



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

3 June 2021 *

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Determination of international jurisdiction of the courts of a Member State – Article 5(1) – Employee residing in a Member State – Contract concluded with a consular representation of that Member State in another Member State – Functions of the employee – No exercise of public powers)

In Case C-280/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski Rayonen sad (Sofia District Court, Bulgaria), made by decision of 27 May 2020, received at the Court on 25 June 2020, in the proceedings

ZN

v

Generalno konsultstvo na Republika Bulgaria v grad Valensia, Kralstvo Ispania,

THE COURT (Eighth Chamber),

composed of N. Wahl, President of the Chamber, F. Biltgen and J. Passer (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Bulgarian Government, by M. Georgieva and L. Zaharieva, acting as Agents,
- the Czech Government, by M. Smolek, J. Vláčil and I. Gavrilova, acting as Agents,
- the European Commission, by M. Heller and G. Koleva, acting as Agents,

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

* Language of the case: Bulgarian.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 5(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 (OJ 2012 L 351, p. 1), read in conjunction with recital 3 of that regulation.
- 2 The request has been made in proceedings between ZN and the Generalno konsulstvo na Republika Bulgaria v grad Valensia, Kralstvo Ispania (Consulate General of the Republic of Bulgaria in Valencia (Spain); ‘the Consulate General’) concerning an application for payment of compensation in lieu of paid annual leave not taken.

Legal context

European Union law

- 3 Recitals 3 to 5 and 15 of Regulation No 1215/2012 read as follows:
 - ‘(3) The [European] Union has set itself the objective of maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
 - (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.
 - (5) Such provisions fall within the area of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty on the Functioning of the European Union (TFEU).
- ...
- (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.’

4 Article 1(1) of that regulation provides:

‘1. 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*).

...’

5 Article 5(1) of that regulation provides:

‘Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.’

6 Article 7(1) of that regulation is worded as follows:

‘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.’

7 Section 5 of that regulation governs jurisdiction over individual contracts of employment. Thus, under Article 20 of that regulation, included in that section:

‘(1) In matters relating to individual contracts of employment, jurisdiction shall be determined by this 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.

(2) Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.’

8 Under Article 21 of that regulation, also included in that section:

‘(1) An employer domiciled in a Member State may be sued:

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

(b) in another Member State:

- (i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or

(ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

(2) An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.'

Bulgarian law

Employment Code

9 Article 362 of the Kodeks na truda (Employment Code) provides:

'... Employment disputes between employees – who are Bulgarian nationals working abroad – and Bulgarian employers abroad shall be subject to the court with jurisdiction in Sofia, whereas, where the employee is a defendant, [those conflicts are subject] to the court with jurisdiction in the employee's place of residence in Bulgaria.'

The Law on Diplomatic Services

10 Article 21 of the Zakon za diplaticheskata sluzhba (Law on Diplomatic Services) provides:

'(1) ... Representations abroad of the Republic of Bulgaria are territorial structural units of the Ministry of Foreign Affairs, which carry out diplomatic and/or consular activities in another State or in respect of international governmental organisations.

(2) Representations abroad are:

1. embassies;
2. permanent representations and permanent delegations to international government organisations;
3. consulates general, consulates, vice-consulates and consular agencies;
4. diplomatic offices and liaison offices;
5. special missions within the meaning of the Convention on Special Missions adopted on 8 December 1969 ... by the United Nations General Assembly.

(3) Representations abroad shall be opened, classified by type and closed by the Council of Ministers on the recommendation of the Minister for Foreign Affairs.'

11 Article 22 of the Law on Diplomatic Services provides:

'(1) Representation abroad shall consist of the Head of Mission, diplomatic staff, administrative and technical staff and members of service staff within the meaning of the Vienna Convention on Diplomatic Relations adopted on 18 April 1961 in Vienna ..., the Vienna Convention on Consular Relations adopted in Vienna on 24 April 1963 ... and the Convention on Special Missions.

(2) Offices may be established in a representation abroad by type, function and staffing.

...'

12 Article 80 of that law is worded as follows:

'With the written consent of the Minister for Foreign Affairs, granted on the basis of a reasoned report, the Head of Mission of the representation abroad may conclude an employment contract with a local resident.'

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

13 ZN is a Bulgarian national residing in Sofia who holds a permit to reside in Spain, where she provided services relating to the activity of the Consulate General.

14 On 30 April 2019, ZN brought an action in Bulgaria against the Consulate General seeking, first, recognition of her employment relationship and, second, payment of compensation in lieu of paid annual leave not taken, that is 120 days of unused annual leave corresponding to 30 days per annum, for the period from 2 January 2013 to 29 June 2017.

