Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 22 October 2015[1]

Case C-94/14

Flight Refund Ltd
v
Deutsche Lufthansa AG

(Request for a preliminary ruling from the Kúria (Supreme Court, Hungary))

(Area of freedom, security and justice — Judicial cooperation in civil matters — Claim for compensation in respect of delayed flight — European order for payment issued in a Member State having no connection with the claim — Designation of court competent to hear contentious proceedings)

1. The present request for a preliminary ruling from the Kúria (Hungarian Supreme Court) raises unusual issues involving the Montreal Convention,[2] the Brussels I Regulation,[3] the Air Passengers Regulation,[4] and the European Order for Payment Regulation ('the EOP Regulation').[5]

2. The complex — and rather puzzling — circumstances of the main proceedings may be summarised as follows. A Hungarian passenger on a delayed flight from Newark (New Jersey, United States of America) to London (United Kingdom) asserted a right to compensation, on the basis of the Air Passengers Regulation, from an air carrier established in Germany. She assigned that right to a company established in the United Kingdom, which obtained a European order for payment from a notary in Hungary, using the procedure laid down in the EOP Regulation. The notary's competence was asserted on the basis of a (misleading) Hungarian translation of the provision governing jurisdiction in the Montreal Convention. The air carrier lodged a statement of opposition to the European order for payment and denied having operated the flight in question. In such circumstances, under the EOP Regulation, the proceedings must continue 'before the competent courts of the Member State of origin' (namely, Hungary, where the European order for payment was issued). However, there is no apparent ground in the Brussels I Regulation for any court in that Member State to exercise jurisdiction over the claim for compensation. It falls to the Kúria to designate a competent court, but the Kúria feels unable to do so without further guidance on the interpretation of the relevant provisions of EU law.

1 — Original language: English.

2 — Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999, signed by the European Community on 9 December 1999 on the basis of Article 300(2) EC, approved on behalf of the EC by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38).

3 — 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).

4 — Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

5 — 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 2006 L 399, p. 1).

Legal background

The Montreal Convention

3. Under Article 19 of the Montreal Convention, carriers are liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

4. Article 33 of the Montreal Convention is entitled 'Jurisdiction'. Article 33(1) provides: 'An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.'

5. Consequently, that provision offers two basic options — the courts for the place of the carrier's domicile or business or those for the place of destination. In both cases, those courts must be in the territory of one of the States Parties.

6. However, Article 33 has been translated into Hungarian in such a way that 'in the territory of one of the States Parties' might appear to be a self-standing (third) option for the plaintiff, rather than a condition applying to the two options that follow.[6] Thus, in contrast to at least the authentic English, French and Spanish versions,[7] it might initially appear from the Hungarian text that an action for damages may be brought, at the option of the plaintiff, (a) in the territory of one of the States Parties, (b) before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or (c) before the court at the place of destination. (On a second reading, such an interpretation might quickly be discarded, however, in so far as options (b) and (c) would be relevant only if the action were brought outside the territory of any of the States Parties — and thus in a State not bound by the Montreal Convention.)

The Brussels I Regulation

7. As a general rule, pursuant to Articles 2(1), 3(1) and 5(1) and (5) of the Brussels I Regulation, read together, a person domiciled in a Member State may be sued for compensation arising out of a contractual obligation only in the courts of that State or in those for the place of performance of the obligation in question. That place is, in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided. In addition, where a dispute arises out of the operations of a branch, agency or other establishment, such a person may be sued in the courts for the place where the branch, agency or establishment is situated.

8. While there are a number of possible exceptions to that general rule, only three seem capable, at least in theory, of being relevant to the case in the main proceedings.

6 — There appear to be two 'official' versions of the Montreal Convention in Hungarian, one in the *Official Journal of the European Union*, Hungarian Special Edition, Chapter 7, Volume 5, p. 492, the other in 2005. évi VII. törvény (Law No 7 of 2005) which incorporated the convention into Hungarian law. Neither, however, is an authentic version of the Montreal Convention itself. The two versions of Article 33(1) differ significantly in actual wording, but in both the words 'either … or …' in the English version are rendered by '*vagy … vagy …*'. In the version in the Official Journal, there is no comma before the first '*vagy*', so that it could more easily be read as 'or' rather than 'either'. The version in Law No 7 of 2005, however, does have a comma, although the Kúria quotes it without a comma in the order for reference. In both versions, there is a comma before the second '*vagy*'.

7 — The other authentic versions are Arabic, Chinese and Russian. In French, the equivalent of 'either … or …' is '*soit … soit …*' while in Spanish it is '*sea … sea …*'. In both languages there is a comma before the first element of the pair, so that it is clear that 'in the territory of one of the States Parties' is a condition applying to both the following options.

9. First, under Article 16(1), a consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled. However, under Article 15(3), that exception does not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation. In the present case, there is no indication as to whether the flight in issue may have formed part of such a travel package.

10. Second, Article 23 (read, in relation to consumer contracts, together with Article 17) regulates the conditions under which parties to a legal relationship may agree that a court or the courts of a Member State are to have jurisdiction to settle disputes in connection with that relationship. In the present case, there is no indication as to whether any such agreement existed.

