Anonymised version

Case C-536/23

Request for a preliminary ruling

Date lodged:

22 September 2023

Referring court:

Landgericht München I (Germany)

Date of the decision to refer:

21 September 2023

Applicant and appellant:

Bundesrepublik Deutschland

Defendant and respondent:

Mutua Madrileña Automovilista

[…]

Landgericht München I (Regional Court, Munich I)

[…]

In the case of

Bundesrepublik Deutschland […]

– applicant and appellant –

[…]

v

Mutua Madrileña Automovilista […]

– defendant and respondent –

[…] concerning a claim,

the Regional Court, Munich I […] has made the following

Order

The order of 4 May 2023 is, for the purpose of correcting mistakes in titles and obvious spelling and dictation mistakes, corrected pursuant to Paragraph 319(1) of the Zivilprozessordnung (Code of Civil Procedure; 'the ZPO'), and now reads as follows:

1. The proceedings are stayed.

2. The following question is referred to the Court of Justice of the European Union:

> Must Article 13(2) 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, read in conjunction with Article 11(1)(b) of that regulation, be interpreted as meaning that a Member State of the European Union itself, in its capacity as an employer which has continued to pay the remuneration of its official who has (temporarily) become unfit for work as a result of a road traffic accident and which is subrogated to the official's rights vis-à-vis the company, established in another Member State, that provides the civil liability insurance for the vehicle involved in that accident, may sue the insurance company as an 'injured party' within the meaning of that provision before the courts for the place where the official who is unfit for work is domiciled, where a direct action is permitted?

Grounds:

(I)

The applicant and appellant ('the applicant'), in its capacity as the employer of the official who was injured in a road traffic accident, asserts against the defendant and respondent ('the defendant'), as the provider of the motor vehicle liability insurance for the vehicle involved in the accident, claims for compensation on the basis of subrogation rights.

The official resides in Munich and works as a federal civil servant at the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office) in the Munich office. The German Patent and Trade Mark Office is a higher federal authority.

On 8 March 2020, when on holiday in Mallorca, the official had an accident when riding her bicycle and collided with a rental car, which was covered by civil liability insurance provided by the defendant, driven by a German driver domiciled in France. Due to the injuries she sustained as a result, the official was unfit to work from 8 March 2020 to 16 March 2020.

The applicant, in its capacity as employer, continued to pay her remuneration for the period during which she was unfit to work in the amount of EUR 1 432.77 and, by letter of 25 January 2021, claimed reimbursement of the continued remuneration from the defendant's claims representative appointed in Germany, APRIL Financial Services AG. That representative refused to pay compensation on the ground that the official had caused the accident.

The applicant then brought an action before the Amtsgericht München (Local Court, Munich) seeking payment of the sum of EUR 1 432.77 […]. The defendant contested the claim and also challenged the international jurisdiction of the court seised. By judgment of 16 February 2022, the Local Court, Munich, then dismissed the action on the ground of lack of international jurisdiction, stating in that regard that the applicant could not assert jurisdiction under Article 11(1)(b) and Article 13(2) 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, since that provision, as a derogating provision, is to be interpreted strictly and the applicant, as a State, does not need the special protection of those provisions within the context of an abstract and categorising assessment of the need for protection, particularly since it also carries out functional activities as a social security institution, for example in the field of pension and sickness insurance schemes. […] [information relating to the national proceedings]

The applicant […] appealed […] against that judgment […]. [information relating to the national proceedings]

The applicant submits that the Local Court, Munich, was wrong to decline jurisdiction because the applicant can correctly rely on Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012. The applicant, as the employer of an employee who was directly injured in a road traffic accident, has, by continuing to pay the employee's remuneration, acquired that employee's right to claim compensation from the defendant by way of subrogation by operation of law. That confers jurisdiction on the courts in the State of domicile of the injured party also in respect of the statutory subrogee. According to the case-law of the Court of Justice (in particular, the judgment of 20 July 2017, C-340/16), it was precisely not necessary to apply a specific assessment on a case-by-case basis or to differentiate according to the criterion of weakness; rather, in the interests of predictability, any person entitled to subrogation who asserts claims not as an insurer or a social security institution but as a statutory subrogee on the basis of subrogated rights, like an injured party, can also bring an action before the courts for the place where the injured party is domiciled.

The applicant claims that the court should

> on appeal by the applicant, set aside the judgment of the Local Court, Munich […] and order the defendant to pay the applicant EUR 1 432.77 plus interest at five percentage points above the relevant base rate as from the date on which the action was brought,
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> […]
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> […] [claim in the alternative]

The defendant contends that the court should

> dismiss the appeal.

