

Case C-99/24 [Chmieka]ⁱ

Request for a preliminary ruling

Date lodged:

7 February 2024

Referring court:

Sąd Rejonowy w Koszalinie (Poland)

Date of the decision to refer:

31 January 2024

Applicant

G.M.K.-Z.B.M.

Defendant:

S.O.

Case ref.: [...]

ORDER

of 31 January 2024

The Sąd Rejonowy w Koszalinie w I Wydziale Cywilnym (First Civil Division of the District Court, Koszalin, Poland), sitting in the following composition: [...]

following consideration in Koszalin in closed session

of the **action brought by G.M.K.-Z.B.M. in K.**

against S.O.

concerning payment

makes the following order:

ⁱ This case has been given a fictitious name which does not correspond to the real name of any of the parties to the proceedings.

- (1) pursuant to Article [...] the proceedings shall be stayed,
- (2) a reference for a preliminary ruling shall be made to the Court of Justice of the European Union as set out in the annex, which forms an integral part of this order.

(Judge [...])

REFERENCE FOR A PRELIMINARY RULING

Referring court:

The Sąd Rejonowy w Koszalinie (Poland)

consisting of: [...]

Case reference of the referring court: [...]

Parties to the main proceedings and their representatives:

Applicant: G.M.K.-Z.B.M. in K., represented by [...], radcy prawny.

Defendant: S.O., represented by [...], radcy prawny, and [...], adwokat

Content of the questions:

- (1) Must Article 66 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 be interpreted as meaning that the ‘institution of legal proceedings’ means the lodging of an application by an applicant in a procedural matter or the lodging, by the defendant, of a request for review of the case after the definitive conclusion thereof,

and, depending on the answer to the above question:

- (2) Must the provisions of Chapter II of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

or the provisions of Chapter II of [Regulation No 1215/2012]

be interpreted as meaning that a person domiciled in one Member State may be sued in the courts of another Member State for payment of remuneration for the non-contractual use of immovable property situated in that other Member State?

Subject matter of the dispute in the main proceedings and relevant facts

- 1 G.M.K. brought an action before the Sąd Rejonowy w Koszalinie [(‘the Sąd Rejonowy’)] on 15 March 2013 against T., S., M. and Sz. O. concerning the payment of remuneration for the non-contractual use of the municipality’s property situated in Koszalin (Republic of Poland) following the termination of a tenancy agreement. The applicant stated the residential address of all defendants in Poland. An order for payment was issued in the case, which was received at the address in Poland by one of the defendants on behalf of all the others. The order for payment was not challenged and was found to be valid and enforceable.
- 2 By a letter addressed to the Sąd Rejonowy on 7 July 2023, S.O. successfully lodged a statement of opposition to the order for payment, requesting that the case be reviewed and the action of 15 March 2013 against her be dismissed. The defendant contended that the Polish court lacked jurisdiction, stating that since 2007 she has been domiciled solely in the Kingdom of the Netherlands and has never concluded a tenancy agreement for the property in question with the municipality.
- 3 The applicant G.M.K. argues that there is such a strong legal link between the defendants that it is expedient to determine the case for payment together. The defendants are all related and lived together in the applicant’s property. The tenancy agreement for that property was concluded solely by T.O. (the mother of the other defendants) in 1994. Termination of the tenancy agreement was notified to T.O. and an order was issued for the eviction of all the defendants from the property in question in 2007.

Provisions of national law

- 4 The first paragraph of Article 18 of the Ustawa z dnia 21 czerwca 2001 r. o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego (Law of 21 June 2001 on the protection of tenants’ rights, municipal housing stock and amendments to the Civil Code) [(‘the Law on the protection of tenants rights’)]:

Persons occupying a property without legal title shall be obliged to pay compensation on a monthly basis until the date on which the property is vacated.

- 5 Article 505 of the Code of Civil Procedure:

(1) The defendant may lodge a statement of opposition to the order for payment.

(2) The order for payment shall become null and void in so far as it is contested by the statement of opposition. A statement of opposition by only one of the co-defendants concerning the same claim and concerning one or more of the claims granted shall render the order null and void only as regards them.

European Union law

- 6 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:

Article 66(1). This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.

Article 5(1). Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

Article 7. A person domiciled in a Member State may be sued in another Member State:

...

([2]) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

Article 8. A person domiciled in a Member State may also be sued:

(1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;

Article 24. The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

- 7 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters:

Article 3(1). Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.

Article 5. A person domiciled in a Member State may, in another Member State, be sued:

...