11. Third, under Article 24, a court of a Member State before which a defendant enters an appearance has jurisdiction, independently from jurisdiction derived from other provisions of the regulation, unless appearance was entered to contest jurisdiction. By contrast, under Article 26(1), where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court must declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of the regulation.

12. A further provision which may be of relevance to the main proceedings is Article 27(1), which provides: 'Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.'

The Air Passengers Regulation

13. The Air Passengers Regulation establishes minimum rights for passengers when they are denied boarding or when their flight is cancelled or delayed (Article 1(1)). It applies to passengers departing from an airport situated in the territory of a Member State to which the Treaty applies (Article 3(1)(a)) or, provided that the operating air carrier of the flight concerned is a Community carrier, arriving in such an airport from an airport in a third country (Article 3(1)(b)). A Community carrier for that purpose is an air carrier with a valid operating licence granted by a Member State (Article 2(c)).

14. Where a flight is cancelled, Article 5(1)(c) gives passengers a right to compensation in accordance with Article 7. Under Article 7(1)(c), for any flight of more than 3 500 kilometres which is not an intra-Community flight (the category in which the flight in issue in the main proceedings falls), the amount of compensation is to be EUR 600. However, under Article 7(2)(c), for the same category of flight, that amount may be reduced by 50% if the passenger is offered re-routing on an alternative flight the arrival time of which does not exceed the scheduled arrival time of the flight originally booked by four hours. For other categories of flight, the relevant delay in arrival time is two or three hours, as the case may be.

15. Article 6 concerns, on its wording, the obligations of operating air carriers in the event of a reasonably expected delay of a flight beyond its scheduled time of departure. Those obligations apply, in the case of a flight of more than 3 500 kilometres which is not an intra-Community flight, when the delay in departure exceeds four hours. Depending on the precise circumstances, carriers must provide care (in the form of refreshments, accommodation, transport, etc.) and/or reimbursement or re-routing.

16. That article does not provide for passengers to receive compensation in the event of delay, and does not refer to delay beyond the scheduled time of arrival. However, the Court has interpreted Articles 5, 6 and 7 together, in the light of the regulation's aim of ensuring a high level of protection for air passengers regardless of whether they are denied boarding or whether their flight is cancelled or delayed, as meaning that passengers whose flights are delayed may be treated, for the purposes of the application of the right to compensation, as passengers whose flights are cancelled and they may thus rely on the right to compensation laid down in Article 7 of the regulation where they suffer, on account of a flight delay, a loss of time equal to or in excess of three hours. [8]

17. The Air Passengers Regulation does not contain any specific rules of jurisdiction in the event of a dispute as to its application.

The EOP Regulation

18. The purpose of the EOP Regulation is in particular to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims (Article 1(1)(a)). It applies, according to Articles 2(1) and 3(1) read together, to civil and commercial matters in cases in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised. Article 4 establishes the European order for payment procedure 'for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted'. However, a claimant is not prevented from pursuing such a claim through any other procedure available under national or EU law (Article 1(2)). In accordance with Article 5(1), the Member State in which a European order for payment is issued is the 'Member State of origin', and Article 5(3) defines a 'court' as 'any authority in a Member State with competence regarding European orders for payment or any other related matters'.

19. Article 6(1) provides: 'For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001.'

20. Pursuant to Article 7(1), an application for a European order for payment is to be made using the standard form in Annex I. In addition to details of the claim itself, the application must state the grounds for jurisdiction. Section 3 of the standard form lists 13 possible grounds which do not require further specification, while ground 14 is 'Other (please specify)'. The 'Guidelines for filling in the application form', also in Annex I, state, inter alia: 'If the application concerns a claim against a consumer relating to a consumer contract, it must be lodged with the competent court of the Member State in which the consumer is domiciled. In other cases, the application must be lodged with the court having jurisdiction in accordance with the rules of [the Brussels I Regulation]. …'

21. Under Article 8, the court seised of an application for a European order for payment must examine, on the basis of the application form, whether the requirements set out in, inter alia, Article 6 (on jurisdiction) are met; the examination may take the form of an 'automated procedure' (although no indication is given as to what such a procedure might comprise). Under Article 11, if the

8 — Judgments in *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716, paragraphs 40 to 69, and *Nelson and Others*, C-581/10 and C-629/10, EU:C:2012:657, paragraphs 28 to 40. See also judgment in *Folkerts*, C-11/11, EU:C:2013:106. In *Sturgeon and Others* (at paragraphs 57 and 58 of the judgment), the Court arrived at an undifferentiated criterion of loss of time of three hours or more for all flights (as opposed to the differentiated delays of two, three or four hours, depending on the category of flight, laid down in Articles 6 and 7 of the Air Passengers Regulation) by a constructed calculation based on Article 5(1)(c)(iii), which concerns re-routing following a notified cancellation where passengers are allowed to depart no more than one hour before the scheduled time of departure and reach their final destination less than two hours after the scheduled time of arrival. By adding those two periods of one hour and two hours together, the Court arrived at a notion of 'loss of time' of three hours, regardless of the category of the flight in respect of which the compensation specified in Article 7 was to be paid in the event of delay on arrival.

requirements are not met, the application is to be rejected, but such rejection can neither be made the subject of an appeal nor constitute a bar to further proceedings of any kind. If all the specified requirements are met, however, the European order for payment is to be issued and served on the defendant, in accordance with Article 12.

