



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

16 November 2023*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Exclusive jurisdiction – First subparagraph of Article 24(1) – Disputes regarding tenancies of immovable property – Contract in relation to the short-term letting of a bungalow in a holiday park concluded between an individual and a tourism professional operating that park)

In Case C-497/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany), made by decision of 8 July 2022, received at the Court on 22 July 2022, in the proceedings

EM

v

Roompot Service BV,

THE COURT (Fourth Chamber),

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

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- EM, by V. Gensch, Rechtsanwalt,
- the European Commission, by P. Kienapfel and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 June 2023,

gives the following

* Language of the case: German.

Judgment

- 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 (OJ 2012 L 351, p. 1).
- 2 The request has been made in proceedings between EM, domiciled in Germany, and Roompot Service BV, a tourism professional having its registered office in the Netherlands, in respect of the repayment of the price paid by that individual, plus interest and costs, for the short-term letting of one of the bungalows in a holiday park operated by that professional.

Legal context

- 3 Recitals 15, 16 and 34 of Regulation No 1215/2012 are worded as follows:
 - ‘(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. ...
 - (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. ...
 - ...
 - (34) Continuity between the [Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), signed at Brussels on 27 September 1968], [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 this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of the 1968 Brussels Convention and of the Regulations replacing it.’
- 4 Under Section 1 of Chapter II of Regulation No 1215/2012, entitled ‘General provisions’, Article 4(1) of that regulation 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 Under Section 6 of Chapter II, entitled ‘Exclusive jurisdiction’, Article 24 of that regulation provides:

‘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’.

...’

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

6 On 23 June 2020, EM, made a booking, via the internet on the website of Roompot Service, for a bungalow at the *Waterpark Zwartkruis* holiday park, situated at Noardburgum (Netherlands), for the period from 31 December 2020 to 4 January 2021 for a group of nine people who were members of more than two different households.

7 The booking was for a total 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

8 The water park has bungalows located directly on a lake, each with a separate jetty. Boats and canoes can be hired for an additional charge.

9 Roompot Service informed EM by email, prior to arrival and at her request, that the waterpark was open during the period of her booking despite the COVID-19 pandemic, but that, due to the rules in force 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. Roompot Service also offered EM the opportunity to rebook her stay for a later date.

10 Since EM did not stay at the accommodation and did not rebook her stay, she was repaid the amount of EUR 300 by Roompot Service.

11 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 to hear such an action.

12 By judgment of 1 October 2021, the Amtsgericht Neuss (Local Court, Neuss) dismissed the action as unfounded.

13 EM lodged an appeal before the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany), the referring court.

- 14 That court is uncertain whether Netherlands courts have exclusive international jurisdiction to hear the case in the main proceedings on the basis of the first subparagraph of Article 24(1) of Regulation No 1215/2012.
- 15 In that regard, that court observes that it is apparent from the Court's case-law on the application of Article 16(1) of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed in Brussels on 27 September 1968, as amended by successive conventions on the accession of new Member States to that convention ('the Brussels Convention'), now Article 16(1)(a) thereof, the content of which was, in essence, reproduced in Article 24(1) of Regulation No 1215/2012, namely the case-law resulting from the judgments of 15 January 1985, *Rösler* (241/83, EU:C:1985:6), of 26 February 1992, *Hacker* (C-280/90, EU:C:1992:92) and of 27 January 2000, *Dansommer* (C-8/98, EU:C:2000:45), that contracts involving the letting of holiday accommodation abroad generally fall within the exclusive jurisdiction of the courts of the Member State in which the immovable property concerned is situated. An exception can be made to that principle only when the contract concerned is a contract of a complex nature, that is to say, a contract providing for the performance of a range of services in consideration for the lump sum paid by the customer.
- 16 That referring court states that the additional services in the present case were the offer, on the internet page of the defendant in the main proceedings, of a variety of bungalows with different facilities, the booking of the bungalow chosen for the customer, reception of the customer 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. That court takes the view that, on a reading of the Court's case-law cited in the previous paragraph, it is then necessary that those services, taken as a whole, confer a complex nature on the contract at issue in the main proceedings within the meaning of that case-law.
- 17 However, 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 in question, the provision of linen or the reception of the customer 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 within the meaning of that case-law.
- 18 The referring court also states that the Bundesgerichtshof (Federal Court of Justice, Germany) has given a different reading to that same case-law. According to that court, the categorisation of a contract for the purposes of the first subparagraph of Article 24(1) of Regulation No 1215/2012 depends on whether the professional tour operator undertakes itself to let accommodation of which it is not the owner. In such a scenario, that provision would not apply. On the other hand, if the professional tour operator merely acts as an intermediary in a tenancy concluded with the owner of the accommodation, that provision would apply.
- 19 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?

