



## Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

3 February 2022\*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Second indent of Article 7(1)(b) – Special jurisdiction in matters relating to a contract – Concept of ‘place of performance of the obligation in question’ – Contract for the provision of services – Air transport – Flight consisting of a confirmed single booking and performed in several legs by two separate air carriers – Regulation (EC) No 261/2004 – Common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights – Article 7 – Right to compensation – Delay on the first leg of the journey – Claim for compensation brought against the air carrier operating that first leg of the journey before the court for the place of arrival of that first flight)

In Case C-20/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany), made by decision of 26 November 2020, received at the Court on 13 January 2021, in the proceedings

**JW,**

**HD,**

**XS**

v

**LOT Polish Airlines,**

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, J.-C. Bonichot and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

\* Language of the case: German.

after considering the observations submitted on behalf of:

- XS, HD, JW, by J.-C. Woicke, Rechtsanwalt,
- LOT Polish Airlines, by C. Hess, Rechtsanwältin,
- the European Commission, by M. Heller and S. Noë, acting as Agents,

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

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of the second indent of Article 7(1)(b) 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 three passengers, JW, HD and XS, and LOT Polish Airlines concerning the payment of compensation in respect of a delayed flight.

### **Legal context**

#### ***Regulation No 1215/2012***

- 3 Recitals 15 and 16 of Regulation No 1215/2012 state:
  - ‘(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. ...’
- 4 Article 4(1) of that regulation, in Section 1 of Chapter II thereof, under the heading ‘General provisions’, is worded 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, in Section 2 of Chapter II thereof, entitled ‘Special jurisdiction’, 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;
- (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;

...

...’

***Regulation (EC) No 261/2004***

6 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 (OJ 2004 L 46, p. 1), entitled ‘Right to compensation’, provides, in paragraph 1 thereof:

‘Where reference is made to this Article, passengers shall receive compensation amounting to:

- (a) EUR 250 for all flights of 1 500 kilometres or less;
- (b) EUR 400 for all intra-Community flights of more than 1 500 kilometres, and for all other flights between 1 500 and 3 500 kilometres;
- (c) EUR 600 for all flights not falling under (a) or (b).

In determining the distance, the basis shall be the last destination at which the denial of boarding or cancellation will delay the passenger’s arrival after the scheduled time.’

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

7 The applicants in the main proceedings made a single booking with Lufthansa AG for a flight, scheduled for 27 April 2019, from Warsaw (Poland) to Malé (Maldives) with a connection in Frankfurt am Main (Germany).

- 8 The first leg of that flight, from Warsaw to Frankfurt am Main, was operated by LOT Polish Airlines. Due to delayed departure, the applicants in the main proceedings landed late in Frankfurt-am-Main and missed their connecting flight to Malé, operated by Lufthansa. They only reached their final destination, Malé, after a delay of more than four hours.
- 9 The applicants in the main proceedings requested, on the basis of Regulation No 261/2004, that the Amtsgericht Frankfurt (Local Court, Frankfurt, Germany) order LOT Polish Airlines to pay each of them compensation of EUR 600, since the distance between Warsaw and Malé is more than 3 500 kilometres, and to reimburse their legal costs.
- 10 By judgment of 29 April 2020, that court rejected that request as inadmissible on the ground that, having regard to the provisions of Regulation No 1215/2012, as interpreted by the Court, it did not have jurisdiction to hear the dispute, since neither the place of departure nor the place of arrival of the flight provided for in the contract of carriage concerned was located within its jurisdiction.
- 11 The applicants in the main proceedings brought an appeal against that judgment before the referring court, the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main, Germany). According to the applicants, the court of first instance may base its international jurisdiction on Article 7(1)(b) of Regulation No 1215/2012. The fact that Warsaw and Malé constitute places of performance of the obligation arising from that contract of carriage does not preclude the existence of other places which may also be classified as places of performance of that obligation within the meaning of that provision.
- 12 The referring court considers that the Amtsgericht Frankfurt (Local Court, Frankfurt) has international jurisdiction to decide the dispute before it, under Article 7(1)(b) of Regulation No 1215/2012, only if the place of arrival of the first leg of the journey concerned, that is to say Frankfurt am Main, could be classified as a ‘place of performance’ of the obligation arising from the contract of carriage in question.
- 13 In those circumstances, the Landgericht Frankfurt am Main (Regional Court, Frankfurt am Main) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 7(1)(b) of Regulation [No 1215/2012] be interpreted as meaning that the place of performance, within the meaning of that provision, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into two or more legs, can also be the place of arrival of the first leg of the journey where transport on those legs of the journey is performed by two separate air carriers and the claim for compensation brought on the basis of Regulation [No 261/2004] arises from the delay of the first leg of the journey and is brought against the operating air carrier of that first leg?’

