



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

11 April 2019\*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Determination of the court having jurisdiction to hear an application for compensation in respect of a delayed flight — Article 7(5) — Operations of a branch — Article 26 — Implied prorogation — Requirement that the defendant enter an appearance)

In Case C-464/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil No 1 de Gerona (Commercial Court No 1, Girona, Spain), made by decision of 9 July 2018, received at the Court on 17 July 2018, in the proceedings

**ZX**

v

**Ryanair DAC,**

THE COURT (Sixth Chamber),

composed of C. Toader (Rapporteur), President of the Chamber, A. Rosas and M. Safjan, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Spanish Government, by L. Aguilera Ruiz, acting as Agent,
- the European Commission, by M. Heller and S. Pardo Quintillán, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: Spanish.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 7(5) and Article 26 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 (OJ 2012 L 351, p. 1).
- 2 The request has been made in the course of proceedings between ZX, a passenger, and the airline Ryanair DAC concerning a claim for compensation brought by ZX following a delayed flight.

### Legal context

#### *EU law*

- 3 Article 4(1) of Regulation No 1215/2012 provides:

‘Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.’

- 4 Article 7 of that Regulation states:

‘A person domiciled in a Member State may be sued in another Member State:

- (1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;  
(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
  - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
  - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
- (c) if point (b) does not apply then point (a) applies;

...

- (5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

...’

- 5 Section 4 of Chapter II of Regulation No 1215/2012, which is entitled ‘Jurisdiction over consumer contracts’, contains Article 17 which provides:

‘(1) In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

- (a) it is a contract for the sale of goods on instalment credit terms;

- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.
- (2) Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.
- (3) This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.'
- 6 Chapter II includes Section 7, entitled 'Prorogation of jurisdiction'. That section contains, inter alia, Article 26(1), which is worded as follows:
- 'Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24.'
- 7 Article 28(1) of Regulation No 1215/2012 provides:
- 'Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.'
- 8 Article 7(1)(a) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1) states that, in the event of denied boarding and of cancellation or long delay of flights, passengers are to receive compensation amounting to EUR 250 for all flights of 1 500 kilometres or less.

### *Spanish law*

- 9 Under Article 86ter (2)(b) of the Ley Orgánica 6/1985 del Poder Judicial (Organic Law 6/1985 on the Judiciary) of 1 July 1985, claims brought under the legislation governing national or international transport are heard at first or sole instance by the commercial courts, which are civil courts specialising in certain civil and commercial matters within the area of civil law.
- 10 The referring court states that the Ley 1/2000 de Enjuiciamiento Civil (Law 1/2000 on Civil Procedure) of 7 January 2000 (BOE No 7 of 8 January 2000, p. 575; 'the Law on Civil Procedure') organises actions, inter alia, on the basis of the amount of the claim, with the result that such actions are subject to the ordinary procedure or the simplified procedure.
- 11 Where the claim in the proceedings does not exceed EUR 6 000, Article 250(2) of the Law on Civil Procedure provides that it must be dealt with according to the rules governing the simplified procedure.

- 12 Pursuant to Article 56 of that law, an applicant is to be deemed to have tacitly submitted to jurisdiction where he has brought proceedings before the courts of a particular district by lodging the application, whilst the defendant will be deemed to have done so where, after entering an appearance in the proceedings, he performs any procedural step other than lodging an objection to jurisdiction in due form. The defendant will also be deemed to have tacitly submitted where, having been given notice or been summoned in due form, he does not enter an appearance in the proceedings or does so when the right to object to jurisdiction has become time-barred.
- 13 In accordance with Article 54(1) of the Law on Civil Procedure, ‘express or implied prorogation shall not be valid in cases which have to be decided using the simplified procedure’.
- 14 In accordance with Article 404, read in conjunction with Article 58, of the Law on Civil Procedure, where the registrar responsible for the procedural and substantive organisation of the proceedings becomes aware, while examining the admissibility of the action, that the court may lack international jurisdiction, he is to notify the court so that it may rule on whether the action is admissible or inadmissible after hearing the parties who have entered an appearance and the Ministerio Fiscal (public prosecutor, Spain).
- 15 Article 36(2)(3) of the Law on Civil Procedure provides:
- ‘The Spanish ... courts shall refrain from hearing cases brought before them where the defendant has been given notice in due form but does not enter an appearance in cases in which the international jurisdiction of the Spanish courts may be based solely on the implied prorogation of jurisdiction by the parties.’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 16 ZX purchased a ticket online for a flight operated by Ryanair between Porto (Portugal) and Barcelona (Spain).
- 17 By her action brought, before the referring court, under Article 7 of Regulation No 261/2004, the applicant in the main proceedings sought compensation in the amount of EUR 250 in respect of the delay to the flight at issue in the main proceedings.
- 18 It appears from the order for reference that the applicant in the main proceedings is neither domiciled nor resident in Spain, that the defendant in the main proceedings has its registered office in Ireland, and that it has a branch in Girona (Spain).
- 19 In accordance with Article 58 of the Law on Civil Procedure, the registrar of the referring court invited the parties in the main proceedings to submit their observations on the possible international jurisdiction of that court.
- 20 The public prosecutor alone submitted observations, arguing that, while the dispute in the main proceedings did not come within the scope of one of the situations relating to exclusive jurisdiction, and since the defendant in the main proceedings did not oppose the referring court hearing the dispute in the main proceedings, that court had to accept jurisdiction to hear the dispute in so far as it could have jurisdiction on the basis of the implied prorogation of jurisdiction.
- 21 Having regard to the fact that the defendant in the main proceedings has a branch in the town of Girona, the referring court is unclear as to whether it could also have international jurisdiction to hear the dispute in the main proceedings on the basis of the special jurisdiction of courts in the place where a branch is situated.