22. Article 16 is entitled 'Opposition to the European order for payment'. In accordance with Article 16(1) to (3), the defendant may lodge a statement of opposition with the court of origin, within 30 days of service of the order, using a standard form on which he is required merely to indicate that he contests the claim, without having to specify the reasons.

23. The first subparagraph of Article 17(1) provides: 'If a statement of opposition is entered within the time limit laid down in Article 16(2), 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' (which he may do by filling in Appendix 2 to the standard application form). Under Article 17(2), such transfer to ordinary civil proceedings is to be governed by the law of the Member State of origin.

24. If no statement of opposition is lodged within the time-limit, Article 18(1) requires the court of origin without delay to declare the European order for payment enforceable.

25. Article 20 provides for 'Review in exceptional cases'. In particular, Article 20(2) provides: 'After 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 the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances.' Pursuant to Article 20(3), if the court decides that the review is justified, the European order for payment is to be null and void; otherwise, it remains in force.

26. Article 26 provides: 'All procedural issues not specifically dealt with in this Regulation shall be governed by national law.'

Hungarian law

27. By Article 59(1) of Law No 50 of 2009 on the order for payment procedure (2009. évi L. törvény a fizetési meghagyásos eljárásról), notaries have jurisdiction to issue a European order for payment, with competence throughout Hungary.

28. Under Article 38(1) and (3) of the same law, in the event of opposition to an order for payment, the notary is to forward the case-file to the court designated by the claimant or, if no such court has been designated, to the court which is territorially competent by virtue of the rules laid down in Law No 3 of 1952 on the code of civil procedure (1952. évi III. törvény a polgári perrendtartásról).

29. Under Paragraph 30(2) of that code, in an action against a legal person which has no registered office in Hungary, the court with territorial jurisdiction is to be determined on the basis of the registered office of a claimant who is a resident legal person, or the home address or habitual residence of a claimant who is a resident natural person.

30. Under Paragraph 36(2), actions for claims arising from any transaction concluded by an economic operator acting in the course of his business activity may be brought before the court of the place of the transaction or of the place of performance. Under Paragraph 37, an action for damages may be brought before the court for the place where the damage was caused or actually occurred.

31. Paragraph 43(1) requires the court seised to raise its lack of territorial jurisdiction *ex officio*, but it may examine the accuracy of facts presented in connection with territorial jurisdiction only if they contradict common knowledge or are incompatible with the information officially available to the court, if they are deemed unlikely or if they are disputed by the defendant.

32. Where there is a conflict of competence, Paragraph 45(1) and (2)(c) requires the Kúria to designate the competent court.

33. Under Paragraph 130(1), the court seised is to dismiss a claim summarily if there is evidence that, in particular, (i) the case is outside the jurisdiction of any Hungarian court pursuant to an act or international agreement, (ii) another court or authority has jurisdiction *ratione materiae* to hear the claim or (iii) another court has territorial jurisdiction to hear the proceedings.

34. Under Paragraph 157, the case is to be discontinued if the claim should have been dismissed summarily on such grounds. Under Paragraph 157/A(1), in cases where there was no such reason for summary dismissal but the jurisdiction of a Hungarian court cannot be established under any jurisdictional rule, the court must dismiss the proceedings if, inter alia, the defendant failed to appear at the first hearing, and failed to submit a written defence.

Facts, procedure and questions referred

35. The order for reference gave the following account of the factual and procedural background to the main proceedings.

36. An airline passenger assigned her rights to compensation for a delayed flight to Flight Refund Ltd ('Flight Refund'), a company registered in the United Kingdom and specialised in the recovery of such claims. Flight Refund then applied to a Hungarian notary for a European order for payment against Deutsche Lufthansa AG ('Lufthansa'), a company established in Germany. It based its claim for EUR 600 on the ground that, following the assignment, it had a right to compensation from Lufthansa owing to a delay of more than three hours on flight LH7626. [9]

37. The notary issued the European order for payment without ascertaining the place where the contract was made, the place for its performance, the place where the alleged damage arose, the place of business of the carrier through which the contract was made, or the flight destination. She declared herself competent on the ground that Hungary is a State Party to the Montreal Convention. Lufthansa lodged a statement of opposition, asserting that it was not the operating carrier of the flight specified, which was operated by United Airlines. [10]

38. Flight Refund's lawyer declared that she was unable to designate the competent court once the proceedings had become contentious. The notary then applied to the Kúria to designate the competent court, stating that: the Hungarian courts had jurisdiction pursuant to Article 33(1) of the Montreal Convention; it was not possible to establish which court was actually authorised to hear the proceedings, since neither party had a registered office within Hungary; neither the place the contract was entered into nor the place for its performance were apparent from the claim; because flight LH7626 operated between Newark and London, the damage could have arisen in the United States or in the United Kingdom; and Lufthansa claimed that the route operator was United Airlines.

