



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

11 April 2024*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Jurisdiction, recognition and enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Article 6(1) – Scope – Contract concluded by a consumer who is a national of a third State with a bank established in a Member State – Proceedings brought against that consumer – Court of the last known domicile of the consumer in a Member State)

In Case C-183/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court, Śródmieście, Warsaw, Poland), made by decision of 27 February 2023, received at the Court on 22 March 2023, in the proceedings

Credit Agricole Bank Polska S.A.

v

AB,

THE COURT (Ninth Chamber),

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

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,
- the German Government, by J. Möller and M. Hellmann, acting as Agents,
- the European Commission, by J. Hottiaux and S. Noë, acting as Agents,

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

* Language of the case: Polish.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 6(1) and Article 26 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 Credit Agricole Bank Polska S.A., established in Poland, and AB, a consumer whose current address is unknown, concerning the payment of a sum of money claimed by the bank from AB under a consumer credit agreement.

Legal context

European Union law

- 3 Recitals 6, 15 and 18 of Regulation No 1215/2012 state:

‘(6) In order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable.

...

(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile. ...

...

(18) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.’

- 4 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 In accordance with Article 5(1) of that regulation:

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

- 6 Pursuant to Article 6(1) of that regulation:

‘If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.’

7 Article 17(1) of Regulation No 1215/2012 provides:

‘In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:

- (a) it is a contract for the sale of goods on instalment credit terms;
- (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer’s domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.’

8 Article 18(1) and (2) of that regulation provides:

‘1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.’

9 Under Article 26 of that regulation:

‘1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24.

2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.’

10 According to Article 28(1) and (2) of that regulation:

‘1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.

2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.’

11 Article 62 of Regulation No 1215/2012 provides:

‘1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.

2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.’

Polish law

12 Under Article 144(1) of the ustawa – Kodeks postępowania cywilnego (Law establishing the Code of Civil Procedure) of 17 November 1964 (Dz. U. No 43, item 296), in the version applicable to the main proceedings (‘the Code of Civil Procedure’):

‘Where the applicant demonstrates that the party’s place of residence is unknown, the President of the Court shall appoint a representative *in absentia*. ...’

13 In accordance with Article 69(3) of the Code of Civil Procedure, which is applicable *mutatis mutandis* to the representative *in absentia* appointed pursuant to Article 144 of that code:

‘The representative appointed pursuant to paragraph 1 shall be empowered to perform all acts in connection with the case concerned.’

14 Under Article 139¹ of the Code of Civil Procedure:

‘(1) If, despite new service pursuant to the second sentence of Article 139(1), the defendant has not withdrawn the application or any other procedural document establishing the need to defend his rights, and if no document has been previously served on him in accordance with the procedures laid down in the preceding Articles, and unless Article 139(2) to (31) or any other special provision giving effect to service applies, the President shall so inform the claimant by sending him a copy of the document addressed to the defendant and shall order him to have that document served on the defendant by a bailiff.

(2) The claimant shall, within two months of the date on which the obligation referred to in paragraph 1 was served on him, either place on file confirmation of service of the document on the defendant by a bailiff or return the document and indicate the defendant’s current address or provide proof that the defendant resides at the address indicated in the application. On expiry of the deadline without effect, Article 177(1)(6) shall apply.’

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

15 By an action brought on 22 December 2021 before the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court, Śródmieście, Warsaw, Poland), which is the referring court, Credit Agricole Bank Polska seeks to secure an order that AB, a third-State national who is a consumer, must pay it the sum of 10 591.64 Polish zlotys (PLN) (approximately EUR 2 250), plus the applicable interest, and the court costs.

