Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 29 June 2023 [1]

Case C-497/22

EM
v
Roompot Service BV

(Request for a preliminary ruling from the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany))

(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 – Exclusive jurisdiction – First subparagraph of Article 24(1) – Disputes regarding tenancies of immovable property – Booking of a bungalow located in a holiday park – Short-term letting or making available concluded between a private individual and a tourism professional operating that park – Further services)

I. Introduction

1. This request for a preliminary ruling concerns the interpretation of the first subparagraph of Article 24(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. [2]

2. The request has been made in proceedings between EM, domiciled in Germany, and Roompot Service BV, which has its registered office in the Netherlands and operates a holiday park comprising tourist accommodation, situated in that Member State, in respect of the repayment of the price paid for the short-term letting of one of the bungalows in that park, plus interest and costs.

3. I will set out the reasons why I consider, principally, that the dispute concerns a complex contract which, therefore, does not fall within the exclusive jurisdiction envisaged by Regulation No 1215/2012 in relation to tenancies of immovable property. In the alternative, if the Court of Justice were to find that the contract at issue falls within the scope of the first subparagraph of Article 24(1) of that regulation, I would be of the opinion that the claim in the main proceedings relates to that contract and also falls within the scope of that provision.

[1] Original language: French.

[2] OJ 2012 L 351, p. 1.

II. Legal context

4. Section 6 of Chapter II of Regulation No 1215/2012, entitled 'Exclusive jurisdiction', states as follows in Article 24(1):

'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.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State'.

III. The facts in the main proceedings and the question referred for a preliminary ruling

5. On 23 June 2020, EM, who is domiciled in Germany, made a booking via the internet on the website of Roompot Service, [3] which has its registered office in the Netherlands, for a bungalow at the 'Waterpark Zwartkruis' holiday park, [4] situated at Noardburgum in that Member State, for the period from 31 December 2020 to 4 January 2021 and for a group of nine people who were members of more than two different households.

6. The booking was for a rental price of EUR 1 902.80, which EM paid in full, and included the provision of bed linen and cleaning at the end of the stay.

7. Waterpark Zwartkruis is a water park with bungalows located directly on a lake, each with a separate jetty. Boats and canoes can be hired for an additional charge.

8. Roompot Service informed EM by email, prior to arrival and at her request, that Waterpark Zwartkruis was open during the period of her booking despite the COVID-19 pandemic, but that, due to the laws in the Netherlands, it was only possible for her to stay in the accommodation with her family and a maximum of two people from another household in one bungalow. She was also offered the opportunity to rebook her stay for a later date.

9. EM did not stay at the accommodation and did not rebook her stay. She was repaid the amount of EUR 300 by Roompot Service.

10. EM brought an action against Roompot Service before the Amtsgericht Neuss (Local Court, Neuss, Germany) seeking repayment of the remainder of the rental price, in the amount of EUR 1 602.80, plus interest and costs. Roompot Service contested the international jurisdiction of the German courts. That action was dismissed as unfounded by judgment delivered on 1 October 2021.

[3] German-language website: www.roompot.de.

[4] 'Waterpark Zwartkruis'.

11. EM lodged an appeal before the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany), which questions the exclusive international jurisdiction of the courts of the Netherlands to hear the main proceedings, in accordance with the first subparagraph of Article 24(1) of Regulation No 1215/2012.

12. That court states that it is clear from the three relevant decisions of the Court of Justice concerning the letting of holiday homes abroad, interpreting Article 16(1) of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[5] the content of which has remained essentially the same in Regulation No 1215/2012 – namely judgments of 15 January 1985, *Rösler*,[6] of 26 February 1992, *Hacker*,[7] and of 27 January 2000, *Dansommer*,[8] – that these contracts are, in principle, subject to the exclusive jurisdiction of the courts of the place where the property in question is located. According to the Court, an exception could only be made where the contract was complex in nature in that it concerned a range of services provided in return for a lump sum paid by the customer.[9]

13. That court noted, first, that in the present case other services were the offer on Roompot Service's internet page, under the heading 'information and advice', of different bungalows with different facilities, the booking made for EM, reception at the destination and the handing over of the keys, the provision of bed linen and the carrying out of cleaning at the end of the stay. According to its understanding of the Court's case-law, these services, taken as a whole, must have sufficient weight to give the contract a complex character.

14. Secondly, according to the view taken by some authors in the German legal literature, minor ancillary services, such as the maintenance or cleaning of the property, the changing of linen or the reception at the destination are of lesser importance, such that the additional services at issue in the main proceedings are not sufficient to establish the existence of a complex contract.

