



For the 10th Anniversary of the European Order for Payment Procedure

Judit Molnár

Assistant Professor, University of Debrecen, Faculty of Law,
Dept. of Civil Procedural Law

E-mail: molnar.judit@law.unideb.hu; dr.molnar.judit@gmail.com

Abstract. On the 12th of December 2006, the European Parliament and the Council adopted a Regulation creating the European Order for Payment procedure. Member states would start applying this single European procedure only after two years' time, starting on the 12th of December 2008. This study attempts to explore the rules of this Regulation from two perspectives: first, in the light of the proposal of the Commission regarding the amendment to it (and the adopted amending Regulation) and secondly through the case-law of the Court of Justice of the European Union. Through the analysis of the legislative process, we can conclude that following the Amendment Regulation the possible ways of continuing the European Order for Payment procedures as an ordinary civil proceeding have been broadened. In addition to the national ordinary civil proceedings, the claimant may now also opt in the first place for the European Small Claims procedure. The Regulation's revised version does not include any changes to its essential non-contentious procedural features. The European Court of Justice has explicitly dealt with the rules of the Regulation, creating a European Order for Payment procedure during the adjudication of six cases. The Court solved the problems which emerged based on the application for a preliminary ruling.

Keywords: European Order for Payment procedure, legislative process, case-law of the Court of Justice, European legal proceedings

I. Introductory Thoughts

On 12 December 2006, the European Parliament and the Council adopted the Regulation creating a European Order for Payment procedure. This unified European procedure was to be applied after two years, starting on the 12th of December 2008.¹

¹ Regulation (EC) 1896/2006. For a brief history of the adoption of the Regulation, see: Storskrubb 2008. 205. sqq.

As stated in Article 32 of the Regulation, the Commission set as its objective to examine the operation of the European Order for Payment procedure and to present a report about the results of such an examination, ensuring the review of the procedure by the 12th of December 2013.

First, the Commission presented a proposal to the Parliament and the Council (on the 13th of November 2013) regarding the amendment to the Regulation; then, a report about the application of the Regulation was made public (on the 13th of October 2015).² Concluding the legislative process, the Parliament and the Council adopted the Regulation amending the procedure on the 16th of December 2015.³ The amended rules are to be applied to the European Order for Payment procedure as of the 14th of July 2017.⁴

This study aims to explore the rules set forth by the Regulation concerning the European Order for Payment procedure from two perspectives: first, in the light of the proposal of the Commission regarding the amendment and the adopted amendment Regulation itself as mentioned in the introductory thoughts and secondly through the case-law of the Court of Justice of the European Union. As far as the first aspect of the analysis is concerned, the purpose is to evaluate the results of the legislative process, while that of the second aspect is to explore the rules of the Regulation regarding the difficulties of interpretation and application that the subjects of the procedure face. On the basis of the results of both aspects, it can be shown how legislation and law enforcement by the Court reflect upon each other regarding the procedure.

II. The Legislative Process and its Results

1. The Amendment Proposal of the Commission and the Report

In accordance with Article 32 of the Regulation, the Commission undertook to present a detailed report to the European Parliament, the Council, and the European Economic and Social Committee about the experience of the 5 years of operation of the European Order for Payment procedure by the 12th of December 2013.⁵ Firstly, the Commission submitted a proposal of amendment (dated the 13th of December 2013) to the European Parliament and Council.⁶ Subsequently, a report about the application of the Regulation creating a European Order for Payment procedure was submitted on the 13th of October 2015.⁷

2 For the common root of the two European procedures, see: COM (2002) 746 final.

3 Regulation (EU) 2015/2421.

4 Regulation (EU) 2015/2421. Article 3.

5 Regulation (EC) 1896/2006. Article 32.

6 COM (2013) 794 final.

7 COM (2015) 495 final.

The amendment proposal dealt more extensively with the European Small Claims procedure, while the amendment regarding the European Order for Payment procedure was formulated in just a single article (Article 17). Whereas the Commission specified the amendments to the Regulation on the European Small Claims procedure and the reasons as a basis thereof,⁸ as far as the European Order for Payment procedure was concerned, their purpose was to confirm the necessity of such an amendment summarily and specifically, and so they stated: ‘Therefore, it should be clarified in Regulation (EC) No 1896/2006 that where a dispute falls within the scope of the European Small Claims procedure, this procedure should also be available to a party in a European Order for Payment procedure who has lodged a statement of opposition to a European order for payment.’⁹ Thus, the Commission touched upon the European Order for Payment procedure only in an incidental manner with the special purpose of ensuring the applicability of the European Small Claims procedure.¹⁰

The report proper, relating to the application of the specific procedure, published later, confirmed the interest in leaving unchanged the areas and issues left untouched by the amendment proposal, as it stated that on the basis of the studies conducted, and consultations undertaken, no major legal or practical problems seem to have appeared in the course of using the procedure.¹¹ The operation of the Regulation was assessed to be adequate, and it was not deemed necessary to modify the essential parameters of the procedure.¹²

2. The Amendment Regulation. Articles that Have Been Modified

Compared to the proposal, the amendment Regulation broadens the range of the articles that have been modified. In addition to Article 17, it contains changes to Articles 7 and 25. As a starting point regarding the Regulation, however, similarly to the proposal, it is also marked by additionality, as Section (22) of the Preamble continues to state the purpose of the amendment of the Regulation as being to clarify the availability of the European Small Claims procedure to the parties of the order for payment procedure.

