Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

25 February 2021 * [i]

(Reference for a preliminary ruling – Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Regulation (EU) No 1215/2012 – Jurisdiction over individual contracts of employment – Provisions of Section 5 of Chapter II – Applicability – Contract entered into in a Member State for employment with a company established in another Member State – No work performed throughout the duration of the contract – Exclusion of the application of national rules of jurisdiction – Article 21(1)(b)(i) – Concept of the 'place where or from where the employee habitually carries out his work' – Contract of employment – Place of performance of the contract – Obligations of the employee towards his or her employer)

In Case C-804/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesgericht Salzburg (Regional Court, Salzburg, Austria), made by decision of 23 October 2019, received at the Court on 31 October 2019, in the proceedings

BU

v

Markt24 GmbH,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan (Rapporteur) and N. Jääskinen, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Markt24 GmbH, by G. Herzog, Rechtsanwalt,

– the Czech Government, by M. Smolek, J. Vláčil and I. Gavrilová, acting as Agents,

* Language of the case: German.

– the European Commission, by M. Wilderspin and M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 October 2020,

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Article 7(1) and Article 21 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 That request has been made in the context of proceedings between BU, a natural person domiciled in Austria, and Markt24 GmbH, a company incorporated under German law with its registered office in Unterschleißheim in the Landkreis München (administrative district of Munich, Germany), concerning the payment by that company of outstanding wage payments, aliquot special payments and compensatory leave payments.

Legal context

EU law

3 Recitals 14 and 18 of Regulation No 1215/2012 are worded as follows:

‘(14) …

> … in order to ensure the protection of … employees, to safeguard the jurisdiction of the courts of the Member States in situations where they have exclusive jurisdiction and to respect the autonomy of the parties, certain rules of jurisdiction in this Regulation should apply regardless of the defendant’s domicile.

…

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

4 Chapter II of that regulation relates to jurisdiction. Section 1 of that chapter, under the heading ‘General provisions’, comprises Articles 4 to 6.

5 Article 4(1) of that regulation provides as follows:

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

6 Article 5 of that regulation provides:

‘1. 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.

2. In particular, the rules of national jurisdiction of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1.’

7 Section 2 of Chapter II of Regulation No 1215/2012, under the heading ‘Special jurisdiction’, comprises Articles 7 to 9 of that regulation.

8 Article 7 of that regulation states:

‘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 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;

…

(5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;

…’

9 Section 5 of Chapter II of that regulation, under the heading ‘Jurisdiction over individual contracts of employment’, comprises Articles 20 to 23 of that regulation.

10 Article 20(1) of that regulation is worded as follows:

‘In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.’

11 Article 21(1) of Regulation No 1215/2012 provides:

‘An employer domiciled in a Member State may be sued:

(a) in the courts of the Member State in which he is domiciled; or

(b) in another Member State:

(i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or
(ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.'

Austrian law

12 Paragraph 4 of the Bundesgesetz über die Arbeits- und Sozialgerichtsbarkeit (Arbeits- und Sozialgerichtsgesetz) (Federal Law on the labour and social courts) of 7 March 1985 ('the ASGG') provides in its subparagraph 1:

'For the disputes referred to in Paragraph 50(1), territorial jurisdiction also lies with, at the choice of the applicant:

(1) in the cases in points 1 to 3, the court within the area of jurisdiction of which
(a) the employee has his or her place of residence or usual abode during the employment relationship or where he or she had his or her place of residence or usual abode at the time when the employment relationship ended,

…
(d) the remuneration is to be paid, or, if the employment relationship has ended, was to be paid when the relationship was last in effect …

…'

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

13 BU, who is domiciled in Austria, was contacted in Salzburg (Austria) by an employee of Markt24, a company with its registered office in Unterschleißheim, in the administrative district of Munich, and signed, with that employee acting as intermediary, a contract of employment with that company as a cleaner in charge of carrying out cleaning work for the period from 6 September to 15 December 2017 ('the contract at issue').