### **Consideration of the question referred**

- 14 By its question, the referring court asks, in essence, whether the second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into two or more legs on which transport is performed by separate air carriers, where a claim for compensation, brought on the

basis of Regulation No 261/2004, arises from a delay of the first leg of the journey caused by a late departure and is brought against the air carrier operating that first leg, the place of arrival of that first leg can also be classified as a ‘place of performance’ within the meaning of that provision.

- 15 As a preliminary point, it should be stated that the action in the main proceedings falls within the concept of ‘matters relating to a contract’ within the meaning of Article 7(1)(a) of Regulation No 1215/2012. As regards the interpretation of Article 5(1)(a) 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), which can be applied to the corresponding provisions of Regulation No 1215/2012, as set out in Article 7(1)(a) thereof, the Court held that the concept of ‘matters relating to a contract’ covers a claim brought by air passengers for compensation for the long delay of a connecting flight, made under Regulation No 261/2004, against an operating air carrier with which the passenger concerned does not have contractual relations (judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 65), which applies in the present case to LOT Polish Airlines.
- 16 Under Article 7(1)(a) of Regulation No 1215/2012, in matters relating to a contract, a person domiciled in a Member State may be sued in another Member State in the courts for the place of performance of the obligation in question. For the purposes of the application of that provision, the second indent of Article 7(1)(b) of that regulation states that, unless otherwise agreed, as regards the provision of services, that place is the place in a Member State where, under the contract, the services were provided or should have been provided.
- 17 It is apparent from the case-law of the Court that, where there are several places at which services are provided in different Member States, the place of performance must, in principle, be understood as the place with the closest connecting factor between the contract and the court having jurisdiction, which, as a general rule, will be at the place of the main provision of services. That place must be deduced, as far as possible, from the provisions of the contract itself (judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 67 and the case-law cited).
- 18 In that regard, in relation to a direct flight operated between two Member States by the airline with which the passenger concerned has a contractual relationship, the Court has held that the place of arrival and the place of departure of the aircraft must be considered, in the same respect, as the place of provision of the services which are the subject of an air transport contract, so that the court having jurisdiction, under the second indent of Article 7(1)(b) of Regulation No 1215/2012, to deal with a claim for compensation founded on that transport contract and on Regulation No 261/2004 is that, at the applicant’s choice, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in that contract (see, to that effect, judgment of 9 July 2009, *Rehder*, C-204/08, EU:C:2009:439, paragraphs 43 and 47).
- 19 In furtherance of that case-law, as regards a flight with a connection, consisting of a confirmed single booking for the entire journey and divided into several legs on which transport is performed by two different air carriers, the Court has also held that the ‘place of performance’, within the meaning of that provision, can be both the place of departure of the first leg of the journey (order of 13 February 2020, *flightright*, C-606/19, EU:C:2020:101, paragraph 36) and the place of arrival of the last leg of the journey (judgment of 7 March 2018, *flightright and Others*, C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 73), and that is regardless of

whether the claim for compensation brought on the basis of Regulation No 261/2004 is brought against the air carrier operating the leg in question or against the air carrier with which the passenger concerned has a contractual relationship but which is not the air carrier operating that leg.

