Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 31 January 2019[1]

Case C-25/18

Brian Andrew Kerr
v
Pavlo Postnov,
Natalia Postnova

(Request for a preliminary ruling from the Okrazhen sad — Blagoevgrad (Blagoevgrad Regional Court, Bulgaria))

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EU) No 1215/2012 — Jurisdiction, recognition and enforcement of judgments in civil and commercial matters — First subparagraph of Article 24(1) — Exclusive jurisdiction in proceedings which have as their object rights *in rem* in immovable property — Article 24(2) — Exclusive jurisdiction in proceedings which have as their object the validity of decisions of organs of companies or other legal persons or associations of natural or legal persons — Article 7(1)(a) — Special jurisdiction in matters relating to a contract — Action for payment of a contribution for the maintenance of a property on the basis of a resolution of an association of property owners without legal personality — Applicable law — Applicability of Regulation (EC) No 593/2008)

I. Introduction

1. Which national court has international jurisdiction under the Brussels Ia Regulation[2] where an association of property owners has brought an action seeking to enforce payment of contributions for the maintenance of a property, but the defaulting property owners are domiciled in another Member State? This question arises in the present case in connection with a payment obligation arising from resolutions made by an association of property owners which does not have legal personality under national law.

2. The referring court is uncertain in this context whether, rather than the general jurisdiction of the domicile of the defendant, the special jurisdiction of the place of performance of the obligation in question can be applied in so far as the claims for payment in question constitute 'matters relating to a contract' within the meaning of Article 7(1)(a) of the Brussels Ia Regulation. The referring court would also like to know whether the Rome I Regulation[3] is applicable to resolutions made by an association of property owners like that in the present proceedings and by which conflict-of-law rules claims arising from such resolutions are to be assessed substantively.

1 Original language: German.

2 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, 'Brussels Ia Regulation').

3 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, 'Rome I Regulation').

II. Legal framework

A. EU law

1. The Brussels Ia Regulation

3. Recitals 15 and 16 of the Brussels Ia Regulation include the following extracts:

'(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. …'

4. Article 4(1) of the Brussels Ia 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. Article 7(1) of the Brussels Ia Regulation stipulates:

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

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

(c) if point (b) does not apply then point (a) applies …'

6. Article 24 of the Brussels Ia Regulation establishes inter alia the following exclusive jurisdiction:

'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.

…

(2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

…'

7. Under Article 27 of the Brussels Ia Regulation, 'where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction'. Article 28(1) of that regulation provides that the court must also declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of the regulation, provided the defendant domiciled in another Member State does not enter an appearance without raising an objection.

2. The Rome I Regulation

8. According to recital 7 of the Rome I Regulation, 'the substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) …' Accordingly, recital 17 of the Rome I Regulation states that 'the concept of "provision of services" and "sale of goods" should be interpreted in the same way as when applying Article 5 of Regulation (EC) No 44/2001 in so far as sale of goods and provision of services are covered by that Regulation'.

9. Under Article 1(2)(f) of the Rome I Regulation, 'questions governed by the law of companies and other bodies, corporate or unincorporated, such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies, corporate or unincorporated, and the personal liability of officers and members as such for the obligations of the company or body' are excluded from the scope of the regulation.

B. National law

10. Legal relationships arising from commonhold property are governed in Bulgaria by the *Zakon za sobstvenostta* (Law on ownership). Article 38 makes clear the parts of a residential building to which commonhold can apply.

11. The *Zakon za upravlenie na etazhnata sobstvenost* (Law on the management of commonhold property, ZUES) lays down the respective rights and obligations of owners, users and occupants in connection with the management of commonhold property. Article 10 defines the general meeting and the management board (managers) as management bodies. Under Article 11(1)(5) of the ZUES, the general meeting determines the amount of contributions for expenditure for the management and maintenance of communal areas of the building. Article 38(2) of the ZUES provides that such resolutions made by the general meeting are enforceable pursuant to the Bulgarian Code of civil procedure, while a legal remedy is available with a view to the annulment of the resolution in question under Article 40 of the ZUES. Article 6(1)(8) of the ZUES makes clear that decisions of the management bodies of the association of property owners are binding on the owners. Furthermore,

pursuant to subparagraph 9 of that provision, they are obliged, in proportion with the intangible ownership shares held by them, to contribute to renovation costs and to the creation of appropriate reserves and, pursuant to subparagraph 10, to contribute to expenditure for the management and maintenance of communal areas of the building.

III. Facts and main proceedings

12. Mr Kerr, the applicant in the proceedings at first instance, now the appellant in the proceedings before the referring court, is a manager of an association of owners of a property situated in the town of Bansko (Bulgaria). He brought proceedings before the Rayonen sad Razlog (Razlog District Court, Bulgaria) against two property owners, Mr Postnov and Ms Postnova, concerning payment of contributions that were owed by them wholly or in part for the maintenance of communal parts of the building on the basis of resolutions made by the general meeting of the property owners in the period from 2013 to 2017. According to the appellant in the main proceedings, an action to secure enforcement of the claim pursued was brought with the application.