14 Markt24 had an office in Salzburg at the beginning of the employment relationship established by the contract at issue. However, that contract was signed, not in that office, but in a bakery in Salzburg. The agreed starting date was 6 September 2017 and the work was to be carried out in Munich. Ultimately, however, Markt24 did not assign any work to BU.

15 Although BU remained contactable by telephone and remained prepared to work, she did not, in fact, perform any work for Markt24. BU did not have the telephone number of the employee of Markt24 with whom she had been in contact for the conclusion of the contract at issue, that employee having mentioned the Austrian telephone number of Markt24 and a German address for that company. BU was registered with the Austrian social security institution as an employee up until 15 December 2017. Markt24 subsequently terminated BU's employment.

16 On 27 April 2018, BU brought proceedings against Markt24 before the Landesgericht Salzburg (Regional Court, Salzburg, Austria), the referring court, for the purposes of recovering outstanding wage payments, aliquot special payments and compensatory leave payments in the

total amount of EUR 2 962.80 gross for the period from 6 September 2017 to 15 December 2017. BU produced three pay slips for the months of September to November 2017, on which Markt24 was identified as the employer.

17 Since the documents initiating the action by BU could not be served on Markt24, notwithstanding several attempts at service at different addresses by post and via the Amtsgericht München (District Court, Munich, Germany), and as the place of residence of that company's representatives was unknown, a representative was appointed by order of 26 December 2018 to represent that company in the proceedings in accordance with the Austrian provisions. By document of 7 January 2019, the representative thus appointed disputed both the jurisdiction of the Austrian courts in general and that of the referring court in particular.

18 In that respect, the referring court is unsure whether Article 21 of Regulation No 1215/2012 is applicable to employment relationships in which the employee, although he or she had entered into a contract of employment in Austria, did not perform any work but remained prepared to work.

19 According to the referring court, the duration and permanence of the employment relationship during the period from 6 September to 15 December 2017 are established. That court adds that both the pre-contractual phase preceding the conclusion of the contract at issue and the conclusion of the contract itself took place in Austria, since BU had also been registered with the Austrian social security institution.

20 The referring court also claims that, as is the case with consumers, employees constitute a group of persons in need of protection, who should not be placed in a worse position by EU legislation as compared with national legislation. According to that court, reference should be made, in particular, to the financial situation of the employee, which, in the case of low pay, makes it more difficult to bring proceedings before the courts of another Member State.

21 In those circumstances, the Landesgericht Salzburg (Regional Court, Salzburg) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 21 of Regulation (EU) No 1215/2012 applicable to an employment relationship in which, although an employment contract was entered into in Austria for the performance of work in Germany, the female employee, who remained in Austria and was prepared for several months to work, did not perform any work?

In the event that the first question is answered in the affirmative:

(2) Is Article 21 of Regulation (EU) No 1215/2012 to be interpreted as meaning that it is possible to apply a national provision which enables an employee to bring an action in the place where she was resident during the employment relationship or at the time when the employment relationship ended (thus facilitating the process of bringing an action), as is the case with Paragraph 4(1)(a) of the [ASGG]?

(3) Is Article 21 of Regulation (EU) No 1215/2012 to be interpreted as meaning that it is possible to apply a national provision which enables an employee to bring an action in the place where the remuneration is to be paid or was to be paid upon termination of his employment relationship (thus facilitating the process of bringing an action), as is the case with Paragraph 4(1)(d) of the ASGG?

In the event that Questions 2 and 3 are answered in the negative:

(4) Is Article 21 of Regulation (EU) No 1215/2012 to be interpreted as meaning that, in the case of an employment relationship in which the female employee has not performed any work, the action must be brought in the Member State in which the employee remained prepared to work?

Is Article 21 of Regulation (EU) No 1215/2012 to be interpreted as meaning that, in the case of an employment relationship in which the female employee has not performed any work, the action must be brought in the Member State in which the employment contract was initiated and entered into, even if the performance of work in another Member State had been agreed or envisaged in that employment contract?

