



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

8 May 2019\*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EU) No 1215/2012 — Article 7(1)(a) — Special jurisdiction in matters relating to contract — Concept of ‘matters relating to a contract’ — Decision of the general meeting of the owners of property in a building — Obligation of the owners to pay annual financial contributions to the budget of the association of property owners as determined by that decision — Legal action seeking enforcement of that decision — Law applicable to contractual obligations — Regulation (EC) No 593/2008 — Article 4(1)(b) and (c) — Concepts of ‘contract for the provision of services’ and ‘a contract relating to a right *in rem* in immovable property’ — Decision of the general meeting of the owners of property in a building relating to maintenance costs for communal areas)

In Case C-25/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Okrazhen sad — Blagoevgrad (Regional Court of Blagoevgrad, Bulgaria), made by decision of 19 December 2017, received at the Court on 16 January 2018, in the proceedings

**Bryan Andrew Kerr**

v

**Pavlo Postnov**

**Natalia Postnova,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, C. Toader, L. Bay Larsen and M. Safjan, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- the Latvian Government, by I. Kucina and V. Soņeca, acting as Agents,
- the European Commission, by M. Wilderspin, M. Heller and Y. Marinova, acting as Agents,

\* Language of the case: Bulgarian.

after hearing the Opinion of the Advocate General at the sitting on 31 January 2019,  
gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 7(1)(a) 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) and of Article 4(1)(b) and (c) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6).
- 2 The request was submitted in the context of a dispute between Mr Brian Andrew Kerr and Mr Pavlo Postnov and Ms Natalia Postnova concerning the failure of the latter two to pay annual financial contributions to the budget of the association of property owners relating to an apartment building, for which Mr Kerr, in his capacity as the building manager, is responsible.

### Legal context

#### *Regulation No 1215/2012*

- 3 Recitals 4, 15 and 16 of Regulation No 1215/2012 state:  

‘(4) 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.

...

(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.

(16) In addition to the defendant’s domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.’
- 4 Article 4(1) of that regulation provides as follows:  

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

5 Article 7 of that regulation provides:

‘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;

...’

6 Article 24 of that regulation is worded as follows:

‘The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated.

...’

**Regulation No 593/2008**

7 Recitals 7 and 17 of Regulation No 593/2008 state as follows:

‘(7) The substantive scope and the provisions of this regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [(OJ 2001 L 12, p. 1)] (Brussels I) and 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 [(‘Rome II’)(OJ 2007 L 199, p. 40)].

...

(17) As far as the applicable law in the absence of choice is concerned, the concept of “provision of services” and “sale of goods” should be interpreted in the same way as when applying Article 5 of Regulation [No 44/2001] in so far as sale of goods and provision of services are covered by that regulation. Although franchise and distribution contracts are contracts for services, they are the subject of specific rules.’

8 Article 1 of Regulation No 593/2008 provides as follows:

‘1. This regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.

...

2. The following shall be excluded from the scope of this regulation:

...

(f) questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body;

...'

9 Under Article 4(1) of that regulation:

'To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

- (a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;
- (b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;
- (c) a contract relating to a right *in rem* in immovable property or to a tenancy of immovable property shall be governed by the law of the country where the property is situated;

...'

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

- 10 Mr Postnov and Ms Postnova, domiciled in Dublin (Ireland), are the owners of an apartment in an apartment block in Bansko (Bulgaria), which they purchased under a sales contract concluded on 30 May 2008.
- 11 At the annual general meetings of the owners of property in that building, held in January 2013, January 2014, February 2015, March 2016 and March 2017, decisions relating to annual financial contributions to the budget of the association of property owners, for the maintenance of the communal areas, were adopted.
- 12 Claiming that Mr Postnov and Ms Postnova had not entirely fulfilled their obligation to pay those contributions, Mr Kerr, in his capacity as the building manager, lodged an application with the Rayonen sad Razlog (District Court, Razlog, Bulgaria), seeking an order requiring them to pay those contributions, together with compensation for delay.
- 13 By an order ruling on that application, the Rayonen sad Razlog (District Court, Razlog) considered that, under Article 4(1) of Regulation No 1215/2012, it did not have jurisdiction to hear the dispute between Mr Kerr and Mr Postnov and Ms Postnova, on the ground that the latter two parties were domiciled in Dublin (Ireland) and that the conditions for application of the exceptions to the general jurisdiction rule set out in that provision were not satisfied.
- 14 Mr Kerr appealed against that order before the referring court.
- 15 The referring court is uncertain as to the legal nature of the obligations arising from a decision made collectively by a group which does not have legal personality, such as a general meeting of the owners of apartments in an apartment block.