13. Information regarding possible applications by the defendants or other co-owners under Article 40 of the ZUES for annulment of the resolutions concerned cannot be inferred from the statements made by the referring court.

14. The address of the defendants used by the court at first instance is in the Republic of Ireland.

15. After deficiencies in the application had been remedied at the instigation of the Rayonen sad Razlog (Razlog District Court), which was hearing the case at first instance, that court declared that it lacked jurisdiction to give a ruling on the action. By his appeal the manager is now challenging that decision at first instance.

IV. Request for a preliminary ruling and procedure before the Court

16. By order of 19 December 2017, received on 16 January 2018, the Okrazhen sad — Blagoevgrad (Regional Court, Blagoevgrad, Bulgaria) referred the following questions to the Court of Justice for a preliminary ruling under Article 267 TFEU:

‘(1) Do the decisions of unincorporated associations created by operation of law due to the special ownership of a right, which are taken by a majority of their members but which bind all of them, including those who did not cast a vote, form the basis of a “contractual obligation” for the purposes of determining international jurisdiction pursuant to Article 7(1)(a) of Regulation (EU) No 1215/2012?

(2) If the first question is answered in the negative: are the rules on determining the applicable law for contractual relationships under Regulation No 593/2008 applicable to such decisions?

(3) If the first and the second questions are answered in the negative: are the provisions of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) applicable to such decisions, and which of the non-contractual bases of liability referred to in that regulation is relevant here?

(4) If the first or second question is answered in the affirmative: should the decisions of unincorporated associations regarding expenditure for building maintenance be regarded as constituting a “contract for the provision of services” within the meaning of Article 4(1)(b) of Regulation No 593/2008 or as a contract relating to a “right in rem” or a “tenancy” within the meaning of Article 4(1)(c) of that regulation?’

17. In the preliminary ruling proceedings before the Court the Republic of Latvia and the European Commission submitted written observations.

V. Admissibility of the request for a preliminary ruling

18. According to the referring court, the main proceedings were initiated by the appeal brought by the applicant at first instance against an order of the Rayonen sad Razlog (Razlog District Court) by which that court declared that it lacked jurisdiction to give a ruling on the action which had been brought.

19. It is not expressly indicated in the order for reference whether the document instituting the proceedings was transmitted to the defendants at first instance in accordance with the applicable rules of law, in this case probably pursuant to the provisions of the Service Regulation. [4]

20. Under these circumstances, the relevance of the present request for a preliminary ruling to the decision might be questioned at first sight since, if the document instituting the proceedings had not been served on the defendants at first instance, the national court hearing the case at first instance was possibly not permitted to examine its international jurisdiction. In that case, the appellate court would have to grant the appeal brought by the manager on that very ground and the answers to the questions referred would be immaterial.

21. Even though the admissibility of a request for a preliminary ruling does not in principle depend on the adversarial nature of the main proceedings [5] — here the appeal proceedings — it should nevertheless be stated in this connection that the due transmission of the document instituting the proceedings is of considerable importance both for examination of international jurisdiction by a national court [6] in accordance with the provisions of the Brussels Ia Regulation and for recognition of a subsequent decision on the merits. [7] The transmission requirement has particular importance as a corollary of the defendant's right to a fair hearing [8] and to the observance his rights of defence. [9]

22. In this case, however, the fact that the order for reference does not explicitly indicate whether and, as the case may be, how the document instituting the proceedings was transmitted to the defendants cannot in itself raise doubts as to the relevance of the request for a preliminary ruling to the decision.

4 Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79, 'Service Regulation').

5 See to that effect, in particular, judgment of 3 March 1994, *Eurico Italia and Others* (C-332/92, C-333/92 and C-335/92, EU:C:1994:79, paragraphs 11 and 13).

6 See, for example, the obligation under Article 19 of the Service Regulation in conjunction with Article 28(3) of the Brussels Ia Regulation to refrain from giving judgment until it can be established that the document instituting the proceedings has been duly transmitted.

7 With regard to the legal consequence of non-service, deficient service or failure to effect service in sufficient time in connection with recognition, see Article 45(1)(b) of the Brussels Ia Regulation.

8 Peiffer E./Peiffer M. in Paulus D./Peiffer E./Peiffer M., *Europäische Gerichtsstands- und Vollstreckungsverordnung (Brüssel Ia), Kommentar*, Article 28, paragraphs 18 and 29.

9 Queirolo I., in Magnus/Mankowski, *ECPIL Commentary on Brussels Ibis Regulation*, Article 28, paragraph 20. See Opinion of Advocate General Bot in *A* (C-112/13, EU:C:2014:207, point 53 et seq.), and judgment of 11 September 2014, *A* (C-112/13, EU:C:2014:2195, paragraph 51 et seq.).