9 — The assignment agreement and the application for a European order for payment, in the case-file forwarded to the Court by the Kúria, show that the passenger was a woman with an address in Budapest, that Flight Refund appointed its Hungarian lawyer to act for it and that it was that lawyer who lodged the application with the notary.

10 — The statement of opposition, also in the case-file, shows that the assertion was added in a blank space below the end of the standard form, which does not contain a section allowing the grounds of opposition to be stated. Lufthansa did not raise any issue of competence in its statement of opposition.

39. On the basis of its understanding of that situation, the Kúria referred five questions to the Court for a preliminary ruling, the first three of which related to a claim for compensation based on Article 19 of the Montreal Convention and to the interrelationship between the jurisdictional rules contained in that convention and those in the EOP Regulation and the Brussels I Regulation. The fourth question concerned the possibility for *ex officio* review of a European payment order issued in breach of the relevant rules, or for discontinuance of the proceedings, while the fifth concerned the possible obligation to designate a Hungarian court to hear contentious proceedings concerning such an order even in the absence of any connecting factor justifying the jurisdiction of the Hungarian courts.

40. Written observations were submitted initially by the German and Hungarian Governments and by the Commission, and were notified to, inter alia, the parties to the main proceedings.

41. Flight Refund's lawyer then wrote to the Court pointing out that she had informed the Kúria that the claim for compensation was based not on Article 19 of the Montreal Convention but on the Air Passengers Regulation, although the claimed basis for jurisdiction of the Hungarian courts was Article 33 of the Montreal Convention. She explained that she had not indicated the basis for the claim in the application form because there was no section calling for that information; but she had specified Article 33 of the Montreal Convention as the ground for jurisdiction under point 14 of section 3 of the form because it was a provision which contained a rule of jurisdiction in respect of claims for damages due to delay in carriage by air, whereas the Air Passengers Regulation contained no such rule.

42. In the light of that communication and pursuant to Article 101(1) of its Rules of Procedure, the Court requested clarification from the Kúria as to the legal basis of the claim at issue in the main proceedings and the identity of the operating air carrier for the purpose of the Air Passengers Regulation.

43. In response, the Kúria specified that Flight Refund's claim was indeed based on Articles 6 and 7 of the Air Passengers Regulation but that its reliance on the jurisdiction of the Hungarian courts was based on Article 33 of the Montreal Convention. In that light, the Kúria withdrew its first three questions and amended the fifth. However, being precluded by national procedural rules from hearing evidence on the substance of the case, it was unable to provide any further information as to the identity of the operating air carrier.

44. The two questions on which the Court is asked to give a preliminary ruling now read as follows:

'(1) Can a European payment order which has been issued in breach of the purpose of [the EOP Regulation] or by an authority which does not have international jurisdiction be the subject of an *ex officio* review? Or must the contentious proceedings following the lodging of a statement of opposition, where there is a lack of jurisdiction, be discontinued *ex officio* or on request?

(2) If any Hungarian court has jurisdiction to consider the case, should the relevant rule governing jurisdiction be interpreted as meaning that the Kúria, in assigning jurisdiction to a court, should designate at least one court which, in the absence of a jurisdiction and competence determined by the Member State's procedural law, is required to conduct the proceedings on the substance of a case which has arisen as a result of a statement of opposition?'

45. The Kúria further stated in its response that it was still essential to ascertain whether, if the Air Passengers Regulation does not contain the necessary rules, jurisdiction over a European order for payment procedure asserting a claim under that regulation should be governed by the Montreal Convention, by the Brussels I Regulation or by other rules. In addition, it needed to know whether Article 17(1) of the EOP Regulation provides a rule of jurisdiction which, independently of the Brussels I Regulation, establishes the competence of the courts of the Member State of origin.

46. Following notification of the Kúria's response and reformulated questions, Hungary alone submitted further written observations. No hearing was requested and none has been held.

Assessment

Admissibility of the request for a preliminary ruling

47. In its observations, the German Government suggested that the request for a preliminary ruling might be inadmissible either in its entirety, on the ground that it appeared from Flight Refund's website that the company had suspended its activities, or as regards the first three questions, on the ground that interpretation of the Montreal Convention was not relevant to determining the issues in the main proceedings.

48. Since the Kúria has confirmed that proceedings are still pending before it and has withdrawn its first three questions, there is no need to consider those aspects further.

Substance of the request for a preliminary ruling

49. The basic question in this case is: what must be done when a European order for payment has been issued by an authority in a Member State whose courts do not have jurisdiction to deal with the claim asserted in the order and when, following a statement of opposition, contentious proceedings are to be pursued before 'the competent courts of the Member State of origin'? As the German Government has pointed out, there is no rule in the EOP Regulation for dealing with such a situation.