15. The referring court also pointed out that the Bundesgerichtshof (Federal Court of Justice, Germany) has given a different reading to the Court's judgments.[10] Based on the judgment in *Hacker* and the judgment in *Dansommer*, the referring court held that the determination of jurisdiction on the basis of the first subparagraph of Article 24(1) of Regulation No 1215/2012 depends solely on whether the professional tour operator is obliged to make available the use of a holiday home owned by a third party. In such a situation, this provision would not apply. On the other hand, if the professional tour operator merely acts as an intermediary in a lease concluded with the owner, the above provision would apply.

16. The referring court is questioning whether this interpretation is compatible with the case-law of the Court of Justice.

5 Convention signed in Brussels on 27 September 1968 (OJ 1972 L 299, p. 32), as amended by the successive conventions on the accession of new Member States to that convention (OJ 1998 C 27, p. 1) ('the Brussels Convention').

6 241/83; 'the judgment in *Rösler*'; EU:C:1985:6.

7 C-280/90; 'the judgment in *Hacker*'; EU:C:1992:92.

8 C-8/98; 'the judgment in *Dansommer*'; EU:C:2000:45.

9 See point 27 of this Opinion.

10 To my knowledge, the referring court makes reference to the judgments of 23 October 2012, *X ZR* 157/11 (paragraph 11 et seq.), and of 28 May 2013, *X ZR* 88/12 (paragraph 8 et seq.).

17. In those circumstances, the Landgericht Düsseldorf (Regional Court, Düsseldorf) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must the first [subparagraph] of Article 24(1) of Regulation [No 1215/2012] be interpreted as meaning that a contract which is concluded between a private individual and a commercial lessor of holiday homes in relation to the short-term letting of a bungalow in a holiday park operated by the lessor, and which provides for cleaning at the end of the stay and the provision of bed linen as further services in addition to the mere letting of the bungalow, is subject to the exclusive jurisdiction of the State in which the rented property is situated, irrespective of whether the holiday bungalow is owned by the lessor or by a third party?'

18. Written observations were submitted by EM and the European Commission.

IV. Analysis

19. In essence, the referring court is asking about the relevant criteria to be taken into consideration in order to classify a contract relating to the short-term use of a bungalow in a holiday park as a tenancy of immovable property, within the meaning of the first subparagraph of Article 24(1) of Regulation No 1215/2012, or as a complex contract relating to a package of services.

20. The provisions of the first subparagraph of Article 24(1) of that regulation are equivalent to those of paragraph 1 of Article 16 (now paragraph 1(a))[11] of the Brussels Convention and the first subparagraph of Article 22(1) of Regulation (EC) No 44/2001,[12] such that the interpretation given by the Court of Justice with regard to the latter provisions also applies to the interpretation of the former.[13]

21. It should be noted that, according to the Court's settled case-law:

– as regards the objective pursued by those provisions, the essential reason for conferring exclusive jurisdiction on the courts of the Member State in which the immovable property is situated is that the courts of the *locus rei sitae* are the best placed, for reasons of proximity, to ascertain the facts satisfactorily and to apply the rules and practices which are generally those of the State in which the property is situated; and

– as regards tenancies of immovable property, exclusive jurisdiction is justified by the complexity of the relationship of landlord and tenant, which comprises a series of rights and obligations in addition to that relating to rent. That relationship is governed by special legislative provisions, some of a mandatory nature, of the State in which the immovable property which is the subject of the lease is situated, for example, provisions determining who is responsible for maintaining the property and paying land taxes, provisions governing the duties of the occupier of the

[11] See point 23 of this Opinion.

[12] Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

[13] See, in particular, judgment of 20 June 2022, *London Steam-Ship Owners' Mutual Insurance Association* (C-700/20, EU:C:2022:488, paragraph 42).

property as against the neighbours, and provisions controlling or restricting the landlord's right to retake possession of the property on expiry of the lease. [14]

22. In accordance with Article 25(4) of Regulation No 1215/2012, this exclusive jurisdiction may not be derogated from by agreement.