23. It is settled case-law that requests for a preliminary ruling concerning the interpretation of EU law enjoy a presumption of relevance.[10] In addition, the Court finds a lack of relevance of the questions referred to it only in very exceptional cases, namely, where it is obvious.[11] That cannot be considered to be the case here.

24. In addition, the referring court states that the appeal brought by the applicant relates to the fact that, until the time of the contested order, the defendants had not raised any objections to the jurisdiction of the court. Furthermore, the referring court states that its findings were made 'from a factual and legal perspective' 'having examined the arguments put forward by the parties, taking account of the decision in respect of which annulment is sought'. This suggests that transmission of the document instituting the proceedings did actually take place.

25. In any case, it is for the national court, before adopting a decision on the merits and thus, as the case may be, after receiving the Court's answer to the questions of interpretation referred, to ensure that the document instituting the proceedings has been duly served.

26. For all the above reasons, factual uncertainties regarding the time and manner of transmission of the document instituting the proceedings — both at first instance and in the pending appeal proceedings — cannot give rise to any doubts as to the admissibility of the request for a preliminary ruling.

VI. Substantive assessment of the questions referred

27. The national court has referred four questions to the Court for a preliminary ruling. The first question concerns special jurisdiction for matters relating to a contract under Article 7(1) of the Brussels Ia Regulation. In the event that such jurisdiction does not apply, a second question is asked regarding the applicability of the Rome I Regulation. In the event that the Rome I Regulation is not applicable to such a situation, clarification is sought in a third question concerning the applicability of the Rome II Regulation.[12] In its fourth question, lastly, the referring court asks whether — from the point of view of the conflict-of-law rules — the resolutions at issue should be regarded as constituting a 'contract for the provision of services' within the meaning of Article 4(1)(b) of the Rome I Regulation or as a contract relating to a 'right *in rem*' (point (c)) or a 'tenancy' (point (c)) within the meaning of Article 4(1) of the Rome I Regulation.

28. Accordingly, the interpretation of the Brussels Ia Regulation will be examined first below. It will be shown that the issues relating to the conflict-of-law rules which are the subject of the second to fourth questions do not need to be examined using other instruments.

10 Judgments of 7 September 1999, *Beck and Bergdorf* (C-355/97, EU:C:1999:391, paragraph 22); of 23 January 2018, *F. Hoffmann-La Roche and Others* (C-179/16, EU:C:2018:25, paragraph 45); of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others* (C-426/16, EU:C:2018:335, paragraph 31); and of 25 July 2018, *Confédération paysanne and Others* (C-528/16, EU:C:2018:583, paragraph 73).

11 According to the settled case-law cited in footnote 10, the Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

12 Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 73).

A. The interpretation of the Brussels Ia Regulation

29. The first question, which concerns the interpretation of Article 7(1)(a) of the Brussels Ia Regulation, refers to 'decisions of unincorporated associations created by operation of law due to the special ownership of a right, which are taken by a majority of their members but which bind all of them, including those who did not cast a vote'. According to the statements made by the referring court regarding the facts of the case, however, it is not the respective decisions of the association of property owners that are the object of the main proceedings, but claims for payment based on those decisions.

30. Article 7(1)(a) of the Brussels Ia Regulation [13] provides for special jurisdiction in the place of performance of the obligation in question 'in matters relating to a contract'. [14] From a schematic point of view, however, it should first be pointed out that recourse to that special jurisdiction is precluded where there is exclusive jurisdiction under Article 24. [15]

31. That exclusive jurisdiction includes the jurisdiction under Article 24(1) of the courts of the Member State in which immovable property is situated in proceedings which have as their object rights *in rem* in immovable property. [16] It also includes the jurisdiction provided for in Article 24(2) of the courts of the Member State in which a company, legal person or association has its seat in certain proceedings in company law. [17]

32. Against this background, a useful answer to the first question requires a preliminary examination of exclusive jurisdiction under Article 24(1) and (2) of the Brussels Ia Regulation. Only in the event that exclusive jurisdiction was not possible under those provisions would an interpretation of Article 7(1) of the Brussels Ia Regulation be necessary.

1. Exclusive jurisdiction under Article 24 of the Brussels Ia Regulation

(a) Exclusive jurisdiction in respect of immovable property (Article 24(1))

33. It is uncertain, first of all, whether proceedings concerning claims for payment arising from resolutions made by an association of property owners without legal personality in connection with the management of the property in question are to be regarded as proceedings 'which have as their object rights *in rem* in immovable property or tenancies of immovable property'.

34. The fourth question makes clear that the referring court has doubts — albeit with regard to the application of the Rome I Regulation and its possible importance for the substantive rules to be applied in determining the place of performance — whether the main proceedings are to be regarded as proceedings which have as their object 'rights *in rem* in immovable property' or 'tenancies of immovable property'.