50. By its questions, the Kúria envisages two possible solutions. First, it might itself be empowered, without having to appoint a court to deal with the substance of the underlying claim, to conduct a review of the European order for payment, leading — on the assumption that the order was clearly wrongly issued, having regard to the requirements laid down in the EOP Regulation — to a finding that it was null and void or to discontinuance of the proceedings. Second, the Kúria might be required, even in the absence of any identifiable ground of jurisdiction, to designate a Hungarian court to deal with the claim.

51. However, before examining whether either of those approaches may be followed (neither, it seems clear, can be construed as *required* by the legislation, and it seems preferable to examine them together), it is in my view helpful to review what has or has not happened so far in the case, as compared with what should have happened. I think it fair to say, in that regard, that the complexity from which the Kúria must now extricate itself is due essentially to elementary mistakes made first by Flight Refund and its lawyer and then by the notary who issued the European order for payment. Those mistakes effectively frustrate the aim of the EOP Regulation to simplify and speed up litigation in cross-border cases concerning uncontested pecuniary claims. [11]

52. First of all, Flight Refund should not have sought to rely on the Montreal Convention to found jurisdiction for issuing a European order for payment against Lufthansa in Hungary. [12] Under Article 6 of the EOP Regulation, competence is to be determined in accordance with 'the relevant rules of Community law, in particular Regulation (EC) No 44/2001'. Although 'relevant rules of Community

11 — 'Oh, what a tangled web we weave, when first we practise to deceive!' wrote Sir Walter Scott in *Marmion* (Canto VI, XVII). I do not accuse any party of practising to deceive, but the web woven here is tangled indeed, and worthy of the wiliest of law professors seeking to confound students in an examination question.

12 — There is no indication as to whether Flight Refund contacted Lufthansa before applying for the European order for payment. That is apparently its current practice, according to its website (http://flight-refund.eu/). It is possible that it did so and Lufthansa simply did not reply. If so, Lufthansa must bear some responsibility for the ensuing confusion, since a short reply to the effect that United Airlines was the operating air carrier would (presumably) have cut short the European order for payment procedure against it.

law' might in principle include the Montreal Convention, the Court has already held, as has been pointed out in the written observations, that jurisdiction with regard to a claim under the Air Passengers Regulation is governed by the Brussels I Regulation alone.[13] Moreover, the 'Guidelines for filling in the application form' for a European order for payment make it clear that the rules of the Brussels I Regulation are those which are to be observed (see point 20 above). In any event, it must be axiomatic that any jurisdictional rule contained in the Montreal Convention concerns proceedings brought in relation to claims governed by that convention, and not to claims governed by other instruments. Unlike the Brussels I Regulation, the Montreal Convention does not purport to lay down generally applicable rules of jurisdiction.

53. Second, even in relying on the Montreal Convention, Flight Refund's lawyer should have known that there were two differing Hungarian versions of that instrument,[14] neither of which was authentic but at least one of which could be construed as meaning that 'in the territory of one of the States Parties' was *not* a self-standing and self-sufficient ground for jurisdiction, so that reference to an authentic version of the convention was essential.

54. Third, the notary who received the application for a European order for payment should have verified Flight Refund's claim that jurisdiction was based on Article 33 of the Montreal Convention. It is true that Article 8 of the EOP Regulation allows such verification to take the form of an 'automated procedure', which may, of course, be a source of error. On the other hand, a Hungarian notary is, for the purposes of the EOP Regulation, a judicial authority and must, as such, be deemed to have knowledge of the law which he or she is called upon to administer and to take responsibility for the way in which it is administered.

55. Thus, both Flight Refund's lawyer and the notary should have examined the possible grounds for competence in the light of the Brussels I Regulation alone. Those possible grounds appear to be as follows.

56. The first claim to jurisdiction in the scheme of the Brussels I Regulation is that of the courts of the Member State in which the defendant is domiciled (Article 2(1)) — in the present case, Germany. The second, in matters relating to a contract, is that of the courts for the place of performance of the obligation in question (Article 5(1)(a)). Because the claim for compensation arises out of an alleged delay on arrival, the place of performance must in my view be the place of arrival — namely, London. Consequently, the most obvious courts from which to request a European order for payment, and those most certain to have jurisdiction, were those of Germany or England.

57. A third possibility might be the courts of the place in which the branch, agency or other establishment of Lufthansa was established (Article 5(5)), if the ticket was bought from such a branch, agency or other establishment. That is conceivably the case and, since the passenger appears to be resident in Hungary, might found the jurisdiction of the Hungarian courts. However, it would be necessary for the Kúria to inquire into that matter, since there appears to be no evidence at this stage as to where the ticket was bought.

58. It may be noted — although it is of no direct relevance — that the above three grounds of jurisdiction correspond to those in Article 33(1) of the Montreal Convention, once the spurious ground of simply 'in the territory of one of the States Parties' has been discounted.

13 — Judgment in *Rehder*, C-204/08, EU:C:2009:439, paragraphs 26 to 28 and the case-law cited.

14 — See footnote 6 above.