Consideration of the question referred

- 20 By its question, the referring court asks, in essence, whether the first subparagraph of Article 24(1) of Regulation No 1215/2012 must be interpreted as meaning that a contract concluded between an individual and a tourism professional by which the latter lets for short-term personal use holiday accommodation situated in a holiday park operated by that professional and including, in addition to the letting of that accommodation, the performance of a range of services in return for a lump sum, comes within the concept of ‘tenancies of immovable property’ within the meaning of that provision.
- 21 As a preliminary point, it must be noted that, since Regulation No 1215/2012 repealed and replaced Regulation No 44/2001, which itself replaced the Brussels Convention, the Court’s interpretation of the provisions of one of those legal instruments also applies to those of the others, whenever those provisions may be regarded as equivalent (judgment of 20 June 2022, *London Steam-Ship Owners’ Mutual Insurance Association*, C-700/20, EU:C:2022:488, paragraph 42 and the case-law cited).
- 22 That is the case of the first subparagraph of Article 24(1) of Regulation No 1215/2012. That provision corresponds to Article 16(1) of the Brussels Convention, which subsequently became Article 16(1)(a) of that same convention, and to the first subparagraph of Article 22(1) of Regulation No 44/2001. As a result, the Court’s interpretation of those latter provisions also holds true for the interpretation of Article 24.
- 23 According to settled case-law, the system of common rules on conferment of jurisdiction laid down in Chapter II of Regulation No 1215/2012 is based on the general rule, set out in Article 4(1) of that regulation, that persons domiciled in a Member State are to be sued in the courts of that State, irrespective of their nationality (judgment of 25 March 2021, *Obala i lučice*, C-307/19, EU:C:2021:236, paragraph 75 and the case-law cited).
- 24 It is only by way of derogation from that general rule that Section 6 of Chapter II of Regulation No 1215/2012 provides for a certain number of rules of exclusive jurisdiction, including that in the first subparagraph of Article 24(1) of that regulation, which confers on the courts of the Member State in which the immovable property concerned is situated jurisdiction to rule on tenancies of immovable property.
- 25 It should also be borne in mind that, as held by the Court, 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 (judgment of 25 March 2021, *Obala i lučice*, C-307/19, EU:C:2021:236, paragraph 76 and the case-law cited).
- 26 As regards the objective pursued by that provision, it must be noted, as is clear from the Court’s settled case-law, that 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 (judgment of 25 March 2021, *Obala i lučice*, C-307/19, EU:C:2021:236, paragraph 77 and the case-law cited).
- 27 As regards tenancies of immovable property in particular, it is clear from that case-law that that 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 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 (judgment of 25 March 2021, *Obala i lučice*, C-307/19, EU:C:2021:236, paragraph 78 and the case-law cited).
- 28 Thus, the exclusive jurisdiction relating to 'tenancies of immovable property' within the meaning of the first subparagraph of Article 24(1) of Regulation No 1215/2012 relates to disputes concerning the conditions of enjoyment of immovable property (see, to that effect, judgment of 25 March 2021, *Obala i lučice*, C-307/19, EU:C:2021:236, paragraph 79), namely, inter alia, those between lessors and lessees relating to the existence or interpretation of tenancies, repair of damage caused by a lessee or giving up possession of the premises (see, to that effect, judgment of 14 December 1977, *Sanders*, 73/77, EU:C:1977:208, paragraph 15).
- 29 In order to establish whether a dispute comes within that exclusive jurisdiction, it must be examined, first, whether that dispute relates to a tenancy of immovable property and, second, whether the subject matter of that dispute relates directly to the rights and obligations arising from that tenancy since, as is apparent from the case-law, it does not suffice that the same dispute involves a tenancy relating to immovable property in order to come within the jurisdiction of the Member State where that immovable property is situated (see, by analogy, judgments of 16 November 2016, *Schmidt*, C-417/15, EU:C:2016:881, paragraph 34, and of 10 February 2022, *ShareWood Switzerland*, C-595/20, EU:C:2022:86, paragraph 31).
- 30 In the judgments of 15 January 1985, *Rösler* (241/83, EU:C:1985:6), of 26 February 1992, *Hacker* (C-280/90, EU:C:1992:92) and of 27 January 2000, *Dansommer* (C-8/98, EU:C:2000:45), the Court had the opportunity to rule on the first part of that examination and determined, in that context, criteria enabling a distinction to be drawn between 'tenancy', which does come within that exclusive jurisdiction, and a complex contract relating to the performance of a range of services, which does not come within that jurisdiction.
- 31 As regards the categorisation of a contract for the short-term letting of holiday accommodation, the Court held that a contract by which the owner of a holiday home let a unit situated in that home for a short term and by which visitors were not allowed to stay overnight, incidental charges for gas, water and electricity had to be calculated according to the quantities consumed and there was also an extra charge for cleaning at the end of the letting, came within the concept of 'tenancy' (see, to that effect, judgment of 15 January 1985, *Rösler*, 241/83, EU:C:1985:6, paragraphs 2, 24 and 25).
- 32 By contrast, a contract for the letting of holiday accommodation providing for the booking of a ferry crossing to the destination concerned, made by a professional travel organiser who was not the owner of that accommodation on behalf of its customer, in return for an additional charge,