3. *in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;*

Article 6. *A person domiciled in a Member State may also be sued:*

1. *where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;*

Article 22. *The following courts shall have exclusive jurisdiction, regardless of domicile:*

1. *in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.*

Need for an interpretation of EU law

- 8 At the current stage of the proceedings, the Sąd Rejonowy must rule on the defendant S.O.'s plea alleging that the Polish court lacks jurisdiction. The applicant claims that the Polish court has such jurisdiction and that the correct interpretation of the legislation in this respect is of relevance to a number of cases relating to satisfaction of the housing needs of the municipality's residents. If the plea is found to be well founded, the Sąd Rejonowy will dismiss the municipality's action of 15 March 2013 and there will be a legal basis for discontinuing enforcement against the defendant.
- 9 The subject matter of the dispute is the demand for payment of remuneration for the use, by the defendant S.O., during the period at issue (2011-2012), of the municipality's property situated in Koszalin (Republic of Poland). The defendant had no right to that property at that time. She had previously lived in the property at issue as a child with her mother, who had concluded a tenancy agreement for that property. After the municipality terminated the tenancy, a Polish court ordered the eviction of the defendant's entire family. The municipality contends that the family failed to vacate the property despite the eviction order. The defendant S.O., on the other hand, claims that she moved permanently to the Kingdom of the Netherlands in 2007. In the proceedings thus far it has been established that at the time the applicant brought the action on 15 March 2013 and at the time the defendant lodged her statement of opposition on 7 July 2023, the defendant S.O. was domiciled in the Kingdom of the Netherlands.
- 10 The case for the payment of remuneration for the use of another person's immovable property is a civil case and falls within the scope *ratione materiae* 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, and
 - Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- 11 In the first place, determining which of those regulations is applicable in this case by virtue of their scope *ratione temporis* remains at issue. Under Article 66(1) of Regulation No 1215/2012, *this Regulation shall apply only to legal proceedings instituted ... on or after 10 January 2015.*
 - 12 The uncertainty concerns whether the concept of ‘institution of proceedings’ should relate to the date on which G.K. brought the action for payment against the defendant (15 March 2013) or the date on which the defendant lodged the statement of opposition (7 July 2023) with a request for review of the case.
 - 13 In the second place, depending on the answer to the first question as to which of the regulations is applicable in this case, the rules of jurisdiction laid down in that regulation need to be analysed. The wording of the provisions of the two regulations is identical in this respect.

Determining the rules of jurisdiction in respect of the above case requires analysis:

- 14 First, Article 7(2) of Regulation [No 1215/2012] (corresponding to Article 5(3) of Regulation [No] 44/2001). It is necessary to consider whether residing in another person’s property without legal title following the termination of the tenancy agreement authorising the occupation of that property constitutes tort, delict or quasi-delict.

Under Polish law – the Law on the protection of tenants’ rights – residing in another person’s property without legal title does not constitute tort. In its resolution of 7 December 2007 in Case III CZP 121/07, the Sąd Najwyższy (Supreme Court, Poland) held: ‘The findings made do not permit liability as referred to in Article 18(1) to (3) of the Law on the protection of tenants’ rights to be regarded as liability in tort. The relinquishment in those provisions of fault as a condition for liability does not allow facts falling within their scope to be classified as an offence within the meaning of Article 415 of the Civil Code and cannot be subsumed under other provisions of the Civil Code on torts. There are also no grounds for assuming that those provisions themselves define an offence of a particular type ...’.

However, the Court of Justice of the European Union, in its judgment of 25 March 2021 in Case C-307/19, held that the concept of ‘matters relating to tort, delict or quasi-delict’ within the meaning of Article 7(2) of Regulation No 1215/2012 covers all actions which seek to establish the liability of a defendant and do not concern ‘matters relating to a contract’ within the meaning of Article 7(1)(a) of

that regulation, in that they are actions not based on a legal obligation freely consented to by one person towards another (paragraph 83 and the case-law cited).

- 15 Secondly, Article 8(1) of Regulation [No 1215/2012] (corresponding to Article 6(1) of Regulation [No] 44/2001). It is necessary to analyse whether it is expedient to determine and hear together the case for payment of such remuneration against all members of the family who once resided together in the property to avoid the risk of irreconcilable judgments resulting from separate proceedings. At the same time, under Polish law, only the persons actually occupying the property are liable for payment. There are no provisions providing for joint and several liability of all family members. Therefore, it is possible to deliver different judgments in respect of each family member, depending on the finding as to whether he or she actually occupied the property at issue during the period covered by the action. This appears to militate against the applicability of that provision as a basis for jurisdiction in this case.
- 16 Thirdly, Article 24(1) of Regulation [No 1215/2012] (corresponding to Article 22(1) of Regulation [No] 44/2001). It is necessary to consider whether a demand for payment of remuneration for the use of another person's property without legal title following the termination of the tenancy agreement authorising the occupation of that property is a case relating to 'rights in rem in immovable property' or 'tenancies of immovable property'. It appears that such an interpretation should be rejected in light of the judgment of the Court of Justice of the European Union of 3 October 2013 in Case C-386/12.
- 17 If none of the abovementioned provisions is applicable, in accordance with Article 5(1) of Regulation [No 1215/2012] (corresponding to Article 3(1) of Regulation [No] 44/2001), there will be a lack of jurisdiction in the case, justifying dismissal of the action of 15 March 2013.

(Judge [...])