



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

22 February 2024*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Regulation (EU) No 1215/2012 – Point 2 of Article 7 – Special jurisdiction in tort, delict or quasi-delict – Place where the damage occurred – Use on a vehicle of a defeat device that reduces the effectiveness of emission control systems – Contract for the sale of that vehicle concluded in a Member State other than the State in which the purchaser is domiciled and in which the manufacturer has its seat – Delivery of that vehicle and normal use of it in the Member State in which the purchaser is domiciled)

In Case C-81/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Supreme Court, Austria), made by decision of 15 December 2022, received at the Court on 15 February 2023, in the proceedings

MA

v

FCA Italy SpA,

FPT Industrial SpA,

THE COURT (Ninth Chamber),

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

- MA, by M. Poduschka, Rechtsanwalt,
- FPT Industrial SpA, by A. Wittwer, Rechtsanwalt,

* Language of the case: German.

– the European Commission, by S. Noë and L. Wildpanner, 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 point 2 of Article 7 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 MA, an Austrian resident, and FCA Italy SpA and FPT Industrial SpA, two Italian companies, concerning those companies' liability for damage resulting from the incorporation of a defeat device that reduces the effectiveness of emission control systems in a vehicle purchased by MA.

Legal context

Regulation No 1215/2012

- 3 Recitals 15 and 16 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. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.'
- 4 Chapter II of Regulation No 1215/2012, entitled 'Jurisdiction', contains, inter alia, a Section 1, entitled 'General provisions', and a Section 2, entitled 'Special jurisdiction'. Article 4(1) of that regulation, which is in that Section 1, provides:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

5 Article 7 of Regulation No 1215/2012, which is in Section 2 of Chapter II of that regulation, is worded as follows:

‘A person domiciled in a Member State may be sued in another Member State:

...

(2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

...’

Regulation (EC) No 715/2007

6 Under Article 5(2) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1):

‘The use of defeat devices that reduce the effectiveness of emission control systems shall be prohibited. ...’

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

7 By a contract of sale of 14 March 2019, MA, who is domiciled in Krems an der Donau (Austria), purchased, together with his wife, a motor caravan from a vehicle dealership established in Germany. The vehicle was delivered to the purchasers via the seller’s delivery warehouse, which is in Salzburg (Austria).

8 FCA Italy and FPT Industrial, two companies established in Italy, are, respectively, the manufacturer of that vehicle and the manufacturer of its engine.

9 MA brought an action before the Landesgericht Salzburg (Regional Court, Salzburg, Austria) for tortious liability against FCA Italy and FPT Industrial, claiming that the engine of that vehicle was unlawfully equipped with a defeat device that reduces the effectiveness of emission control systems, within the meaning of Article 5(2) of Regulation No 715/2007. According to MA, that court had international jurisdiction on the basis of point 2 of Article 7 of Regulation No 1215/2012 to hear and determine that action, since the harmful event occurred in Salzburg, at the place where the sale became complete upon delivery of the item.

10 FPT Industrial raised an objection of lack of jurisdiction of that court on the ground that it is apparent from the judgment of 9 July 2020, *Verein für Konsumenteninformation* (C-343/19, ‘the judgment in *VKI*’, EU:C:2020:534), that, in such a situation, the place where the harmful event is deemed to have occurred, for the purposes of point 2 of Article 7 of Regulation No 1215/2012, is in the Member State in which the vehicle was purchased from the seller. According to FPT Industrial, MA’s purchase of the motor caravan took place in Germany, where the parties signed the contract of sale. It follows that the place where the harmful event occurred is in Germany, with the result that the German courts have jurisdiction to hear and determine the case.