As far as the articles to be modified are concerned, we can see that the amendment of Article 17 can be considered as essential for the objective to be achieved concerning the European Small Claims procedure, whereas Articles 7 and 25 clarify the correlations of the change to be achieved with the procedure.

8 COM (2013) 794 final. 3.1.

9 COM (2013) 794 final. 1.3.

10 On the topic of the ‘Effects of the lodging of a statement of opposition’, see: Molnár 2014. 623. sqq. For further proposals, see: Varga 2009. 37–48; Harsági 2012a. 4–26, 2012b. 15–23.

11 COM (2015) 495 final. 4.

12 COM (2015) 495 final. 12.

2.1 Changes to Article 17

Section (1) of Article 17 in the Regulation currently in force provides as follows: ‘the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.’

In accordance with the proposal, the parts of Section (1) of the new Article 17 that have been changed provide as follows: ‘The proceedings shall continue before the competent courts of the Member State, (...) The proceedings shall continue in accordance with the rules of: (a) any applicable simplified procedure, in particular, the procedure laid down in Regulation (EC) No 861/2007; or (b) the ordinary civil procedure.’

As stated in Section (1) of Article 17 of the Amendment Regulation to be applied from the 14th of July 2017: ‘the proceedings shall continue before the competent courts of the Member State (...) The proceedings shall continue in accordance with the rules of: (a) the European Small Claims procedure laid down in Regulation (EC) No 861/2007, if applicable; or (b) any appropriate national civil procedure.’

As is evident, the proposal made by the Commission extends the procedural rules to be applied in case of a transfer to court proceedings. Subsequent to an opposition, the European Order for Payment procedure may also be continued, in addition to the civil trial, as a simplified procedure provided by the law of the specific member state, but it may also – explicitly – take the form of a European Small Claims procedure. The extended procedural scope provided by the proposal can be much criticized as it would permit procedures to be transferred to court proceedings that are incompatible with the positions of legal literature.¹³

The amendment Regulation defines a more limited procedural scope for the transfer to court proceedings, and it explicitly emphasizes the justification of the European Small Claims procedure in addition to the trial under civil procedure on the condition that the claim which is to be enforced falls under the scope of the Regulation on small claims.

In connection to this, the Amendment Regulation also extends the rules of Article 17 with a new Section (2). The purpose of this new section is obviously to set rules regarding the relationship between the national civil procedure (trial) and the small claims procedure in the phase after being transferred to court. It can be stated that it is definitely not a relationship between two procedures on an equal footing, and that fact is demonstrated by Section (2) of the Amendment Regulation:

13 Kormann 2007. 150, Gruber 2010. 348. Regarding the member states’ simplified procedures, see: Varga 2010. 428–435, Nyilas 2012. 137–209, https://e-justice.europa.eu/content_small_claims-42-hu.do (05.05.2016).

Where the claimant has not indicated which of the procedures listed in points (a) and (b) of paragraph 1 he requests to be applied to his claim in the proceedings that ensue in the event of a statement of opposition or where the claimant has requested that the European Small Claims procedure as laid down in Regulation (EC) No 861/2007 be applied to a claim that does not fall within the scope of that Regulation, the proceedings shall be transferred to the appropriate national civil procedure unless the claimant has explicitly requested that such transfer not be made.

Primarily, the European Small Claims procedure shall be therefore utilized in case of the transfer of a European Order for Payment procedure to court proceedings upon the claimant's request. In the absence of such a request or, if on the basis of the request, the procedure is rendered unavailable, the national civil procedure shall be applied as a possibility to continue the procedure.

The recognition by the legislator that the European Small Claims procedure is subject to a request, apparent in the rules of the Amendment Regulation, can be considered certainly as a development, as stated in the respective Regulation,¹⁴ and therefore the connective rule in this respect should also be integrated into the rules of the order for payment procedure. Previously, the transfer of the procedure to a European Small Claims procedure was specified in Section (1) of Article 17 of the proposal without any transitional provisions.¹⁵

However, the amended rules provided for in Section (1) and (2) of Article 17 themselves cannot solve the problem that is constituted by the content of Section (4), left unchanged: the transfer to ordinary civil proceedings shall be governed by the law of the member state of origin. However, the member states often give different solutions for the transfer between non-contentious and court proceedings. The two main directions are as follows: automatism and subject to application (or request).¹⁶

2.2 Change in Section (4) of Article 7

The amendment to Section (4) of article 7 can solve the problem which we have indicated in connection with Article 17 as it results in a substantial change concerning the application for a European order for payment and its Appendices.