13 See point 5 of this Opinion.

14 The German version of this provision ('wenn ein Vertrag oder Ansprüche aus einem Vertrag den Gegenstand des Verfahrens bilden') is different in this respect from other language versions, which in some cases have a less specific wording (English version 'matters relating to a contract', Spanish version: 'materia contractual', French version: 'en matière contractuelle', Hungarian version: 'egy szerződés', Italian version: 'materia contrattuale', Romanian version: 'materie contractuală').

15 See also Article 27 of the Brussels Ia Regulation.

16 And for tenancies of immovable property.

17 See point 6 of this Opinion.

35. Recital 7 of the Rome I Regulation states that the provisions of that regulation should be consistent inter alia with the Brussels I Regulation.[18] In addition, the referring court rightly considers that this concordance imperative also applies to the relationship between the Brussels Ia Regulation and the Rome I Regulation.[19]

36. Against this background, it must be assumed that the referring court's doubts of interpretation with regard to whether the present case concerns rights *in rem* in immovable property also relate to Article 24(1) of the Brussels Ia Regulation.

37. As has already been stated, the main proceedings have as their object the payment of outstanding contributions purportedly owed by two co-owners for the management and maintenance of the property concerned. It is thus a matter of obligations — to use the words of the referring court — arising from ownership of shares in the commonhold as rights *in rem* in immovable property.

38. According to the Court's case-law, the notion of 'right *in rem*' in immovable property within the meaning of Article 24(1) of the Brussels Ia Regulation must be given an autonomous and strict interpretation[20] such that the right in question must have effect *erga omnes*.[21] Case-law also requires that the content or extent of that right is the object of the proceedings.[22]

39. In the main proceedings, however, the action brought by the manager is based on claims *in personam* of the association of owners for payment of contributions for the maintenance of communal areas of the property. The rights *in rem* of the defendant co-owners of the commonhold — in the form of intangible ownership shares — initially remain unaffected, with the result that exclusive jurisdiction under Article 24(1) must be ruled out in accordance with the cited case-law.

40. The assessment might be different in this case on the ground that, according to the appellant in the main proceedings, an action to secure enforcement was brought with the application,[23] on which the court at first instance had not taken a decision. Such an action could affect the defendants' rights *in rem* arising from their ownership shares, for example by restricting their powers of disposal.[24] There would thus be a ground for international jurisdiction based on the first alternative in the first subparagraph of Article 24(1) of the Brussels Ia Regulation. It is therefore for the referring court to determine what *in rem* effects might be created in the main proceedings for the defendants' ownership shares as a result of the action to secure enforcement.[25]

41. It should be noted, purely for the sake of completeness, that management by an association of property owners cannot be equated with use of a property and, for that reason, it can be ruled out that the main proceedings have as their object 'tenancies of immovable property'.

18 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, 'Brussels I Regulation').

19 See to that effect judgment of 15 June 2017, *Kareda* (C-249/16, EU:C:2017:472, paragraph 32), with reference to judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic* (C-359/14 and C-475/14, EU:C:2016:40, paragraph 43).

20 With regard to the schematic and teleological foundations of this principle, see my Opinion in *Schmidt* (C-417/15, EU:C:2016:535, points 35 and 37), and judgment of 16 November 2016, *Schmidt* (C-417/15, EU:C:2016:881, paragraph 28 et seq.).

21 Judgment of 16 November 2016, *Schmidt* (C-417/15, EU:C:2016:881, paragraph 31), with reference to judgment of 17 December 2015, *Komu and Others* (C-605/14, EU:C:2015:833, paragraph 27 and the case-law cited).

22 Judgment of 16 November 2016, *Schmidt* (C-417/15, EU:C:2016:881, paragraph 30), likewise with reference to judgment of 17 December 2015, *Komu and Others* (C-605/14, EU:C:2015:833, paragraph 26 and the case-law cited).

23 Under Article 397(1) of the Bulgarian Code of civil procedure, a court order may evidently be imposed on the debtor in this context, prohibiting him from disposing of a property.
See https://e-justice.europa.eu/content_interim_and_precautionary_measures-78-bg-en.do?member= 1 (as at: 26.11.2018).

24 Along similar lines, the Court ruled in judgment of 17 December 2015, *Komu and Others* (C-605/14, EU:C:2015:833) that an action for the termination of co-ownership in undivided shares of immovable property by way of sale, by an appointed agent, falls under *in rem* jurisdiction.

25 If, in the present case, the jurisdiction of the Bulgarian courts should result from the action to secure enforcement under the first alternative in the first subparagraph of Article 24(1) of the Brussels Ia Regulation, the jurisdiction of those courts could also possibly be founded on the secured monetary claim under Article 8(4) of that regulation.

(b) Exclusive jurisdiction in respect of companies and other legal persons or associations (Article 24(2))

42. Article 24(2) of the Brussels Ia Regulation establishes exclusive jurisdiction of the courts of the Member State in which a company, legal person [26] or association has its seat, inter alia in proceedings which have as their object the validity of the decisions of their organs (fourth alternative).

