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JUDGMENT OF THE COURT (Fourth Chamber)

10 December 2015 (*)

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation No 864/2007 — Article 4(1) — Concepts of ‘country in which the damage occurs’, ‘damage’ and ‘indirect consequences of the tort or delict’ — Damage sustained personally by a family member of a person who died as a result of a road traffic accident — Applicable law)

In Case C-350/14,

REQUEST for a preliminary ruling Article 267 TFEU, from the Tribunale di Trieste (District Court, Trieste, Italy), made by decision of 10 July 2014, received at the Court on 21 July 2014, in the proceedings

Florin Lazar,

v

Allianz SpA,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan (Rapporteur), A. Prechal and K. Jürimäe, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- L. Lazar and G. Chiturlas, by M. Bonito, avvocato,
- the Austrian Government, by G. Eberhard, acting as Agent,
- the Portuguese Government, by L. Inez Fernandes and A. Fonseca Santos, acting as Agents,
- the European Commission, by L. Cappelletti and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 September 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(1) 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, 'the Rome II Regulation').

2 The request has been made in proceedings between Mr Lazar, who resides in Romania, and the Italian insurance company Allianz SpA concerning compensation in respect of material and non-material damage he sustained as a result of the death of his daughter in a road traffic accident which occurred in Italy.

Legal context

EU law

The Rome II Regulation

3 According to recital 7 in the preamble to the Rome II 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 [OJ 2001 L 12, p. 1, 'Brussels I'] and the instruments dealing with the law applicable to contractual obligations.'

4 Recitals 16 and 17 in the preamble to that regulation state as follows:

'(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.

(17) The law applicable should be determined on the basis of where the damage occurs, regardless of the country or countries in which the indirect consequences could occur. Accordingly, in cases of personal injury or damage to property, the country in which the damage occurs should be the country where the injury was sustained or the property was damaged respectively.’

5 Article 2 of that regulation, entitled ‘Non-Contractual Obligations’, provides at paragraph 1:

‘For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.’

6 Under Chapter II of the Rome II Regulation, which concerns torts and delicts, Article 4 thereof, entitled, ‘General Rule’, states:

‘(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.

(2) However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.

(3) Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.’

7 Under Article 15(c) and (f) respectively of the Rome II Regulation, the law applicable to non-contractual obligations governs ‘the existence, the nature and the assessment of damage or the remedy claimed’ and ‘persons entitled to compensation for damage sustained personally’.

The Brussels I Regulation and Regulation (EU) No 1215/2012

8 Chapter II of the Brussels I Regulation, which sets out the rules relating to the determination of the court having jurisdiction, contains Section 2 on ‘Special Jurisdiction’. Article 5(3), which is set at in Section 2, provides:

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

...

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

9 That regulation was replaced with effect from 10 January 2015 by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 20 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 21), the wording of Article 7(2) thereof being identical to Article 5(3) of the Brussels I Regulation.

Italian law

10 According to the referring court, the Corte suprema di Cassazione (Court of Cassation) has interpreted Articles 2043 and 2059 of the Civil Code as meaning that members of a deceased person’s family are entitled in their own right to compensation in respect of material and non-material damage. As regards non material damage, the following damage is recognised: damage to health (medically certified damage), psychological damage (non-physical pain), and damage to personal relationships (significant impairment of daily life).

11 That court has also indicated that, under Article 283(1) of the Private Insurance Code, where it has not been possible to identify the vehicle which caused the accident, the Guarantee Fund for Road Accident Victims (Fondao di garanzia per le vittime della strada) is to pay compensation for the damage caused as a result of the use of vehicles through the intermediary of designated insurance companies.

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

12 The order for reference states that Mr Lazar, a Romanian national, has claimed compensation for material and non-material damage sustained as a result of the death of his daughter, a Romanian national resident in Italy, in a road traffic accident in that Member State caused by an unidentified vehicle.

13 The insurance company Allianz SpA was designated as the company designated by the guarantee fund for road accident victims.

14 The mother and grandmother of the victim, both Romanian nationals residing in Italy, have also intervened in the proceedings and seek compensation for material and non-material damage they have sustained on account of her death.

15 According to the referring court, since the applicants claim compensation for harm they personally suffered on account of the death a member of their family, it is important

to know whether this constitutes ‘damage’ within the meaning of Article 4(1) of the Rome II Regulation, or an indirect consequence of a tort or delict within the meaning of the same provision.

16 The answer to that question depends on the substantive law to be applied by the referring court in order to adjudicate on the existence and recoverable nature of the damage relied on before it by the applicant resident in Romania. In that regard, that court sets out the reasons which might lead to the application of both Italian and Romanian law to the dispute before it.

17 Thus, under Italian law, the damage resulting from the death of a family member is treated as having been suffered directly by the family member and, in particular, is deemed to amount to an infringement of his personal rights. Accordingly, in the dispute in the main proceedings, the applicant relies on damage which, on the basis of that national law, must be regarded as personal to him and as representing the material consequence of the death of his family member. In other European legal systems, however, that type of damage is not recognised in the same way.