Pursuant to Section (4) of Article 7, in effect, the claimant can indicate upon the submission of the application, in a special appendix, if he does not request the transfer of the procedure to ordinary civil proceedings to result from a statement of

¹⁴ Regulation (EC) 861/2007. Article 4.1.

¹⁵ For a critique, see: Molnár 2014. 623–624.

¹⁶ Helmreich 1995. 143, Beltz 1992. 538, Balbi 2001. 186, Freitas 2001. 231, Delcasso 2001. 246.

opposition.¹⁷ Section (4), as amended, provides two possibilities for the claimant to issue a statement: 1° if the defendant lodges a statement of opposition, the claimant can indicate to the court the procedure by which the enforcement of his claim shall be pursued (by means of a European Small Claims procedure or by the applicable national ordinary civil proceedings)¹⁸; 2° the provision of the currently valid Section (4) that the claimant can make a statement saying he does not request the transfer to either procedure is also maintained in force. Thus, the Amendment Regulation takes a real step towards the applicability of the European Small Claims procedure subsequent to a European Order for Payment procedure.

2.3 Change in Section (1) of Article 25

Section (1) of Article 25 – the third rule to be changed – merely responds to the change concerning the issue of fees when the European Order for Payment procedure can be transferred to a European Small Claims procedure or to national ordinary civil proceedings. As far as the fee is concerned, it maintains without change that the total court fees cannot exceed the court fees of the national ordinary civil proceedings that should be paid without the European Order for Payment.

3. Concluding Thoughts

In the analysis of the legislative process, we can conclude that following the Amendment Regulation the ways by which it is possible to continue the European Order for Payment procedures in the form of ordinary civil proceedings have been broadened. In addition to the national ordinary civil proceedings, and with priority as compared to these, the claimant can also opt for the European Small Claims procedure even in the first place.

This process started with the amendment proposal of the Commission issued in 2013 within the scope of the continuation of the order for payment procedures before the court, and it is to be concluded by the modified and new provisions of the Amendment Regulation. The European Small Claims procedure was still integrated into Section (1) of Article 17 insufficiently and without due consideration, and its actual interface (the application) was not included. In case of a transfer of the procedure to court proceedings, the priority of the European Small Claims procedure and the auxiliary nature of the national ordinary civil proceedings, are provided for jointly by the provisions specified in the Amendment Regulation, thus in Section (2) of Article 17 and Section (4) of Article 7.

Evaluating the experience relating to the application of the Regulation, the report of the Commission has emphasized that during the application of the Regulation

¹⁷ Gruber 2010. 318–319.

¹⁸ Regulation (EU) 2015/2421. Article 7.4.

legal or practical problems have not emerged, and therefore the Regulation can be applied from mid-2017, and its revised version does not include any changes to its essential non-contentious procedural features. In respect of the transfer of the procedure to court proceedings, there is an amendment the explicit purpose of which is to ensure the use of the European Small Claims procedure.

This change is welcome in the regard that the claimant is not involved in a national civil procedure of the member state, which is unknown to him, in case of a statement of opposition, but instead in European legal proceedings the rules of which are integrated into the respective Regulation in each member state in a predictable and uniform way. This change can have a positive impact on the statements adverse to the transfer of the European Order for Payment procedure to court proceedings, and the number of appendices to the applications for issuing an order for payment, which include a content categorically refusing court proceedings, can be reduced.

The European Order for Payment procedure and the European Small Claims procedure can be considered as two ways of enforcing the same claim.¹⁹ Their common feature is that they provide the enforcement of claims within the scope of a simple and quick procedure, and for that reason they can be jointly valid alternatives for the cross-border enforcement of claims.²⁰ However, regarding their procedural features, their consecutive application fails to provide the appropriate legal safeguards for the parties involved in the procedure. Varga stated – relating to the European Small Claims procedure – that they abandoned a series of procedural safeguards for the implementation of a quick procedure. It is a formalized and written procedure, and an oral hearing involving both parties is only exceptionally held. In general, the procedure lacks oral hearings and direct measures, and the court decides on the basis of court records alone.²¹

Thus, the advantage of the new possibility of continuing the case within the scope of civil proceedings is definitely the result of more coherent elements of regulation compared to the regulation on the level of member states. However, we must not forget to consider that even this regulation ‘does not save’ us from applying the ‘unknown’ civil procedural law of a member state, as in issues not laid down in the Regulation the relevant civil procedural law rules of the member state where the place of the procedure is situated continue to be applied.²²

19 Nyilas 2012. 262, Storme 2005. 87–100, Varga 2009. 37–48.

20 ECC-Net European Small Claims Procedure Report 2012.

21 Varga 2010. 438–439.

22 Regulation (EC) 861/2007. Article 19. Regarding small claims procedures in the member states, see: Varga 2010. 428–435. https://e-justice.europa.eu/content_small_claims-42-hu.do (05.05.2016).

