

Anonymised version

Translation

C-62/22 – 1

Case C-62/22

Request for a preliminary ruling

Date lodged:

1 February 2022

Referring court:

Amtsgericht Frankfurt am Main (Germany)

Date of the decision to refer:

21 January 2022

Applicant:

IA

Defendant:

DER Touristik Deutschland GmbH

[...] **Amtsgericht Frankfurt am Main**

File reference: 30 C 208/21 (47)

Frankfurt am Main, 21 January 2022

Order

In the case

IA, [...] Frankfurt am Main,

applicant,

[...] v

DER Touristik Deutschland GmbH [...] Frankfurt am Main,

defendant,

[...]

on 21 January 2022, the Amtsgericht Frankfurt am Main (Local Court, Frankfurt am Main, Germany) [...] decided as follows:

The proceedings are stayed.

The following question is referred to the Court of Justice of the European Union for a preliminary ruling pursuant to point (b) of the first paragraph and the third paragraph of Article 267 TFEU:

Is Article 18(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to be interpreted as meaning that, in addition to regulating international jurisdiction, the provision also lays down a rule to be observed by the adjudicating court as to the territorial jurisdiction of the national courts in matters pertaining to travel contracts where both the consumer, as the traveller, and his or her contractual partner, the tour operator, are domiciled in the same Member State, however the destination is not in that Member State but is located abroad, with the consequence that the consumer can bring contractual claims against the tour operator before the court for his or her place of domicile as a supplement to national rules?

Grounds:

I. Summary of the subject matter of the dispute and the relevant findings of fact, Article 94(a) of the Rules of Procedure of the Court of Justice of the European Union

1. In her application, the applicant pursues a claim for the payment of EUR 3 808.10 plus interest at the rate of five percentage points above base rate since 11 July 2020 as well as a claim to be exempted from paying pre-litigation legal costs in the amount of EUR 413.64. She is domiciled in Frankfurt am Main, Germany.

She derives her claim for payment of EUR 3 808.10 from a travel contract which her partner had concluded with the defendant. The booking confirmation shows an address in Frankfurt am Main. In essence, the contract is for a flight from Frankfurt am Main in Germany to Varadero in Cuba on 24 December 2019, transfer from Varadero airport to the hotel, accommodation in a Grand Suite in the Hotel [...] with [...] board until 10 January 2020, transfer to the airport and return flight from Varadero to Frankfurt am Main on 10 January 2020.

The applicant claims that the accommodation did not correspond to what had been agreed in the contract. She claims that the accommodation provided initially was in a standard room instead of in the Grand Suite. Moreover, that room was dirty and unhygienic and only boiling hot water came out of the taps. These issues were

not remedied even after the applicant and her partner were moved to another room, with the result that they could not stay in the room overnight.

It was only on 25 December 2020 that they were able to be moved into the Grand Suite. There, however, the air-conditioning system was defective. Essentially, only cold water came out of the shower and all of the taps. The jacuzzi was defective, as the jets did not work. Severe mould was visible on all of the sanitaryware. The Grand Suite was also very dirty and was inhabited by numerous insects, most likely cockroaches.

On New Year's Eve, there were considerable waiting times in all bars and at all meals, and dirty crockery and leftovers were not cleared away.

The defendant is a legal entity with its domicile in Cologne, Germany.

2. The applicant brought her action before the Local Court, Frankfurt am Main. She is of the opinion that Article 18(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the Brussels Ia Regulation') governs not only international jurisdiction, but also territorial jurisdiction within a Member State. The applicant claims that there is a sufficient foreign connection on account of the foreign destination. Therefore, she is able to bring the action before the court for her place of domicile, namely the referring court.

The defendant argues that the Local Court, Frankfurt am Main does not have territorial jurisdiction. It claims that the Amtsgericht Köln (Local Court, Cologne, Germany) has jurisdiction to hear the action. The defendant raised a complaint to that effect in its written pleading of 5 March 2021.

The applicant did not file an application for the action to be referred to the Local Court, Cologne or to any other court.

II. Tenor of the applicable national provisions and relevant case-law, Article 94(b) of the Rules of Procedure of the Court of Justice of the European Union

1. According to the Zivilprozessordnung (Civil Procedure Code; 'the ZPO'), in the version published on 5 December 2005 (BGBl. I p. 3202; 2006 I p. 431; 2007 I p. 1781), most recently amended by Paragraph 3 of the Gesetz vom 5. Oktober 2021 (Law of 5 October 2021; BGBl. I p. 4607):

a) Paragraph 12 – General place of jurisdiction; Concept

The court at which a person has his or her general place of jurisdiction shall have jurisdiction for all actions brought against him or her, unless exclusive jurisdiction has been established for an action.

b) Paragraph 17 – General place of jurisdiction of legal persons

(1) The general place of jurisdiction of the municipalities and corporations, as well as those companies, cooperatives or other associations and those foundations, institutions and pools of assets which may be sued as such shall be determined by their domicile. Unless otherwise specified, the place where the administration is carried out shall be deemed to be the domicile.