- 11 By order of 31 May 2022, the Landesgericht Salzburg (Regional Court, Salzburg) dismissed that objection, holding that, as MA maintained, the damage suffered by him had occurred only when the vehicle was delivered in Austria.
- 12 By order of 3 October 2022, the Oberlandesgericht Linz (Higher Regional Court, Linz, Austria) upheld the appeal brought by FPT Industrial on the ground that the court of first instance did not have international jurisdiction to hear and determine the case, since the place where the vehicle was purchased corresponded to the place where the contract of sale, which was the act determining the reciprocal obligations of the parties, was concluded.
- 13 An appeal on a point of law (*Revision*) against that order was brought before the Oberster Gerichtshof (Supreme Court, Austria), which is the referring court.
- 14 The referring court states that, unlike the situations at issue in the case that gave rise to the judgment in *VKI*, in the present case, the place where the contract of sale was concluded and the place where the vehicle was delivered to the purchaser are not the same.
- 15 That court states that, under Austrian law, the acquisition of a right of ownership in movable property consists of the act giving rise to obligations (*titulus*) and the act of disposal (*modus*), the latter occurring only at the time and at the place of delivery of that property. However, the application of national law for the purpose of interpreting the concept of the ‘place where the harmful event occurred’, within the meaning of point 2 of Article 7 of Regulation No 1215/2012, would lead to divergent solutions and would thus run counter to the autonomous nature of that concept in EU law.
- 16 First, the referring court observes that, if the place where the contract of sale was concluded were held to be decisive for the purpose of applying the rules of international jurisdiction, that would run counter to the requirement – on which the application of point 2 of Article 7 of Regulation No 1215/2012 is based – that there be a close connection between the court before which the action has been brought and the action, since the dispute in the main proceedings has no significant connection with the place where the contract was concluded, which is in Germany.
- 17 Second, according to that court, although, in the judgment in *VKI*, the Court applied the criterion of the ‘purchase’ of the vehicle in order to determine the place where the harmful event occurred, paragraphs 30 to 35 of that judgment appear to identify another important connecting criterion, since the Court held that damage consisting of a loss in value stemming from the purchase of a vehicle that has a defect represents initial damage which is not purely financial and which occurs only at the time when the item that has that defect is purchased from the seller.
- 18 It could thus be inferred from that judgment that the place where the harmful event occurred is, in a situation such as that at issue in the main proceedings, the place where the defect manifested its effects. According to that court, in so far as normal use is made of a vehicle that has a defect in the Member State in which the applicant is domiciled, international jurisdiction to hear and determine an action for tortious liability lies with the courts of that State. Such a conclusion would also be consistent with the principles laid down in the Court’s case-law relating to point 2 of Article 7 of Regulation No 1215/2012.
- 19 If, for the purpose of applying that provision, the place where the harmful event occurred were determined on the basis of the place where the damage occurred, it is apparent from that case-law that specific factors might plead at the outset in favour of determining that place to be

in the Member State in which the applicant is domiciled, thus resulting in a *forum actoris*. That is the case, in particular, with regard to actions based on the breach of an obligation to draw up a prospectus, on the breach of a legal obligation to provide information in the Member State in which the applicant is domiciled or on damage connected with the management of investment accounts. The referring court is therefore uncertain whether, in the same way, the place where a defect that affects the proper functioning of an item of property manifests its effects could also be regarded as the place where the harmful event occurred.

- 20 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must point 2 of Article 7 of [Regulation No 1215/2012] be interpreted as meaning that, in an action for tortious liability against the developer [established in Member State A (in this case: the Italian Republic)] of a diesel engine with a prohibited defeat device within the meaning of Article 5(2) of [Regulation No 715/2007], the place where the harmful event occurred in a case where the vehicle was bought by the applicant domiciled in Member State B (in this case: [the Republic of] Austria) from a third party established in Member State C (in this case: [the Federal Republic of] Germany) is

(a) the place where the contract was concluded;

(b) the place where the vehicle was delivered[;]

or

(c) the place where the physical defect constituting the damage occurred and, therefore, the place where the vehicle is normally used?’

Consideration of the question referred

- 21 By its question, the referring court asks, in essence, whether point 2 of Article 7 of Regulation No 1215/2012 must be interpreted as meaning that, where a vehicle, allegedly equipped by its manufacturer, in a first Member State, with an unlawful defeat device that reduces the effectiveness of emission control systems, has formed the subject of a contract of sale concluded in a second Member State and has been delivered to the purchaser in a third Member State in which normal use has been made of it, the place where the damage occurred, within the meaning of that provision, is the place where that contract was concluded, the place where that vehicle was delivered or the place where it is used.

- 22 As a preliminary point, it must be noted that, in so far as Regulation No 1215/2012 repealed and replaced 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 itself replaced the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive conventions on the accession of new Member States to that convention, the Court’s interpretation of the provisions of the latter legal instruments also applies to the interpretation of Regulation No 1215/2012 whenever those provisions may be regarded as ‘equivalent’. That is the case with point 3 of Article 5 of that convention and Regulation No 44/2001, on the one hand, and with point 2 of Article 7 of Regulation No 1215/2012, on the other (judgment in *VKI*, paragraph 22 and the case-law cited).

