Reports of Cases

ORDER OF THE COURT (Seventh Chamber)

14 March 2024*

(Reference for a preliminary ruling – Article 99 of the Rules of Procedure of the Court of Justice – Questions the answer to which may be clearly deduced from the Court's existing case-law – Judicial cooperation in civil matters – Law applicable to contractual obligations – Regulation (EC) No 593/2008 – Article 6 – Consumer claiming payment of a sum of money allegedly won in an online casino – No choice of applicable law – Application of a law deemed to be more favourable rather than the law of the country of habitual residence of the consumer)

In Case C-429/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), made by decision of 22 June 2022, received at the Court on 28 June 2022, in the proceedings

VK

v

N1 Interactive Ltd.,

THE COURT (Seventh Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, N. Wahl and J. Passer, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to rule by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

* Language of the case: German.

Order

1 This reference for a preliminary ruling concerns the interpretation of Article 6(1) of 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, 'the Rome I Regulation'), read in conjunction with Article 4 thereof.

2 The request has been made in proceedings between VK, an Austrian resident, and N1 Interactive Ltd., a company with its registered office in Malta, concerning the law applicable to the contract concluded between those parties.

Legal context

European Union law

3 Recital 23 of the Rome I Regulation reads as follows:

'As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict-of-law rules that are more favourable to their interests than the general rules.'

4 Article 4 of that regulation, entitled 'Applicable law in the absence of choice', provides:

'1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3 and without prejudice to Articles 5 to 8, the law governing the contract shall be determined as follows:

(a) a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence;

(b) a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence;

…

(g) a contract for the sale of goods by auction shall be governed by the law of the country where the auction takes place, if such a place can be determined;

…

2. Where the contract is not covered by paragraph 1 or where the elements of the contract would be covered by more than one of points (a) to (h) of paragraph 1, the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.

3. Where it is clear from all the circumstances of the case that the contract 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.

4. Where the law applicable cannot be determined pursuant to paragraphs 1 or 2, the contract shall be governed by the law of the country with which it is most closely connected.'

5 Article 6 of that regulation, entitled 'Consumer contracts', provides:

'1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or

(b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.

2. Notwithstanding paragraph 1, the parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.

3. If the requirements in points (a) or (b) of paragraph 1 are not fulfilled, the law applicable to a contract between a consumer and a professional shall be determined pursuant to Articles 3 and 4.

…'

6 Article 9 of that same regulation, entitled 'Overriding mandatory provisions', provides:

'1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.'

Austrian law

7 Paragraph 1271 of the Allgemeines bürgerliches Gesetzbuch (General Civil Code), in the version applicable to the dispute in the main proceedings ('the ABGB'), provides that bets made in good faith and other authorised bets are binding, in so far as the fixed price has not only been promised but has actually been paid or deposited. The prize cannot be claimed in court.

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

8 N1 Interactive operates an online casino from Malta and provides services, in particular, in Austria via the homepage of its website.

9 VK, who claims to have made winnings from playing at this online casino in 2020 in the amount of EUR 106 000, brought an action before the Handelsgericht Wien (Commercial Court, Vienna, Austria) seeking payment by N1 Interactive of that sum, together with default interest.

10 The defendant in the main proceedings disputes the merits of that action and argues that VK breached the general terms and conditions of sale by allowing a third party access to his user account.

11 It is apparent from the order for reference that the parties to the main proceedings have not determined the law applicable to their contract.

12 After finding that VK was a consumer, the Handelsgericht Wien (Commercial Court, Vienna) dismissed the action by judgment of 8 November 2021. Having regard to the failure of the parties in the main proceedings to determine the law applicable to their contract, that court held that the dispute in the main proceedings fell within the scope of Article 6(1)(a) of the Rome I Regulation, which determines as the applicable law the law of the country in which the consumer has his or her habitual residence, namely, in the present case, Austrian law.

13 However, under Austrian law, in particular Paragraph 1271 of the ABGB, it is not permissible to bring legal proceedings for the payment of winnings from a game of chance. According to the Handelsgericht Wien (Commercial Court, Vienna), the national provision at issue may even be characterised as an overriding mandatory provision within the meaning of Article 9 of the Rome I Regulation.