III. European Order for Payment Procedure before the European Court of Justice

The decisions of the European Court of Justice hold particular sway in the special environment where the European procedures are regulated. The Regulation creating the European Order for Payment procedure includes the rules of a community-level uniform (full) procedure, which is, in effect, conducted alongside the order for payment procedures, in accordance with the procedural rules of the member states. However, both these procedures do not simply ‘exist’ in parallel with each other but intersect: the Regulation includes provisions for the whole procedure, but in many cases it determines the broad outlines of the procedure only. The procedural rules of the European Union are completed by the rules of the national legal order on issues not covered in the Regulation.²³ This kind of legislative solution, however, can cause problems. National order for payment procedures have similar main features, but there are significant differences in their formation and operation.²⁴

The cases presented in this study and the decisions of the European Court of Justice regarding such cases also focus on the issue of the applicability of the Regulation rules or the national law. The European Court of Justice has explicitly dealt with the rules of the Regulation creating a European Order for Payment procedure in six cases. Based on the substantive part and direction of the court’s decisions, the cases subject to investigation can be divided into three groups: 1° the decisions declaring/confirming the priority of the rules of the Regulation, 2° the decisions clarifying or restricting the applicability of the rules of the Regulation, and 3° the decisions relying on national law.

Next, let us have a look at which cases these kinds of decisions were brought in.

1. Absolute Nature of the Rules Laid Down in the Regulation

1.1. *In case C-215/11 Iwona Szirocka v SiGer Technologie GmbH*,²⁵ the Court examined the substantive parts of the application for issuing a European Order for Payment and their relation to the national procedural law rules. In the case examined, the Polish court to which the claimant submitted the application observed that the application did not comply with the requirements laid down by Polish procedural law (the claimant specified the value of the claim in Euros, not in Polish currency). Moreover, the claimant claimed interest from a specified date until the date of payment of the principal claim.²⁶

23 Regulation (EC) 1896/2006. Article 26.

24 Harsági 2012c. 1–11.

25 C-215/11.

26 C-215/11. 22.

The domestic court submitted an application to the European Court of Justice for a preliminary ruling. The questions referred to the Court concerned whether Article 7 of the Regulation exhaustively established all the requirements to be met by an application for the European Order for Payment or whether it only established the minimum requirements for the application and whether domestic law should be applied in the issues not regulated by the former requirements.

In its reply, the European Court of Justice made clear that although domestic law appears in several points regarding the issues not established by the Regulation, that does not affect the contents of the application. The contents of the application are therefore exhaustively established by the Regulation at Article 7.²⁷ Within the scope of the application, the presence of national rules of law would be contrary to the major objectives of the Regulation, which are simplification, hastening cross-border disputes, and reduction in the costs of such disputes. A further objective is to establish a uniform tool that provides equal opportunities for both creditors and debtors in the whole area of the European Union.²⁸

1.2. In *joined cases C-119/13 and C-120/13*,²⁹ the Court examined the breach of the rules of service of procedure. It concluded that service to the defendants of the order for payment had been performed without the application of the minimum requirements laid down in the Regulation.³⁰ The court of the member state informed the defendants about the possibility of the revision of the order for payment. The applications sent by the defendants in this regard were received.³¹ Afterwards, the court of the member state requested the opinion of the European Court of Justice referring to a question about the applicability of the extraordinary remedy pursuant to Article 20 of the Regulation.³²

The European Court of Justice stated that if the order for payment had not been served within the scope of the procedure pursuant to articles 13–15 of the Regulation (minimum rules) further procedural measures cannot be applied (opposition pursuant to articles 16–20 and their legal effects, enforceability, declaration of enforceability, and review).³³ As in these cases, in case of breach of the service rules, no opposition is lodged, and the procedural irregularity is only revealed after the declaration of enforceability; so, for that reason the possibility to contest such an irregularity and that of the cancellation of the declaration of enforceability are to be provided to the defendant. Regarding this case, the Court confirmed the absolute effect of the rules of service laid down in the Regulation and set duly affected service as a condition to the applicability of further procedural measures.

27 C-215/11. 28.

28 C-215/11. 30.

29 C-119/13 and C-120/13.

30 C-119/13 and C-120/13. 19. 24–26.

31 C-119/13 and C-120/13. 21–29.

32 C-119/13 and C-120/13. 30.

33 C-119/13 and C-120/13. 41.

1.3. In *case C-144/12 Golbet Sportwetten GmbH v Massimo Sperindeo*,³⁴ the Court examined the legal effects of the opposition lodged to the European Order for Payment. In his statement of opposition, the defendant referred to the fact that the claimant's claim was unfounded and the sum claimed was not payable. Due to the opposition, the procedure was transferred to court proceedings in Austria, and the defendant pleaded the lack of jurisdiction of the Austrian court. The claimant responded that the defendant had not referred to lack of jurisdiction in his opposition to the order for payment, and by submitting his opposition he implicitly accepted Austrian jurisdiction. The domestic court referred a question to the European Court of Justice on whether the opposition to the European Order for Payment not disputing the jurisdiction of the court in the member state of origin was deemed as *entering an appearance* pursuant to Article 24 of Council Regulation (EC) No 44/2001 and whether the fact that the defendant had made a statement on the merits of the case within the scope of the opposition lodged by him was relevant.³⁵