[...]

c) Paragraph 21 – Special place of jurisdiction for branch establishments

(1) Where, for the purpose of operating a factory or carrying on a trade or other business, a person has a branch establishment from which business is conducted directly, any action against him or her relating to the commercial operation of the branch establishment may be brought against him or her before the court of the place where the branch establishment is situated.

[...]

d) Paragraph 29 – Special place of jurisdiction for the place of performance

(1) For disputes arising from a contractual relationship and relating to the existence of the latter, the court of the place where the obligation at issue is to be performed shall have jurisdiction.

[...]

e) Paragraph 39 – Jurisdiction following proceedings where it is not asserted that the court does not have jurisdiction

Furthermore, the jurisdiction of a court of first instance shall be established where the defendant gives oral argument in the proceedings on the merits of the case without asserting that the court does not have jurisdiction. This shall not apply where the notice referred to in Paragraph 504 has not been provided.

f) Paragraph 148 – Stay pending a decision on another matter

(1) If the decision on the dispute depends in whole or in part on the existence or non-existence of a legal relationship which forms the subject matter of another pending dispute or which is to be determined by an administrative authority, the court may order that the hearing be stayed until the other dispute has been settled or until the administrative authority has reached a decision.

[...]

g) Paragraph 281 – Referral in the event of lack of jurisdiction

(1) If it must be found that the court lacks jurisdiction on the basis of the provisions on the territorial or substantive jurisdiction of the courts, the court seised must declare, by order, at the request of the applicant, that it lacks jurisdiction and must refer the case to the court having jurisdiction, provided that the court having jurisdiction can be determined. Where several courts have jurisdiction, the matter shall be referred to the court chosen by the applicant.

(2) Applications and declarations concerning the jurisdiction of the court may be made before the registrar. The order shall not be open to appeal. The dispute shall be brought before the court designated in the order as soon as the case files are received. The order shall be binding on that court.

h) Paragraph 513 – Grounds of appeal

(1) [...]

(2) The appeal may not be based on the fact that the court at first instance wrongly assumed that it had jurisdiction.

2. According to the Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany, ‘the GG’), in the consolidated version published in Part III, subsection 100-1 of the Bundesgesetzblatt (Federal Law Gazette), most recently amended by Paragraph 1 and the second sentence of Paragraph 2 of the Gesetz vom 29. September 2020 (Law of 29 September 2020; BGBl. I p. 2048):

Paragraph 101

(1) Exceptional courts are not permitted. No one may be removed from the jurisdiction of his or her lawful judge.

III. Reasons for referral and relationship between the provisions of EU law and the applicable national legislation, Article 94(c) of the Rules of Procedure of the Court of Justice of the European Union

1. The question was originally referred by the Landgericht Mainz (Regional Court, Mainz, Germany).¹ However, after the case was struck from the register, the request for a preliminary ruling was withdrawn and no answer was given to the question referred.²

2. Pursuant to the third paragraph of Article 267 TFEU, the Local Court, Frankfurt am Main is obliged to make a reference, which is why the proceedings must be stayed pursuant to Paragraph 148 ZPO for the duration of the preliminary ruling proceedings. The Local Court, Frankfurt am Main may only give a decision

¹ Order of the Regional Court, Mainz of 10 June 2020 – Ref: 3 O 105/18.

² Order of the Court of Justice of the European Union of 26 April 2021 in Case C-317/20.

in the case if it has territorial jurisdiction. In so far as it accepts territorial jurisdiction, the higher-ranking Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany), which would have to decide on any appeal, is bound by the Local Court's acceptance of territorial jurisdiction pursuant to Paragraph 513(2) ZPO. In this respect, the Local Court is to be regarded as the court of last instance for the question of territorial jurisdiction. It is thus obliged to make a reference under the third paragraph of Article 267 TFEU if territorial jurisdiction can only be established by applying EU law and there are doubts in the interpretation of that EU law. That is the situation in the present case.

If the Local Court, Frankfurt am Main, incorrectly accepted territorial jurisdiction, this would also constitute an infringement of the second sentence of Paragraph 101(1) GG, as it would then not be the lawful judge for the present legal dispute.

3. When considering whether or not it has territorial jurisdiction, the referring court came to the conclusion that the courts for the place of domicile of the applicant may have territorial jurisdiction under Article 18(1) of the Brussels Ia Regulation, but not under national law.