59. A further possible ground on which the jurisdiction of the Hungarian courts might have been asserted relates to the passenger's domicile. It is true that the rule of Hungarian law which allows an action to be brought in Hungary by a natural person domiciled or habitually resident in Hungary against a legal person having no registered office there [15] does not seem fully compatible with the Brussels I Regulation, if it is a generally applicable rule. Such a rule would be the exact opposite of the general rule in the Brussels I Regulation, which gives preference to the courts of the Member State of the defendant's domicile. [16] However, there are circumstances in which that regulation does allow of such a possibility — namely, when the natural person is a consumer and brings proceedings against the other party to a consumer contract which, if it is a contract of transport, is part of a travel package. [17]

60. In any event, the circumstances of the contract in question would again have to be investigated by the Kúria. Moreover, I doubt whether such a ground of jurisdiction could be relied upon when the consumer in question has assigned the claim to a collection agency such as Flight Refund. Although assignment of a claim is not a point addressed in the Brussels I Regulation [18] and I know of no case-law dealing with it, it is clear that the exceptional rule whereby the courts for the place of domicile of the consumer may be given just as much weight as those for the place of domicile of the defendant is intended to relieve the weaker party to the contract of the need to pursue a claim in foreign courts. [19] That consideration no longer applies when the claimant is not the weaker party to the contract — that is, the consumer — but a professional collection agency. [20]

61. Finally, it is possible that the terms and conditions governing the sale of the ticket contained a jurisdiction clause. If so, its validity would have to be measured against the provisions of Article 23 and, if applicable, Article 17 of the Brussels I Regulation. [21]

62. Thus, it seems to me that, from the information available, the international jurisdiction of the Hungarian courts to deal with the claim for compensation under the Air Passengers Regulation cannot be entirely ruled out on the basis of the Brussels I Regulation, although neither this Court nor the Kúria has any information which would make such jurisdiction clear. What can be said is that jurisdiction cannot be founded on the Montreal Convention and that more information would be required in order to establish jurisdiction on the basis of the Brussels I Regulation.

15 — Paragraph 30(2) of the Code of civil procedure: see point 29 above.

16 — See point 7 above.

17 — See point 9 above.

18 — By contrast, Article 14(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6) provides: 'The relationship between assignor and assignee under a voluntary assignment or contractual subrogation of a claim against another person (the debtor) shall be governed by the law that applies to the contract between the assignor and assignee under this Regulation.' Unfortunately, that choice of law rule does not assist with the separate issue of jurisdiction to deal with the claim against Lufthansa. If it had done so, the matter would have been simple, since the assignment agreement between Flight Refund and the passenger stipulates that questions not regulated in the agreement are to be governed by Hungarian law and that disputes between those parties are within the exclusive jurisdiction of the Budai Központi Kerületi Bíróság (Buda Central District Court). However, even though, by virtue of Article 14(2) of Regulation No 593/2008, Hungarian law is therefore to determine 'the conditions under which the assignment or subrogation can be invoked against the debtor', that cannot in my view extend to subjecting Lufthansa, which is not a party to the agreement, to the jurisdiction of a court which does not derive its competence from the Brussels I Regulation.

19 — Similar rules apply for actions brought by a policyholder, insured person or beneficiary against an insurer, or by an employee against his employer, and recital 13 in the preamble to the Brussels I Regulation makes it clear that all those provisions are intended to protect the weaker party by means of more favourable rules of jurisdiction.

20 — On its website, Flight Refund describes itself as 'Your Legal Attendant' and as a specialist in claim enforcement cases. It also appears from the website that Flight Refund now trades as 'Flight Refund Kft.', a limited liability company registered in Hungary with its head office in Budapest, and is a tied agent of PannonHitel Zrt., a private company also registered in Hungary. The change of registered office is however of no relevance in my view, because (i) the proceedings were brought by Flight Refund Ltd, registered in the United Kingdom, and (ii), since a limited liability company is not a consumer, its place of establishment cannot found jurisdiction.

21 — See point 10 above.

63. The Kúria has informed the Court that it is not empowered to hear evidence on the substance of the case. Although it is not for this Court to interpret Hungarian law, it seems to me plausible that the provisions cited by the Kúria and set out at point 29 et seq. above might not preclude hearing evidence on the issue of admissibility. In any event, I consider that, in conformity with the Court's consistent case-law, the Hungarian Code of civil procedure must be interpreted in such a way as to give full effect to the provisions of EU law, including those governing jurisdiction. [22]

64. If a full examination of all the facts relevant to the issue of jurisdiction in the light of the Brussels I Regulation showed that the Hungarian courts were competent to deal with Flight Refund's claim against Lufthansa based on the Court's interpretation of the Air Passengers Regulation, the Kúria's difficulties would not arise.

65. I shall therefore assume in what follows that such an examination has taken place and has led to the conclusion that those courts do not have jurisdiction to deal with that claim. In those circumstances, the Kúria is simply not in a position to designate a competent court of the Member State of origin before which the proceedings can continue in accordance with the ordinary rules of civil procedure, as provided for in Article 17(1) of the EOP Regulation.