- 16 In those circumstances, the Okrazhen sad — Blagoevgrad (the Regional Court of Blagoevgrad, Bulgaria) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- (1) Do the decisions of unincorporated associations created by operation of law due to the special ownership of a right, which are taken by a majority of their members but which bind all of them, including those who did not cast a vote, form the basis of a “contractual obligation” for the purposes of determining international jurisdiction pursuant to Article 7(1)(a) of Regulation [(EU) No 1215/2012]?
  - (2) If the first question is answered in the negative: are the rules on determining the applicable law for contractual relationships under Regulation [No 593/2008] applicable to such decisions?
  - (3) If the first and the second questions are answered in the negative: are the provisions of Regulation [No 864/2007] applicable to such decisions, and which of the non-contractual bases of liability referred to in that regulation is relevant here?
  - (4) If the first or second question is answered in the affirmative: should the decisions of unincorporated associations regarding expenditure for building maintenance be regarded as constituting a “contract for the provision of services” within the meaning of Article 4(1)(b) of Regulation No 593/2008 or as a contract relating to a “right *in rem*” or a “tenancy” within the meaning of Article 4(1)(c) of that regulation?

## Consideration of the questions referred

### *The first question*

- 17 By its first question, the referring court asks, in essence, whether Article 7(1)(a) of Regulation No 1215/2012 must be interpreted as meaning that a dispute concerning a payment obligation arising from a decision taken by a general meeting of the owners of property in a building, which does not have legal personality and has been specifically established by law in order to exercise certain rights, — where that decision has been taken by a majority of members, but binds all members — must be regarded as falling within the concept of ‘matters relating to a contract’ within the meaning of that provision.
- 18 In the present case, the obligation in respect of which enforcement is sought derives from a decision adopted by the general meeting of the association of the owners of property in an apartment building, setting the amount of the annual financial contributions to the budget of the association of property owners for maintenance of the communal areas of that building.
- 19 In so far as Regulation No 1215/2012 repeals and replaces Council Regulation (EC) No 44/2001, it should be observed that the Court’s interpretation of the provisions of the latter regulation also applies to Regulation No 1215/2012, whenever the provisions of the two instruments of EU law may be regarded as equivalent (judgment of 15 November 2018, *Kuhn*, C-308/17, EU:C:2018:911, paragraph 31 and the case-law cited).
- 20 Consequently, the interpretation given by the Court concerning Article 5(1) of Regulation No 44/2001 also applies to Article 7(1) of Regulation No 1215/2012, given that those provisions may be regarded as equivalent (judgment of 15 June 2017, *Kareda*, C-249/16, EU:C:2017:472, paragraph 27).