In the event that the first question is answered in the negative:

(5) Is Article 7(1) of Regulation (EU) No 1215/2012 applicable to an employment relationship in which, although an employment contract was entered into in Austria for the performance of work in Germany, the female employee, who remained in Austria and was prepared for several months to work, did not perform any work, if it is possible to apply a national provision which enables an employee to bring an action in the place where she was resident during the employment relationship or at the time when the employment relationship ended (thus facilitating the process of bringing an action), as is the case with Paragraph 4(1)(a) of the ASGG, or if it is possible to apply a national provision which enables an employee to bring an action in the place where the remuneration is to be paid or was to be paid upon termination of the employment relationship (thus facilitating the process of bringing an action), as is the case with Paragraph 4(1)(d) of the ASGG?'

Consideration of the questions referred

The first question

22 By its first question, the referring court asks, in essence, whether the provisions laid down in Section 5 of Chapter II of Regulation No 1215/2012, under the heading 'Jurisdiction over individual contracts of employment', must be interpreted as applying to a legal action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the employee is domiciled and provided that the place of performance of the work was located in the Member State of the employer, even though that work was not performed for a reason attributable to that employer.

23 In this respect, it must be borne in mind that, under Article 20 of Regulation No 1215/2012, in matters relating to individual contracts of employment, jurisdiction is determined by Section 5 of Chapter II of that regulation, under the heading 'Jurisdiction over individual contracts of employment', which comprises Articles 20 to 23 thereof, without prejudice to Article 6 and point 5 of Article 7 of Regulation No 1215/2012 and, in the case of an action brought against an employer, Article 8(1) of that regulation.

24 The concept of an 'individual contract of employment' referred to in Article 20 of Regulation No 1215/2012 must be given an autonomous interpretation in order to ensure the uniform application of the rules of jurisdiction established by that regulation in all Member States (see, to that effect, judgment of 14 September 2017, *Nogueira and Others*, C-168/16 and C-169/16, EU:C:2017:688, paragraphs 47 and 48 and the case-law cited).

25 As is apparent from the Court's case-law, that concept presupposes a relationship of subordination of the employee to the employer; the essential feature of an employment relationship is that for a certain period of time one person performs services for and under the direction of another in return for which he or she receives remuneration (see, by analogy, judgments of 10 September 2015, *Holterman Ferho Exploitatie and Others*, C-47/14, EU:C:2015:574, paragraphs 40 and 41, and of 11 April 2019, *Bosworth and Hurley*, C-603/17, EU:C:2019:310, paragraphs 25 and 26).

26 In such a case, it must be held that the parties are bound by a 'contract of employment' within the meaning of Article 20 of Regulation No 1215/2012, irrespective of whether the work which is the subject of that contract has been performed or not.

27 Accordingly, in so far as it is apparent from the order for reference that, in the main proceedings, the contract at issue established a relationship of subordination between an employer and an employee and gave rise to the rights and obligations of each of the parties in the context of an employment relationship, a dispute concerning that contract comes within the scope of the provisions of Section 5 of Chapter II of Regulation No 1215/2012 notwithstanding the fact that there was no performance of that contract.

28 Consequently, the answer to the first question is that the provisions set out in Section 5 of Chapter II of Regulation No 1215/2012, under the heading 'Jurisdiction over individual contracts of employment', must be interpreted as applying to a legal action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the employee is domiciled and provided that the place of performance of the work was located in the Member State of the employer, even though that work was not performed for a reason attributable to that employer.

The second and third questions

29 By its second and third questions, which should be considered together, the referring court asks, in essence, whether the provisions set out in Section 5 of Chapter II of Regulation No 1215/2012 must be interpreted as precluding the application of national rules of jurisdiction in respect of an action such as that referred to in paragraph 28 of the present judgment, in a situation where it should be established that those rules are more beneficial to the employee.

