

Anonymised version

Translation

C-652/20 -1

Case C-652/20

Request for a preliminary ruling

Date lodged:

2 December 2020

Referring court:

Tribunalul Bucureşti (Romania)

Date of the decision to refer:

28 September 2020

Applicants:

HW

ZF

MZ

Defendant:

Allianz Elementar Versicherungs-AG

[...] TRIBUNALUL BUCUREȘTI

SECȚIA A VI-A CIVILĂ

(Regional Court, Bucharest – Sixth Division for Civil Matters)

[...] ORDER

Public hearing of 28 September 2020 [...] [composition of the court]

Registered in the roll is the civil action brought by the applicant **HW**, the applicant **MZ** and the applicant **ZF** [...] against the defendant **Allianz Elementar**

Versicherungs-AG through the intermediary of its correspondent S.C. Allianz-Țiriac Asigurări SA, for damages (non-material damage).

[...] [national proceedings] [...] THE COURT

Ruling:

I On the reference to the Court of Justice of the European Union of a question for a preliminary ruling concerning the interpretation of Article 11(1)(b) of Regulation (EU) No 1215/2012:

I (i) Facts:

- 1 On 22 December 2017, the deceased person SZ was driving a vehicle registered in Austria and bearing the registration number W-67200G. As a result of driving too fast and of having consumed alcohol, SZ lost control of the vehicle and crashed into an electricity pole. Responsibility for the accident lies, at least in part, with SZ. Following the accident, EY, who was sitting to the right of the driver, also died. **[OR. 2]**
- 2 The vehicle bearing the registration number W-67200G was insured in Austria by the defendant Allianz Elementar Versicherungs-AG under an insurance policy [...] that was in effect on the date of the accident.
- 3 Following the accident, on 17 February 2020, the applicants in the present case (the mother of the deceased person EY, his maternal grandfather and his maternal grandmother) brought legal proceedings against the defendant Allianz Elementar Versicherungs-AG, through the intermediary of its correspondent in Romania (S.C. Allianz Țiriac Asigurări SA, whose registered office is in Bucharest), with each applicant seeking compensation for non-material damage in the sum of 1 000 000 Romanian lei (RON) (slightly in excess of EUR 250 000). They claim to have suffered great mental anguish as a result of the death of EY and argue that the consequential harm should be covered by the insurer of the vehicle bearing the registration number W-67200G. The applicants have chosen to bring proceedings before the referring court, which is located in the place where the defendant's correspondent in Romania has its registered office, rather than [before the courts of] the places where they are domiciled (the applicants are domiciled respectively in the counties of Braşov and Mehedinţi, while their legal representative has its law office in the county of Olt).

I (ii) Issue of jurisdiction:

- 4 The provisions of Article 131(1)¹ and Article 1071(1)² of the Codul de procedură civilă roman (Romanian Code of Civil Procedure)³ [...] require the court to verify *ex officio* that it has general, international, substantive and local jurisdiction at the first hearing to which the parties have been duly summoned and at which they are in a position to apply for a form of order, and to record the legal basis for its jurisdiction in the transcript of the hearing. Therefore, of relevance to the present case are the provisions of Article 11(1)(b) of Regulation (EU) No 1215/2012⁴ [...], pursuant to which: *an insurer domiciled in a Member State may be sued: ... in another Member State, in the case of actions brought by the policyholder, [OR. 3] the insured or a beneficiary, in the courts for the place where the claimant is domiciled; ...*
- 5 Accordingly, that provision is applicable in the present case, since the insurer (the defendant) is domiciled in the territory of a Member State of the European Union (Austria) and legal proceedings have been brought against it by beneficiaries of the insurance policy (the applicants) in another Member State (Romania). The applicability of Article 11(1)(b) of Regulation (EU) No 1215/2012 is also apparent from the ruling of the Court of Justice in Case C-463/06 [(*FBTO Schadeverzekeringen*)], in which, with reference to provisions of Regulation (EC) No 44/2001⁵ subsequently taken up in Regulation (EU) No 1215/2012, it held that: *the reference in Article 11(2) 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 to Article 9(1)(b) of that regulation is to be interpreted as meaning that the injured party may bring an action directly against the insurer before the courts for the place in a Member State where that*

¹ **Article 131 Verification of jurisdiction** Paragraph (1): At the first hearing before the court of first instance to which the parties have been duly summoned and at which they are in a position to apply for a form of order, the judge must, *ex officio*, verify and establish whether the court seised has general, substantive and local jurisdiction to hear the case and must record in the transcript of the hearing the legal grounds for declaring that the court seised has jurisdiction. The transcript shall be interlocutory.