- 23 In order to answer the question raised by the referring court, it must be recalled, first, that, according to settled case-law, the rule of special jurisdiction laid down by point 2 of Article 7 of Regulation No 1215/2012, which allows the applicant, by way of derogation from the general rule that jurisdiction lies with the courts of the defendant's place of domicile set out in Article 4 of that regulation, to bring his action in matters relating to tort, delict or quasi-delict in the courts for the place where the harmful event occurred or may occur, must be interpreted independently and strictly (see, to that effect, judgment of 10 March 2022, *BMA Nederland*, C-498/20, EU:C:2022:173, paragraph 28 and the case-law cited).
- 24 That rule of special jurisdiction is based on the existence of a particularly close connecting factor between the dispute and the courts of the place where the harmful event occurred, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (see, to that effect, judgment of 10 March 2022, *BMA Nederland*, C-498/20, EU:C:2022:173, paragraph 29 and the case-law cited).
- 25 In matters of tort, delict or quasi-delict, the courts of the place where the harmful event occurred or may occur are usually the most appropriate for deciding the case, in particular on grounds of proximity and ease of taking evidence (judgment of 10 March 2022, *BMA Nederland*, C-498/20, EU:C:2022:173, paragraph 30 and the case-law cited).
- 26 Second, it must be borne in mind that the concept of the 'place where the harmful event occurred' is intended to cover both the place where the damage occurred and the place of the event giving rise to it, with the result that the defendant may be sued, at the option of the applicant, in the courts for either of those places (judgment in *VKI*, paragraph 23 and the case-law cited).
- 27 In the present case, the parties to the main proceedings disagree as regards the determination of the place where the damage occurred.
- 28 In that regard, in the first place, the Court has already held that a distinction must be drawn between, on the one hand, initial damage, resulting directly from the event giving rise to the damage, in which case the place where such damage occurred may provide a basis for jurisdiction of the courts of that place under point 2 of Article 7 of Regulation No 1215/2012, and, on the other hand, subsequent adverse consequences which are not capable of providing a basis for jurisdiction under that provision (see, to that effect, judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 27 and the case-law cited).
- 29 The Court has thus held that damage which is no more than the indirect consequence of the harm initially suffered by other persons who were the direct victims of damage which occurred at a place different from that where the indirect victim subsequently suffered harm could not establish jurisdiction under that provision (judgment of 29 July 2019, *Tibor-Trans*, C-451/18, EU:C:2019:635, paragraph 29 and the case-law cited).
- 30 It is in the light of that case-law that, in paragraphs 29 to 31 of the judgment in *VKI*, the Court classified damage taking the form of a loss in value of a vehicle stemming from the difference between the price paid by the purchaser for that vehicle and its actual value owing to the installation of software that manipulates data relating to exhaust gas emissions as 'initial damage', in so far as that damage did not exist before the purchase of the vehicle by the final purchaser, and not as an indirect consequence of the harm initially suffered by other persons.

- 31 In paragraphs 32 to 34 of that judgment, the Court also held that such damage is not purely financial in nature, since it is not damage that directly causes harm to the financial assets of the adversely affected party, but material damage corresponding to the reduction in the intrinsic value of the vehicle which that party has purchased and which has been found to have a defect.
- 32 In the present case, as is apparent from the documents before the Court, it is not alleged that the nature and classification of the damage claimed by the applicant in the main proceedings are different from those at issue in the judgment in *VKI*.
- 33 As regards, in the second place, the place where material damage such as that at issue in the main proceedings occurred, the Court held, in paragraphs 30, 31 and 35 of the judgment in *VKI*, that that damage occurs only at the time when the vehicle that has a defect is purchased, through its purchase for a price higher than the intrinsic value of that vehicle. The Court therefore answered the question referred by the referring court in the case that gave rise to that judgment to the effect that point 2 of Article 7 of Regulation No 1215/2012 had to be interpreted as meaning that, where a manufacturer in a Member State has unlawfully equipped its vehicle with software that manipulates data relating to exhaust gas emissions before that vehicle is purchased from a third party in another Member State, the place where the damage occurs is in that latter Member State, since it is the Member State in which the vehicle was purchased.
- 34 In the present case, the referring court is uncertain, however, as to the place where the damage suffered by the purchaser of such a vehicle occurred in the event that, unlike the case that gave rise to the judgment in *VKI*, two different Member States may be the one in which that vehicle was purchased. In the case in the main proceedings, the conclusion of the contract of sale, on the one hand, and the delivery of that vehicle and normal use of it, on the other, have taken place in different Member States.
- 35 It is in that context that the referring court asks, in essence, whether the place where a vehicle that has a defect has been purchased and, accordingly, the ‘place where the harmful event occurred’, within the meaning of point 2 of Article 7 of Regulation No 1215/2012, as interpreted in the judgment in *VKI*, correspond to the place where the contract for the sale of the vehicle was concluded, to the place where the vehicle was delivered to the final purchaser or to the place where normal use has been made of it.
- 36 As regards, in the first place, the place where the contract of sale was concluded, that cannot be decisive in itself for the purpose of establishing the place of purchase in such a context.
- 37 The tortious liability of the manufacturers of a vehicle is based, in principle, on the existence of an unlawful act consisting of having equipped that vehicle with an unlawful device, on the existence of damage consisting in the difference between the price paid by the purchaser and the actual price of the vehicle, and on the establishment of the causal link between such an unlawful act and that damage, the arrangements for acquiring that vehicle being irrelevant in that regard. It does not therefore appear necessary, for the purpose of examining the conduct complained of and the extent of the damage claimed, to analyse the content of the contract of sale by which the victim acquired that vehicle. Consequently, the requirement of the sound administration of justice and the efficacious conduct of proceedings does not mean, in an action for tortious liability such as that in the main proceedings, that international jurisdiction must be attributed to the court for the place where the contract of sale was concluded.

