



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

5 December 2019*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Article 7(1)(a) — Special jurisdiction in matters relating to a contract — Concept of ‘matters relating to a contract’ — Claim for payment of annual fees payable by a lawyer to a bar association)

In Case C-421/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal de première instance de Namur (Court of First Instance, Namur, Belgium), made by decision of 21 June 2018, received at the Court on 27 June 2018, in the proceedings

Ordre des avocats du barreau de Dinant

v

JN,

THE COURT (First Chamber),

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

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, and by F. Varrone, avvocato dello Stato,
- the Lithuanian Government, by R. Krasuckaitė and G. Taluntytė, acting as Agents,
- the European Commission, by M. Heller and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 July 2019,

gives the following

* Language of the case: French.

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).
- 2 The request has been made in proceedings between the Ordre des avocats du barreau de Dinant (Dinant Bar Association, Belgium) and JN concerning the non-payment by JN of annual professional fees payable to the association.

Legal context

European Union law

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

‘This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).’

- 4 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.’

- 5 Article 7 of Regulation No 1215/2012 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;

...’

Belgian law

- 6 The first paragraph of Article 428 of the code judiciaire (Belgian Judicial Code) provides:

‘No one may bear the title of lawyer or practise as a lawyer if he is not a Belgian national or a national of a Member State of the European Union, or if he does not hold a degree of doctor or licentiate of law, or if he has not taken the oath referred to in Article 429, and is not registered as a member of the Bar Association or as a trainee lawyer.’

- 7 The first paragraph of Article 443 of the Judicial Code provides:

‘The Council of the Bar Association can oblige the lawyers registered with the Bar Association, the lawyers practising under a professional title conferred by another Member State of the European Union, the trainee lawyers and the honorary lawyers to pay the contributions it determines.’

The dispute in the main proceedings and the question referred for a preliminary ruling

- 8 JN was admitted to the Dinant Bar and was registered with the Dinant Bar Association.
- 9 JN stated that he had, in the 1990s, taken up residence in France, while remaining registered with the Dinant Bar Association, to which he paid annual fees until 2012.
- 10 By a letter of 29 May 2015, the President of the Dinant Bar Association requested that JN pay the fees owed for the years 2013 to 2015, offered to reduce the amount of those fees to that of the insurance premiums paid by the bar association and to accept payments by instalments. It is apparent from that letter that registration with the bar association ‘confers not insignificant advantages in terms of insurance’ and that the fees payable to that association ‘are, in fact, essentially made up of insurance premiums’.
- 11 Having received no reply to that letter or any payment by JN, the Dinant Bar Association sent reminders to JN on 11 December 2015 and 21 December 2016.
- 12 No reply having been received to those reminders either, the Council of the Dinant Bar Association decided to instruct a lawyer of another Bar to recover the annual fees concerned.
- 13 By a letter of formal notice of 23 January 2017, that lawyer demanded that JN pay those fees.
- 14 In reply to that letter, JN indicated in a letter addressed to the Dinant Bar Association that, in view of the financial difficulties he was experiencing, he was unable to pay more than EUR 100 per month in respect of those fees.
- 15 No payment having been made by JN, however, the Dinant Bar Association issued a summons dated 17 May 2017 for JN to appear before the referring court, the tribunal de première instance de Namur (Court of First Instance, Namur, Belgium), seeking an order for payment by JN of the sum of EUR 7 277.70, together with interest and the costs and expenses of the proceedings.
- 16 By a letter of 16 May 2017 addressed to the President of the Dinant Bar Association, JN asked to be removed from the register of the bar association and to be allowed to spread his payments over a period of 24 months.
- 17 Before the referring court, JN disputed that court’s jurisdiction, on the basis of the provisions 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 (OJ 2001 L 12, p. 1) and of Regulation No 1215/2012.
- 18 The referring court states in that regard that, according to JN, registration with the bar association for the purposes of practising as a lawyer is not contractual in nature, since it does not constitute the conclusion of a contract arising from the exercise of free will and freedom of choice, but the accomplishment of an administrative formality and of a legal obligation.
- 19 The referring court also states that, on the other hand, according to the Dinant Bar Association, by maintaining his registration with that bar association, JN entered into a commitment vis-à-vis that bar association to pay the annual fees it determines, with the result that that commitment must be regarded as a commitment in matters relating to a contract, within the meaning of Article 7(1)(a) of Regulation No 1215/2012.

20 In those circumstances, the tribunal de première instance de Namur (Court of First Instance, Namur) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is the action brought by a Bar Association seeking an order that one of its members pay the annual professional fees owed to it a matter “relating to a contract” within the meaning of Article [7(1)(a) of Regulation No 1215/2012]?’

