

Case C-682/23

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

15 November 2023

Referring court:

Curtea de Apel Cluj (Romania)

Date of the decision to refer:

25 October 2023

Applicant:

E. B.SP. Z. O. O.

Defendant:

K. P.SP. Z. O. O.

Subject matter of the main proceedings

Appeal brought before the Curtea de Apel Cluj (Court of Appeal, Cluj, Romania), the referring court, against the judgment by which the Tribunalul Specializat Cluj (Specialised Court, Cluj, Romania) upheld the plea alleging lack of international jurisdiction of the Romanian courts in a dispute concerning non-contractual and contractual liability between two companies under Polish law.

Subject matter and legal basis of the request

On the basis of Article 267 TFEU, the Court is asked for an interpretation of Article 25 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 ('Regulation No 1215/2012').

Questions referred for a preliminary ruling

1. Can Article 25 of Regulation 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 conferring on the assignee of a claim arising from a contract the right to enforce the jurisdiction clause in that contract against the original party to the contract, if the assignment contract has, in accordance with the national law applicable to the substance of the dispute, transferred the claim and its ancillary rights, but not the obligations arising from the contract?

2. In a case such as the one described above, is the opposition of the party that agreed to the jurisdiction clause, against whom the action is brought, relevant for the purpose of determining which court has jurisdiction? In addition, is a new consensus required from that party, prior to or concomitant with bringing a legal action, in order for the third-party assignee to be entitled to rely on the jurisdiction clause?

Provisions of European Union law relied on

Article 267 TFEU;

Article 25 and Article 7(2) of Regulation No 1215/2012;

Judgment of 7 February 2013, *Refcomp SpA*, C-543/10, EU:C:2013:62;

Judgment of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335;

Judgment of 28 June 2017, *Leventis eVafias*, C-436/16, EU:C:2017:497;

Judgment of 18 November 2020, *DelayFix*, C-519/19, EU:C:2020:933.

Provisions of national law relied on

Articles 361 to 363, 415, 416, 471, 472, 509 and 647 of the Polish Civil Code. Pursuant to Article 509(2) of the Polish Civil Code, ‘together with the claim, the associated rights, in particular the claim in respect of default interest, shall be transferred to the assignee’.

Article 1068(1) of the Codul român de procedură civilă (Romanian Code of Civil Procedure) provides that ‘in matters of property, the parties may agree on the court having jurisdiction to hear a current or potential dispute arising from a relationship with cross-border implications. The agreement may be made in writing, by telegram, telex, fax or any other means of communication that provides written evidence. Unless otherwise agreed, the court chosen shall have exclusive jurisdiction.’

Article 1071 of the Romanian Code of Civil Procedure, which provides: ‘1. The court seised shall determine of its own motion whether it has international jurisdiction, proceeding in accordance with the national rules on jurisdiction. If it finds that neither it nor any other Romanian court has jurisdiction, it shall reject the application initiating the proceedings as not falling within the jurisdiction of the Romanian courts, without prejudice to the application of Article 1070. The decision of the court may be appealed before a higher court. 2. The lack of international jurisdiction of the Romanian court may be invoked at any stage of the proceedings, including directly in the appeal. The provisions of Article 1067 shall continue to apply.’