was not a ‘tenancy’, but rather a complex contract relating to the performance of a range of services in return for an overall amount since, irrespective of its title, the contract covered, in addition to the letting of the accommodation, other services, such as information and advice by which the travel organiser proposed a range of choices for the customer’s holiday, booking of accommodation for the period selected by the customer, booking of travel, reception at the destination and possibly travel cancellation insurance (see, to that effect, judgment of 26 February 1992, *Hacker*, C-280/90, EU:C:1992:92, paragraphs 3, 14 and 15).

- 33 However, a contract for the letting of holiday accommodation concluded with a professional travel organiser who served merely as an intermediary between the customer concerned and the owner of that accommodation, and the price of which included an insurance premium intended to cover the costs incurred in the event of cancellation of the contract, that professional travel organiser also guaranteeing reimbursement of the price paid in the event of insolvency, without being required to provide other services, was held to be a ‘tenancy’. The Court thus held that that contract related solely to the letting of immovable property, the insurance-related and reimbursement guarantee clauses being merely ancillary provisions which did not affect the nature of the contract. The fact that the dispute in question was not directly between the owner of that accommodation and the tenant thereof had not led to a different outcome, the professional travel organiser having subrogated itself in the rights of the owner and having acted not in its capacity as a professional travel organiser, but rather as though it were the owner of the immovable property in question (see, to that effect, judgment of 27 January 2000, *Dansommer*, C-8/98, EU:C:2000:45, paragraphs 7 to 11 and 33 to 37).
- 34 It is apparent from the case-law cited in paragraph 31 to 33 of the present judgment that the categorisation of a contract relating to the performance of a range of services, in addition to the short-term letting of holiday accommodation, requires, as observed by the Advocate General in point 28 of his Opinion, an assessment of the contractual relationship in question as a whole and in its context.
- 35 In the present case, the referring court is uncertain about the categorisation of a contract concluded between an individual and a tourism professional by which the latter lets for short-term personal use a bungalow situated in a water park operated by that professional and providing for, in addition to the letting of that property, the performance of other services such as the offer, on the internet page of the defendant in the main proceedings, of a variety of bungalows with different facilities, the booking of the bungalow chosen for the customer, reception of the customer 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.
- 36 That court is uncertain, in particular, whether those additional services suffice to qualify the contract at issue in the main proceedings as a complex contract relating to a range of services and whether the fact that the bungalow concerned is the property of the tourism professional or of a third party is of any importance whatsoever for the purpose of that categorisation.
- 37 In that regard, it should be stated at the outset that it will be for that court to categorise the contract at issue in the main proceedings, in the light of all the information in its possession.
- 38 To that end, in the first place the referring court will have to examine whether the additional services concerned, provided in addition to the letting of the holiday accommodation which is the subject of that contract, confer a complex nature on that contract.

