



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

17 May 2023*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Law applicable to non-contractual obligations – Regulation (EC) No 864/2007 – Article 4(1) – Article 15(h) – Article 19 – Accident caused by a boat in a Member State – Compensation for the victim of that accident – Subrogation in accordance with the law of another Member State – Reimbursement requested by the third-person subrogee – Applicable law – Limitation)

In Case C-264/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal da Relação de Lisboa (Court of Appeal, Lisbon, Portugal), made by decision of 5 April 2022, received at the Court on 20 April 2022, in the proceedings

Fonds de Garantie des Victimes des Actes de Terrorisme et d’Autres Infractions (FGTI)

v

Victoria Seguros SA,

THE COURT (Ninth Chamber),

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

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Fonds de Garantie des Victimes des Actes de Terrorisme et d’Autres Infractions (FGTI), by L. Franco e Abreu, advogado,
- Victoria Seguros SA, by J. Serrano Santos, advogado,
- the Portuguese Government, by P. Barros da Costa, S. Duarte Afonso, A. Pimenta and J. Ramos, acting as Agents,

* Language of the case: Portuguese.

- the Czech Government, by A. Edelmannová, M. Smolek and J. Vláčil, acting as Agents,
- the European Commission, by I. Melo Sampaio and W. Wils, acting as Agents,

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

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(1), Article 15(h) and Article 19 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) (OJ 2007 L 199, p. 40).
- 2 The request has been made in proceedings between the Fonds de garantie des victimes des actes de terrorisme et d'autres infractions (FGTI) and Victoria Seguros SA, an insurance company, concerning the reimbursement of compensation paid by FGTI to a victim of an accident which occurred in Portugal.

Legal context

European Union law

- 3 Recitals 6, 14 and 16 of Regulation No 864/2007 state:

‘(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

...

- (14) The requirement of legal certainty and the need to do justice in individual cases are essential elements of an area of justice. This Regulation provides for the connecting factors which are the most appropriate to achieve these objectives. ...

...

- (16) Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. A connection with the country where the direct damage occurred (*lex loci damni*) strikes a fair balance between the interests of the person claimed to be liable and the person sustaining the damage, and also reflects the modern approach to civil liability and the development of systems of strict liability.’

4 Article 4 of that regulation, entitled 'General rule', provides in paragraph 1:

'Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.'

5 Article 15 of that regulation, entitled 'Scope of the law applicable', provides:

'The law applicable to non-contractual obligations under this Regulation shall govern in particular:

...

(h) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.'

6 Article 19 of that regulation, entitled 'Subrogation', states:

'Where a person (the creditor) has a non-contractual claim upon another (the debtor), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether, and the extent to which, the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.'

Portuguese law

7 In accordance with Article 45(1) of the Código Civil (Civil Code), where an accident or an unlawful act has occurred in Portuguese territory, the law applicable to non-contractual liability arising from that accident or as a result of that act is Portuguese law.

8 Article 498(1) of the Civil Code provides that the right to compensation expires after a period of three years from the date of the tort/delict. If the tort/delict is a criminal offence for which the law provides for a longer limitation period, that longer limitation period applies pursuant to Article 498(3) of that code.

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

9 On 4 August 2010, while swimming and snorkelling in the sea off the beach at Alvor (Portugal), a person of French nationality was struck by the propeller of a boat registered in Portugal. As a result of that accident, that person suffered serious physical injuries, received hospital treatment and underwent several surgical operations in Portugal and France.

10 In the context of the claim for compensation brought by that person against FGTI before the tribunal de grande instance de Lyon (Regional Court, Lyon, France), the parties agreed to set the amount of compensation due in respect of the damage suffered as a result of that accident at EUR 229 480.73. On 20 March 2014, that court approved the agreement thus reached, in accordance with which FGTI made the final payment to that person on 7 April 2014.