15 ZN submits that, during that period, she provided services concerning the receipt of documents in files opened at the consulate by Bulgarian nationals and the handling of those files in accordance with six successive contracts concluded with the Consulate General.

16 ZN claims that, in accordance with the Law on Diplomatic Services, representations of the Republic of Bulgaria may employ persons only on the basis of contracts of employment which formalise the relationship between the employer and the employee. In that regard, she states that the contracts concluded satisfy the requirements concerning the content of a contract of employment under Bulgarian law.

17 The Consulate General, for its part, contests the jurisdiction of the Bulgarian courts to rule on the dispute in the main proceedings and invokes the jurisdiction of the Spanish courts as the courts of ZN's place of employment.

18 The referring court has doubts as to the existence of cross-border implications in so far as the dispute at issue in the main proceedings concerns a Bulgarian employee and a Bulgarian employer, and the fact that their legal relationship is closely connected with the Republic of Bulgaria.

19 In addition, the referring court notes that Bulgarian law expressly provides that, in the case of contracts concluded between a Bulgarian employer established abroad and a Bulgarian national working abroad, any disputes may be examined only by the Bulgarian courts. Since the Consulate General is a subdivision of a Bulgarian state body established in another Member State and its activities are, in principle, linked to the service of Bulgarian nationals, Regulation No 1215/2012 does not apply to disputes between nationals of one Member State and consular representations of the same Member State established in another Member State.

20 In those circumstances, the Sofiyski Rayonen sad (Sofia District Court, Bulgaria) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Is Article 5(1) of Regulation (EU) No 1215/2012, in conjunction with recital 3 thereof, to be interpreted as meaning that the regulation applies for the purpose of determining the international jurisdiction of the courts of a Member State to adjudicate in a dispute between a worker from that Member State and the consular service of that Member State in the sovereign territory of another Member State? Or should those provisions be interpreted as meaning that the national jurisdictional rules of the Member State of which both parties are nationals apply to such a dispute?’

Consideration of the question referred

21 By its question, the referring court asks, in essence, whether Article 5(1) of Regulation No 1215/2012, read in conjunction with recital 3 of that regulation, must be interpreted as meaning that it applies for the purposes of determining the international jurisdiction of the courts of a Member State to hear a dispute between an employee from one Member State and a consular authority of that Member State situated in the territory of another Member State.

22 In order to answer the question referred for a preliminary ruling, which concerns Article 5(1) of Regulation No 1215/2012, read in conjunction with recital 3 of that regulation, it must be determined whether Regulation No 1215/2012 is applicable to the situation which gave rise to the dispute in the main proceedings.

23 In that regard, it is necessary to examine, in the first place, whether the dispute in the main proceedings falls within the scope of Regulation No 1215/2012 as a ‘civil and commercial matter’ within the meaning of Article 1(1) of that regulation.

24 Since Regulation No 1215/2012 replaces 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), 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 16 November 2016, *Schmidt*, C-417/15, EU:C:2016:881, paragraph 26 and the case-law cited).

25 In that regard, it should be noted that, pursuant to the first sentence of Article 1(1) of Regulation No 44/2001, that regulation is to apply in civil and commercial matters. The interpretation of the concept of ‘civil and commercial matters’ has resulted in the exclusion of certain judicial decisions from the scope of that regulation, by reason either of the legal relationships between the parties to the action or of the subject matter of the action (see, to that effect, judgment of 28 April 2009, *Apostolides*, C-420/07, EU:C:2009:271, paragraph 42 and the case-law cited).

26 The Court has thus found 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. 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 Regulation No 1215/2012 (see, judgment of 28 February 2019, *Gradbeništvo Korana*, C-579/17, EU:C:2019:162, paragraph 49 and the case-law cited).