- 16 This action is based on a consumer credit agreement concluded on 16 July 2020 between the applicant in the main proceedings and the defendant in the main proceedings for the purpose of the latter's purchase of a mobile telephone. The defendant's address in the application corresponded to the address in the agreement.
- 17 On 30 March 2022, the court officer at the referring court ('the court officer') issued an order for payment against AB, by which he ordered AB to pay the applicant in the main proceedings the sum of PLN 10 591.64, plus contractual default interest, and the court costs, plus statutory default interest, calculated from the date on which that order for payment becomes final until the date of the payment sought.
- 18 A copy of that application and of the order for payment, together with other information for the attention of the defendant in the main proceedings, was sent by post to the latter's address as indicated in the application. On 5 May 2022, these documents were returned since they were not collected by the addressee.
- 19 The court officer instructed the authorised representative of the applicant in the main proceedings to have a copy of the application and of the order for payment served on the defendant in the main proceedings by a bailiff, in accordance with Polish law, failing which the proceedings would be stayed. By letter of 15 September 2022, the authorised representative informed the referring court that the service in question had not taken place, since the defendant was unknown at the address indicated.
- 20 By order of 4 October 2022, the court officer appointed a representative *in absentia* for the defendant.
- 21 On 26 October 2022, that representative lodged a statement of objection to the order for payment of 30 March 2022, on the ground that the applicant in the main proceedings had not shown that it was a creditor in the amount claimed in its submissions. That representative also stated that he was unable to establish the place of residence of the defendant in the main proceedings, but did not raise any objection relating to the international jurisdiction of the referring court to hear the matter in the main proceedings under Articles 17 and 18 of Regulation No 1215/2012.
- 22 Neither the steps taken by that court nor those taken by the authorised representative of the applicant in the main proceedings and the representative *in absentia* of the defendant in the main proceedings made it possible to identify the latter's residence or domicile. They merely revealed that the defendant had arrived in Poland on 29 September 2017, that he had left the address at which he was registered in that Member State in 2018 and that, at the time of the checks thus carried out, he had not been deprived of his liberty in that Member State.
- 23 According to the referring court, it cannot be ruled out that the defendant in the main proceedings may have left Poland, although this cannot be established with certainty, given the absence of checks at some of the land borders of the Republic of Poland.
- 24 The referring court asks, first of all, whether, having regard to Article 6(1) of Regulation No 1215/2012, it is required to establish its jurisdiction in accordance with the rules of its domestic law or in accordance with the uniform rules of jurisdiction laid down in that regulation.

- 25 According to that court, it is apparent from the case-law resulting from the judgments of 17 November 2011, *Hypoteční banka* (C-327/10, EU:C:2011:745), and of 15 March 2012, *G* (C-292/10, EU:C:2012:142), that the application of rules of national law rather than the uniform rules of jurisdiction is possible only if the court seized of the matter has firm evidence to support the conclusion that the defendant, an EU citizen not domiciled in the Member State of that court, is in fact domiciled outside the European Union.
- 26 The referring court asks whether that case-law is also to apply in a situation such as that in the main proceedings, in which the defendant concerned is a person who is not a national of any Member State but is probably domiciled in a Member State. It observes that compliance with the principle of effective judicial protection enshrined in EU law, particularly where consumers are concerned, might militate in favour of an affirmative answer to that question.
- 27 The referring court asks next, whether, in the light of Article 26 of Regulation No 1215/2012, the defendant in the main proceedings might be regarded as having entered an appearance and, consequently, as having recognised the jurisdiction of the court seized of the matter, where the proceedings are conducted in the presence of that defendant's representative *in absentia*.
- 28 The referring court states that the purpose of the institution of the *curator absentis* is to guarantee the right of an applicant who, for reasons beyond his or her control, is not in a position to establish where the defendant concerned is domiciled to have access to a court or tribunal. It submits that, as is apparent from the case-law resulting from the judgments of 2 April 2009, *Gambazzi* (C-394/07, EU:C:2009:219), and of 17 November 2011, *Hypoteční banka* (C-327/10, EU:C:2011:745), while the possibility of taking further steps in the proceedings without the defendant's knowledge by means, as in the case in the main proceedings, of notification of the action served on a representative appointed by the court seized of the matter constitutes a restriction of the defendant's rights of defence, that restriction is justified in the light of the applicant's right to effective judicial protection.
- 29 However, the referring court has doubts as to whether the representative *in absentia* of an absent consumer, whose place of residence is unknown, may recognise the jurisdiction of a court, where in fact such jurisdiction is not conferred on that court under Regulation No 1215/2012, by entering an appearance before that court.
- 30 In that regard, the referring court notes that the case in the main proceedings differs from that which gave rise to the judgment of 10 October 1996, *Hendrikman and Feyen* (C-78/95, EU:C:1996:380), in which the Court held that the entering of an appearance by a representative incorrectly appointed for a defendant cannot be interpreted as constituting the entering of an appearance by the defendant. In the present case, the representative *in absentia* of the defendant in the main proceedings was appointed in accordance with Polish law, that representative being empowered to perform all acts in connection with the case in the main proceedings on behalf of the defendant, whose place of residence remained unknown during the proceedings.
- 31 According to that court, it follows from Article 26(2) of Regulation No 1215/2012 that, in order for a consumer to be presumed to have recognised the jurisdiction of a court which does not derive from that regulation, in particular from Article 18(2) thereof, it is necessary for that consumer to be informed of his or her right to contest the jurisdiction of the latter court and of the consequences of entering or not entering an appearance before that court. Therefore, to take the