Succinct presentation of the facts and procedure in the main proceedings

- 1 On 21 December 2021, E. B.SP. Z. O. O. (a legal entity under Polish law; ‘E. B.SP.’ or the ‘applicant’) brought an action before the Specialised Court of Cluj against K. P.SP. Z. O. O. (a legal entity under Polish law; ‘K. P.SP.’ or the ‘defendant’), seeking an order that K. P.SP. should pay the sum of 14 092 308 Polish zloty (PLN) by way of damages, in addition to default interest and other expenses incurred for the recovery of that sum, citing the non-contractual and contractual liability of K. P.SP.
- 2 On 24 March 2017, E. B.SP. signed a contract with E.PL. (a legal entity under Polish law) for the preparation of a plot of land in Poland on which a timber products factory was to be built. On 24 July 2017, E. B.SP. signed a contract with E.PL. for the main construction works for the factory in Poland. On 4 March 2017, E.PL. signed a subcontracting agreement for the works with E. S. A. (a legal entity under Romanian law). On 10 July 2017, E. S. A. signed a further subcontracting agreement for the works with K. P.SP. (a legal entity under Polish law). According to their terms, all of those contracts were governed by Polish law.
- 3 On 16 December 2021, E. S. A. assigned to E. B.SP. a claim for damages in the amount of PLN 14 050 878.35 that it held against K. P.SP. in respect of the loss allegedly incurred due to deficiencies in the latter’s compliance with its obligations under the subcontracting agreement signed on 10 July 2017.
- 4 In support of its claim, E. B.SP. cited both the non-contractual liability of K. P.SP. (Articles 415 and 416, in conjunction with Articles 361 to 363 of the Polish Civil Code) and its contractual liability (Articles 471 and 472, in conjunction with Articles 647 and 361 to 363 of the Polish Civil Code). Furthermore, to justify the conferral of jurisdiction on the Specialised Court of Cluj, E. B.SP. relied on the jurisdiction clause in the subcontracting agreement signed on 10 July 2017 between E. S. A. and K. P.SP, based on which ‘any disputes shall be resolved by the court having jurisdiction over the contracting party’s registered office’. E. B.SP. submitted that, under the national law applicable to the merits of the case, namely Article 509(2) of the Polish Civil Code, it not only took over the

claim, but the ancillary rights thereto. It also referred to Article 25 of Regulation No 1215/2012.

- 5 In its defence, K. P.SP. raised the plea of lack of jurisdiction of the Romanian courts, relying on: (a) with regard to the claims based on non-contractual liability, Article 7(2) of Regulation No 1215/2012 (K. P.SP. states that the alleged harmful event occurred in Poland and that jurisdiction to hear the dispute therefore lies with the Polish courts) and (b) with regard to the claims based on contractual liability, that E. B.SP. is a third party to the contract containing the jurisdiction clause and that its status as assignee does not entitle it to rely on that clause.
- 6 By judgment of 19 December 2022, the Specialised Court of Cluj upheld the plea of lack of international jurisdiction raised by K. P.SP., and therefore dismissed the appeal as not falling within the jurisdiction of the Romanian courts.
- 7 On 11 April 2023, E. B.SP. appealed that judgment before the Court of Appeal of Cluj.

The essential arguments of the parties in the main proceedings

- 8 The applicant submits that, pursuant to Article 509(2) of the Polish Civil Code, in the case of an assignment of claim agreement, the associated rights are transferred to the assignee together with the claim, particularly any claim in respect of default interest. The applicant points out that the assignment of the claim entails a transfer of the claim to the assignee, but not a transfer of the assignor's obligations to the assigned debtor. The applicant also notes that, according to the case-law of the Sąd Najwyższy (Supreme Court, Poland), together with the transferred claim there is also a transfer of the associated rights, including the possibility of bringing proceedings before a court identified in an agreement on the prorogation of jurisdiction.
- 9 E. B.SP. refers to the principles arrived at in the case-law of the Court of Justice on the interpretation of Article 25 of Regulation No 1215/2012, namely the judgments in Cases C-543/10, C-352/13, C-519/19 and C-436/16. It further states that the purpose of a jurisdiction clause is to determine the jurisdiction of the court seised in the event of an existing or potential conflict, in accordance with the consensus of the parties. Moreover, in its case-law the Court imposes alternative criteria for the tests that the national court must perform to determine the effectiveness of a jurisdiction clause, namely the third party's consent or the fact that it has succeeded to the rights and obligations of the original contracting party.
- 10 The applicant considers that the third party's acceptance of the jurisdiction clause, regardless of when it gave its consent, is sufficient to give effect to that clause. In addition, a new consensus is no longer required from the contracting party since it is already bound by that clause from the moment it accepted it. Therefore, the national court is no longer required to examine the matter of the rights and obligations of the original contracting party being assumed by the third party, such

examination being required as a subsidiary and alternative criterion to test the effectiveness of the jurisdiction clause.