The Court stated that the order for payment that had been served to the defendant provided two possibilities pursuant to Section (3) of Article 12 of the Regulation as follows: he pays the sum indicated in the order for payment or he can lodge an opposition in the member state of origin.³⁶ In accordance with Section (1) of Article 17, the consequence of the opposition is that the legal dispute continues automatically in the form of civil proceedings. If the opposition, which failed to dispute jurisdiction, had the consequence that the defendant enters an appearance, it would extend the legal effects of the opposition compared to the rules of the Regulation.³⁷ In addition, on the opposition form, no reference is made to any requirement that the defendant must dispute the jurisdiction of the member state; it is simply a statement about the opposition to the order for payment.³⁸ For that reason, the opposition to the European Order for Payment, in which the defendant does not dispute the jurisdiction of the member state of origin, cannot be deemed as a statement of entering appearance pursuant to Article 24 of Council Regulation (EC) No 44/2001 and thus establishing jurisdiction.³⁹ Afterwards, the Court examined whether the merits of the opposition have an impact on the consideration of the above question. Based on this, it stated that the primary objective of the institution of the opposition established in the Regulation is to provide a possibility of disputing the claim, and therefore it cannot be deemed as a

34 C-144/12.

35 C-144/12. 23.

36 C-144/12. 29.

37 C-144/12. 32.

38 C-144/12. 33, Gruber 2010. 343.

39 C-144/12. 34.

statement on the merits of the case.⁴⁰ Thus, the fact that the defendant made a statement on the merits of the case in his opposition does not equate to entering an appearance pursuant to Article 24 of Council Regulation (EC) No 44/2001.⁴¹

The Court emphasized in this case that the objective relating to the opposition to the order for payment is set forth to provide an opportunity for disputing the claim and bringing proceedings to court in this respect. The actual content of the opposition does not have any impact on the scope of the legal effects, and it can result in court proceedings regarding disputing the claim only, and further legal effects provided for by the member state's procedural laws cannot be applied.

2. Clarifying and Restricting the Applicability of the Rules of the Regulation

2.1. In *case C-245/14 Thomas Cook Belgium NV v Thurner Hotel GmbH*,⁴² the Court examined the applicability of the review provided in Article 20 of the Regulation.

It stated that in this case the defendant had failed to lodge an opposition to the European Order for Payment validly served within the time limit; however, he requested the review of the order for payment after the expiry of the time limit available for lodging an opposition referring to the fact that the court had no jurisdiction to issue the order for payment.⁴³ The European Court interpreted the provisions of Article 20, Section (2) in the sense that behaviour, such as that displayed by the debtor, who, subsequent to valid service of the order for, payment failed to lodge an opposition, while referring later, during revision, to the fact that based on the data provided by the claimant the court had no right to issue the order, cannot be encouraged based on the circumstances of the first procedure. It is clear from the wording in Section (2) that the cumulative conditions of a revision are the omission of the time limit provided for lodging an opposition and the incorrect issue of an order for payment in view of the requirements established in the Regulation or any other special circumstances.⁴⁴ The legislation of the European Union wished to restrict the review procedure to special situations only; so, the provision in this respect is to be construed strictly.⁴⁵

The European Court of Justice concluded that – on the basis of the circumstances of the initial procedure – the defendant should have acted within the time limit available for lodging an opposition if he had wished to invoke the lack of jurisdiction of the court and referred to the fact that the data provided by

40 C-144/12. 40.

41 C-144/12. 41.

42 C-245/14.

43 C-245/14. 18–23.

44 C-245/14. 30.

45 C-245/14. 31.

the claimant in the application concerning the jurisdiction was incorrect.⁴⁶ It emphasized that the possibility of a review of the order for payment could not give a second opportunity to the defendant to lodge an opposition to the claim not even if the court of a member state acted in lack of jurisdiction in consideration of all information available in the case.⁴⁷

2.2. In *case C-324/12 Novontech-Zala Kft. v Logicdata Electronic & Software Entwicklungs GmbH*,⁴⁸ the Court interpreted Article 20 of the Regulation where the defendant's lawyer had lodged the opposition to the order for payment duly served beyond the time limit.⁴⁹ The defendant requested the review of the order for payment by a new lawyer on the basis of Article 20 of the Regulation, which was dismissed by the court of the member state.⁵⁰ The court of the member state referred the question to the European Court of Justice as to whether the failure made by the defendant's lawyer constitutes a fault on the part of the defendant pursuant to Section (1) (b) of Article 20 of the Regulation or it is not to be regarded as a fault on the part of the defendant himself, and the failure is instead to be regarded as an extraordinary circumstance within the meaning of Section (2) of Article 20 of the Regulation.⁵¹

The Court stated that in this case the failure is due to a lack of diligence by the defendant's representative, and it does not constitute extraordinary or exceptional circumstances within the meaning of the review.⁵²

3. Presence of the Law of a Member State

3.1. In *case C-94/14 Flight Refund Ltd. v Deutsche Lufthansa AG*,⁵³ the Court examined the issue of transfer of the order for payment procedure to civil proceedings and the issue of jurisdiction.