Consideration of the question referred

- 21 By its question, the referring court asks, in essence, whether Article 7(1)(a) of Regulation No 1215/2012 must be interpreted as meaning that an action by which a bar association seeks an order that one of its members pay the annual professional fees for which he or she is liable and which are essentially intended to finance insurance services is an action in ‘matters relating to a contract’, within the meaning of that provision.
- 22 As a preliminary point, it must be noted that, although certain actions between a public authority and a person governed by private law may come within the scope of Regulation No 1215/2012, it is otherwise where the public authority is acting in the exercise of its public powers (judgments of 11 April 2013, *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 33, and of 15 November 2018, *Kuhn*, C-308/17, EU:C:2018:911, paragraph 34). The exercise of public powers by one of the parties to the case, because it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals, excludes such a case from ‘civil and commercial matters’ within the meaning of Article 1(1) of that regulation (judgment of 28 February 2019, *Gradbeništvo Korana*, C-579/17, EU:C:2019:162, paragraph 49).
- 23 Consequently, a dispute concerning a lawyer’s obligation to pay the annual professional fees for which he or she is liable to the bar association to which he or she belongs comes within the scope of that regulation only if, in calling on that lawyer to perform that obligation, the bar association is not acting, under the national law applicable, in the exercise of public powers, which it is for the referring court to ascertain.
- 24 On the assumption that that is the case, it should be recalled that, 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 that 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 (judgment of 8 May 2019, *Kerr*, C-25/18, EU:C:2019:376, paragraph 21 and the case-law cited).
- 25 As regards the rule of special jurisdiction provided for, in matters relating to a contract, in Article 7(1)(a) of Regulation No 1215/2012, it should also be noted that the conclusion of a contract is not a condition for the application of that provision (judgment of 8 May 2019, *Kerr*, C-25/18, EU:C:2019:376, paragraph 23 and the case-law cited).
- 26 However, 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 application of that rule presupposes the establishment of a legal obligation freely consented to by one person towards another and on which the claimant’s action is based (judgment of 8 May 2019, *Kerr*, C-25/18, EU:C:2019:376, paragraphs 24 and 25 and the case-law cited).

- 27 According to the information provided by the referring court, however, under the first paragraph of Article 428 of the Belgian Judicial Code, registration as a member of the bar association is a requirement with which any person wishing to bear the title of lawyer and to practise as a lawyer must necessarily comply.
- 28 Furthermore, in accordance with the first paragraph of Article 443 of the Belgian Judicial Code, the Council of the Bar Association can oblige the lawyers registered with the bar association to pay the contributions it determines, so that when that body decides to use that legal power, payment of those contributions becomes mandatory for the persons concerned.
- 29 That situation must be distinguished from the situation at issue in the case giving rise to the judgment of 8 May 2019, *Kerr* (C-25/18, EU:C:2019:376), in which, in the case of an obligation of co-owners towards the association of property owners relating to the payment of annual financial contributions to the budget of the association of property owners for the maintenance of the communal areas of an apartment building, the Court ruled that, 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 such an obligation must be regarded as a legal obligation freely consented to (judgment of 8 May 2019, *Kerr*, C-25/18, EU:C:2019:376, paragraph 27).
- 30 It is true that, as in that case, it appears that the national legislature has conferred on a body, namely the Council of the Bar Association, the power to oblige individuals who have joined that association — in this instance, the lawyers registered with the bar association — to pay certain contributions, by following the association's internal procedures.
- 31 However, it is evident from the order for reference that registration with the bar association constitutes a legal obligation to which practising as a professional lawyer is subject, and that individuals wishing to practise that profession must be a member of a bar association and must comply with decisions taken by that association, notably as regards the payment of fees.
- 32 In those circumstances, Article 7(1)(a) of Regulation No 1215/2012 must be interpreted as meaning that an action by which a bar association seeks an order that one of its members pay the annual professional fees which he or she is obliged to pay is not, in principle, an action 'in matters relating to a contract', within the meaning of that provision.
- 33 However, it cannot be ruled out that, in addition to the relations imposed by law, a bar association may also establish contractual relations with its members. Thus, in so far as those fees constitute consideration for services freely consented to, including insurance services, which that bar association may have negotiated with a third party with a view to obtaining more advantageous terms for its lawyer members, the obligation to pay those fees would be of a contractual nature and, therefore, an action initiated with a view to ensuring that that obligation is performed would come within the scope of Article 7(1)(a) of Regulation No 1215/2012. It is for the referring court to ascertain whether that is the case in the dispute in the main proceedings.
- 34 Having regard to all of the above considerations, the answer to the question put is as follows:
- Article 1(1) of Regulation No 1215/2012 must be interpreted as meaning that a dispute concerning a lawyer's obligation to pay annual professional fees for which he or she is liable to the bar association to which he or she belongs comes within the scope of that regulation only if, in calling on that lawyer to perform that obligation, the bar association is not acting, under the national law applicable, in the exercise of public powers, which it is for the referring court to ascertain;

- Article 7(1)(a) of that regulation must be interpreted as meaning that an action by which a bar association seeks an order that one of its members pay the annual professional fees for which he or she is liable and which are essentially intended to finance services, such as insurance services, must be regarded as constituting an action in ‘matters relating to a contract’, within the meaning of that provision, provided that those fees constitute consideration for services provided by that bar association to its members and those services are freely consented to by the member concerned, which it is for the referring court to ascertain.

Costs

- ³⁵ 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:

Article 1(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 must be interpreted as meaning that a dispute concerning a lawyer’s obligation to pay annual professional fees for which he or she is liable to the bar association to which he or she belongs comes within the scope of that regulation only if, in calling on that lawyer to perform that obligation, the bar association is not acting, under the national law applicable, in the exercise of public powers, which it is for the referring court to ascertain.

Article 7(1)(a) of Regulation No 1215/2012 must be interpreted as meaning that an action by which a bar association seeks an order that one of its members pay the annual professional fees for which he or she is liable and which are essentially intended to finance services, such as insurance services, must be regarded as constituting an action in ‘matters relating to a contract’, within the meaning of that provision, provided that those fees constitute consideration for services provided by that bar association to its members and those services are freely consented to by the member concerned, which it is for the referring court to ascertain.

[Signatures]