- 38 In the second place, in so far as the damage claimed in the present case does not constitute purely financial damage, as is apparent from paragraph 32 of the present judgment, the ‘place where the harmful event occurred’, within the meaning of point 2 of Article 7 of Regulation No 1215/2012, need not be the place where the obligation to pay the difference between the price paid for the defective vehicle by the adversely affected purchaser and the actual value of the vehicle arose, either. The attribution of jurisdiction to the courts for the place where the financial loss resulted in a definitive reduction in the applicant’s assets is relevant only in the case of purely financial damage (see, to that effect, judgment of 16 June 2016, *Universal Music International Holding*, C-12/15, EU:C:2016:449, paragraphs 30 to 32), which is not the case in a situation such as that at issue in the main proceedings.
- 39 In the third and last place, as regards the question whether the place where the vehicle that has a defect was purchased and, consequently, the place where the damage occurred, within the meaning of point 2 of Article 7 of Regulation No 1215/2012, as interpreted in the judgment in *VKI*, corresponds to the place where the vehicle was delivered to the final purchaser, it should be recalled that, in paragraph 27 of the judgment of 16 July 2009, *Zuid-Chemie* (C-189/08, EU:C:2009:475), the Court held that the place where the damage occurred is the place where the event giving rise to the damage produces its harmful effects, that is to say, the place where the damage caused by the defective product actually manifests itself.
- 40 In the light of that case-law and the reasons set out in paragraphs 36 to 39 of the present judgment, it must be held that, where, as in the present case, the signature of the contract of sale, on the one hand, and the delivery of the vehicle and the use of it, on the other, have taken place in different Member States, the place where that vehicle was purchased, and therefore the place where the damage occurred, within the meaning of point 2 of Article 7 of Regulation No 1215/2012, as interpreted in the judgment in *VKI*, is the place in which the defect affecting that vehicle, namely the incorporation of the illegal device, which constitutes the event giving rise to the damage, manifests itself and produces its harmful effects vis-à-vis the final purchaser, namely the place where the vehicle was delivered to the final purchaser.
- 41 Such an interpretation meets the objective of predictability of the rules governing jurisdiction, referred to in recital 15 of that regulation, in so far as, following on from what the Court has already held in paragraph 36 of the judgment in *VKI*, namely that a motor vehicle manufacturer which is established in a Member State and engages in unlawful tampering with vehicles sold in other Member States may reasonably expect to be sued in the courts of those States, it must be held that such a manufacturer must expect in the same way to be sued in the courts of the Member States where the vehicles sold have been delivered to the final purchasers.
- 42 In addition, the place where the vehicle that has a defect is used cannot be relevant for the purpose of determining the place where the damage occurred. Unlike the place of delivery, such a criterion does not meet the objective of predictability and, moreover, as is apparent from the foregoing considerations, it must be considered that the damage manifests itself as soon as the vehicle is purchased, namely, in the present case, upon its delivery.
- 43 It follows from all the foregoing that point 2 of Article 7 of Regulation No 1215/2012 must be interpreted as meaning that, where a vehicle, allegedly equipped by its manufacturer, in a first Member State, with an unlawful defeat device that reduces the effectiveness of emission control systems, has formed the subject of a contract of sale concluded in a second Member State and has been delivered to the purchaser in a third Member State, the place where the damage occurred, within the meaning of that provision, is in the latter Member State.

Costs

- 44 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 (Ninth Chamber) hereby rules:

Point 2 of Article 7 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, where a vehicle, allegedly equipped by its manufacturer, in a first Member State, with an unlawful defeat device that reduces the effectiveness of emission control systems, has formed the subject of a contract of sale concluded in a second Member State and has been delivered to the purchaser in a third Member State, the place where the damage occurred, within the meaning of that provision, is in the latter Member State.

[Signatures]