- 20 In the present case, it is apparent from the order for reference that the claim for compensation was brought solely on account of the delayed departure from the place of departure for the first leg of the journey concerned by the contract of carriage by air at issue in the main proceedings. That place corresponds to one of the main places of provision of the services which are the subject of that contract and therefore ensures the close connecting factor required by the rules of special jurisdiction set out in Article 7(1) of Regulation No 1215/2012 between that contract and the court which has territorial jurisdiction over that place.
- 21 However, the referring court asks whether the place of landing of that first leg of the journey could justify its jurisdiction under the second indent of Article 7(1)(b) of Regulation No 1215/2012.
- 22 In that regard, it should be noted that, as has been recalled in paragraph 17 of the present judgment, where there are several places at which services are provided in different Member States, the place with the closest connecting factor between the contract concerned and the court having jurisdiction is, in particular, the place where, pursuant to that contract, the main provision of services is to be carried out (see, to that effect, judgment of 9 July 2009, *Rehder*, C-204/08, EU:C:2009:439, paragraph 38).
- 23 It is clear from that case-law and, in particular, from the use of the term ‘in particular’, that the places of the main provision of services, identified as being both the initial place of departure and the place of the final destination of a journey, are only a non-exhaustive illustration of the places where such a connecting factor could materialise. It cannot be ruled out from the outset that, in the light of the specific terms of a contract of carriage by air, services other than those provided at the initial place of departure and the place of the final destination of a journey may, where appropriate, justify the jurisdiction of courts other than the courts which have territorial jurisdiction over those places, that is to say, the courts at the transit location, to deal with a claim for compensation brought on the basis of Regulation No 261/2004.
- 24 In the present case, the referring court does not indicate the elements of the contract which could justify, with a view to the efficacious conduct of proceedings, the existence of a sufficiently close link between the facts of the dispute in the main proceedings and its jurisdiction. In the absence of such information, the ‘place of performance’ within the meaning of the second indent of Article 7(1)(b) of Regulation No 1215/2012 can therefore be the place of departure of the first leg of the journey as one of the places of the main provision of services that are the subject of the contract of carriage by air at issue in the main proceedings.
- 25 That conclusion satisfies the objectives of proximity and sound administration of justice, referred to in recital 16 of Regulation No 1215/2012, since the Court has already held that, in respect of a flight with a connection consisting of a confirmed single booking for the entire journey, including several legs, the place of departure of the first leg of the journey ensures the close connecting factor required by the rules of special jurisdiction set out in Article 7(1) of Regulation No 1215/2012 between the contract of carriage by air and the court or tribunal having jurisdiction (see, to that effect, order of 13 February 2020, *flightright*, C-606/19, EU:C:2020:101, paragraph 31).

- 26 This is also consistent with the principle of predictability of the rules of jurisdiction laid down by Regulation No 1215/2012, since it enables both the applicant and the defendant to identify the courts or tribunals for the place of departure of the first leg, as it appears in the contract of carriage by air, as the courts or tribunals before which a claim for compensation may be brought under Regulation No 261/2004.
- 27 In the light of all the foregoing considerations, the answer to the question referred is that the second indent of Article 7(1)(b) of Regulation No 1215/2012 must be interpreted as meaning that, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into two or more legs on which transport is performed by separate air carriers, where a claim for compensation, brought on the basis of Regulation No 261/2004, arises exclusively from a delay of the first leg of the journey caused by a late departure and is brought against the air carrier operating that first leg, the place of arrival for that first leg may not be classified as a ‘place of performance’ within the meaning of that provision.

### **Costs**

- 28 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 (Ninth Chamber) hereby rules:

**The second indent of Article 7(1)(b) 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, in respect of a flight consisting of a confirmed single booking for the entire journey and divided into two or more legs on which transport is performed by separate air carriers, where a claim for compensation, brought on the basis 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, arises exclusively from a delay of the first leg of the journey caused by a late departure and is brought against the air carrier operating that first leg, the place of arrival for that first leg may not be classified as a ‘place of performance’ within the meaning of that provision.**

[Signatures]