66. However, the saga does not end with the notary's injudicious issuing of the European order for payment.

67. That order was sent to Lufthansa, which lodged a statement of objection. Although not required to do so, Lufthansa indicated the ground on which it denied liability, namely that it was not the operating air carrier for the flight concerned. If that could have been considered to be entering an appearance for the purposes of Article 24 of the Brussels I Regulation, it might have conferred jurisdiction on the Hungarian courts. [23] However, the Court has held that lodging a statement of opposition to a European order for payment, even when accompanied by arguments on the substance of the case, cannot be regarded as entering an appearance for the purposes of Article 24 of the Brussels I Regulation. [24]

68. The effect of the statement of opposition is, first, that the European order for payment cannot be declared enforceable in accordance with Article 18 of the EOP Regulation and, second, that the proceedings are to continue before the 'competent courts of the Member State of origin' pursuant to Article 17(1) of that regulation.

69. Until the proceedings can continue thus, Flight Refund's claim would appear to be in limbo. A European order for payment has been issued but cannot be declared enforceable. The EOP Regulation clearly states that the proceedings must continue in the Member State of origin, namely, Hungary.

70. That is clearly the correct course on the assumption that the courts of that Member State are internationally competent to deal with the claim, which will in principle be the case if the authority which issued the European order for payment correctly examined its own competence in accordance with Articles 6 and 8 of the EOP Regulation. However, the legislature does not appear to have fully envisaged the possibility that the courts of the Member State of origin might not be internationally competent to deal with the underlying claim.

22 — See, in relation to the Brussels Convention which preceded the Brussels I Regulation, judgment in *Hagen*, C-365/88, EU:C:1990:203, paragraph 20 and the case-law cited. See also, for an example relating to Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1), judgment in *Purrucker*, C-256/09, EU:C:2010:437, paragraph 99 and the case-law cited.

23 — See point 11 above.

24 — Judgment in *Goldbet Sportwetten*, C-144/12, EU:C:2013:393, paragraphs 38 to 41.

71. Moreover, even though Article 1(2) of the EOP Regulation states that the regulation does not prevent a claimant from pursuing a claim by any other procedure, that cannot in my view be read as enabling the claim to be pursued, or the order to be enforced, concurrently by another procedure, which might result in double enforcement. Rather, as long as the European order for payment procedure has not been terminated, Article 27 of the Brussels I Regulation would appear to prevent any other court from dealing with the claim.

72. As I have suggested [25] and as has been pointed out in the observations submitted to the Court, the legislation does not specifically provide for a solution in circumstances such as those of the main proceedings. Consequently, what must be found is a solution which is not inconsistent with the legislation and which allows the European order for payment procedure to be terminated, Flight Refund to pursue its claim (if it still so wishes) and Lufthansa to defend itself in a forum which is competent for the purposes of the Brussels I Regulation.

73. Lufthansa did not, in its statement of opposition, raise the issue of the notary's territorial incompetence. However, even if it had done so, I do not see how that could have changed the procedural situation. The effect of the statement of opposition, which is not designed to include a statement of the grounds of opposition, would in my view have remained the same as in the actual circumstances of the main proceedings: the claim would still have had to continue before the competent courts of the Member State of origin, and the impossibility of finding such a court would have remained unchanged.

74. Lufthansa could perhaps, in accordance with Article 20(2) of the EOP Regulation, have raised the issue of the notary's territorial competence after expiry of the time-limit for lodging its opposition (and thus, implicitly, only once the European order for payment had been declared enforceable), on the ground that the order was 'clearly wrongly issued, having regard to the requirements laid down in this Regulation' — a notion which must in my view be read to include its having been issued by an authority which clearly lacked international competence in accordance with the Brussels I Regulation. That would have involved applying for a review of the order by the 'competent court in the Member State of origin', which would have been required, if it found the review to be justified, to declare the European order for payment null and void. And there the proceedings would have ended (without prejudice to the claim being advanced again, under the same or a different procedure, in a competent forum).

75. I do not suggest that Lufthansa should have pursued such a course of action — it seems unlikely, commercially speaking, that it would have been in its interest to do so. Nevertheless, I think that it is worth pausing to consider such a situation and to compare it with that in the main proceedings.

76. Where the defendant applies for review under Article 20(2) of the EOP Regulation, it is clear, first, that there must always be a 'competent court in the Member State of origin' to carry out that review, even if — as may well be the case — there is no court in that State with jurisdiction to deal with the underlying claim. If that were not so, it would be impossible to rectify situations in which a European order for payment had been issued by an authority lacking international competence, and it must be possible to do so.

25 — See point 49 above.

77. It is also clear that, since the identification of the competent court is not dealt with in the EOP Regulation, it is to be governed by national law pursuant to Article 26 of that regulation. In Hungary, therefore, that national law[26] must be interpreted in such a way that, if the designation of the competent court does not follow automatically from, for example, the place of establishment of the notary who issued the European order for payment, then the Kúria must be both in a position and under an obligation to designate the competent court. If the order was wrongly issued, that court must terminate the proceedings with a finding that the order is null and void. However, the competent court in that situation is not the court competent to deal with the underlying claim. It is the court competent to review the legality of the European order for payment.