- 11 The applicant further submits that the factual premises of the judgments in Cases C-543/10, C-352/13 and C-519/19 are different from those in the main proceedings, since in those cases the third party had brought an action against a party that had signed a contract on the basis of the rules of general law on jurisdiction, and the party signing the contract containing a jurisdiction clause had relied on that clause against the third party. At the same time, in Case C-436/16, the dispute was initiated by a party that had agreed to a jurisdiction clause against a third party before a court chosen on the basis of rules other than Article 25 of Regulation No 1215/2012; the third party, which had no connection with that clause, had relied on it to dispute the jurisdiction of the court seised. Unlike those cases, in the main proceedings, the applicant is the assignee of a claim arising from the subcontracting agreement containing the jurisdiction clause. It would therefore be entitled to rely on that clause to appeal before the court chosen by the parties in the original contract.
- 12 E. B.SP. points out that the succession of the third party to the rights and obligations of the original party to the contract becomes relevant – as a subordinate condition for the applicability of the jurisdiction clause – if the party that accepted that clause enforces it against the third party, hence the need to clarify the question whether the third party is required to comply with the agreement on jurisdiction. In the main proceedings, however, the third party is under no obligation to comply with the jurisdiction clause. On the contrary, the third party exercises its right to rely on that clause on the basis of the effects of the assignment of the claim under the national law applicable to the merits of the case.
- 13 Lastly, the applicant submits that the entire case-law of the Court of Justice on the interpretation of Article 25 of Regulation No 1215/2012 in the matter of bills of lading (C-71/83, C-159/97, C-387/98), insurance contracts (C-201/82) and company agreements (C-214/89) supports the view that the agreement on jurisdiction is also enforceable against a third party who assumes the rights and obligations of the signatory to that agreement. Likewise, a person who is not a party to the contract and who acquires rights thereunder may rely on the jurisdiction clause; the consent given by the other party when entering into the contract is sufficient, provided that it has been clearly expressed in the terms of the contract.
- 14 The applicant left it to the discretion of the referring court to decide whether to use the preliminary ruling mechanism under Article 267 TFEU, although it considered that a reference for a preliminary ruling would be useful.
- 15 The defendant expressed a procedural position diametrically opposed to that of the applicant, centred on the principle of an interpretation of Article 25 of Regulation No 1215/2012 in the light of the principle of the freedom of contract and the *intuitu personae* character of the jurisdiction clause.

- 16 According to the defendant, the jurisdiction clause is only effective between the parties to the contract, and not against a third party. That finding is based on the *intuitu personae* character of the clause in question, which is negotiated by the parties and relates solely to the contractual party with whom it was agreed. Given that, under Article 25 of Regulation No 1215/2012, the substantive condition for the validity of the jurisdiction clause is a specific indication of the legal relationship leading to the potential dispute to be resolved by the relevant court, there must always be an agreement on jurisdiction between the parties to the dispute. Since that agreement is independent, it must be assessed separately from the underlying contract. One argument in that respect is that, under Regulation No 1215/2012, the agreement on jurisdiction referred to in Article 25 is governed independently from the issue of national laws relating to the parties' commitments.
- 17 K. P.SP. also pointed out that the rules contained in Article 25 are based on the principle of the autonomy of the parties, as enshrined in recital 19 of Regulation No 1215/2012. It notes that, according to that principle, a third party cannot enforce a jurisdiction clause against the signatory of that clause, since the latter's consent to that clause was given on the basis of its legal relationship with the other party to the contract and is limited to its dealings with that party, and not with third parties who have acquired rights derived from the original contract.
- 18 Lastly, the defendant argued that the rule contained in Article 25 of Regulation No 1215/2012 is an exception and must therefore be interpreted and applied strictly, since the situation provided for in that rule is that an agreement exists between the parties under which jurisdiction to hear the dispute in relation to a particular legal relationship has been conferred on a court of a Member State, and it is therefore necessary that the agreement on jurisdiction originates from the parties to the dispute themselves.
- 19 In principle, the defendant objected to the reference for a preliminary ruling to the Court of Justice and put forward, in the alternative, four questions that highlight the need to interpret Article 25 of Regulation No 1215/2012.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 20 The referring court finds that the two variants of interpretation of Article 25 of Regulation No 1215/2012 put forward by the parties are plausible in the specific case in which the third party relying on the jurisdiction clause is the assignee of claims arising from the contract containing that clause and, under the national law chosen as *lex causae* (Polish law, in the present case), the assignee only assumes the claim and ancillary rights, and not the obligations by which the original contracting party was bound.
- 21 Specifically, the difficulty of interpreting Article 25 of Regulation No 1215/2012 facing the appeal court is the fact that, although it has not entirely succeeded to all the rights and obligations of the assignor, the third-party assignee relies on the