43. It can be inferred from the distinction between companies and other legal persons, first of all, that 'unincorporated associations', that is, associations of persons without legal personality, such as, it would appear, the association of property owners in the main proceedings under Bulgarian law, are, in principle, covered by Article 24(2), without there being any need to examine further the notion of 'company'.

44. It should nevertheless be noted that the fourth alternative in Article 24(2) of the Brussels Ia Regulation covers only proceedings which have as their object the legal validity of a decision. [27] These must be distinguished from proceedings which have as their object the enforcement of such decisions, like the action at issue seeking payment of contributions based on such a decision.

45. It must therefore be stated that exclusive jurisdiction under the fourth alternative in Article 24(2) of the Brussels Ia Regulation does not apply in proceedings of the kind at issue.

(c) Interim conclusion

46. In the event that, in view of the subject matter of the action in the main proceedings, there are no grounds for exclusive jurisdiction under the first alternative in the first subparagraph of Article 24(1) of the Brussels Ia Regulation, [28] it is now necessary to examine the interpretation of Article 7(1) of the Brussels Ia Regulation.

2. Special jurisdiction under Article 7(1) of the Brussels Ia Regulation

47. The first question concerning the interpretation of Article 7(1) of the Brussels Ia Regulation is intended to clarify, in essence, whether the claims for payment at issue are to be regarded as matters relating to a contract within the meaning of that provision.

48. As the Brussels Ia Regulation replaced the Brussels I Regulation, the Court considers in settled case-law [29] that the Court's interpretation of the provisions of the latter regulation also applies to the Brussels Ia Regulation, whenever the provisions of the two instruments of EU law may be regarded as equivalent. In so far as Article 7(1) of the Brussels Ia Regulation is the same as the precursor provisions in Article 5(1) of the Brussels I Regulation and Article 5(1) of the Brussels Convention, [30] the Court's interpretation of those precursor provisions is also relevant to Article 7(1) of the Brussels Ia Regulation. [31]

26 Here too, however, the individual language versions of this provision differ: the English version, for example, refers to 'companies or other legal persons or associations of natural or legal persons' [while the German version states 'Gesellschaft oder juristischen Person'].

27 Judgment of 2 October 2008, *Hassett and Doherty* (C-372/07, EU:C:2008:534, paragraph 26).

28 See above, point 40.

29 Judgments of 16 November 2016, *Schmidt* (C-417/15, EU:C:2016:881, paragraph 26), and of 9 March 2017, *Pula Parking* (C-551/15, EU:C:2017:193, paragraph 31).

30 Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32).

31 See to that effect judgment of 15 June 2017, *Kareda* (C-249/16, EU:C:2017:472, paragraph 27). See also the recent judgment of 15 November 2018, *Kuhn* (C-308/17, EU:C:2018:911, paragraph 31).

49. With regard to Article 5(1)(a) of the Brussels I Regulation, the Court has ruled that the conclusion of a contract is not a condition for its application.[32] It is nevertheless essential, for that provision to apply, that an obligation be identified, since the jurisdiction of the national court under that provision is determined by the place of performance of the obligation in question. Thus, the concept of 'matters relating to a contract' within the meaning of that provision is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another.[33]

50. The Court infers from this that, consequently, the application of the rule of special jurisdiction for matters relating to a contract presupposes the establishment of a legal obligation freely consented to by one person towards another and on which the claimant's action is based.[34]

51. The Court has also accepted the necessary free consent in cases in which the obligation at issue had its legal basis in statutes of associations or in decisions made by organs of an association,[35] in the performance of management tasks in accordance with company law,[36] in legal provisions[37] in the Flight Compensation Regulation[38] or in a unilateral declaration.[39] These cases show that the Court does not interpret the condition of 'matters relating to a contract' narrowly,[40] although there is often a formal reference in case-law to the rule-exception relationship between general jurisdiction under Article 4 of the Brussels Ia Regulation and special jurisdiction.[41]

52. It is thus crucial to the answer to the first question whether in the main proceedings 'a legal obligation freely consented to by one person towards another' can be identified. In this connection it must be examined to what extent the considerations expressed by the Court in *Peters Bauunternehmung*[42] might be valid in the present case. That case concerned the classification of a payment obligation based on voluntary membership of an association of undertakings. The Court found in this regard that 'membership of an association creates between the members close links of the same kind as those which are created between the parties to a contract',[43] such that the obligations at issue may be regarded as contractual for the purpose of the application of Article 5(1) of the Brussels Convention.[44] It is immaterial in this context that 'the obligation in question arises simply from the act of becoming a member or results from that act in conjunction with a decision of an organ of the association.'[45]

32 Judgments of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37, paragraph 38), and of 21 April 2016, *Austro-Mechana* (C-572/14, EU:C:2016:286, paragraph 34).