78. But that is also, in essence, the situation in the main proceedings here. The Kúria is in principle required, by virtue of its obligations under the Hungarian Code of civil procedure in conjunction with the provisions of Article 17(1) of the EOP Regulation and its duty to ensure the full effectiveness of the rules of jurisdiction of EU law, to designate a court competent to deal with the underlying claim. In order to do so, it must examine all the facts relevant to the determination of jurisdiction. The only situation in which it is unable to make such a designation is one in which it has ascertained that the Hungarian courts lack international jurisdiction.

79. A logical course to follow in that situation would therefore be to designate a court which would have been competent to review the validity of the European order for payment if the defendant had applied for review pursuant to Article 20(2) of the EOP Regulation and which is also materially competent to deal with claims of the kind in question. That court would then be required, pursuant to Article 26(1) of the Brussels I Regulation, to declare itself incompetent to hear the claim unless the defendant entered appearance other than in order to contest its jurisdiction. The claimant would then be free to pursue the claim in any other competent forum. If the defendant did enter an appearance for any other purpose, the court's jurisdiction would be established pursuant to Article 24 of the Brussels I Regulation and the proceedings could continue in accordance with Article 17 of the EOP Regulation.

80. Such a solution, which corresponds broadly to that envisaged in the Kúria's second question, seems to me to conflict in no way with any of the relevant legislation. It might, admittedly, pose problems if there were no identifiable court which both would have been competent to review the validity of the European order for payment and was materially competent to deal with claims of the kind in question.

81. The other solution envisaged by the Kúria, in its first question, would involve an *ex officio* review of the European order for payment by the Kúria itself. Whilst that would indeed achieve the obviously required result in a manner not greatly different from the other solution, it appears to me to accord slightly less well with the provisions of the EOP Regulation, inasmuch as Article 20 of that regulation does not provide for *ex officio* review but only for review at the request of the defendant.

26 — The European judicial enforcement website's page (http://www.europe-eje.eu/sites/default/files/pj/dossiers/ipe_hongrie_english.pdf) concerning the European order for payment procedure in Hungary states simply that: 'the review referred to in Article 20, paragraph 2, of Regulation (EC) No 1896/2006 is ruled by the Hungarian regulations on the admissibility of the reopening of proceedings (Code of Civil Procedure)'.

Final remarks

82. The amount at stake in the main proceedings in the present case is small,[27] although I acknowledge that the stakes may be considerably higher in other European order for payment procedures. But in all comparable situations, the ultimate solution to the problem raised is clear: in the interests of all parties, the European order for payment procedure must be terminated in order to allow the claim to be pursued, if desired, before a competent court. Had the problem been raised before a lower court, it is quite conceivable that a pragmatic solution might have been found, without requesting a preliminary ruling from this Court.

83. However, the issue falls to be decided by a court against whose decisions there is no judicial remedy under national law and which therefore, under the third paragraph of Article 267 TFEU, had no option but to seek such a ruling. The Kúria loyally complied with that obligation. As a result, although either of the solutions that the Kúria itself identified would (to my mind) have provided a satisfactory outcome, the case has had to be dealt with at length by the Court.

84. It seems to me that this is, *par excellence*, the type of case for which some less intensive form of treatment would appear appropriate — whether that be the 'green light' procedure often advocated by my predecessor in office, Sir Francis Jacobs,[28] or some other mechanism. Given the increasing workload of the Court and the pressure on it to deliver judgments promptly in answer to national courts, it may be worthwhile reopening the discussion on this issue.

Conclusion

85. In the light of all the foregoing considerations, I am of the opinion that the Court should answer the Kúria's questions to the following effect: Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure must be interpreted to the effect that, where

(a) a European order for payment has been issued by a court or authority of a Member State but no grounds can be identified to establish the territorial competence of the courts of that Member State in respect of the claim pursued,

(b) the defendant has lodged a statement of opposition with the result that, pursuant to Article 17(1) of Regulation No 1896/2006, the proceedings must continue before the competent courts of that Member State in accordance with the ordinary rules of civil procedure and

(c) a superior court is required, in accordance with those rules, to designate such a competent court,

then the superior court should designate a court which would have been competent to review the validity of the European order for payment if the defendant had applied for review pursuant to Article 20(2) of Regulation No 1896/2006 and which is also materially competent to deal with claims of the kind in question.

27 — The principal claim is for EUR 600. According to the assignment agreement between Flight Refund and the passenger, Flight Refund will be entitled to 25% of that amount (EUR 150) if the claim is successful, nothing if it is not. In such circumstances, it is unsurprising that Flight Refund has not committed any particular effort or expense to assisting the Kúria or this Court in solving the problem posed, which arises as a result partly of an oversight on the part of the legislature and partly of a lack of professional thoroughness on the part of Flight Refund itself, its lawyer and the notary who issued the European order for payment. In addition, given the sum involved and its firm conviction of being completely free from liability in any event, it is unsurprising that Lufthansa has been equally relaxed in that regard.

28 — See, for example, his speech '*The European Courts and the UK — What Future? A New Role for English Courts*', delivered at the 13th Annual Law Reform Committee Lecture, 18 November 2014 (http://www.barcouncil.org.uk/media-centre/speeches,-letters-and-reports/speeches-of-interest/).