- 22 The referring court considers that, with a view to ruling on whether to decline jurisdiction by a final decision which would bring the proceedings to a close, or on the admissibility of the action brought by the applicant in the main proceedings and giving a decision on the substance of the case, it requires an interpretation of Article 26 of Regulation No 1215/2012 on the implied prorogation of jurisdiction, as well as Article 7(5) of that regulation, on the alternative jurisdiction of courts in the place where the branch is situated in disputes concerning the operation of that branch.
- 23 In those circumstances, the Juzgado de lo Mercantil No 1 de Gerona (Commercial Court No 1, Girona, Spain) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does the concept of implied prorogation of jurisdiction laid down in and governed by Article 26 of [Regulation No 1215/2012] require, in all respects, an autonomous interpretation common to all the Member States, which cannot, therefore, be made subject to limitations laid down in Member States’ rules on domestic jurisdiction?
- (2) Is the concept of implied prorogation of jurisdiction laid down in and governed by Article 26 of [Regulation No 1215/2012] a “pure” rule of international jurisdiction, which determines exclusively the courts of a particular Member State but leaves it to the procedural law of that Member State to specify the court with territorial jurisdiction or, on the other hand, is it a rule of both international and territorial jurisdiction?
- (3) In the light of the facts of the case, can a situation involving a flight which is operated by an airline domiciled in another Member State, but which departs from or arrives in a Member State where that airline has a branch providing ancillary services to the airline but through which the tickets were not purchased, be deemed to constitute a dispute arising out of the operations of a branch, agency or other establishment, which is the basis for the connecting factor for the ground of jurisdiction laid down in Article 7(5) of [Regulation No 1215/2012]?’

### Consideration of the questions referred

- 24 As a preliminary point, it should be observed that Regulation No 261/2004 does not contain rules on the international jurisdiction of the courts of the Member States, so that the issue of jurisdiction must be examined in the light of Regulation No 1215/2012 (see, to that effect, judgment of 9 July 2009, *Rehder*, C-204/08, EU:C:2009:439, paragraph 28).
- 25 In that connection, the first sentence of Article 26(1) of Regulation No 1215/2012 serves to establish the jurisdiction of a court when, ‘apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction’.
- 26 For that reason, it is appropriate to examine, first of all, whether or not the referring court has jurisdiction by virtue of other provisions of that regulation.
- 27 Although Regulation No 1215/2012 lays down rules of special jurisdiction, set out in particular under Section 2 of Chapter II of that regulation, the applicant in the main proceedings did not bring her claim for compensation in relation to a flight operated between Porto and Barcelona before the referring court under the rule of special jurisdiction based on the place of performance of the obligation, which forms the basis of the application contained in Article 7(1)(b) of that regulation, as interpreted by the Court (judgment of 9 July 2009, *Rehder*, C-204/08, EU:C:2009:439, paragraph 43), on the ground that that court is situated in the place of departure or the place of arrival of the aircraft concerned.

- 28 Similarly, while the provisions under Section 4 of Chapter II of Regulation No 1215/2012, on ‘Jurisdiction over consumer contracts’, also establish a rule of special jurisdiction for consumers, and although an airline passenger may be considered to be a consumer, it should be noted that Article 17(3) of that regulation states that Section 4 ‘shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation’.
- 29 In those circumstances, it follows unambiguously from the wording of that provision that, in circumstances such as those at issue in the main proceedings, an airline passenger, who has simply purchased a ticket for a flight, rather than a travel package, cannot rely on the rules of special jurisdiction over consumer contracts contained in Regulation No 1215/2012.
- 30 Moreover, it should be added that, while Article 4 of Regulation No 1215/2012 lays down the general principle of the courts of the Member State in which the defendant is domiciled, the referring court states that the defendant in the main proceedings has its registered office in a Member State other than the Kingdom of Spain — namely Ireland — so that that provision cannot serve as a basis for that court’s jurisdiction.
- 31 It follows that it is appropriate to examine, in the first place, the third question referred by the referring court, on the interpretation to be given to Article 7(5) of Regulation No 1215/2012 in order to determine whether its jurisdiction may arise from that provision.