33 Judgments of 14 March 2013, *Česká spořitelna* (C-419/11, EU:C:2013:165, paragraph 46); of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37, paragraph 39); and of 21 April 2016, *Austro-Mechana* (C-572/14, EU:C:2016:286, paragraph 35). See also, with regard to the Brussels Convention, judgment of 17 June 1992, *Handte* (C-26/91, EU:C:1992:268, paragraph 15).

34 Judgments of 15 June 2017, *Kareda* (C-249/16, EU:C:2017:472, paragraph 28); of 14 March 2013, *Česká spořitelna* (C-419/11, EU:C:2013:165, paragraph 47); of 28 January 2015, *Kolassa* (C-375/13, EU:C:2015:37, paragraph 39); and of 21 April 2016, *Austro-Mechana* (C-572/14, EU:C:2016:286, paragraph 36).

35 Judgment of 22 March 1983, *Peters Bauunternehmung* (34/82, EU:C:1983:87, paragraph 13).

36 Judgment of 10 September 2015, *Holterman Ferho Exploitatie and Others* (C-47/14, EU:C:2015:574, paragraph 54).

37 Judgment of 7 March 2018, *Flightright and Others* (C-274/16, C-447/16 and C-448/16, EU:C:2018:160, paragraph 64). See the earlier judgment of 9 July 2009, *Rehder* (C-204/08, EU:C:2009:439, paragraph 28).

38 Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

39 Judgment of 20 January 2005, *Engler* (C-27/02, EU:C:2005:33, paragraph 53) (prize notification).

40 See to that effect judgment of 20 January 2005, *Engler* (C-27/02, EU:C:2005:33, paragraph 48).

41 Judgment of 14 July 2016, *Granarolo* (C-196/15, EU:C:2016:559, paragraph 18 et seq.), with reference to judgment of 18 July 2013, *ÖFAB* (C-147/12, EU:C:2013:490, paragraph 30 et seq.).

42 Judgment of 22 March 1983, *Peters Bauunternehmung* (34/82, EU:C:1983:87, paragraph 13).

43 Judgment of 22 March 1983, *Peters Bauunternehmung* (34/82, EU:C:1983:87, paragraph 13).

44 This approach was confirmed in the judgment of 10 March 1992, *Powell Duffryn* (C-214/89, EU:C:1992:115), regarding the validity vis-à-vis shareholders of an agreement conferring jurisdiction laid down in articles of association, and in the abovementioned judgment of 20 January 2005, *Engler* (C-27/02, EU:C:2005:33, paragraph 45).

45 Judgment of 22 March 1983, *Peters Bauunternehmung* (34/82, EU:C:1983:87, paragraph 18).

53. With regard to the main proceedings, it should thus be stated, first of all, that the procedure for adopting the resolution on which the claim for payment is based [46] and the fact that the annulment of the resolution in question was not applied for by the defaulting co-owners are irrelevant to the assessment of free consent to the obligation imposed on the co-owners by that resolution.

54. As regards membership of the association of property owners, it must be pointed out that, on the one hand, it is prescribed by law, as the relevant Bulgarian law stipulates that commonhold property must be managed by an association of owners. On the other hand, the detailed arrangements for management are, where applicable, governed by contract and the association is joined through voluntary acquisition of an apartment together with ownership shares of the communal areas of the property. These aspects thus justify the view that the relevant obligation of the co-owners towards the association of owners is a legal obligation freely consented to. [47]

55. This conclusion is also consistent with the objectives pursued by the Brussels Ia Regulation. According to recitals 15 and 16, 'the rules of jurisdiction should be highly predictable' and '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'. In *Peters Bauunternehmung* [48] the Court had stated that 'since under national legal systems it is usually stipulated that the place in which the association is established is to be the place of performance of obligations arising out of the act of becoming a member, the application of [contractual jurisdiction] also has practical advantages: the court for the place in which the association has its seat is in fact usually the best fitted to understand the documents of constitution, rules and decisions of the association, and also the circumstances out of which the dispute arose'.

56. These considerations appear to be applicable to the case at issue. As the Latvian Government rightly states in its written observations, jurisdiction for claims arising from the management of commonhold property is at the place where decisions are taken, [49] if it corresponds to the place of performance of the obligation in question, [50] in accordance with the objective of special jurisdiction under Article 7(1), as expressed in recital 16 of the Brussels Ia Regulation.

57. In particular, this will prevent claims for payment against co-owners who may be domiciled in different States and questions regarding the validity of the underlying resolutions being heard before different courts.

58. On the basis of the above considerations, I therefore suggest that the Court answer the first question to the effect that, notwithstanding any exclusive jurisdiction under the first alternative in the first subparagraph of Article 24(1) in conjunction with Article 8(4) of the Brussels Ia Regulation, proceedings concerning claims arising from decisions which are taken by the majority of the members of an association of property owners without legal personality, but which bind all members, including those who did not cast a vote, are to be regarded as matters relating to a contract within the meaning of Article 7(1)(a) of the Brussels Ia Regulation.