An authority of a member state issued a European Order for Payment without clarifying the jurisdiction concerning the case. The defendant lodged an opposition and the procedure was transferred to court proceedings. However, the authority issuing the order for payment could not identify the competent national court for the civil proceedings; so, it submitted the case documents to the Supreme Court applying to designate the competent court. This Supreme Court referred the case to the European Court of Justice concerning the interpretation of the rules regarding jurisdiction and explicitly asked the question as to whether

46 C-245/14. 39.

47 C-245/14. 48, Regulation (EC) 1896/2006. Article 25.

48 C-324/12.

49 C-324/12. 10.

50 C-324/12. 11–13.

51 C-324/12. 14.

52 C-324/12. 21.

53 C-94/14.

a European Payment Order which has been issued by an authority that does not have jurisdiction could be subjected to an *ex officio* review.⁵⁴

The European Court of Justice clearly excluded the *ex officio* review for a European Order for Payment pursuant to Article 20,⁵⁵ and, regarding the circumstances of this case, it referred to the respective rules of the national law to remedy the situation due to the lack of jurisdiction, as on the basis of the opposition the procedure was still on-going, and the enforceability of the order for payment could not be decided.⁵⁶

By its decision concerning the case, the European Court of Justice made it clear that the European payment orders issued in lack of jurisdiction are to be settled in court proceedings held in the member state and in case of opposition by the defendant pursuant to the rules of the national civil procedural law, while the review provided by the Regulation cannot be applied *ex officio* or on request. The rules of the national procedural law have to provide the examination of jurisdiction on the basis of Regulation (EC) No 44/2001, and the proper decision depending on its result, and accordingly, is to be terminated in lack of jurisdiction.

3.2 In *joined cases C-119/13 and C-120/13*,⁵⁷ the Court examined the breach of the rules of the Regulation about service, and, in addition to the above (1.2), it faced the issue of whether in such a case the remedy concerning the breach of rule of law has to be provided to the defendant on the basis of the Regulation or by the provisions of the national procedural law. The Court indicated clearly the national law as a base for the remedy.⁵⁸

Here, however, it should be noted that Gruber emphasized in the comprehensive comment to the Regulation that the Regulation does not provide a possibility of remedy in case of a defective service that is in breach of minimum requirements laid down in articles 13–15. In Article 18, the court of the member state of origin is challenged to check the time limit for lodging an opposition only when a decision is made on the issue of enforceability. If the time limit expires and no opposition is lodged, the examination does not cover the control of the service rules.⁵⁹ Gruber clearly took the position in the commentary published in 2010 that the defendant can request the review of the payment order served in breach of the service rules and consequently declared enforceable pursuant to Sections (1) and (2) of Article 20 of the Regulation.⁶⁰ As we can see, with its judgment delivered in 2013, the European Court of Justice excludes the applicability of the rule referred to and any further procedural measures. On the basis of the Regulation, however, it cannot

54 C-94/14. 38.

55 C-215/14. 47. sqq.

56 C-94/14. 72. Regarding similar cases, see: Harsági 2014. 209.

57 C-119/13 and C-120/13.

58 C-119/13 and C-120/13. 46. sqq.

59 Gruber 2010. 339.

60 Gruber 2010. 340.

highlight a rule in the Regulation provided as a remedy for the problem, and for that reason it refers the issue for eliminating the consequences of the defective service to the applicable provisions of the national law.

4. Closing Thoughts

Related to the Regulation, the European Court of Justice examined and interpreted the substantive parts of the application, the service rules, the opportunity of review provided by the Regulation, the content of the opposition, and the issue of the transfer to civil proceedings.

It could be noted that the Court avoided taking the peculiarities of the national civil procedures into consideration concerning the content of the application, and it defined the form attached to the Regulation and its parts as a community-level uniform application. The position of the Court concerning the subject matter of the opposition provided an interpretation excluding the legal effects of the national civil proceedings. Thereby, the Court established a legal effect of the opposition that is uniform in the area of the European Union (effect of transfer to civil proceedings). As far as the observance of the service rules is concerned, the Court indicated a clear choice concerning the validity of the minimum standards laid down in the Regulation, and in this regard it excluded the applicability of the procedural measures after service.

In this latter case, the Court emphasized another kind of conclusion referring to the elimination of the legal effects due to a defective service according to the national law. Also, the Court referred to the national law when a remedy is to be provided after the issue of a European Order for Payment in lack of jurisdiction; however, the procedure was transferred to civil proceedings due to the opposition of the defendant. Within this scope, it should be highlighted that the Court clearly excluded the opportunity of an *ex officio* review provided by the Regulation as a possibility of eliminating a fault.