30 It is important to recall that, according to settled case-law, the purpose of both 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 the new Member States to that convention, on the one hand, and Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) and Regulation No 1215/2012, which succeeded that convention, on the other hand, is to establish uniform rules of

international jurisdiction (judgments of 3 July 1997, *Benincasa*, C-269/95, EU:C:1997:337, paragraph 25; of 17 November 2011, *Hypoteční banka*, C-327/10, EU:C:2011:745, paragraphs 33 and 45; and of 7 July 2016, *Hőszig*, C-222/15, EU:C:2016:525, paragraph 31).

31 First, under Article 4(1) of Regulation No 1215/2012, 'persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State'. Secondly, under 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 [Chapter II of that regulation]'.

32 It follows that, as the Advocate General has argued in points 41 and 42 of his Opinion, where a dispute with an international element comes within the material scope of the regulation and the defendant is domiciled in a Member State, the uniform rules of jurisdiction laid down in Regulation No 1215/2012 must take precedence over national rules of jurisdiction (see, to that effect, judgments of 17 November 2011, *Hypoteční banka*, C-327/10, EU:C:2011:745, paragraphs 33 and 45, and of 19 December 2013, *Corman-Collins*, C-9/12, EU:C:2013:860, paragraph 22).

33 That exclusion in principle of national rules of jurisdiction also applies in regard to the provisions set out in Section 5 of Chapter II of Regulation No 1215/2012, which, the Court has stated, are not only specific but also exhaustive (see, by analogy, judgment of 21 June 2018, *Petronas Lubricants Italy*, C-1/17, EU:C:2018:478, paragraph 25 and the case-law cited).

34 Therefore, in the context of a legal action coming within the scope of the provisions set out in Section 5 of Chapter II of that regulation, national rules for determining jurisdiction in respect of individual contracts of employment which differ from those laid down in those provisions cannot be applied, irrespective of whether those national rules are more beneficial to the employee.

35 The answer to the second and third questions is therefore that the provisions set out in Section 5 of Chapter II of Regulation No 1215/2012 must be interpreted as precluding the application of national rules of jurisdiction in respect of an action such as that referred to in paragraph 28 of the present judgment, irrespective of whether those rules are more beneficial to the employee.

The fourth question

36 By its fourth question, the referring court asks, in essence, whether Article 21 of Regulation No 1215/2012 must be interpreted as applying to an action such as that referred to in paragraph 28 of the present judgment. As appropriate, the referring court also requests the Court of Justice to specify the competent forum under that article.

37 In this respect, it is important to recall that an employer domiciled in a Member State may be sued either, under Article 21(1)(a) of that regulation, in the courts of the Member State in which he or she is domiciled or, under Article 21(1)(b)(i) and (ii) of that regulation, in the courts for the place where or from where the employee habitually carries out his or her work or in the courts for the last place where he or she did so, or, if the employee does not or did not habitually carry out his or her work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

38 In this case, it is apparent from the order for reference that the court before which the employee brought proceedings is not that of the Member State in which the employer is domiciled, as permitted under Article 21(1)(a) of Regulation No 1215/2012. Nor is it apparent from the facts in the main proceedings that the action brought by the employee would come within the scope of Article 21(1)(b)(ii) of that regulation.

39 It is thus necessary to determine whether, even though no work was performed, an action such as that in the main proceedings comes within the scope of Article 21(1)(b)(i) of that regulation, which provides that an employer domiciled in a Member State may be sued in another Member State in the courts for the place where or from where the employee habitually carries out his or her work or in the courts for the last place where he or she did so.

40 In this respect, the concept of the 'place where the employee habitually carries out his work' enshrined in Article 19(2)(a) of Regulation No 44/2001, which corresponds to Article 21(1)(b)(i) of Regulation No 1215/2012, must be interpreted as referring to the place where, or from which, the employee in fact performs the essential part of his or her duties vis-à-vis his or her employer (see, to that effect, judgment of 14 September 2017, *Nogueira and Others*, C-168/16 and C-169/16, EU:C:2017:688, paragraph 59).