- 11 At the end of November 2016, FGTI brought proceedings against Victoria Seguros, the insurance company of the person alleged to be responsible for the accident in question, before the Portuguese courts in order to obtain reimbursement of the amount paid by FGTI to the victim of that accident.
- 12 The court of first instance, the Tribunal Marítimo de Lisboa (Maritime Court, Lisbon, Portugal), dismissed FGTI's action, declaring that FGTI's right was time-barred since the three-year period laid down by the applicable Portuguese law had expired.
- 13 FGTI appealed that dismissal decision before the referring court, the Tribunal da Relação de Lisboa (Court of Appeal, Lisbon, Portugal), asserting that, in accordance with Article 19 of Regulation No 864/2007, the applicable limitation period is not that laid down by Portuguese law but rather that laid down by French law. On the date when its action was brought before the Portuguese courts, that period had not yet expired. Where there is subrogation, French law provides for a limitation period of 10 years from the date of the judicial decision at issue, which, in the present case, was made in March 2014. In the alternative, FGTI maintains that, even if Portuguese law were to apply, the three-year limitation period laid down by Portuguese law also would not have expired on that date, since it would start to run only as of the last payment made to the victim, namely, in the present case, 7 April 2014, whereas FGTI had brought that action in November 2016.
- 14 Victoria Seguros, for its part, relies on the applicability of Portuguese law, under which that action is time-barred, in accordance with the rules laid down by the Portuguese Civil Code.
- 15 In those circumstances, the Tribunal da Relação de Lisboa (Court of Appeal, Lisbon) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the law applicable to the limitation rules for the right to claim compensation that of the place of the accident (Portuguese law), in accordance with Article 4(l) and [Article 15(h)] of [Regulation No 864/2007] or, if the injured party's place is taken by subrogation, is the "law of the third person" subrogee (French law) applicable in accordance with Article 19 of that Regulation?'

Consideration of the question referred

- 16 By its question, the referring court asks, in essence, whether Article 4(1), Article 15(h) and Article 19 of Regulation No 864/2007 must be interpreted as meaning that the law which governs the action of a third party subrogated to the rights of an injured party against the person who caused the damage and which determines, in particular, the rules on limitation periods in respect of that action, is that of the country in which that damage occurs.
- 17 In accordance with settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgments of 7 April 2022, *Berlin Chemie A. Menarini*, C-333/20, EU:C:2022:291, paragraph 34, and of 20 June 2022, *London Steam-Ship Owners' Mutual Insurance Association*, C-700/20, EU:C:2022:488, paragraph 55).

- 18 In that regard, in the first place, Article 4(1) of Regulation No 864/2007 provides that, ‘unless otherwise provided for in [that] Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs’. It follows that the law applicable to an action brought by the injured party against the person who caused the damage is, unless otherwise provided for in that regulation, the law of the country in which that damage occurs.
- 19 Furthermore, Article 15(h) of Regulation No 864/2007 states that ‘the law applicable to non-contractual obligations under [that] Regulation shall govern in particular ... the manner in which an obligation may be extinguished and rules of prescription and limitation’.
- 20 It is thus apparent, first, from a combined reading of Article 4(1) and Article 15(h) of that regulation that, unless otherwise provided for therein, the law which governs the injured party’s action against the person who caused the damage and which determines, in particular, the rules on limitation periods in respect of that action is the law of the country in which that damage occurs.
- 21 Second, Article 19 of that regulation, entitled ‘Subrogation’, provides, with regard to the duty of a third person to satisfy the injured party, that ‘the law which governs the third person’s duty ... shall determine whether, and the extent to which, the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship’. That article thus distinguishes between, on the one hand, the law applicable to the relationship between the creditor, namely the injured party in the event of damage, and the third party subrogated to his or her rights and, on the other hand, the law governing the relationship between the creditor and its debtor, that is to say, in the event of damage, the relationship between the injured party and the person who caused that damage.
- 22 In addition, Article 19 provides that the third-person subrogee may exercise the rights of the injured party under the law governing the relationship between that person and the person who caused the damage. It follows that it is under the latter law that the third-person subrogee may bring, in the place of the injured party, the action available to that person against the person who caused that damage. In other words, the law applicable to an action by a third-person subrogee against the person who caused the damage is the law applicable to an action brought by the injured party against that person who caused that damage.
- 23 That law is determined, as will be set out in paragraph 27 of the present judgment, in accordance with the provisions of Article 4 et seq. of Regulation No 864/2007, which are found in Chapters II to IV thereof. In the event of damage caused by an accident such as that at issue in the main proceedings, the law applicable to an action brought by the injured party against the person who caused that damage is, as stated in paragraph 18 of the present judgment, in accordance with the general rule laid down in Article 4(1) of that regulation, in principle, the law of the country in which that damage occurs.
- 24 Furthermore, such an interpretation is supported by the case-law of the Court. Accordingly, in paragraphs 56 to 59 of the judgment of 21 January 2016, *ERGO Insurance and Gjensidige Baltic* (C-359/14 and C-475/14, EU:C:2016:40), it was held, in essence, that, in a situation in which a third party has compensated the victim of an accident in order to discharge an obligation towards its insured party, Article 19 of that regulation provides that the issue of any subrogation to that victim’s rights and the conditions for the exercise of that subrogation are governed by the law applicable to the duty of the third party to compensate that victim. By contrast, the Court has

found that the law applicable to determining the persons who may be held liable for the accident remains subject, in accordance with Article 19, to Article 4 et seq. of that regulation. It follows that the law governing the relationship between the injured party and the person who caused the damage, that is to say, the creditor and the debtor referred to in that Article 19, is to be determined in accordance with Article 4 et seq. of that regulation.