view that providing information to the consumer may be replaced by providing information to the consumer's representative would run counter to the essential purpose of Article 26(2) of Regulation No 1215/2012, which is to protect consumers.

32 In those circumstances the Sąd Rejonowy dla Warszawy – Śródmieścia w Warszawie (District Court, Śródmieście, Warsaw) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 6(1) of [Regulation No 1215/2012] to be interpreted as meaning that the provisions of that regulation apply to the determination of jurisdiction in a case against a consumer *in absentia* who is not a national of any Member State and regarding whom, first, it is known that his or her last known place of residence was in a Member State and, second, there is credible evidence that he or she is no longer domiciled in the territory of that Member State, where there is no credible evidence suggesting that he or she has left the territory of the European Union to return to the State of which he or she is a national?’

(2) Is Article 26(1) and (2) of [Regulation No 1215/2012] to be interpreted as meaning that an appearance entered by a representative appointed in accordance with the national law of a Member State to represent that consumer *in absentia* replaces the appearance of the consumer and permits the assumption that a court of that Member State has jurisdiction despite the existence of credible evidence that the consumer is no longer domiciled in the territory of the Member State concerned?’

Consideration of the questions referred

Preliminary observations

33 It must be noted, in the first place, 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 had itself replaced the Convention of 27 September 1968 on jurisdiction and enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by 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' (judgment of 9 July 2020, *Verein für Konsumenteninformation*, C-343/19, EU:C:2020:534, paragraph 22 and the case-law cited).

34 In the second place, it must be stated that the national court refers, both in the grounds of the request for a preliminary ruling and in the questions themselves, alternatively to the place of residence of the defendant in the main proceedings and to the place where that defendant is domiciled.

35 Regulation No 1215/2012 refers solely to the concept of 'domicile' of the defendant, which is the general connecting factor for establishing the international jurisdiction of a court under Article 4(1) of that regulation.

- 36 In that regard, as is expressly stated in Mr P. Jenard’s report on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1979 C 59, p. 1), whose commentary on the determination of domicile also applies to the interpretation of Regulation No 1215/2012, the reason for the EU legislature’s decision to apply the criterion of the defendant’s domicile, and not that of his or her habitual residence or both those criteria simultaneously, was the need to avoid increasing the number of courts having jurisdiction.
- 37 Like the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended, and Regulation No 44/2001, Regulation No 1215/2012 does not define the concept of ‘domicile’. Thus, Article 62(1) of the latter regulation refers to the law of the Member State whose courts have been seised of a matter in order to determine whether a party is domiciled in that Member State. According to Article 62(2) of Regulation No 1215/2012, ‘if a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State’.
- 38 In the light of all the foregoing considerations, it is for the referring court to establish its jurisdiction to hear the matter in the main proceedings by taking into account the concept of ‘domicile’, as established by Polish law.