41 As noted by the Advocate General in points 61 and 63 of his Opinion, in the case where the contract of employment has not been performed, the intention expressed by the parties to the contract as to the place of that performance is, in principle, the only element which makes it possible to establish a habitual place of work for the purposes of Article 21(1)(b)(i) of Regulation No 1215/2012. That interpretation best allows a high degree of predictability of rules of jurisdiction to be ensured, since the place of work envisaged by the parties in the contract of employment is, in principle, easy to identify.

42 Accordingly, Article 21(1)(b)(i) of Regulation No 1215/2012 must be interpreted as meaning that an action relating to an employment relationship, such as that referred to in paragraph 28 of the present judgment, may be brought before a court of the Member State in which the employee was required, pursuant to the contract of employment, to discharge the essential part of his or her obligations towards his or her employer.

43 As is apparent from the order for reference in the present case, the place in which the employee was required, pursuant to the contract at issue, to discharge the essential part of her obligations towards her employer was located in Munich.

44 It must be added that, under Article 20(1) of Regulation No 1215/2012, jurisdiction is to be determined in Section 5 of Chapter II of that regulation 'without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8' of that regulation.

45 Under point 5 of Article 7 of Regulation No 1215/2012, a person domiciled in a Member State may be sued in another Member State, 'as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated'.

46 It is for the referring court to determine whether that provision may also be applicable in the present case in so far as, as is apparent from the order for reference, (i) Markt24 had an office in Salzburg at the beginning of the employment relationship established by the contract at issue and (ii) the employee was required, pursuant to the contract at issue, to discharge the essential part of her obligations towards her employer in Munich.

47 It should be borne in mind that the concepts of 'branch,' 'agency' and 'other establishment' referred to in point 5 of Article 7 of Regulation No 1215/2012 must be interpreted autonomously as implying a centre of operations which has the appearance of permanency, such as the extension of a parent body. That centre must have a management and be materially equipped to negotiate business with third parties, so that they do not have to deal directly with the parent body (see, to that effect, judgment of 11 April 2019, *Ryanair*, C-464/18, EU:C:2019:311, paragraph 33 and the case-law cited).

48 It must be added that that provision applies only if the dispute concerns either acts relating to the operations of a branch, or commitments entered into by such a branch on behalf of the parent body, if those commitments are to be performed in the State in which that branch is situated (see, to that effect, judgment of 11 April 2019, *Ryanair*, C-464/18, EU:C:2019:311, paragraph 33 and the case-law cited).

49 In the light of all of the foregoing considerations, the answer to the fourth question is that Article 21(1)(b)(i) of Regulation No 1215/2012 must be interpreted as meaning that an action such as that referred to in paragraph 28 of the present judgment may be brought before the court of the place where or from where the employee was required, pursuant to the contract of employment, to discharge the essential part of his or her obligations towards his or her employer, without prejudice to point 5 of Article 7 of that regulation.

The fifth question

50 Since the fifth question is asked only in the event of a negative answer to the first question, there is no need to answer it in view of the affirmative answer given to that first question.

Costs

51 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 (First Chamber) hereby rules:

1. **The provisions set out in Section 5 of Chapter II 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, under the heading 'Jurisdiction over individual contracts of employment', must be interpreted as applying to a legal action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the**

employee is domiciled and provided that the place of performance of the work was located in the Member State of the employer, even though that work was not performed for a reason attributable to that employer.

2. **The provisions set out in Section 5 of Chapter II of Regulation No 1215/2012 must be interpreted as precluding the application of national rules of jurisdiction in respect of an action such as that referred to in point 1 of the operative part of the present judgment, irrespective of whether those rules are more beneficial to the employee.**

3. **Article 21(1)(b)(i) of Regulation No 1215/2012 must be interpreted as meaning that an action such as that referred to in point 1 of the operative part of the present judgment may be brought before the court of the place where or from where the employee was required, pursuant to the contract of employment, to discharge the essential part of his or her obligations towards his or her employer, without prejudice to point 5 of Article 7 of that regulation.**

[Signatures]

[i] — The wording of the headwords of this document has been amended since it was first put online.