

Anonymised version

Translation

C-639/21 – 1

Case C-639/21

Request for a preliminary ruling

Date lodged:

19 October 2021

Referring court:

Cour de cassation (France)

Date of the decision to refer:

13 October 2021

Appellant:

PB

Respondents:

Geos SAS

Geos International Consulting Limited

[...]

COUR DE CASSATION (COURT OF CASSATION)

[...]

JUDGMENT OF THE COUR DE CASSATION, CHAMBRE SOCIALE
(COURT OF CASSATION, SOCIAL CHAMBER), 13 OCTOBER 2021

PB, [...], has lodged an appeal [...] against the judgment delivered on 18 December 2019 by the Cour d'appel de Montpellier (4^e A Chambre sociale) (Court of Appeal, Montpellier (Social Chamber 4 A), France) in the dispute between PB and:

1. the company Geos, [...] whose registered office is at [...] Tour Franklin, 100-101 Terrasse Boieldieu, 92800 Puteaux,

2. the company Geos International Consulting Limited, whose registered office is at Salisbury House LG, [...] 28-29 Finsbury Circus, London EC2M 5QQ (United Kingdom),

respondents in cassation.

[...]

[...] [Matters of national procedure],

The Social Chamber of the Cour de cassation (Court of Cassation, France), [...] [composition of the referring court], after deliberation in accordance with the law, has delivered the present judgment.

Facts and procedure

- 1 According to the judgment under appeal (Montpellier, 18 December 2019), PB was engaged by Geos International Consulting Limited as a network administrator on 1 October 2016.
- 2 That company, which is established in the United Kingdom, is the subsidiary of the French company Geos.
- 3 The employee carried out various assignments in Kabul (Afghanistan) during the employment relationship.
- 4 After receiving a warning on 2 October 2017, the employee was dismissed by the United Kingdom company on 11 January 2018.
- 5 On 9 May 2018, he brought an action before the Conseil de prud'hommes de Montpellier (Labour Tribunal, Montpellier, France), alleging that Geos International Consulting Limited and Geos were his joint employers and that they should be declared jointly and severally liable for the payment of various amounts to him by way of statutory compensation for dismissal; compensation in lieu of notice and related paid leave entitlement; and damages for dismissal without genuine and serious cause and improper performance of the employment contract; and that they should issue termination of contract documents or, failing that, pay a periodic penalty.
- 6 By judgment of 17 May 2019, after declaring the employee's claims against Geos admissible, that tribunal dismissed the plea of lack of jurisdiction raised by the companies, which argued that the United Kingdom courts had jurisdiction. It also referred the case back for a decision on the merits.

- 7 By judgment of 18 December 2019, the Cour d'appel de Montpellier (Court of Appeal, Montpellier) set aside that judgment in its entirety. In a new decision, it stated that the French courts lacked territorial jurisdiction to hear and determine the case, and instructed the employee to bring proceedings before the proper courts.
- 8 In reaching that decision, the Cour d'appel (Court of Appeal) first found that the employee had been engaged from 1 October 2016 by Geos International Consulting Limited, established in London (United Kingdom), that Geos is the parent company of Geos International Consulting Limited, and that the employee carried out various assignments exclusively in Kabul. It also held that the employee did not habitually carry out his work in France or from France, that the last place in which he carried out his work was Afghanistan, and that the establishment which recruited him was not in French territory.
- 9 The employee lodged an appeal against that judgment.
- 10 The companies have requested that the appeal be dismissed and, in the alternative, that the Court of Justice of the European Union be asked the following questions:

‘Is Article 4 of Regulation (EU) No 1215/2012 of 12 December 2012 to be interpreted as meaning that where a French employee, who is bound by a contract of employment to a company established in another Member State, carries out his work outside France and has a relationship of subordination to that company, he may sue in the French courts the parent company established in France in a dispute concerning the contract of employment by merely claiming that that parent company is his joint employer, without having to produce any other evidence?’

Or is Regulation (EU) No 1215/2012 of 12 December 2012 to be interpreted as meaning that, in such a case, the employee must produce evidence to show that the company he is suing in the French courts has the status of employer, which is an autonomous concept of EU law?’