The first question

- 39 By its first question, the referring court asks, in essence, whether Article 6(1) of Regulation No 1215/2012 is to be interpreted as meaning that, where the last known domicile of a defendant who is a national of a third State and a consumer is situated in the Member State of the court seised of the matter, and that court is unable to identify the current domicile of the defendant and has no firm evidence to support the conclusion that the defendant is in fact domiciled in another Member State or outside the European Union, jurisdiction to hear the matter is determined by the law of the Member State of that court.
- 40 It should be recalled that Regulation No 1215/2012 aims to harmonise the rules regarding conflicting jurisdictions in civil and commercial matters by means of creating rules governing jurisdiction that are highly predictable. Therefore, the purpose of this regulation is to strengthen the legal protection of persons established in the European Union by enabling the applicant to identify easily the court in which he or she may sue and a normally well-informed defendant to reasonably foresee in which court he or she may be sued (judgment of 4 October 2018, *Feniks*, C-337/17, EU:C:2018:805, paragraph 34 and the case-law cited).
- 41 Under Article 6(1) of Regulation No 1215/2012, if the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25 of that regulation, be determined by the law of that Member State.
- 42 In so far as Article 6(1) of Regulation No 1215/2012 allows the rules of the law of each Member State to be applied rather than the uniform rules of jurisdiction laid down in that regulation, the premiss on which the application of that provision is based, namely that the defendant is not domiciled in a Member State, must be interpreted strictly.

- 43 Such a strict interpretation is all the more justified if the defendant is a consumer and is thus afforded, in accordance with Article 18 of Regulation No 1215/2012, enhanced protection via the introduction of a rule of special jurisdiction in favour of the courts of the Member State in which his or her domicile is situated. It cannot be ruled out that such a consumer might run the risk of losing that protection in the event that the rules of jurisdiction of the national law are to apply.
- 44 That is why, if the domicile of a defendant consumer who is a national of a Member State is unknown, the Court has held that Article 4(1) of Regulation No 44/2001, the wording of which is, in essence, equivalent to that of Article 6(1) of Regulation No 1215/2012, applies only if the national court has firm evidence to support the conclusion that that defendant is in fact domiciled outside the European Union (see, to that effect, judgments of 17 November 2011, *Hypoteční banka*, C-327/10, EU:C:2011:745, paragraph 42, and of 15 March 2012, *G*, C-292/10, EU:C:2012:142, paragraph 42).
- 45 By contrast, the Court has held that, where the national court has no firm evidence to support the conclusion that the defendant consumer is in fact domiciled outside the European Union and is unable to identify the place of domicile of that consumer, the rule of special jurisdiction laid down in Article 16(2) of Regulation No 44/2001, now Article 18(2) of Regulation No 1215/2012, under which proceedings brought against the consumer in question by the other party to the contract must be brought before the courts of the Member State in which the consumer is domiciled, also covers the consumer's last known domicile (see, to that effect, judgment of 17 November 2011, *Hypoteční banka*, C-327/10, EU:C:2011:745, paragraph 42).
- 46 The referring court asks whether the case-law cited in paragraphs 44 and 45 of the present judgment also applies in a situation such as that at issue in the main proceedings, in which proceedings are brought against a consumer who is not a national of a Member State but a national of a third State whose last known domicile is situated in the Member State of the court seised of the matter, and it is not possible to establish with certainty that the consumer has left that Member State for another Member State or that he or she has left the European Union.
- 47 In that regard, it should be observed that, as is recalled in paragraph 35 above, Regulation No 1215/2012 relies on the criterion of the defendant's domicile, and not that of his or her nationality. Article 4(1) of that regulation provides that, whatever their nationality, persons domiciled in a Member State are to be sued in the courts of that Member State.
- 48 Consequently, the rule of jurisdiction based on the last known domicile of the defendant consumer in a Member State, referred to in paragraph 45 above, applies irrespective of that consumer's nationality.
- 49 In the light of all the foregoing considerations, the answer to the first question is that Article 6(1) of Regulation No 1215/2012 must be interpreted as meaning that, where the last known domicile of a defendant who is a national of a third State and a consumer is situated in the Member State of the court seised of the matter, and that court is unable to identify the current domicile of the defendant and has no firm evidence to support the conclusion that the defendant is in fact domiciled in another Member State or outside the European Union, jurisdiction to hear the matter is determined not by the law of the Member State of that court, but by Article 18(2) of that regulation, which confers jurisdiction to hear the matter on the court within whose judicial district the defendant's last known domicile is situated.