The Court has examined the possibility of a review several times, and it has interpreted the terms and conditions concerning the review. It emphasized that in cases when no opposition is lodged and the defendant submits a remark within the scope of a review against the order for payment issued, even if it is an opposition concerning jurisdiction, no review can be approved. Opposition has priority, and the purpose of a review is not to provide a second opportunity for lodging an opposition.

IV. Conclusions – Legislation and Judicial Application of Law

The European Order for Payment procedure has been available for almost 8 years for the enforcement of cross-border claims for a specific amount that has fallen due.⁶¹ It will be available for claimants and enforcement bodies with amended rules concerning the transfer to civil proceedings as of the 14th of July 2017.

The number of cases examined by the European Court of Justice and the scope of the issues concerned can support the statement included in the Commission Report that during the utilization of the procedure no major legal or practical problems emerged.⁶² The Court solved the problems which had emerged based on the application for preliminary ruling.

To what extent did the legislative standpoint and the opinions of the Court overlap? The report of the Commission covering the experience concerning the application of the Regulation explicitly referred back to three court cases and revealed the responses of the legislation provided to the problems detected.⁶³

One of these emerged due to a judgment examining the issue of the subject matter of the application and the interest payment⁶⁴ when the Commission reports about the amendment to the content of the form referring to the actual case.⁶⁵ Accordingly, the defendant is informed in the table in form 'E' that, based on the national law, there can be an obligation of interest payment until the date of the enforcement of the payment order, and in such a case the amount payable is increased by this sum. However, the Commission takes the position that form 'E' does not appropriately elaborate on this as it does not include the proper description of the interest payable.⁶⁶

In the second case,⁶⁷ it was stated that in case of the breach of rules of service laid down in the Regulation, the Regulation itself does not provide any reference of remedy. In response to that, the Commission also revealed this problem in its report. As a solution, the Commission proposed the clarification of the conditions of the review provided by the Regulation on the basis of the pertinent provisions of the Regulation on the European Maintenance and Small Claims Procedure.⁶⁸ However, the current Amendment Regulation does not include any changes to such an effect or any other solution.⁶⁹

61 COM (2015) 495 final. 13–15.

62 COM (2015) 495 final. 4.

63 C-215/11, C-324/12, C-119/13, and C-120/13.

64 C-215/11.

65 Regulation (EU) 936/2012.

66 COM (2015) 495 final. 5–6.

67 C-119/13 and C-120/13.

68 COM (2015) 495 final. 10.

69 Regulation (EU) 2015/2421. Article 2.

Concerning the third case referred to,⁷⁰ the Commission recalled the applicability of the consequences covering the defendant due to the fault of a legal representative, relating to the legal effects of an opposition and the failure to lodge such an opposition.

In the Amendment Regulation, the second problem mentioned by the Commission could have been solved in addition to the changes concerning the transfer to civil proceedings. Whereas the first problem had been solved by the time the Amendment Regulation was made, and no amendment to the Regulation was needed for the third one, the second problem concerning the scope of tools of remedy to be used in case breach of the rules of service has not been solved in the Regulation amended despite the fact that it is of the utmost importance. Within the scope of the European Order for Payment procedure, there is still lack of legislation despite the elaboration of the Amendment Regulation.

References

Books, Book Chapters, and Articles

- BALBI, C. E. 2001. Injonction de payer: Le modèle italien. In: *Orders for Payment in the European Union. Civil Procedures in Europe 4. Kluwer Law International*. 171–189.
- BELTZ, K.-H. 1992. Unterschiede des Mahnverfahren im deutschen und französischen Recht. *Recht der internationalen Wirtschaft (RIW)* 7: 536–539.
- DELCASSO, J. P. C. 2001. La procédure d'injonction de payer en Espagne. *Orders for Payment in the European Union. Civil Procedure in Europe 4. Kluwer Law International*. 235–247.
- FREITAS, J. L. de. 2001. L'injonction de Payer dans la loi Portugaise. *Orders for Payment in the European Union. Civil Procedure in Europe 4. Kluwer Law International*. 219–233.
- GRUBER, U. P. 2010. Verordnung (EG) Nr 1896/2006 des Europäischen Parlaments und Rates vom 12. Dezember 2006 zur Einführung eines Europäischen Mahnverfahrens. In: *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar*. München. 267–407.
- HARSÁGI, V. 2012a. Az európai fizetési meghagyásos eljárásról szóló rendelet más közösségi jogforrások és a tagállami szabályozások feszültségi mezőjében [Regulation about European Order for Payment Procedure in the Tension Field of Other Community Sources of Law and Member States Regulations]. *Közjegyzők Közlönye* 6: 4–26.

⁷⁰ C-324/12.

