the order for reference, the principal action giving rise to the main proceedings was a declaratory action seeking to establish the existence of a right over movable property, namely a private vehicle, and not an uncontested claim. Since such an action does not come

within the scope of Regulation No 805/2004, a decision on the amount of costs related to the court proceedings arising from that action also cannot be certified as a European Enforcement Order under that regulation.

35 In the light of all of the foregoing considerations, the answer to the question referred is that Article 4(1) and Article 7 of Regulation No 805/2004 must be interpreted as meaning that an enforceable decision on the amount of costs related to court proceedings, contained in a judgment which does not relate to an uncontested claim, cannot be certified as a European Enforcement Order.

Costs

36 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 (Seventh Chamber) hereby rules:

Article 4(1) and Article 7 of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that an enforceable decision on the amount of costs related to court proceedings, contained in a judgment which does not relate to an uncontested claim, cannot be certified as a European Enforcement Order.

[Signatures]