23. The determination of the jurisdiction of national courts in relation to the letting of holiday accommodation has been the subject of three judgments of the Court of Justice, namely the judgments in *Rösler*, *Hacker* and *Dansommer*, [15] and two legislative amendments. [16] These have created a derogation from the exclusive jurisdiction provided for in the first subparagraph of Article 24(1) of that regulation where both parties to the dispute are domiciled in the same Member State. [17] It should be noted, however, that the legislative amendment that introduced a second subparagraph into Article 24(1) of that regulation is not entirely consistent, as far as leases of such accommodation are concerned, with the justification for the rule of principle that the Court of Justice sought to establish and that was recalled in point 21 of this Opinion. [18]

24. This is therefore the regime that has been applicable to short-term tourist lets for almost 20 years, without any new difficulties of interpretation having been brought to the Court's attention to date by the national courts.

25. It follows from the case-law of the Court of Justice that the application of the first subparagraph of Article 24(1) of Regulation No 1215/2012 assumes that two conditions are met. First, the dispute must relate to a contract for the letting of immoveable property within the meaning of that provision. Second, if this is the case, the dispute must concern the rights and obligations arising from that contract. If the first condition is not met, there is no need to examine the second.

A. The classification of the contract

26. It emerges from the Court's two most recent rulings, the judgments in *Hacker* and *Dansommer*, that classification as a tenancy requires the absence of services ancillary to the principal obligation relating to the use of holiday accommodation. [19]

27. The questions raised by the referring court arise from the assessment of the contractual obligations in the main proceedings in comparison with those in the judgment in *Hacker*. They are set out in paragraph 31 of the judgment in *Dansommer* in the following terms: 'The contract

[14] See, in particular, judgments in *Rösler* (paragraphs 19 and 20) and of 25 March 2021, *Obala i lučice* (C-307/19, EU:C:2021:236, paragraphs 77 and 78 and the case-law cited).

[15] These judgments are summarised by the referring court in its reference for a preliminary ruling. See point 12 of this Opinion.

[16] See also, on the amendment of the rules on jurisdiction in respect of contracts concluded by consumers made after the judgment in *Hacker*, Article 15(3), *in fine*, of Regulation No 44/2001 and Article 17(3), *in fine*, of Regulation No 1215/2012.

[17] See the second subparagraph of Article 24(1) on tenancies of less than six months (see point 4 of this Opinion), which allows the defendant to be brought before a court in the Member State in which he or she is domiciled. This does not apply in the present case. The domicile of EM and the registered office of Roompot Service are not located in the same Member State. On the background to the addition of that subparagraph to the Brussels Convention after the judgment in *Rösler*, see Gaudemet-Tallon, H. and Ancel, M.-E., *Compétence et exécution des jugements en Europe, Règlements 44/2001 et 1215/2012, Conventions de Bruxelles (1968) et de Lugano (1998 et 2007)*, 6th ed., Librairie générale de droit et de jurisprudence, collection 'Droit des affaires', Paris, 2018, paragraphs 112 to 114, pp. 152 to 154.

[18] On the consequences of the parties' failure to choose the applicable law, see Article 4(1)(d) 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).

[19] See the judgment in *Dansommer* (paragraphs 30 to 35). See also judgment of 10 February 2022, *ShareWood Switzerland* (C-595/20, EU:C:2022:86, paragraphs 32 and 33 and the case-law cited).

at issue in [the case which gave rise to the judgment in *Hacker*] had been concluded between a professional travel organiser and its customer at the place where both were domiciled, and even though that contract provided for a service concerning the use of short-term holiday accommodation, it also included other services, such as information and advice, where the travel organiser proposed a range of holiday offers, the reservation of accommodation during the period chosen by the customer, the reservation of seats in connection with travel arrangements, reception at the destination and the possibility of travel cancellation insurance ([the judgment in] *Hacker* …, paragraph 14).'

28. In my view, it follows from those two judgments that, for the purposes of deciding whether it has jurisdiction, the court must assess the contractual relationship in question as a whole and in its context, in order to determine whether it has as its sole object the use of accommodation or an undertaking to make that accommodation available to the person with services specific to a holiday stay.[20] As I see it, services such as cleaning, the supply of linen, for example, which can be provided in any property rented by a private individual or by a professional, have no impact on the classification of the contract, as long as they are ancillary to its occupation.

29. The same applies to the question as to whether the holiday home was rented by the owner directly or on its behalf. In my view, in the judgment in *Dansommer*, the Court of Justice did not intend to modify the criteria used to determine international jurisdiction.[21] A contractual commitment to use the property is sufficient.[22] It is presumed that the lessor is authorised for this purpose. It should not be up to the tenant of a holiday home to check who the owner is, especially if that tenant decides to take legal action.