The second question

- 50 By its second question, the referring court asks, in essence, whether Article 26(1) and (2) of Regulation No 1215/2012 must be interpreted as meaning that the entering of an appearance before a court by a representative *in absentia*, appointed by a national court to represent a defendant consumer who is absent and whose current domicile is unknown, amounts to that consumer entering an appearance before that court and thus gives rise to a presumption that that court has international jurisdiction.
- 51 As a preliminary point, it should be recalled that Article 26 of Regulation No 1215/2012 is in Section 7 of Chapter II thereof, that section being entitled ‘Prorogation of jurisdiction’.
- 52 Article 26(1) of that regulation lays down a rule of jurisdiction based on the entering of an appearance by the defendant in all disputes in which the jurisdiction of the court seised of the matter does not derive from other provisions of that regulation, with the exception of disputes covered by a rule of exclusive jurisdiction by virtue of Article 24 of that regulation, in respect of which the entering of an appearance by the defendant does not entail a prorogation of jurisdiction.
- 53 Article 26(2) of Regulation No 1215/2012 imposes, in matters relating to insurance contracts, consumer contracts and individual contracts of employment, on the court which considers that it has jurisdiction under paragraph 1 of that article an obligation to inform the weaker party before assuming jurisdiction. Thus, where a defendant consumer enters an appearance before a court other than that of his or her domicile, having jurisdiction under Article 18(2) of Regulation No 1215/2012, the court seised of the matter must ensure that that consumer is informed of his or her right to contest the jurisdiction of the court and of the consequences of entering an appearance.
- 54 It follows from the foregoing that the question of prorogation of jurisdiction by effect of the entering of an appearance by the defendant consumer or, as the case may be, by his or her representative *in absentia* arises only in the situation in which the court seised of the matter does not derive its jurisdiction to hear the matter from provisions other than Article 26(1) of Regulation No 1215/2012.
- 55 In the present case, as is apparent from the answer to the first question, where it is not possible to identify the place where the consumer concerned is domiciled and in the absence of firm evidence that that consumer has in fact left the territory of the European Union, the referring court derives its jurisdiction from Article 18(2) of Regulation No 1215/2012, as the court of that consumer’s last known domicile.
- 56 Consequently, having regard to the answer given to the first question, it is not necessary to answer the second question.

Costs

- 57 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:

Article 6(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, where the last known domicile of a defendant who is a national of a third State and a consumer is situated in the Member State of the court seised of the matter, and that court is unable to identify the current domicile of the defendant and has no firm evidence to support the conclusion that the defendant is in fact domiciled in another Member State or outside the European Union, jurisdiction to hear the matter is determined not by the law of the Member State of that court, but by Article 18(2) of that regulation, which confers jurisdiction to hear the matter on the court within whose judicial district the defendant's last known domicile is situated.

[Signatures]