² **Article 1071 Verification of international jurisdiction** Paragraph (1): The court seised shall verify, *ex officio*, that it has international jurisdiction in accordance with domestic legislation governing jurisdiction; where it establishes that it does not have such jurisdiction and that no other Romanian court has jurisdiction, it shall dismiss the claim on the ground that it does not fall within the jurisdiction of the Romanian courts, without prejudice to the application of the provisions of Article 1070. The decision of the court may be appealed before a higher court.

³ Law No 134/2010, republished in the Monitorul Oficial [al României] (Official Journal of Romania) No 247 of 10 April 2015, as amended.

⁴ 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 (OJ 2012 L 351, p. 1) [...].

⁵ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (repealed).

injured party is domiciled, provided that such a direct action is permitted and the insurer is domiciled in a Member State.

- 6 The issue of interpretation which the referring court is required to address arises from the wording of the last part of the provision, which states that, where a beneficiary of the insurance issues proceedings in another Member State, he or she may sue the insurer *in the courts for the place where he or she is domiciled*.
- 7 The referring court observes in this connection that the rules governing international jurisdiction do not, generally speaking, aim also to determine domestic jurisdiction (or more precisely, local jurisdiction). That is true of the provisions of Article 1072(1) of the Codul de procedură civilă⁶ and of recital 4 of Regulation (EU) No 1215/2012.⁷
- 8 However, the referring court considers that there are exceptions to that rule, and legal academic writers also take that view. [...] For example, the Codul de procedură civilă establishes local jurisdiction in accordance with a rule of private **[OR. 4]** international law in the case of *forum necessitatis* [(see Article 1070(1) of the Codul de procedură civilă,⁸ which provides that the Romanian court for the place with which the case is sufficiently connected acquires jurisdiction to hear the case in the particular circumstances contemplated in that provision)].
- 9 However, more importantly, the first indent of Article 7(1)(b) of Regulation (EU) No 1215/2012 has been interpreted by the Court of Justice [...] as meaning that that provision establishes not only international jurisdiction, but also domestic (local) jurisdiction. To that effect, in its judgment in Case C-386/05 [(*Color Drack*)], at [paragraph] 30, the Court held that: *the first indent of Article 5(1)(b) of Regulation No 44/2001, determining both international and local jurisdiction, seeks to unify the rules of conflict of jurisdiction and, accordingly, to designate the court having jurisdiction directly, without reference to the domestic rules of the Member States*. The Court of Justice of the European Union has thus expressly stated that the provisions of the first indent of Article 5(1)(b) of Regulation No 44/2001, which are equivalent to those of the first indent of Article 7(1)(b) of

⁶ **Article 1072 Domestic jurisdiction** Paragraph (1): Where the Romanian courts have jurisdiction in accordance with the provisions of this Book, jurisdiction shall be determined on the basis of the rules laid down in this Code and, where necessary, the rules laid down in special laws.

⁷ Which states that: certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters, and to ensure rapid and simple recognition and enforcement of judgments given in a Member State, are essential.

⁸ **Article 1070 Forum necessitatis** Paragraph (1): The Romanian court for the place with which the case is sufficiently connected acquires jurisdiction to hear the case. However, the law does not provide for the jurisdiction of the Romanian courts where it is shown that it is not possible to bring a claim abroad or that it cannot reasonably be required that a claim be brought abroad.

Regulation (EU) No 1215/2012, determine both international jurisdiction and domestic (local) jurisdiction.

- 10 It follows that, even in the case of Regulation (EU) No 1215/2012, there are rules on conflicts that are intended to determine not only international jurisdiction, but also domestic (local) jurisdiction. It is on the basis of that premiss that the referring court's doubts arise, in the sense that it is possible to find arguments in favour of an interpretation according to which the provision under consideration establishes [both] international jurisdiction and domestic (local) jurisdiction, just as there are arguments to the contrary, according to which the subject matter of the provision mentioned is solely international jurisdiction.
- 11 The arguments in favour of the view that Article 11(1)(b) of Regulation (EU) No 1215/2012 establishes both international jurisdiction and domestic (local) jurisdiction, at least in so far as the referring court understands them, are the following:
 - 12 (a) in the first place, a grammatical interpretation suggests this, in that the provision points to the jurisdiction of the court for the *place where the claimant is domiciled*; it should be emphasised that the English, French and Italian language versions, as well as other language versions, have the same content; accordingly, it should be observed that reference is made to the *place* of domicile, and not to the *State* of domicile; **[OR. 5]**
 - 13 (b) next, a systematic analysis, in addition to the grammatical analysis, suggests the same; it may be observed that the wording of Article 11(1) of the regulation refers to three distinct situations, but, while point (a) refers to the courts of the Member State in which the insurer is domiciled, point (b) establishes the jurisdiction of the courts for the place where the claimant is domiciled; that difference in wording might be explained by the fact that the latter rule is intended also to establish local jurisdiction; it may also be noted that the first indent of Article 7(1)(b) of Regulation (EU) No 1215/2012, which, as has already been mentioned, has been interpreted by the Court of Justice as also concerning local jurisdiction, also contains the same word: *place*;
 - 14 (c) moreover, according to recital 15 [of] Regulation (EU) No 1215/2012, the rules of jurisdiction should be highly predictable; that objective is achieved through an interpretation according to which reference is also made to domestic (local) jurisdiction;
 - 15 (d) on the other hand, the application of the rule under consideration in this way would not impinge upon the traditions of the Member States of the European Union in so far as concerns the determination of their own domestic jurisdictions; this is different, for example, from the case of Article 24(1) of Regulation (EU) No 1215/2012, whose provisions, the Court of Justice of the European Union has had occasion to rule, establish only international jurisdiction (see, to that effect, the judgment in Case C-420/07 [*Apostolides*]); it should be emphasised at this