46 Under the cited provisions of national law, the maintenance costs, to which all the joint owners will be required to contribute in proportion with the intangible ownership shares held by them, are decided by majority resolution of the general meeting of owners. The binding nature of the resolution in question is not therefore linked to whether or not a joint owner supported the resolution.

47 In Case C-421/18 the Court will have to clarify whether these considerations can also be applied to a case in which a bar association is taking legal action to assert claims for payment of fees against one of its members.

48 Judgment of 22 March 1983, *Peters Bauunternehmung* (34/82, EU:C:1983:87, paragraph 14).

49 This also corresponds to the situs of the property.

50 With regard to the determination of the place of performance, however, see my statements regarding the fourth question, point 62 et seq. below.

B. Conclusions with regard to the other questions

1. The second question

59. The second question concerning the applicability of the Rome I Regulation has been asked in the event that the first question is answered in the negative. Because I propose that the Court answers the first question in the affirmative, it might therefore be unnecessary to answer the second question.

60. As regards the applicability of the Rome I Regulation, it should be borne in mind in any case that such applicability does not simply stem from the fact that an action falls under special jurisdiction for matters relating to a contract under Article 7(1) of the Brussels Ia Regulation.[51] Regard must be had to the exceptions to the material scope of the Rome I Regulation. Under Article 1(2)(f), the Rome I Regulation is not applicable in particular to 'questions governed by the law of companies and other bodies, corporate or unincorporated …'. It follows from this exception that, under the conflict-of-law rules, claims for payment made by a legal association against its members are not to be assessed on the basis of the Rome I Regulation, even though such claims are to be regarded as 'matters relating to a contract' within the meaning of Article 7(1) of the Brussels Ia Regulation, which does not contain a similar exception.[52]

2. The third question

61. The third question concerning the applicability of the Rome II Regulation is also asked only in the case of a negative answer to both the first and the second questions. Therefore, in view of my proposed answer to the first question, there is no need to answer them.

3. The fourth question

62. On the other hand, the fourth question concerning the interpretation of Article 4(1)(b) and (c) of the Rome I Regulation is asked in the case of an affirmative answer to the first or second questions, that is, if the applicability of the conflict-of-law rules for contractual obligations followed from the applicability of the special jurisdiction of the place of performance of the contractual obligation.

63. It is, however, clear from my above comments regarding the applicability of the Rome I Regulation[53] that that regulation is not applicable in principle to the legal relationship at issue in the main proceedings according to Article 1(2)(f) thereof.

64. As has already been intimated,[54] it is nevertheless evident that, by the fourth question, the referring court wishes in essence to ascertain to what extent the classification of the legal relationship on which the claim for payment at issue is based in the main proceedings affects the legal provisions applicable in determining the place of performance.

51 The Commission's reference to the concordance imperative thus does not go far enough.

52 See also to that effect Von Hein in Rauscher, Großkommentar EuZPR/EuIPR, Bd. III Rom I-VO, Rom II-VO, 4. Aufl. 2015, Artikel 1 Rom I-VO, paragraph 47.

53 See above, point 60.

54 See above, point 34.

65. Since, according to settled case-law, it is for the Court to provide the national court with an answer which will be of use to it and enable it to decide the case before it, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions. [55]

66. Against this background, the doubts of interpretation expressed by the referring court in the fourth question regarding the classification of the legal relationship on which the action for payment is based as a 'contract for the provision of services', [56] as a contract relating to a 'right *in rem*' [57] or as a tenancy [58] could also be seen as an extension of the doubts of interpretation regarding Article 7(1) of the Brussels Ia Regulation. This is suggested in particular by the fact that in its order for reference the national court mentions Article 68 of the Zakon za zadalzheniata i dogovorite (Law on obligations and contracts) in respect of the determination of the place of performance of a claim.

67. The fourth question should thus be reformulated and interpreted as seeking to ascertain whether the place of performance of the obligation in question is to be determined on the basis of the second indent of Article 7(1)(b) of the Brussels Ia Regulation.

68. For contracts for the provision of services, the second indent of Article 7(1)(b) of the Brussels Ia Regulation contains a rule for the autonomous Union-wide determination of the place of performance of the obligation, unless the contract in question includes an agreement to that effect. The relevant place is the place where, under the contract, the characteristic performance of the contract — that is, the services — was provided or should have been provided.

69. According to the Court's case-law concerning Article 5(1)(b) of the Brussels I Regulation, the wording of which is the same as that of Article 7(1)(b) of the Brussels Ia Regulation, 'the concept of service implies, at the least, that the party who provides the service carries out a particular activity in return for remuneration'. [59] [60]

70. The relationship between the contributions to be paid by the co-owners, the payment of which is at issue in the main proceedings, and the management tasks of the association of property owners is therefore uncertain. The tasks essentially consist in the maintenance of the property and, alongside that, the conclusion of different kinds of contracts with third parties in execution of the commercial management activity, such as for cleaning and care of communal areas of the property, carrying out repairs or energy supply.