- 21 According to the Court's settled case-law, the jurisdiction provided for in Article 4 of Regulation No 1215/2012, namely that the courts of the Member State in which the defendant is domiciled are to have jurisdiction, constitutes the general rule. It is only by way of derogation from that general rule that the regulation provides for rules of special and exclusive jurisdiction for cases, which are exhaustively listed, in which the defendant may or must, depending on the case, be sued in the courts of another Member State (judgments of 7 March 2018, *E.ON Czech Holding*, C-560/16, EU:C:2018:167, paragraph 26, and of 12 September 2018, *Löber*, C-304/17, EU:C:2018:701, paragraph 18).
- 22 Therefore, the rules of special jurisdiction laid down in Regulation No 1215/2012 must be interpreted restrictively and cannot give rise to an interpretation going beyond the cases expressly envisaged by that regulation (judgments of 18 July 2013, *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 31; of 17 October 2013, *OTP Bank*, C-519/12, not published, EU:C:2013:674, paragraph 23, and of 14 July 2016, *Granarolo*, C-196/15, EU:C:2016:559, paragraph 18).
- 23 As regards the rule of special jurisdiction provided for in Article 7(1)(a) of Regulation No 1215/2012, the Court has held that the conclusion of a contract is not a condition for the application of that provision (judgments of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 38, and of 21 April 2016, *Austro-Mechana*, C-572/14, EU:C:2016:286, paragraph 34).
- 24 Although that provision does not require the conclusion of a contract, it is nevertheless essential, for that provision to apply, to identify an obligation, since the jurisdiction of the national court under that provision is determined by the place of performance of the obligation in question. Thus, the concept of 'matters relating to a contract' within the meaning of that provision is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another (judgments of 14 March 2013, *Česká spořitelna*, C-419/11, EU:C:2013:165, paragraph 46; of 28 January 2015, *Kolassa*, C-375/13, EU:C:2015:37, paragraph 39, and of 21 April 2016, *Austro-Mechana*, C-572/14, EU:C:2016:286, paragraph 35).
- 25 Consequently, the application of the rule of special jurisdiction laid down for matters relating to a contract in Article 7(1)(a) of Regulation No 1215/2012 presupposes the establishment of a legal obligation freely consented to by one person towards another and on which the claimant's action is based (judgments of 14 March 2013, *Česká spořitelna*, C-419/11, EU:C:2013:165, paragraph 47; of 18 July 2013, *ÖFAB*, C-147/12, EU:C:2013:490, paragraph 33, and of 21 April 2016, *Austro-Mechana*, C-572/14, EU:C:2016:286, paragraph 36).
- 26 Since the wording of Article 5(1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36) corresponds to that of Article 7(1) of Regulation No 1215/2012, as pointed out in paragraph 19 of this judgment, the interpretation given by the Court of the first of those provisions also applies to the second. Accordingly, the Court has previously held that obligations relating to the payment of a sum of money which have their basis in the relationship between an association and its members by virtue of membership must be regarded as 'matters relating to a contract' within the meaning of that provision, on the ground that membership of an association creates between the members close links of the same kind as those which are created between the parties to a contract (judgments of 22 March 1983, *Peters Bauunternehmung*, 34/82, EU:C:1983:87, paragraphs 13 and 15; of 10 March 1992, *Powell Duffryn*, C-214/89, EU:C:1992:115, paragraph 15, and of 20 January 2005, *Engler*, C-27/02, EU:C:2005:33, paragraph 47).
- 27 However, as the Advocate General noted in point 54 of her Opinion, even if membership of an association of property owners is prescribed by law, the fact remains that the detailed arrangements for management of the communal areas of the building concerned are, as the case may be, governed by contract and the association is joined through voluntary acquisition of an apartment together with ownership shares of the communal areas of the property, so that an obligation of the co-owners

towards the association of owners, such as that at issue in the main proceedings, must be regarded as a legal obligation freely consented to, within the meaning of the case-law cited in paragraph 25 of this judgment.

- 28 The fact that that obligation results exclusively from that act of purchase or derives from that act in conjunction with a decision adopted by the general assembly of the association of the owners of property in that building has no effect on the application of Article 7(1)(a) of Regulation No 1215/2012 to a dispute concerning that obligation (see, by analogy, judgment of 22 March 1983, *Peters Bauunternehmung*, 34/82, EU:C:1983:87, paragraph 18).
- 29 Likewise, the fact that the property owners in question were not involved in adopting that decision or opposed it, but, by virtue of the law, that decision and the ensuing obligation are binding on them, has no effect on that application, since, by becoming and remaining the owner of a property in a building, each owner agrees to be subject to all the provisions in the act governing the association of property owners concerned and the decisions adopted by the general meeting of the owners of property in that building (see, to that effect, judgment of 10 March 1992, *Powell Duffryn*, C-214/89, EU:C:1992:115, paragraphs 18 and 19).
- 30 In the light of the above considerations, the answer to the first question is that Article 7(1)(a) of Regulation No 1215/2012 must be interpreted as meaning that a dispute concerning a payment obligation arising from a decision taken by a general meeting of the owners of property in a building, which does not have legal personality and has been specifically established by law in order to exercise certain rights, — where that decision has been taken by a majority of members, but binds all members — must be regarded as falling within the concept of ‘matters relating to a contract’ within the meaning of that provision.

### *The second and third questions*

- 31 Since the second and third questions were asked only in the event that the first question was answered in the negative, there is no need to address them.

### *The fourth question*

- 32 By its fourth question, the referring court asks, in essence, whether a dispute concerning a payment obligation resulting from a decision of a general meeting of the owners of property in an apartment building, relating to the costs of maintaining the communal areas of that property, must be regarded as relating to a contract for the provision of services, within the meaning of Article 4(1)(b) of Regulation No 593/2008, or a contract concerning a right *in rem* in immovable property, within the meaning of Article 4(1)(c) of that regulation.
- 33 As a preliminary point, it should be noted that the exclusion from the scope of Regulation No 593/2008 of matters relating to questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, set out in Article 1(2)(f) of that regulation, applies not to a request from an unincorporated association, in this case that constituted by the owners of property in an apartment building represented by the building manager, concerning the payment of annual financial contributions to the budget of the association of property owners relating to that building, which falls within the scope of the general law on contractual obligations, but rather exclusively to the structural aspects of those companies and other bodies, corporate or unincorporated.