juncture that national traditions differ in the attribution of jurisdiction in the case of claims relating to immovable property; the previous Romanian legislation even contained rules different from those currently established under Article 117 of the Codul de procedură civilă [...]),⁹ the situation under consideration does not raise any sensitive issues and, in any event, the provisions of Article 62 of the regulation are applicable to this situation.

- 16 As regards the arguments that may be made in favour of the opposing view, which is that international jurisdiction alone is addressed, the referring court would suggest the following:
- 17 (a) the arguments mentioned above do not take account of the fact that the rule is still the rule on the establishment, by the rules of private international law, solely of international jurisdiction, and that exceptions must be expressly provided for; in addition, in the interests of legal certainty, **[OR. 6]** such exceptions must be set out in clear, precise rules capable of providing the answer sought without any excessive need for interpretation;
- 18 (b) a teleological interpretation may support the view that, since the aim of Article 11(1)(b) of Regulation (EU) No 1215/2012 is to establish jurisdiction more favourably for the beneficiary of the insurance, then the application of that rule should not result in the conclusion that claimants may not apply to a different court in the Member State in which they are domiciled, if that could be to their advantage. Such an interpretation could render the provisions of the regulation nugatory (the Tribunalul Gorj (Regional Court, Gorj) has ruled to similar effect). It could, for example, be to the advantage of the applicants in the present case to apply to the Bucharest court, rather than to any of the courts where they are domiciled, since they may assume that the Bucharest court will give a higher award for non-material damage than would the other courts in the country; that assumption might be based on the fact that the income of residents of Bucharest is much higher than that of people in the rest of Romania, as indeed are the prices, which reasonably leads to the conclusion that judges in Bucharest, like other residents in that city, will perceive the value of money differently from the other judges in the country, in the sense that the perceived value of money will be less; this could, in theory, result in the grant of a higher amount of compensation for non-material loss. This example is, however, based merely on intuition.

⁹ **Article 117 Claims relating to immovable property** Paragraph (1): Claims relating to rights in immovable property shall be brought solely before the court of the district in which the property is situated. Paragraph (2): Where the property is situated in several judicial districts, the claim shall be brought before the court of the place of domicile or residence of the defendant, if the defendant is in one of those districts, and otherwise before any of the courts of the districts in which the property is situated. [...]

I (iii) Fulfilment of the conditions for referring a question to the Court of Justice of the European Union for a preliminary ruling concerning the interpretation of Article 11(1)(b) of Regulation (EU) No 1215/2012:

19 Pursuant to Article 267 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has jurisdiction to give a preliminary ruling concerning the interpretation of acts of the European Union institutions when it is requested to do so by a national court which considers that a decision on the question is necessary to enable it to give judgment.

20 The present case entails interpretation of a rule of European Union law; an official interpretation is necessary, in that the referring court is in doubt as to the content of the rule of jurisdiction laid down in Article 11(1)(b) of Regulation (EU) No 1215/2012 and resolution of that issue of interpretation is necessary in order to verify the jurisdiction of that national court. **[OR. 7]**

21 In addition, the ruling of the Court of Justice will satisfy other, broader, but equally practical objectives: making it public knowledge that the regulation under consideration can also establish domestic (local) jurisdiction, and not only international jurisdiction (since the Court has not yet ruled to that effect in the operative part of any judgment, and given that its position on the point is not well known), and also preventing conflicting case-law on the subject.

22 [...]

[...]

23 [...]

24 [...]

[...]

FOR THOSE REASONS,

IN THE NAME OF THE LAW

HEREBY

Refers the following question to the Court of Justice of the European Union for a preliminary ruling: **[OR. 8]**

Are the provisions of Article 11(1)(b) of Regulation (EU) No 1215/2012 to be interpreted as relating solely to the international jurisdiction of the Member States

[of the European Union] or as also establishing the domestic (local) jurisdiction of the courts for the place where the beneficiary of the insurance policy is domiciled?

[...] [procedural provisions of national law]

WORKING DOCUMENT