- 39 That would be so *inter alia* where those services are offered in return for a lump sum on the same terms as those offered to customers of a hotel complex, thereby escaping the scope of the first subparagraph of Article 24(1) of Regulation No 1215/2012 (see, by analogy, judgment of 13 October 2005, *Klein*, C-73/04, EU:C:2005:607, paragraph 27). By contrast, any additional service that is ancillary in nature to such a letting would not necessarily modify the categorisation of the contract concerned to that of tenancy, but would have to be examined in the context of that contract.
- 40 As regards the additional services referred to by the referring court, neither cleaning at the end of the stay nor providing bed linen are sufficiently weighty services liable to distinguish, on their own, a tenancy from a complex holiday organisation contract. Although it is true that cleaning usually is the responsibility of the tenant at the end of a lease, it cannot be ruled out that, due to the particular nature of seasonal lettings of holiday homes, the lessor may take on that task, without that modifying the nature of the contract as a tenancy of immovable property. The same holds true for providing bed linen and handing over keys.
- 41 On the other hand, information and advice, booking and reception services forming part of the offer proposed by a tourism professional, together with the letting, in return for a lump sum, constitute services which are generally provided as part of a complex holiday organisation contract.
- 42 In the second place, in the context of the overall assessment of the information in the possession of the referring court, that court will also have to examine in what capacity the travel organiser concerned intervenes in the contractual relationship at issue in the main proceedings.
- 43 As is apparent from the case-law referred to in paragraph 33 of the present judgment, the fact that the travel organiser is not the owner of the accommodation, but is subrogated in the owner's rights, is not such on its own as to modify a possible categorisation of the contract concerned as a tenancy of immovable property. On the other hand, as is apparent from the case-law cited in paragraph 32 of the present judgment, if that travel organiser intervenes as a tourism professional and proposes, in the context of an organised stay, additional services in consideration of which the offer is accepted, that fact may be an indication of the complex nature of that contract.
- 44 In the present case, letting accommodation in a holiday park that includes standardised holiday accommodation units forming a homogenous whole, such as *Waterpark Zwartkruis*, operated by a tourism professional such as Roompot Service, along with the holiday offer in return for a lump sum reflecting the quality and extent of the full range of services offered in that holiday park, appear to weigh in favour of a contract such as that at issue in the main proceedings not coming within the scope of the first subparagraph of Article 24(1) of Regulation No 1215/2012, subject to verifications which it will be for the national court to carry out.
- 45 That conclusion is consistent with the requirement of strict interpretation of the exclusive jurisdiction rule provided for in the first subparagraph of Article 24(1) of Regulation No 1215/2012 and the objective pursued by that provision, which, as observed in paragraph 27 of the present judgment, consists of including in the scope thereof only those contractual relations between lessors and lessees which comprise a series of rights and obligations governed by specific legislation on letting of immovable property, generally mandatory, of the Member State where the immovable property is situated, the courts of which are the best placed, by reason of their proximity, to hear disputes regarding tenancies of immovable property.

- 46 In the light of all the foregoing considerations, the answer to the question referred is that the first subparagraph of Article 24(1) of Regulation No 1215/2012 must be interpreted as meaning that a contract concluded between an individual and a tourism professional by which the latter lets for short-term personal use holiday accommodation situated in a holiday park operated by that professional and including, in addition to the letting of that accommodation, the performance of a range of services in return for a lump sum, does not come within the concept of ‘tenancies of immovable property’ within the meaning of that provision.

Costs

- 47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

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 that a contract concluded between an individual and a tourism professional by which the latter lets for short-term personal use holiday accommodation situated in a holiday park operated by that professional and including, in addition to the letting of that accommodation, the performance of a range of services in return for a lump sum, does not come within the concept of ‘tenancies of immovable property’ within the meaning of that provision.

[Signatures]