30. On the other hand, as in the case of an organised holiday,[23] the provision of accommodation in places designed specifically for holidays, such as the Waterpark Zwartkruis operated by Roompot Service,[24] has particular characteristics that, in my view, if they are identified by the referring court, justify the classification of the contract in question as a 'complex contract'.

31. It is first necessary to verify the basis on which the contractual relationship was established. In the present case, the referring court did not refer to the existence of a tenancy, such as is concluded in writing in the case of accommodation in an individual house,[25] or to its content, in particular as regards the conditions for payment of the full price. More specifically, it is not

[20] The term 'making available' seems to me to be better suited to cases where accommodation is booked with an operator that is a tourism professional. The term 'tenancy' used in the judgments by the Court of Justice relating to short-term letting, since the judgment in *Rösler* (paragraph 25, see also the reminder at p. 113 of that judgment that this expression appears in the Schlosser Report on the Convention of 9 October 1978 on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice (OJ 1979 C 59, p. 71, in particular p. 120)), should be reserved for cases where the owner or its agent undertakes to grant a co-contractor (the tenant) exclusive enjoyment of an immoveable property designated in the contract concluded by the parties. Consequently, in my opinion, in the specific case of a holiday park, it is merely an undertaking for use of one of the accommodation units made available to holidaymakers that is made under the responsibility of the person offering that undertaking.

[21] See paragraphs 36 and 37 of that judgment. The latter paragraph relates to the agency's right to act, on which the Court had been questioned in particular by the referring court. See also the commentary on that judgment, Huet, A., 'Compétence judiciaire. – Bail d'une maison de vacances conclu par un organisateur professionnel de voyages et un client. – Application de l'article 16-1° (oui)', *Journal du droit international (Clunet)*, LexisNexis, Paris, April-May-June 2000, No 2, pp. 550 to 554, in particular p. 553, to be read in conjunction with the Opinion of Advocate General Darmon in *Hacker* (C-280/90, not published, EU:C:1991:466, point 43(1)).

[22] See, on this point, judgments in *Rösler* (paragraph 25) and *Dansommer* (paragraphs 31 and 33).

[23] See, by way of illustration, the judgment in *Hacker* (paragraphs 2 and 3). To be compared with the judgment in *Dansommer* (paragraphs 7 and 8), in which it is stated that the tour operator acted merely as an intermediary.

[24] See website: https://www.roompot.fr/destinations/pays-bas/la-frise/waterpark-zwartkruis.

[25] On the circumstances of the tenancy in question, see points 5 and 6 of this Opinion, to be read together with the judgment in *Hacker* (paragraph 3). I note that the judgment states, in paragraph 2, that the dispute concerned a 'contract described as a "tenancy agreement"'.

specified whether the reservation was for a pre-determined bungalow.[26] However, within a property park, which comprises standardised accommodation units forming a uniform whole and, where applicable, buildings for collective use, undertakings for use of one of the furnished accommodation units seem to be made, as in a hotel complex, under the sole responsibility of the park operator, which usually presents itself as the contact point for claims.

32. Second, it should be noted that this type of holiday accommodation package is designed in consideration of the holiday organisation offer as a whole. In the present case, the referring court found that the rented accommodation was located in a water park, the facilities of which were specifically intended to provide the persons accommodated there with leisure-related services.[27] Consequently, it may be inferred that a certain level of comfort and advice is also expected by holidaymakers and is promoted when such accommodation is booked. In that connection, the fact that the organiser of a stay in a holiday park is a professional is key,[28] in my view, as is the fact that the accommodation is available all year round, without any time limit, as these criteria make it possible to distinguish such situations from seasonal lettings.

33. Third, the total price of the stay[29] is also a factor that should be taken into account. I think it necessary to establish whether the price includes the cost of several services or the range of services provided in such a holiday park, in consideration of their quality or scale, which would justify this price not being directly related to the price for renting a single unit in the local rental market of privately owned holiday homes,[30] but rather being set according to a standardised level of comfort, as in a hotel. As such, it would not be subject to mandatory regulations comparable to those governing residential leases.

34. Consequently, I am of the view that it is for the referring court to verify all the contractual conditions and the specific features of the offer of accommodation for a short stay in a holiday park such as, in the present case, Waterpark Zwartkruis. The search for items of evidence relating to the services provided by the operator of a holiday park, described by the referring court as a 'commercial lessor of holiday homes', makes it possible to go beyond the limits imposed by a case-by-case analysis such as that submitted to the Court for assessment or discussed in the legal literature.[31] It also ensures sufficient predictability.