- 27 As regards a dispute between an embassy of a third State situated in a Member State and its employees, the Court has found that the functions of an embassy, as is apparent from Article 3 of the Vienna Convention on Diplomatic Relations, concluded in Vienna on 18 April 1961, consist essentially in representing the sending State, protecting the interests of the sending State and promoting relations with the receiving State. In the exercise of those functions, the embassy, like any other public entity, can act *jure gestionis* and acquire rights and obligations of a civil nature, in particular as a result of concluding private law contracts. That is the case where it concludes contracts of employment with persons who do not perform duties which fall within the exercise of public powers (judgment of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 49).
- 28 That is also particularly the case where there is a dispute involving a Consulate General and a person who provides individual services there in connection with the receipt of documents in files opened at the consulate by Bulgarian nationals and the management of those files, services which do not fall within the exercise of public powers and which do not risk interfering with the security interests of the Republic of Bulgaria (see, to that effect, judgment of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 56).
- 29 Consequently, a dispute arising from a contract such as that at issue in the main proceedings may fall within the scope of Regulation No 1215/2012 as a civil and commercial matter. It is nevertheless for the referring court to determine whether that is the case in the light of all the facts of the case in the main proceedings.
- 30 As regards, in the second place, the international aspect whose existence is a condition for the applicability of that regulation, it should be noted that, while Regulation No 1215/2012 uses, in recitals 3 and 26, the term ‘cross-border disputes’, it contains no definition in that regard.
- 31 However, Article 3(1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ 2006 L 399, p. 1) defines the equivalent concept of a ‘cross-border dispute’ as a dispute in which at least one of the parties is domiciled or habitually resident in a Member State other than that of the court seised (judgment of 7 May 2020, *Parking and Interplastics*, C-267/19 and C-323/19, EU:C:2020:351, paragraph 33).
- 32 Since those two regulations both relate to judicial cooperation in civil matters having cross-border implications, it is necessary to harmonise the interpretation of the equivalent concepts used by the EU legislature in those areas (judgment of 7 May 2020, *Parking and Interplastics*, C-267/19 and C-323/19, EU:C:2020:351, paragraph 35).
- 33 On the basis of Article 3(1) of that regulation, the Court has found that, in so far as the applicant in an order for payment procedure has its registered office in a Member State other than that in which the court seised is situated, the dispute is of a cross-border nature and therefore falls within the scope of Regulation No 1896/2006 (judgment of 7 May 2020, *Parking and Interplastics*, C-267/19 and C-323/19, EU:C:2020:351, paragraph 34 and the case-law cited).

- 34 In that regard, it should be noted, as regards contracts of employment concluded by an embassy on behalf of the State, that the embassy is an ‘establishment’ within the meaning of Article 18(2) of Regulation No 44/2001 where the functions of the employees with whom it has concluded those contracts are connected with the management activity carried out by the embassy in the receiving State (judgment of 19 July 2012, *Mahamdia*, C-154/11, EU:C:2012:491, paragraph 52).
- 35 That conclusion applies all the more so where the employment contract is concluded not by an embassy but by a Consulate General, provided that the conditions set out in paragraph 48 of the judgment of 19 July 2012, *Mahamdia* (C-154/11, EU:C:2012:491) are met.
- 36 By analogy, it must be found that the Consulate General constitutes an ‘establishment’ for the purposes of Regulation No 1215/2012, since it satisfies the criteria laid down by the Court’s case-law. More specifically, as a territorial structural unit of the Ministry of Foreign Affairs, the Consulate General has the appearance of permanency, as the extension of that Ministry. The Consulate General represents the Ministry in the receiving State; it is run by the Consul General and is capable of independently assuming rights and obligations under civil law. It follows that a consulate may be perceived as a centre of operations, in accordance with what has been found in paragraphs 49 and 50 of the judgment of 19 July 2012, *Mahamdia* (C-154/11, EU:C:2012:491).
- 37 It follows from the foregoing that, since a consulate is an ‘establishment’ of one Member State in another Member State, one of the parties to the dispute must be considered to be domiciled or habitually resident in a Member State other than that of the court seised.
- 38 In that regard, it must be borne in mind that the contracts for the provision of services at issue in the main proceedings were concluded in Spain and it was in that Member State that the obligations imposed by those contracts were performed.
- 39 In the light of the foregoing, it must be concluded that the dispute in the main proceedings has cross-border implications.
- 40 In so far as the question referred for a preliminary ruling is limited to the application of Regulation No 1215/2012 and does not concern the determination of the jurisdiction of the Bulgarian or Spanish courts in the present case, it will be for the referring court to draw the conclusions in the light of the application of Article 362 of the Bulgarian Employment Code.
- 41 In those circumstances, the answer to the question referred is that Article 5(1) of Regulation No 1215/2012, read in conjunction with recital 3 of that regulation, must be interpreted as meaning that it applies for the purposes of determining the international jurisdiction of the courts of a Member State to hear and rule on a dispute between an employee from a Member State who does not carry out duties involving the exercise of public powers and a consular authority of that Member State situated in the territory of another Member State.

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 (Eighth Chamber) hereby rules:

Article 5(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, read in conjunction with recital 3 of that regulation, must be interpreted as meaning that it applies for the purposes of determining the international jurisdiction of the courts of a Member State to hear and rule on a dispute between an employee from a Member State who does not carry out duties involving the exercise of public powers and a consular authority of that Member State situated in the territory of another Member State.

[Signatures]