### *The third question*

- 32 By its third question, the referring court is asking, in essence, whether Article 7(5) of Regulation No 1215/2012 must be interpreted as meaning that a court of a Member State has jurisdiction to hear a dispute concerning a claim for compensation brought under Article 7 of Regulation No 261/2004 against an airline, established in the territory of another Member State, on the ground that that airline has a branch within the territorial jurisdiction of the court seised.
- 33 It is settled case-law of the Court that two criteria serve to determine whether legal proceedings relating to the operations of a branch are linked to a Member State. First, the concept of ‘branch’ implies a centre of operations which has the appearance of permanency, such as the extension of a parent body. It must have a management and be materially equipped to negotiate business with third parties, so that they do not have to deal directly with the parent body. Secondly, the dispute must concern either acts relating to the operations of a branch, or commitments entered into by such a branch on behalf of the parent body, if those commitments are to be performed in the State in which that branch is situated (see, to that effect, judgments of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 48 and the case-law cited, and of 5 July 2018, *flyLAL-Lithuanian Airlines*, C-27/17, EU:C:2018:533, paragraph 59 and the case-law cited).
- 34 So far as concerns, in particular, the second criterion established by the case-law, it is apparent from the order for reference that the ticket at issue in the main proceedings was purchased online. There is therefore no element in that order for reference indicating that the transport contract was concluded between the applicant in the main proceedings and the airline through that branch. Furthermore, according to the information before the Court, the services provided by the branch of Ryanair in Girona appear to be related to tax matters.
- 35 It follows that there is no evidence serving to establish the branch’s involvement in the legal relationship between Ryanair and the applicant in the main proceedings, with the result that that the referring court cannot have jurisdiction to hear the dispute in the main proceedings pursuant to Article 7(5) of Regulation No 1215/2012 (see, by analogy, judgment of 5 July 2018, *flyLAL-Lithuanian Airlines*, C-27/17, EU:C:2018:533, paragraph 63).

36 In the light of the foregoing, Article 7(5) of Regulation No 1215/2012 must be interpreted as meaning that a court of a Member State does not have jurisdiction to hear a dispute concerning a claim for compensation brought under Article 7 of Regulation No 261/2004 against an airline established in the territory of another Member State, on the ground that that company has a branch within the territorial jurisdiction of the court seised, without that branch having been involved in the legal relationship between the airline and the passenger concerned.

### *The first two questions*

37 By its first and second questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 26(1) of Regulation No 1215/2012 must be interpreted as meaning that that provision may justify the international jurisdiction of the court seised by virtue of a tacit acceptance of jurisdiction, on the ground that the defendant in the main proceedings does not oppose that court having jurisdiction.

38 The first sentence of Article 26(1) of Regulation No 1215/2012 provides for a rule of jurisdiction based on the entering of an appearance by the defendant in respect of all disputes where the jurisdiction of the court seised is not derived from other provisions of that regulation. That provision applies also in cases where the court has been seised in breach of the provisions of that regulation and implies that the entering of an appearance by the defendant may be considered to be a tacit acceptance of the jurisdiction of the court seised and thus a prorogation of that court's jurisdiction (judgments of 20 May 2010, *ČPP Vienna Insurance Group*, C-111/09, EU:C:2010:290, paragraph 21, and of 27 February 2014, *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C-1/13, EU:C:2014:109, paragraph 34).

39 In the present case, it follows from the explanations given by the referring court that, following the invitation from the registry of that court to submit observations on the possible international jurisdiction of that court to hear the claim at issue in the main proceedings, the defendant in those proceedings failed to submit written observations.

40 Since an absence of observations cannot constitute the entering of an appearance within the meaning of Article 26 of Regulation No 1215/2012 and, therefore, cannot be considered as tacit acceptance, by the defendant, of the jurisdiction of the court seised, such a provision concerning the implied prorogation of jurisdiction cannot be applied in circumstances such as those in question in the main proceedings.

41 Accordingly, the answer to the first and second questions is that Article 26(1) of Regulation No 1215/2012 must be interpreted as not applying in a case, such as that at issue in the main proceedings, where the defendant has not submitted observations or entered an appearance.

### **Costs**

42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

- 1. Article 7(5) 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 must be interpreted as meaning that a court of a Member State does not have jurisdiction to hear a dispute concerning a claim for compensation brought**

**under Article 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, and directed against an airline, established in the territory of another Member State, on the ground that that company has a branch within the territorial jurisdiction of the court seised, without that branch having been involved in the legal relationship between the airline and the passenger concerned.**

- 2. Article 26(1) of Regulation No 1215/2012 must be interpreted as not applying in a case, such as that at issue in the main proceedings, where the defendant has not submitted observations or entered an appearance.**

[Signatures]