The Local Court, Frankfurt am Main does not have territorial jurisdiction under provisions of national law. According to Paragraph 12 ZPO, territorial jurisdiction is determined in principle according to the general place of jurisdiction. Under Paragraph 17 ZPO, in the case of legal persons such as the defendant, the general place of jurisdiction is the defendant's domicile. In the present case, this is Cologne, not Frankfurt am Main.

Nor does the defendant have a branch in Frankfurt am Main within the meaning of Paragraph 21(1) ZPO. According to the case-law of the Oberlandesgericht Frankfurt am Main (Higher Regional Court, Frankfurt am Main, Germany), the address in the booking confirmation is not sufficient to establish that such a branch exists. In the case of the defendant, that court has previously ruled that it was not sufficient that the booking confirmation stated an address in Frankfurt am Main.³

Similarly, according to the case-law of the Higher Regional Court, Frankfurt am Main, the Local Court, Frankfurt am Main cannot accept territorial jurisdiction under Paragraph 29(1) ZPO. As to the place of jurisdiction on the basis of the place of performance of a travel contract, that court held that the place of departure was not a place of performance within the meaning of Paragraph 29 ZPO.⁴

³ Order of the Higher Regional Court, Frankfurt am Main of 31 July 2019 – Ref: 11 SV 27/19.

⁴ Order of the Regional Court, Frankfurt am Main of 27 November 2015 – Ref: 11 SV 72/15.

Nor can territorial jurisdiction be established under Paragraph 39 ZPO on the basis that no assertion has been made that the referring court does not have jurisdiction, as the defendant expressly challenges its territorial jurisdiction.

4. The correct interpretation of Article 18(1) of the Brussels Ia Regulation is not obvious within the meaning of the judgment of the Court of Justice of 6 October 1982, *Cilfit and Others* (283/81, EU:C:1982:335). Nor is it apparent from the judgment of the Court of Justice of 14 November 2013, *Maletic* (C-478/12, EU:C:2013:735). First, in that case it was Article 16 of Regulation (EC) No 44/2001, a different provision of law, which was relevant; second, in that case, the parties were domiciled in different Member States, unlike in the present case.

IV. Reasons why the referring court has doubts as to the interpretation of Article 18(1) of the Brussels Ia Regulation, Article 94(c) of the Rules of Procedure of the Court of Justice of the European Union

It is unclear from German case-law whether, in cases such as the present case, in which the traveller and the tour operator are domiciled in Germany, but the destination is abroad, Article 18(1) of the Brussels Ia Regulation is applicable. For example, the Landgericht Nürnberg-Fürth (Regional Court, Nuremberg-Fürth, Germany) ruled that in order for Article 18(1) of the Brussels Ia Regulation to apply, it is necessary that the tour operator and the traveller do not have their domicile in the same Member State; only in such circumstances is there the requisite cross-border implication.⁵ That provision did not establish a rule on territorial jurisdiction within a Member State. Nor was this necessary, because the purpose of the Brussels Ia Regulation was only to protect the consumer from being exposed to a legal dispute under a legal system that was foreign to him or her. This was the conclusion that the Regional Court, Nuremberg-Fürth drew from recitals 15 and 18 of the Brussels Ia Regulation. It also stated, by reference to the judgment of the Court of Justice of 13 July 2000, *Group Josi* (C-412/98, EU:C:2000:399), that the Brussels Ia Regulation was to be interpreted restrictively and, therefore, that no application of Article 18(1) of the Brussels Ia Regulation would be required if both parties had their domicile in the same Member State and the link to another country resulted only from the destination of the travel.

On the other hand, in legal academic writing it is argued that, in order for there to be a cross-border situation, it is not necessary that the parties have their domiciles in different Member States. According to that writing, such a limitation cannot be inferred from the German, English or French-language versions of the Brussels Ia Regulation. Rather, when the Brussels Ia Regulation was introduced, it was intended to create a forum of domicile for the applicant consumer.⁶ Furthermore, Article 6(1) of the Brussels Ia Regulation, for example, does not require that both

⁵ Order of the Regional Court, Nuremberg-Fürth of 30 April 2015 – Ref: 3 O 2749/15.

⁶ [...] [Reference to national legal academic writing]

parties be domiciled in different Member States, but allows domicile in one Member State to suffice; it is not excluded that this could also cover two parties domiciled in the same Member State.⁷ This view is also based on the case-law of the Court of Justice, namely the judgment of 1 March 2005, *Owusu* (C-281/02, EU:C:2005:120), which related to the predecessor provision, Article 2(1) of the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. That decision should apply to the Brussels Ia Regulation. The legislator of the Brussels Ia Regulation also intended that legislation to govern domestic cases, as is shown by the second sentence of Article 24(1) of the Brussels Ia Regulation. That provision would not be applicable if the legislator had intended to regulate only cases in which the parties were domiciled in different Member States.

[...] [Information on legal remedies]

[...] [Signature]

⁷ [...] [Reference to national legal academic writing]