Analysis of the ground of appeal

Wording of the ground of appeal

- 11 The employee criticises the judgment for stating that the French courts lack territorial jurisdiction to hear the case, and for instructing him to bring proceedings before the appropriate courts when, ‘under Article 4 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, persons domiciled in a Member State, whatever their nationality, are to be sued in the courts of that Member State; in the present case, in which proceedings have been brought against SAS Geos whose registered office is in France, the French courts therefore had jurisdiction to hear

the case; the Cour d'appel (Court of Appeal) nevertheless ruled that the French courts lacked territorial jurisdiction, thereby infringing Article 4 of Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012'.

The referring court's reply

Admissibility of the ground of appeal

12 [...]

13 [...]

14 [...] [The referring court finds that the ground of appeal is admissible]

The merits of the ground of appeal

European Union law

15 Article 2(1) 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 provided that, subject to that regulation, persons domiciled in a Member State, whatever their nationality, were to be sued in the courts of that Member State.

16 Under point 1 of Article 6 of that regulation, a person domiciled in a Member State could be sued, where he was one of a number of defendants, in the courts for the place where any one of them was domiciled, provided the claims were so closely connected that it was expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

17 Article 18(1) of that regulation provided that, in matters relating to individual contracts of employment, jurisdiction was to be determined by Section 5 of Chapter II of that regulation, without prejudice to Article 4 and point 5 of Article 5.

18 Regulation No 44/2001 was repealed by 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.

19 Article 81 of the latter regulation provides that that regulation is to apply from 10 January 2015, with the exception of Articles 75 and 76 thereof.

20 In Section 1 of Chapter II of Regulation No 1215/2012, Article 4(1) provides that, subject to that regulation, persons domiciled in a Member State, whatever their nationality, are to be sued in the courts of that State.

21 Under Article 20(1) of that regulation, which is in Section 5 of Chapter II of the regulation, in matters relating to individual contracts of employment, jurisdiction

is to be determined by that section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.

- 22 Under point 1 of Article 8 of that regulation, a person domiciled in a Member State may also be sued, 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.

The questions necessary for the resolution of the dispute

- 23 The provisions set out in Section 5 of Chapter II of Regulation No 1215/2012 are not only specific but also exhaustive (judgments of 14 September 2017, *Nogueira and Others*, C-168/16 and C-169/16, paragraph 51, and of 21 June 2018, *Petronas Lubricants Italy*, C-1/17, paragraph 25).
- 24 The concept of an ‘individual contract of employment’ within the meaning of that regulation presupposes a relationship of subordination of the employee to the employer; the essential feature of the employment relationship is that, for a certain period of time, one person performs services for and under the direction of another, in return for which he receives remuneration (judgment of 25 February 2021, *Markt24*, C-804/19, paragraph 2[5]).
- 25 According to the case-law of the Cour de cassation (Court of Cassation), a company which belongs to a group is classed as a joint employer of staff employed by another company where there is a relationship of subordination or where, beyond the necessary coordination of economic actions between companies belonging to the same group and the state of economic domination which may arise from belonging to that group, there is permanent interference by that company in the economic and social management of the employing company, resulting in the total loss of the employing company’s autonomy of action (Social Chamber, 25 November 2020, Appeal No 18-13.769, published).
- 26 Following the judgment in *Glaxosmithkline and Laboratoires Glaxosmithkline* (22 May 2008, C-462/06), the Cour de cassation (Court of Cassation) ruled that, in alleged circumstances in which an employee is jointly employed by a parent company, established in France, and by its subsidiary company, established in another Member State, which engaged that employee, the French courts do not have jurisdiction to rule on the claims made by that employee against the subsidiary company on the basis of the conflict rule provided for in point 1 of Article 6 of Regulation No 44/2001, considering that that jurisdiction had to be assessed in the light of the provisions of Article 19 of that regulation (Social Chamber, 16 December 2008, Appeal No 04-44.713, Bulletin 2008, V, No 248).
- 27 In the context of Regulation No 44/2001, and as an employee had claimed that he was jointly employed by a parent company domiciled in France and by its subsidiary domiciled in another State, and that the latter had engaged him, the

Cour de cassation (Court of Cassation) also found that, pursuant to Article 2(1) of that regulation, the French courts had jurisdiction to hear and determine the action brought by that employee against those companies on the basis of the place where the parent company was domiciled, without those courts being required to assess at the outset whether the employee had a relationship of direct subordination to the parent company (Social Chamber, 28 January 2015, Appeal No 13-23.006, Bulletin 2015, V, No 17).