- 34 In that regard, it should also be noted that that interpretation is supported by the Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor, University of Paris I (OJ 1980, C 282, p. 1), according to which the exclusion of those questions from the scope of the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1), replaced between the Member States by Regulation No 593/2008, affects all the complex acts which are necessary to the creation of a company or firm and to the regulation of its internal organisation and winding-up, that is to say acts which fall within the scope of company law.
- 35 It follows that Regulation No 593/2008 is applicable in a situation such as that at issue in the main proceedings.
- 36 According to recital 7 of Regulation No 593/2008, the substantive scope and enacting terms of that regulation should be consistent with Regulation No 44/2001. In so far as that regulation was repealed and replaced by Regulation No 1215/2012, that objective of ensuring consistency also applies to that regulation.
- 37 In that regard, it must be noted that, as regards Article 24(1) of Regulation No 1215/2012, which provides for the exclusive jurisdiction of the courts of the Member State in which the property is situated in proceedings which have as their object rights *in rem* in immovable property or tenancies of immovable property, the Court has previously stated that that jurisdiction does not encompass all actions concerning rights *in rem* in immovable property, but only those which both come within the scope of that regulation and are actions which seek to determine the extent, content, ownership or possession of immovable property or the existence of other rights *in rem* therein and to provide the holders of those rights with protection for the powers which attach to their interest (judgments of 17 December 2015, *Komu and Others*, C-605/14, EU:C:2015:833, paragraph 26 and of 16 November 2016, *Schmidt*, C-417/15, EU:C:2016:881, paragraph 30).
- 38 In the light of those factors, and in so far as the action which gave rise to the dispute in the main proceedings does not fall within the scope of any of those actions, but is based on the rights of the association of property owners to payment of contributions relating to the maintenance of the communal areas of a building, that action must not be regarded as relating to a contract for a right *in rem* in immovable property, within the meaning of Article 4(1)(c) of Regulation No 593/2008.
- 39 As regards the concept of ‘services’, within the meaning of the second indent of Article 7(1)(b) of Regulation No 1215/2012, it follows from the settled case-law of the Court that that concept implies, at the least, that the party who provides the service carries out a particular activity in return for remuneration (judgments of 23 April 2009, *Falco Privatstiftung and Rabitsch*, C-533/07, EU:C:2009:257, paragraph 29; of 19 December 2013, *Corman Collins*, C-9/12, EU:C:2013:860, paragraph 37; of 10 September 2015, *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraph 57; of 15 June 2017, *Kareda*, C-249/16, EU:C:2017:472, paragraph 35, and of 8 March 2018, *Saey Home & Garden*, C-64/17, EU:C:2018:173, paragraph 38).
- 40 In the present case, the action before the national court seeks enforcement of an obligation to pay the contribution of the parties concerned to the charges for the building in which they own property, the amount of which was determined by the general meeting of the property owners.
- 41 Therefore, a dispute such as that at issue in the main proceedings must be regarded as having as its object not a right *in rem* in immovable property within the meaning of Article 4(1)(c) of Regulation No 593/2008, but the provision of services, within the meaning of Article 4(1)(b) of that regulation.
- 42 In those circumstances, the answer to the fourth question is that Article 4(1)(b) of Regulation No 593/2008 must be interpreted as meaning that a dispute, such as that at issue in the main proceedings, concerning a payment obligation resulting from a decision of a general meeting of the

owners of property in an apartment building, relating to the costs of maintaining the communal areas of that property, must be regarded as relating to a contract for the provision of services, within the meaning of that provision.

### **Costs**

- <sup>43</sup> 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 (First Chamber) hereby rules:

- 1. Article 7(1)(a) 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 dispute concerning a payment obligation arising from a decision taken by a general meeting of the owners of property in a building, which does not have legal personality and has been specifically established by law in order to exercise certain rights, — where that decision has been taken by a majority of members, but binds all members — must be regarded as falling within the concept of ‘matters relating to a contract’ within the meaning of that provision.**
- 2. Article 4(1)(b) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that a dispute, such as that at issue in the main proceedings, concerning a payment obligation resulting from a decision of a general meeting of the owners of property in an apartment building, relating to the costs of maintaining the communal areas of that property, must be regarded as relating to a contract for the provision of services, within the meaning of that provision.**

[Signatures]