35. This approach is also suited to the diverse range of tourist accommodation on offer, which has developed in many Member States.[32] I note, in this respect, that this is reflected in the terminology of the French language in this field. A distinction is made between residential leisure parks, tourist residences and holiday villages, depending on the type of accommodation or furnished tourist lets, such as a house, flat, bungalow, mobile home or holiday cottage, and the type of leisure-related services provided.

[26] See, by analogy, judgment of 13 October 2005, *Klein* (C-73/04, EU:C:2005:607, paragraph 24).

[27] See the background in the order for reference in points 5 and 7 of this Opinion.

[28] In that regard, see Opinion of Advocate General Darmon in *Hacker* (C-280/90, not published, EU:C:1991:466, point 25).

[29] See the judgment in *Hacker* (paragraph 15) and, by analogy, judgment of 13 October 2005, *Klein* (C-73/04, EU:C:2005:607, paragraph 27).

[30] In that regard, see Opinion of Advocate General Darmon in *Hacker* (C-280/90, not published, EU:C:1991:466, point 30).

[31] See point 14 of this Opinion. See also Gaudemet-Tallon, H. and Ancel, M.-E., op. cit., paragraph 115, p. 155.

[32] On the importance of tourism in the European Union, see the special report by the Court of Auditors of the European Union entitled 'EU support to tourism. Need for a fresh strategic orientation and a better funding approach', 2021, available from the following internet address: https://www.eca.europa.eu/Lists/ECADocuments/SR21_27/SR_EU-invest-tourism_EN.pdf, paragraphs 1 to 5.

36. Furthermore, access to this vast range of offers has now become extensive as a result of the growing use of bookings through websites.[33] Finally, it should be borne in mind that, since the Court's decisions in the judgments in *Rösler*, *Hacker* and *Dansommer*, the legislative and case-law context in EU law has undergone profound changes in terms of consumer protection[34] and in the field of holidays in particular.[35] In national law too, specific legal regimes have been adopted for tourist accommodation.[36]

37. Thus, in the specific context of the letting of accommodation in holiday parks, the justification for the exclusive jurisdiction of the courts of the Member States in which property that has been let for a short period is located[37] does not appear to me to be relevant, which militates in favour of a reply to the referring court in line with the principle of a strict interpretation of the first subparagraph of Article 24(1) of Regulation No 1215/2012.[38]

38. I therefore propose that the Court of Justice find, as in the judgment in *Hacker*, that the provision by a tourism professional of accommodation in a holiday park for short-term personal use does not fall within the scope of the first subparagraph of Article 24(1) of that regulation, and that this contractual relationship should be classified as a 'complex contract' within the meaning of that case-law.

39. If, however, the Court were to hold that the contract in question relates exclusively to the letting of holiday accommodation, as in the judgment in *Dansommer*, it would then be appropriate to analyse the request made by EM before the referring court.

33 In that regard, see recital 2 of Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ 2015 L 326, p. 1).

34 See Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64). Directive 85/577 concerned the protection of consumers in respect of contracts negotiated away from business premises. Directive 97/7 concerned the protection of consumers in respect of distance contracts. I would point out that contracts for the letting of accommodation for residential purposes are excluded from the scope of Directive 2011/83 (see Article 3(f)). No exception has been made for short-term letting.

35 See Directive 2015/2302, which concerns package travel and linked travel arrangements. According to Article 3 of that directive, accommodation which is not intrinsically part of carriage of passengers and is not for residential purposes is included within the meaning of 'travel service'. Furthermore, I note that the conclusion of a single contract for the purposes of a holiday including accommodation and the hire of boats could fall within the scope of that directive. See also Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (OJ 2009 L 33, p. 10).

36 On compliance with national legislation governing property ownership, see the judgment in *Rösler* (paragraph 22). By way of example, see, in French law, Painchaux, M., 'Bail d'habitation. – Règles particulières à certains baux. – Locations saisonnières', *JurisClasseur Civil Code*, LexisNexis, Paris, 29 July 2020, Fascicule 690, in particular paragraph 6; in Spanish law, Martínez Nadal, A.L., 'Regulación del arrendamiento turístico en el Derecho español', *La regulación del alquiler turístico: una approximación de Derecho comparado*, Aranzadi, Cizur Menor, 2022, pp. 57 to 84, in particular p. 61; and, in Italian law, 'Le locazioni turistiche nell'ordinamento italiano', *La regulación del alquiler turístico: una approximación de Derecho comparado*, op. cit., pp. 113 to 126, in particular pp. 114, 122 and 123.