18 Therefore, although, according to Italian law, there is direct damage sustained by an entitled person on account of the death of a member of his family, the referring court is unsure whether, in the light of the case-law of the Court of Justice relating to the Brussels I Regulation, the right to compensation for that damage may constitute, for the purposes of the Rome II Regulation, one of the ‘indirect consequences’ of the tort or delict, namely the road traffic accident.

19 In those circumstances, the Tribunale di Trieste (District Court, Trieste) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘1. How is the term “the [place] in which the damage occurs” within the meaning of Article 4(1) of [the Rome II Regulation] to be interpreted in the context of a claim for compensation for material and non-material damage brought by the close relatives of a person who has died as a result of a road traffic accident which occurred in the State of the court seised, where those family members are resident in another EU Member State and have suffered the damage itself in that other Member State?

2. For the purposes of the application of Article 4(1) of [the Rome II Regulation], do the material and non-material damage sustained, in their State of residence, by the close relatives of a person who has died as a result of a road traffic accident which occurred in the State of the court seised constitute “damage” within the meaning of the first part of Article 4(1) of that regulation, or “indirect consequences” within the meaning of the second part of that provision?’

Consideration of the questions referred for a preliminary ruling

20 By its questions, which it is appropriate to examine together, the referring court wishes to know essentially whether Article 4(1) of the Rome II Regulation must, in order to determine the law applicable to a non-contractual obligation arising from a road traffic accident, be interpreted as meaning that the damage arising from the death of a person in such an accident, which occurred in the Member State of the court seised, sustained by close relatives of the deceased who reside in another Member State, must be regarded as ‘damage’ or as ‘indirect consequences’ of that accident, within the meaning of that provision.

21 As a preliminary point, it must be noted, first, that, as regards the interpretation of Article 4(1) of the Rome II Regulation, the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union (see, to that effect, judgment in *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 37). 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 (judgment in *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 35 and the case-law cited).

22 In that connection, it must be observed that, according to Article 2 of the Rome II Regulation, ‘damage shall cover any consequence arising out of tort/delict’.

23 In order to identify the law applicable to a non-contractual obligation arising from a tort or delict, Article 4(1) of that regulation adopts 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. The damage which must be taken into account in order to determine the place where the damage occurred is the direct damage, as is clear from recital 16 of that regulation.

24 In the event of physical injuries caused to a person or the damage caused to goods, the EU legislature stated, in recital 17 in the preamble to the Rome II Regulation, that the country of the place where the direct damage occurs is the country of the place where the injuries were suffered or the goods were damaged.

25 It follows that, where it is possible to identify the occurrence of direct damage, which is usually the case with a road traffic accident, the place where the direct damage occurred is the relevant connecting factor for the determination of the applicable law, regardless of the indirect consequences of that accident. In the present case, the damage is constituted by the injuries which led to the death of Mr Lazar’s daughter, which, according to the referring court, occurred in Italy. The damage sustained by the close relatives of the deceased, must be regarded as indirect consequences of the accident at issue in the main proceedings, within the meaning of Article 4(1) of the Rome II Regulation.

26 That interpretation is confirmed by Article 15(f) of that regulation which confers on the applicable law the task of determining which are the persons entitled to claim damages, and which covers the situation, at issue in the main proceedings, of damage sustained by close relatives of the victim.

27 As the European Commission explained with regard to Article 11(g) of its Draft Proposal for a European Parliament and Council Regulation on the Law Applicable to Contractual Obligations ('ROME II') (COM(2003) 427 final), now Article 15(f) of the Rome II Regulation, the designated law also determines the persons entitled to compensation for damage they have sustained personally. That concept covers, in particular, whether a person other than the 'direct victim' may obtain compensation 'by ricochet', following damage sustained by the victim. That damage may be psychological, for example, the suffering caused by the death of a close relative, or financial, sustained for example by the children or spouse of a deceased person.

28 In the light of the above, it is necessary, first, to determine the law applicable to a legal act in order to be able to determine, on the basis of that, the persons who have sustained damage giving entitlement to compensation.

29 Thus, the application of the law of the place where the direct damage was suffered contributes to the objective set out in recital 16 in the preamble to the Rome II Regulation, seeking to ensure the foreseeability of the applicable law, while avoiding the risk that the tort or delict is broken up in to several elements, each subject to a different law according to the places or the persons other than the direct victim who sustain damage.

30 It follows from all of the foregoing that the answer to the questions referred is that Article 4(1) of the Rome II Regulation must be interpreted, in order to determine the law applicable to a non-contractual obligation arising from a road traffic accident, as meaning that the damage related to the death of a person in such an accident which took place in the Member State of the court seised and sustained by the close relatives of that person who reside in another Member State, must be classified as 'indirect consequences' of that accident, within the meaning of that provision.

Costs

31 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 (Fourth Chamber) hereby rules:

Article 4(1) 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, in order to determine the law applicable to a non-

contractual obligation arising from a road traffic accident, as meaning that the damage related to the death of a person in such an accident which took place in the Member State of the court seised and sustained by the close relatives of that person who reside in another Member State, must be classified as ‘indirect consequences’ of that accident, within the meaning of that provision.

[Signatures]

* Language of the case: Italian.