- 28 It held that, in such a case, the autonomy of the special rules of jurisdiction over individual contracts of employment, set out in Section 5 of Chapter II of that regulation, did not preclude the application of the general rule that jurisdiction lies with the courts of the Member State in which the defendant is domiciled, provided for in Article 2(1) of Regulation No 44/2001.
- 29 It followed from the case-law of the Court of Justice of the European Union (judgment in *Glaxosmithkline and Laboratoires Glaxosmithkline*, cited above), in relation to Regulation No 44/2001, that the court with jurisdiction to rule in proceedings against the employing subsidiary company did not have jurisdiction to rule in proceedings concerning joint employment brought against the parent company whose registered office was in another Member State, since the rule of special jurisdiction provided for in Article 6, point 1, of Regulation No 44/2001 could not be applied to a dispute falling under Section 5 of Chapter II of that regulation concerning the jurisdiction rules applicable to individual contracts of employment.
- 30 Since the French case-law adopts a concept of joint employment according to which the latter is not constituted merely by the existence of a relationship of direct subordination of the employee to the subsidiary and the parent company, but also covers the situations described in paragraph 25 of the present judgment, applying the general rule on jurisdiction under Article 2(1) of Regulation No 44/2001 was the only way to determine which court had jurisdiction to assess the merits of the employee's claim that he was jointly employed, from a structural or collective point of view, by those two companies, as the 'connected claims' rule provided for in point 1 of Article 6 of that regulation did not apply.
- 31 Regulation No 1215/2012 now provides, under Article 20(1) and point 1 of Article 8, that, where an action is brought against an employer, a person domiciled in a Member State may also be sued, 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.
- 32 In the light of those new provisions, under which an employee who claims to be jointly employed and in a situation which fulfils those criteria of connectedness may bring proceedings either before the courts of the Member State where the company which engaged him is domiciled, or before the courts of the Member

State where his joint employer is domiciled, the Cour de Cassation (Court of Cassation) is uncertain as to the relationship between the general rule on jurisdiction set out in Article 4(1) of Regulation No 1215/2012 and Section 5 of Chapter II of that regulation.

- 33 The question therefore arises whether Article 4(1) and Article 20(1) of that regulation are to be interpreted as meaning that, where it is claimed that a company domiciled in a Member State, and being sued by an employee before the courts of that State, is the joint employer of that employee, who was engaged by another company, that court is not required to assess at the outset whether the employee is jointly employed by those two companies in order to determine whether it has jurisdiction to rule on the claims made against them.
- 34 The question also arises whether, in such a case, the autonomy of the special rules of jurisdiction over individual contracts of employment does not preclude the application of Article 4(1) of that regulation.

ON THOSE GROUNDS, the referring court:

REFERS the following questions to the Court of Justice of the European Union:

- Are Article 4(1) and Article 20(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, where it is claimed that a company domiciled in a Member State, and being sued by an employee before the courts of that State, is the joint employer of that employee, who was engaged by another company, that court is not required to assess at the outset whether the employee is jointly employed by those two companies in order to determine whether it has jurisdiction to rule on the claims made against them?

- Are those articles to be interpreted as meaning that, in such a case, the autonomy of the special rules of jurisdiction over individual contracts of employment does not preclude the application of the general rule that jurisdiction lies with the courts of the Member State in which the defendant is domiciled, set out in Article 4(1) of Regulation No 1215/2012?

[...]

[...] [Stay of the proceedings and matters of national procedure]