jurisdiction clause, thereby exercising a right against the assigned debtor who accepted that clause by signing the contract.

- 22 With regard to the applicant's grounds for relying on the jurisdiction clause – namely the fact that, according to the national law applicable to the merits of the case, the applicant has assumed rights that are ancillary to the claim – the referring court states that, although in principle the characterisation of the right to apply to a certain court, on the basis of an agreement on jurisdiction, as a right ancillary or otherwise to the assigned claim, may be a matter that falls within the provisions of national law, the fact remains that the assignee relies on the jurisdiction clause in the contract by exercising a right contractually recognised in favour of the assignor, rather than on the basis of a binding obligation for the assignee.
- 23 Moreover, the referring court admits that the spirit and purpose of the rules on jurisdiction clauses contained in Regulation No 1215/2012 are undeniably found in the principle of the autonomy of the parties to the contract, according to which the parties' consensus on a particular court must prevail in present or future disputes arising from a given legal relationship. In accordance with that principle, an agreement on jurisdiction can only be effective in relation to the parties who signed that agreement; a third party, even if it acquires some of the rights arising from the underlying contract, does not seem to be entitled to rely on the agreement on jurisdiction, which is only binding on the original parties to the contract. In that regard, the referring court refers to the judgments of the Court of Justice in Case C-436/16 (paragraphs 35 to 37) and Case C-519/19 (paragraphs 42 to 44), which mention the fact that the consensus of the parties to the jurisdiction clause must be established for both parties to the dispute – both the party relying on the clause and the party against whom the clause is being enforced – and that the consent of the party that agreed to the clause must be assessed in relation to the other party in the dispute.
- 24 As to the Court's extensive case-law on the interpretation of Article 25 of Regulation No 1215/2012 in certain specialised sectors, such as bills of lading (C-71/83, C-159/97, C-387/98), insurance (C-201/82) and companies (C-214/89), the referring court submits that that interpretation is limited to the sectors in question.
- 25 The referring court observes that the criteria set out in the Court's case-law to give effect to a jurisdiction clause were decided in cases in which that clause was enforced against the third party, where it was necessary to establish whether that third party had expressed an agreement to that effect or, if not, whether it had succeeded to all the rights and obligations of the parties, thereby assuming the obligation to comply with that clause (Cases C-543/10, C-352/13 and C-519/19). It notes that only in Case C-436/16 was the jurisdiction clause relied on by a third party. However, in the main proceedings, the jurisdiction clause is not enforced against the third party in order to test whether it is effective, in accordance with the criteria set out in the Court's case-law.

- 26 The referring court thus considers it useful to submit several questions to clarify (i) how to interpret Article 25 of Regulation No 1215/2012 in the specific case in which the jurisdiction clause is relied on by an assignee who has acquired, under an assignment of claim agreement, rights arising from the underlying contract containing the jurisdiction clause, (ii) whether the procedural position of the party that agreed to the jurisdiction clause is relevant for the effectiveness or otherwise of that clause, and (iii) whether, to give effect to the clause relied on by the third party, a new consensus is necessary from the party that accepted that clause.
- 27 The referring court is hearing the main proceedings as the appeal court and its decision will be final.

WORKING DOCUMENT