The defendant states that it follows from the protective function of Article 11(1)(b) and Article 13 of Regulation No 1215/2012 that only the party who is to be regarded as institutionally weaker than the insurance company – namely the civil liability insurer – may rely on that privilege against an insurer against which a claim has been made. That has been rejected by the Court of Justice both in respect of a social security institution and in the case of persons engaged professionally in insurance law, irrespective of their size (judgments of 17 September 2009, C-347/08; of 31 January 2018, C-108/17; of 20 May 2021, C-913/19, and of 21 October 2021, C-393/20). Such institutional inferiority should also be rejected in respect of a Member State of the European Union as a subject of international law, especially where, like the applicant in the present case, it also provides benefits which, by their nature, correspond to social insurance benefits and it also supervises the insurance companies operating on its territory. However, in any case, the chamber seised, sitting as an appeal court, is required to refer to the Court of Justice the question of interpretation for a preliminary ruling, pursuant to Article 267 TFEU, in particular where it wishes to depart from the case-law of the Oberlandesgericht Koblenz (Higher Regional Court, Koblenz) of 15 October 2012, Case 12 U 1528/11.

[…] [information relating to the national proceedings]

(II)

The proceedings are to be stayed pursuant to Paragraph 148 of the ZPO and the question set out in point 2 of this order is to be referred to the Court of Justice pursuant to point (b) of the first paragraph and the second paragraph of Article 267 of the Treaty on the Functioning of the European Union (TFEU). The applicant's appeal is admissible and the merits of that appeal depend on the interpretation of Article 11(1)(b) and Article 13(2) of *Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*, or, in other words, on whether the court seised at first instance has jurisdiction.

1. The applicant's appeal against the judgment of the Local Court, Munich […] is admissible. […] [detailed argument]

2. The merits of the appeal depend on the question of whether the Local Court, Munich, was correct in declining jurisdiction pursuant to Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012.

2.1 In that regard, the EU legal framework is worded as follows:

- Recitals of Regulation No 1215/2012:

  (15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

  […]

  (18) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.

- Article 11 of Regulation No 1215/2012:

  1. An insurer domiciled in a Member State may be sued:

  (a) in the courts of the Member State in which he is domiciled;

  (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or

  (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.

  2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

- Article 13 of Regulation No 1215/2012:

  1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.

> *2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.*

2.2 Under Article 13(2) of Regulation No 1215/2012, an injured party asserting a direct claim against an insurer may bring an action before a court which has jurisdiction under Articles 10 to 12 of Regulation No 1215/2012. Article 11(1)(b) of Regulation No 1215/2012, in turn, opens up the possibility for an action to be brought before the courts for the place where the policyholder is domiciled and – by the reference in Article 13(2) of Regulation No 1215/2012 – also in the place where the injured party is domiciled.

In that regard, it is common ground between the parties that the applicant is making a direct claim against the defendant as the civil liability insurer of the vehicle involved in the accident under the first paragraph of Article 18 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('the Rome II Regulation'), in conjunction with the second paragraph of Article 7(1), Article 1(1) and Article 143 of the Spanish Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor (Law on civil liability and insurance for the use of motor vehicles; 'the LRCSCVM') on the basis of subrogation rights, pursuant to Article 19 of the Rome II Regulation read in conjunction with Paragraph 76 of the Bundesbeamtengesetz (Law on federal public servants; 'the BBG'). It is also not disputed that the applicant is the employer of the official who was injured in the accident and – again undisputedly – continued to pay remuneration, in the amount of EUR 1 432.77, during the period when the injured party was unfit for work as a result of the accident.

2.3 The decisive factor is whether the applicant, who is suing as a statutory subrogee on the basis of subrogation of the rights of the staff member who was originally injured in the accident, may rely on Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012.

With regard to the rules on jurisdiction, Regulation No 1215/2012 – like its predecessor, Regulation (EC) No 44/2001 of 22 December 2000 – proceeds from the following fundamental considerations: According to recital 15 of Regulation No 1215/2012, the rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. According to recital 18 thereof, in relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his or her interests than the general rules.

2.4 To this court's knowledge, the Court of Justice has already elaborated on the essential principles in that regard in three decisions of 17 September 2009 (C-347/08), of 20 July 2017 (C-340/16) and of 31 January 2018 (C-106/17),

in order to satisfy, first, the protection of the weaker party intended by Articles 10 to 13 of Regulation No 1215/2012 (or the provisions of its predecessor, Regulation No 44/2001, worded in the same way) and, second, the need for predictability vis-à-vis the court having jurisdiction:

Thus, anyone who is commercially active in the insurance industry, be it as an insurer or a statutory social insurance institution (judgment of 17 September 2019, C-347/08), or a professionally active assignee (judgment of 31 January 2018, C-106/17), does not require protection and is therefore not covered by the protection conferred by Article 10 et seq. of Regulation No 1215/2012 when choosing the *forum actoris*, irrespective of whether or not they operate with a comparable market or economic power as the defendant insurance company.