- 25 In the light of the foregoing, it follows from a combined reading of Article 4(1), Article 15(h) and Article 19 of Regulation No 864/2007 that the law which governs an action of the injured party against the person who caused the damage and which determines, in particular, the rules on limitation periods in respect of that action, which law is, in principle, the law of the country in which that damage occurs, is also the law which governs the action of a third party subrogated to the rights of that injured party against the person who caused that damage.
- 26 In the second place, the general structure of Regulation No 864/2007 supports the interpretation under which Article 19 thereof does not seek to determine the law applicable to the time-barring of an action relied on by a third-person subrogee against the debtor referred to in that article.
- 27 Chapter V of Regulation No 864/2007, which includes Article 19, establishes common rules which apply to situations in which the law applicable to the non-contractual obligation at issue has, as such, already been determined. Such a determination is made in accordance with the rules set out in Chapter II of that regulation, entitled 'Torts/delicts', in Chapter III thereof, entitled 'Unjust enrichment, *negotiorum gestio* and *culpa in contrahendo*', and in Chapter IV of that regulation on freedom of choice of the law applicable.
- 28 As has been stated in paragraphs 20 and 23 of the present judgment, it follows from the rules set out in those chapters that the law applicable to the rules on limitation periods in respect of a non-contractual obligation arising from a tort/delict must, in principle, be determined in accordance with the general rule laid down in Article 4(1) of Regulation No 864/2007 (see, to that effect, judgment of 31 January 2019, *Da Silva Martins*, C-149/18, EU:C:2019:84, paragraph 33), which designates the law of the country where the damage occurs.
- 29 In the third place, it would run counter to the objective pursued by Regulation No 864/2007 to interpret Article 19 thereof to the effect that the law applicable to the duty of the third-person subrogee to satisfy the creditor determines the rules concerning the limitation period for that action, when the third-person subrogee is bringing an action against the debtor.
- 30 As is apparent from recitals 6, 14 and 16 of that regulation, that objective consists, inter alia, in ensuring certainty as to the law applicable irrespective of the country in which the action is brought, improving the foreseeability of court decisions and ensuring a reasonable balance between the interests of the person claimed to be liable and those of the person who has sustained damage. Such foreseeability of the law applicable would, however, be undermined if, where there is subrogation, the conditions for discharge and the manner in which the non-contractual obligation of the debtor towards the injured party may be extinguished were determined by the law applicable to the duty of the third person to satisfy that person. Under that interpretation, the law applicable and, therefore, those conditions for discharge and such manner of being extinguished may vary according to whether or not subrogation has taken place.
- 31 In addition, such an interpretation of Article 19 of Regulation No 864/2007 would also run counter to the objective of ensuring a reasonable balance between the interests involved, as well as, as the European Commission has observed, the very essence of the subrogation mechanism.

The consequence of that interpretation would be that the person who caused the damage, the debtor, by reason of the fact that an action is brought against him or her by the third-person subrogee, and not by the injured party, the creditor, would be placed in a different situation, which might be less favourable, than the situation in which he or she would have found himself or herself had that creditor personally and directly exercised his or her rights against him or her. In so far as subrogation is intended in principle solely to enable the third-person subrogee to exercise the rights of the creditor, applying that mechanism ought to have no effect on the legal situation of the debtor. Indeed, the debtor ought to be able to rely against the third-person subrogee on all the defences available to him or her against the injured party, in particular those relating to the application of the limitation rules.

- 32 In the light of all the foregoing, the answer to the question referred is that Article 4(1), Article 15(h) and Article 19 of Regulation No 864/2007 must be interpreted as meaning that the law which governs the action of a third party subrogated to the rights of an injured party against the person who caused the damage and which determines, in particular, the rules on limitation in respect of that action is, in principle, that of the country in which that damage occurs.

Costs

- 33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 4(1), Article 15(h) and Article 19 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)

must be interpreted as meaning that the law which governs the action of a third party subrogated to the rights of an injured party against the person who caused the damage and which determines, in particular, the rules on limitation in respect of that action is, in principle, that of the country in which that damage occurs.

[Signatures]