71. It should nevertheless be borne in mind that this management activity itself is not necessarily carried out for remuneration. This is the case, for example, only where the management of a property consisting of apartments is assigned to a specialised service provider — and is not, for example, carried out voluntarily by one of the co-owners. In addition, the contributions to be paid to the association by the co-owners are intended in no small part to cover taxes and duties, and not therefore to fulfil contractual obligations towards third parties which were entered into on behalf of and for the account of the association of owners.

55 See recent judgment of 7 August 2018, *Smith* (C-122/17, EU:C:2018:631, paragraph 34). See also, inter alia, judgment of 22 June 2017, *E.ON Biofor Sverige* (C-549/15, EU:C:2017:490, paragraph 72).

56 It should be stated as a preliminary point that the notion of 'service' under the second indent of Article 7(1)(b) of the Brussels Ia Regulation is the same notion as under Article 4(1)(b) of the Rome I Regulation. See to that effect Paulus, in Paulus/Peiffer/Peiffer, Kommentar zur VO (EU) No 1215/2012, Article 7, paragraph 97 with further references.

57 See above, with regard to Article 24(1) of the Brussels Ia Regulation, point 33 et seq.

58 See above, point 41.

59 See judgment of 23 April 2009, *Falco Privatstiftung and Rabitsch* (C-533/07, EU:C:2009:257, paragraph 29). See also judgment of 14 July 2016, *Granarolo* (C-196/15, EU:C:2016:559, paragraph 37).

60 In interpreting this criterion, however, the Court considers the grant of an 'economic value' to be sufficient consideration where a payment obligation cannot be identified. See for example judgment of 19 December 2013, *Corman-Collins* (C-9/12, EU:C:2013:860, paragraph 40).

72. In view of these considerations relating to the mixed or at least non-uniform nature of the contributions in question and in accordance with the principles of legal certainty and predictability of the determination of international jurisdiction,[61] the second indent of Article 7(1)(b) of the Brussels Ia Regulation should not, in my view, be applied to a situation like that in the main proceedings.

73. Consequently, the place of performance would have to be determined on the basis of the subsidiary rule — pursuant to Article 7(1)(c) of the Brussels Ia Regulation — contained in Article 7(1)(a) of the Brussels Ia Regulation, which provides that jurisdiction in matters relating to a contract within the meaning of that provision is at 'the place of performance of the obligation in question'.

74. Regard should be had, in determining the place of performance according to the 'Tessili rule',[62] to the *lex causae* defined as applicable by the valid conflict-of-law rules of the forum State.

75. It should be borne in mind in this regard that the place of performance within the meaning of Article 7(1)(a) of the Brussels Ia Regulation would have to be determined in the light of the specific obligation at issue, which, in the main proceedings, is the payment obligation and not the characteristic performance of the contract as in point (b).[63]

76. I therefore propose that the Court reformulate the fourth question in order to clarify its reference to Article 7(1) of the Brussels Ia Regulation and answer it as follows:

Article 7(1) of the Brussels Ia Regulation is to be interpreted as meaning that

– the performance of a management task by an association of owners, within which decisions regarding expenditure for building maintenance are taken, is not to be classified as 'services' within the meaning of the second indent of point (b);

– the place of performance of a payment obligation arising from such decisions is to be determined on the basis of the law applicable to the legal relationship in question under the conflict-of-law rules of the forum State in accordance with point (a).

VII. Conclusion

77. In the light of the foregoing considerations, I propose that the Court answer the request for a preliminary ruling from the Okrazhen sad — Blagoevgrad (Blagoevgrad Regional Court, Bulgaria) as follows:

(1) Notwithstanding exclusive jurisdiction under the first alternative in the first subparagraph of Article 24(1) in conjunction with the first alternative in the first sentence of Article 8(4) of Regulation (EU) No 1215/2012 (Brussels Ia), proceedings concerning claims arising from decisions which are taken by the majority of the members of an association of property owners without legal personality, but which bind all members, including those who did not cast a vote, are to be regarded as matters relating to a contract within the meaning of Article 7(1)(a) of Regulation (EU) No 1215/2012 (Brussels Ia).

(2) Article 7(1) of Regulation (EU) No 1215/2012 (Brussels Ia) is to be interpreted as meaning that

61 See recitals 15 and 16 of the Brussels Ia Regulation.

62 Judgment of 6 October 1976, *Industrie tessili italiana Como* (12/76, EU:C:1976:133).

63 Settled case-law since the judgment of 6 October 1976, *De Bloos* (14/76, EU:C:1976:134).

– the performance of a management task by the organs of an association of owners, within which decisions regarding expenditure for building maintenance are taken, is not to be classified as 'services' within the meaning of the second indent of point (b);

– the place of performance of a payment obligation arising from such decisions is to be determined on the basis of the law applicable to the legal relationship in question under the conflict-of-law rules of the forum State in accordance with point (a).