In contrast, anyone who is not commercially active in the insurance industry, but brings an action on the basis of rights subrogated to them by the injured party, for example through succession or due to the continued payment of remuneration, must in turn be regarded as an 'injured party' within the meaning of Article 13(2) of Regulation No 1215/2012 and benefit from the *forum actoris* in Article 10 et seq. of Regulation No 1215/2012. That also applies without it being necessary to examine an individual need for protection on a case-by-case basis. The Court of Justice has held in that regard (judgment of 20 July 2017, C-340/16, paragraph 34 et seq.):

> *'Furthermore, as the referring court observed in its order for reference, a case-by-case assessment of the question whether an employer which continues to pay the salary may be regarded as the economically weaker party in order to be covered by the definition of "injured party" within the meaning of Article 11(2) of Regulation No 44/2001, would give rise to the risk of legal uncertainty and would be contrary to the objective of that regulation, laid down in recital 11 thereof, according to which the rules of jurisdiction must be highly predictable.*
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> *Therefore, it must be held that, pursuant to Article 11(2) of Regulation No 44/2001, employers to which the rights of their employees to compensation have passed may, as persons which have suffered damage and whatever their size and legal form, rely on the rules of special jurisdiction laid down in Articles 8 to 10 of that regulation.*
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> *Thus, the employer to which the rights of its employee have passed in order to be reimbursed for the salary paid to the latter during a period of incapacity to work, which, solely in that capacity, has brought an action for damages may be regarded as weaker than the insurer that it sues and, therefore, is able to benefit from the possibility to bring that action before the courts of the Member State in which it is established.*

> *It follows that an employer to which the rights of the employee injured in a road traffic accident have passed and for whom it continued to pay his salary may, as the "injured party", sue the insurer of the vehicle involved in that accident before the courts of the Member State in which the employer is established where a direct action is permitted.*
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> *[…]*
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> *It follows from all of the foregoing that Article 9(1)(b) of Regulation No 44/2001, read together with Article 11(2) thereof, must be interpreted as meaning that an employer, established in one Member State, which continued to pay the salary of its employee absent as the result of a road traffic accident and to which have passed the employee's rights with regard to the company insuring the civil liability resulting from the vehicle involved in that accident, which is established in a second Member State, may, in the capacity of "injured party", within the meaning of Article 11(2), sue the insurance company before the courts of the first Member State, where a direct action is permitted.'*

At the same time, however, since the derogations from the principle of jurisdiction at the defendant's domicile must be exceptional in nature and interpreted strictly, they are not to be extended to persons for whom that protection is not justified (judgments of 31 January 2018, C-106/17, paragraph 41, and of 20 May 2021, C-913/19, paragraph 39). Although it is true that, as a general rule, no specific case-by-case assessment and balancing of the structural weaknesses or need for protection must be carried out for the purpose of applying Article 10 et seq. of Regulation No 1215/2012, an imbalance for the purposes of those provisions should generally be absent where an action does not concern an insurer, in relation to whom both the insured and the injured person must be considered to be weaker (judgment of 9 December 2021, C-708/20, paragraph 33).

2.5 Thus, on the one hand, an abstract and generalising assessment of the need for protection in the context of Article 10 et seq. of Regulation No 1215/2012 can be established, according to which, in certain groups of cases – and within those groups, irrespective of the specific weakness or need for protection in relation to the insurer against whom a claim has been made – a need for protection is to be affirmed (namely in the case of subrogation by operation of law in respect of inheritance or employers) or rejected (namely in the case of social insurance institutions or subrogees who are commercially active in the insurance sector). On the other hand, it is precisely that grouping which suggests that a categorised approach makes it possible to take sufficient account of the requirement of predictability, as set out in recital 15 of Regulation No 1215/2012, while at the same time leaving room to preserve its nature as a derogation.

In its judgment of 15 October 2021 (Case 12 U 1528/11), the Higher Regional Court, Koblenz, declined jurisdiction to hear actions brought by a federal state of a Member State on the basis of Article 9(1)(b) and Article 11(2) of Regulation No 44/2001 – the provisions of which are identical to Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012 – on the ground that a Land of the Federal Republic of Germany is not weaker or less experienced in legal terms than an insurer and that its position could be compared to that of a social security institution.

Conversely, in the decision cited above (see judgment of 20 July 2017, C-340/16), the Court of Justice confirmed jurisdiction to hear actions brought by a hospital operator organised under public law as an employer following subrogation by operation of law in respect of the continued payment of its employees' remuneration; however, the public-law entity bringing the action in that case was neither a federal state nor, a fortiori, a Member State of the European Union itself and it is precisely the criterion of subjectivity under international law which appears to be capable of being established sufficiently abstractly so as to satisfy the requirement of predictability with regard to jurisdiction.

3. Against that background, the issue at the heart of the decision on the applicant's appeal is whether Article 11(1)(b) and Article 13(2) of Regulation No 1215/2012 may be interpreted, despite their exceptional nature, to the effect that a Member State of the European Union itself, in its capacity as employer which has continued to pay the remuneration of its official who has (temporarily) become unfit for work as a result of a road traffic accident and which is subrogated to the official's rights vis-à-vis the company, established in another Member State, that provides the civil liability insurance for the vehicle involved in that accident, may sue the insurance company as an 'injured party' within the meaning of that provision before the courts for the place where the official who is unfit for work is domiciled, where a direct action is permitted. Thus, the parties are in dispute as to the interpretation of a regulation and this is of central importance for the determination of the appeal.

Accordingly, the question of interpretation set out in point 2 of this order is to be referred to the Court of Justice of the European Union for a preliminary ruling, pursuant to Article 267 TFEU.

[…]