- 2012b. Értelmezési nehézségek és alkalmazási problémák az európai fizetési meghagyás kibocsátása iránti kérelem vizsgálata során [Interpretation Difficulties and Application Problems in the Examination of Request for Payment Warrant]. *Európai Jog* 6: 15–23.
- 2012c. A fizetési meghagyásos eljárások hasonlóságai és különbségei Európában [Similarities and Differences of the Order for Payment Procedures in Europe]. *Jogtudományi Közlöny* 1: 1–11.
2014. Hungarian Case Law Relating to European Private Law (2013–2014). *Zeitschrift für Gemeinschaftsprivatrecht* 4: 209–214.
- HELMREICH, H. 1995. *Erscheinungsformen des Mahverfahrens im deutschsprachigen Rechtskreis – unter besonderer Berücksichtigung des Mahnverfahrens in der Zivilprozessordnung und seiner Vorgängermodelle*. Köln–Berlin–Bonn–Munich.
- KORMANN, J. M. 2007. *Das neue Europäische Mahnverfahrenim Vergleichzu den Mahnverfahren in Deutschland und Österreich*. Jena.
- MOLNÁR, J. 2014. Az európai fizetési meghagyásos eljárás peres folytatásának újragondolása – Gondolatok az 1896/2006/EK rendelet felülvizsgálata kapcsán [Reconsideration of the Litigation of the European Order for Payment Procedure – Thoughts on the Revision of Regulation (EC) No 1896/2006]. *Kúria Döntések – Bírósági Határozatok – A Kúria Lapja* 6: 623–626.
- NYILAS, A. 2011. *A polgári per egyszerűsítésének és gyorsításának eszközei az európai jogrendszerekben, különös tekintettel a kisértékű követelésekre vonatkozó eljárásokra. (PhD-Thesis)*. Debrecen.
2012. *Simplification and Acceleration of Civil Justice in Europe: with Special Reference to Small Claims Procedures*. Saarbrücken.
- STORME, M. 2005. A Single Civil Procedure for Europe: A Cathedral Builders' Dream. *Ritsumeikan Law Review* 22: 87–100.
- STORSKRUBB, E. 2008. *Civil Procedure and EU Law, a Policy Area Uncovered*. New York.
- VARGA, I. 2009. A határon átnyúló igényérvényesítés új európai alternatívái (New European Alternatives for Cross-Border Enforcement of Claims). In: *A polgári eljárásjogi szabályok átalakulása az Európai Unió jogában* [The Transformation of Civil Procedure Rules in the Law of the European Union]. Budapest: 37–48.
2010. Verordnung (EG) Nr 861/2007 des Europäischen Parlaments und Rates vom 11. Juli 2007 zur Einföhrungeines Europäischen Verfahrens für geringfügige Forderungen. *Europäisches Zivilprozess- und Kollisionrecht EuZPR/EuIPR Kommentar*. Munich, 409–556.

Jurisprudence

Judgment of the Court 13 December 2012. In Case C 215/11, Iwona Szirocka v SiGer Technologie GmbH.

Judgment of the Court 21 March 2013. In Case C-324/12, Novontech-Zalakft. v Logicdata Electronic &Software Enetwicklungs GmbH.

Judgment of the Court 13 June 2013. In Case C 144/12, Golbet Sportwetten GmbH v Massimo Sperindeo.

Judgment of the Court 4 September 2014. In Joined Cases C-119/13 and C-120/13, Eco-cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy; Raiffeisenbank St. Georgen reg. Gen. mbh v Tetyana Bonchuk.

Judgment of the Court 22 October 2015. In Case C-245/14, Thomas Cook Belgium NV v Thurner Hotel GmbH.

Judgment of the Court 10 March 2016. In Case C-94/14, Flight Refund Ltd v Deutsche Lufthansa AG.

Other References

ECC-Net European Small Claims Procedure Report September 2012. 18. http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf (07. 05. 2016.). https://e-justice.europa.eu/content_small_claims-42-hu.do (05. 05. 2016.).

COM (2002) 746 final. Green Paper on a European Order for Payment Procedure and on Measures to Simplify and Speed up Small Claims Litigation. Brussels.

COM (2013) 794 final. Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 Establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 Creating a European Order for Payment Procedure.

COM (2015) 495 final. Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the Application of Regulation (EC) 1896/2006 of the European Parliament and of the Council Creating a European Order for Payment Procedure.

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 Creating a European Order for Payment Procedure (OJ L 399, 30.12.2006).

Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 Establishing a European Small Claims Procedure (OJ L 99, 31.7.2007).

Regulation (EU) No 936/2012 of 4 October 2012 on Amending the Annexes to Regulation (EC) No 1896/2006 of the European Parliament and of the Council Creating a European Order for Payment Procedure(OJ L 283, 16.10.2012).

Regulation (EU) 2015/2421 of the European Parliament and of the Council of the 16th of December 2015 Amending Regulation (EC) No 861/2007 Establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 Creating a European Order for Payment Procedure (OJ L 341, 24.12.2015).