37 See point 21 of this Opinion.

38 See judgment of 25 March 2021, *Obala i lučice* (C-307/19, EU:C:2021:236, paragraph 76 and the case-law cited), which reiterates that, given that they constitute a derogation, the provisions of Article 24(1) of that regulation must not be given an interpretation broader than is required by their objective.

B. The subject matter of the application

40. The basis for EM's application is that in June 2020 she booked accommodation for more than two households comprising a total of nine people, but was only permitted by Roompot Service to stay there from 31 December 2020 with her family and two people from another household. [39] It is stated in the order for reference that EM is seeking repayment of 'the remainder of the rental price' after Roompot Service repaid part of the amount of the 'rental price'. [40]

41. In this case, the term 'rental price' refers to the price for the stay that had been paid in full. It is not specified whether this price covers specific costs not directly related to the use of the accommodation, such as booking fees, which could be implied by the partial repayment granted to EM. [41]

42. In the case of a claim for the payment of rent, in the sense of consideration for the enjoyment of an immoveable property, the Court of Justice has held that the exclusive jurisdiction in matters of tenancies applies, provided that the subject matter of the dispute is directly related to the use of the rented property. [42]

43. In the context of this legal regime, two circumstances in this case merit particular attention. First, I do not consider that the fact that the tenant did not use the leased property affects how EM's application is classified. That circumstance does not, in principle, release her from her obligations to Roompot Service. Second, the change in the terms for the letting of the property should be seen as a failure by Roompot Service to comply with its contractual commitments, even if it is justified by the restrictions imposed by the measures to contain the COVID-19 pandemic. [43]

44. In those circumstances, I am of the view that the subject matter of the dispute in the main proceedings falls within the exclusive jurisdiction of the courts of the Member State in which the leased property is situated. It could only be otherwise if EM had claimed compensation, in the amount claimed, for a loss indirectly related to the use of the rented property. [44]

45. Consequently, in the alternative, if the Court were to hold that the contract between EM and Roompot Service concerns the letting of holiday accommodation, I consider that the rule of exclusive jurisdiction laid down in the first subparagraph of Article 24(1) of Regulation No 1215/2012 would also be applicable on the ground that the dispute concerns the rights and obligations arising from such a contract.

[39] See points 5 and 8 of this Opinion. In that regard, the subject matter of the dispute is similar to that of the case which gave rise to the judgment in *Hacker* (see paragraph 4). The applicant considered that the size of the holiday home made available to her for her actual stay was less than that indicated in the Euro-Relais GmbH brochure and demanded, in particular, a reduction in the price paid.

[40] See points 6, 9 and 10 of this Opinion. The refund corresponds to 15.77% of the amount paid at the time of booking. The referring court did not specify in what capacity it had been paid.

[41] See footnote 40 to this Opinion.

[42] See judgments in *Rösler* (paragraph 29) and *Dansommer* (paragraph 25), and, in that regard, judgment of 25 March 2021, *Obala i lučice* (C-307/19, EU:C:2021:236, paragraph 79). On a claim for repayment of the total amount paid on the basis that the contract is void, where the link between the contract and the property to be used is not sufficiently close to warrant classifying it as a tenancy, see judgment of 13 October 2005, *Klein* (C-73/04, EU:C:2005:607, paragraphs 17 and 26).

[43] By way of comparison, in the same context and in the context of Directive 2015/2302 on package travel, see judgment of 12 January 2023, *FTI Touristik (Package travel to the Canary Islands*) (C-396/21, EU:C:2023:10, paragraph 42), and the requests for interpretation currently pending before the Court in *Tuk Tuk Travel* (C-83/22, the Opinion of Advocate General Medina in *Tuk Travel* (C-83/22, EU:C:2023:245) was read on 23 March 2023) and in the joined cases *DocLX Travel Events* (C-414/22) and *Kiwi Tours* (C-584/22), for which the Opinions of Advocate General Medina are awaiting publication.

[44] See the judgment in *Rösler* (paragraph 29). To be read together with the judgment in *Hacker* (paragraph 4).

V. Conclusion

46. Having regard to the foregoing considerations, I suggest that the Court answer the question referred by the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany) as follows:

The first subparagraph of Article 24(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:

principally, that it does not apply to a contract under which holiday accommodation in a holiday park is made available by a tourism professional for short-term personal use;

in the alternative, that it covers a claim for repayment of part of the price paid following a change by one of the parties to the terms of a contract for the rental of holiday accommodation.