14 VK brought an appeal against that judgment before the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), the referring court, which agrees with the findings of the court of first instance as to VK's status as a consumer and the application of Article 6(1) of the Rome I Regulation, but expresses doubts as to whether Paragraph 1271 of the ABGB is a mandatory provision. Furthermore, the Oberlandesgericht Wien (Higher Regional Court, Vienna) points out that, in so far as Maltese law does not contain a provision equivalent to that article, the applicant in the main proceedings would be in a less unfavourable position if that law applied to him. If the applicant in the main proceedings were not a consumer, Maltese law would be applicable by virtue of Article 4 of the Rome I Regulation, even if the parties to the main proceedings had not determined the applicable law.

15 Furthermore, where the parties to a consumer contract have chosen the applicable law, that law will apply, in accordance with Article 6(2) of the Rome I Regulation, only if it does not deprive the consumer of the protection afforded to him or her by provisions of the law of his or her place of residence that cannot be derogated from.

16 According to the referring court, failure by the parties to a contract to determine the law applicable to it therefore precludes, in accordance with Article 6 of the Rome I Regulation, an analysis aimed at determining the most favourable applicable law.

17 In those circumstances, the Oberlandesgericht Wien (Higher Regional Court, Vienna) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 6(1) of [the Rome I Regulation] to be interpreted as meaning that the law of the country in which the consumer has his or her habitual residence is not applicable if the law applicable under Article 4 of the Rome I Regulation, the application of which the applicant seeks and which would be applicable if the applicant lacked consumer status, is more favourable to the applicant?'

Procedure before the Court

18 By decision of the President of the Court of 9 August 2022, the proceedings in the present case were stayed pending delivery of the judgment of 14 September 2023, *Club La Costa and Others* (C-821/21, EU:C:2023:672).

19 By letter of 18 September 2023, the Court Registry sent a copy of that judgment to the referring court and asked it to state whether, in the light of that judgment, it wished to maintain its request for a preliminary ruling.

20 By letter of 11 October 2023, that court informed the Court of Justice that it wished to maintain its request for a preliminary ruling.

21 By decision of the President of the Court of 18 October 2023, it was decided not to notify the parties of the request for a preliminary ruling.

Consideration of the question referred

22 Pursuant to Article 99 of its Rules of Procedure, where the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or where the answer to such a question admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

23 It is appropriate to apply that provision in the present case.

24 By its question, the referring court asks, in essence, whether Article 6(1) of the Rome I Regulation must be interpreted as meaning that, where a consumer contract fulfils the requirements set out in that provision and in the absence of a valid choice of law applicable to that contract, that law

must be determined in accordance with that provision, notwithstanding the fact that the law applicable to the contract in accordance with Article 4 of that regulation may be more favourable to the consumer.

25 However, the Court has already responded to a similar question, in the judgment of 14 September 2023, *Club La Costa and Others* (C-821/21, EU:C:2023:672).

26 The Court recalled, first, that Article 6(1) of the Rome I Regulation provides that a contract concluded by a consumer with a professional is to be governed by the law of the country where the consumer has his or her habitual residence, subject to fulfilment of the requirements set out in that provision, namely that the professional pursues his or her commercial or professional activities in the country where the consumer has his or her habitual residence, or, by any means, directs such activities to that country or to several countries including that country, and the contract falls within the scope of such activities (see, to that effect, judgment of 14 September 2023, *Club La Costa and Others*, C-821/21, EU:C:2023:672, paragraph 81).

27 In addition, Article 6(2) of the Rome I Regulation expressly provides that the parties may, in accordance with Article 3 of that regulation, choose the law applicable to such a contract, provided that such choice does not result in depriving the consumer of the protection afforded to him or her by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of Article 6(1) of that regulation (judgment of 14 September 2023, *Club La Costa and Others*, C-821/21, EU:C:2023:672, paragraph 82).

28 Finally, it is only if the contract in question does not fulfil the requirements set out in Article 6(1)(a) or (b) of the Rome I Regulation that Article 6(3) of that regulation states that the law applicable to that contract is to be determined in accordance with Articles 3 and 4 of that regulation (judgment of 14 September 2023, *Club La Costa and Others*, C-821/21, EU:C:2023:672, paragraph 83).

29 The Court inferred from this that where a consumer contract fulfils those requirements and in the absence of a valid choice of law made by the parties as to the law applicable to that contract, that law must be determined in accordance with Article 6(1) of the Rome I Regulation (judgment of 14 September 2023, *Club La Costa and Others*, C-821/21, EU:C:2023:672, paragraph 84).

30 The Court noted that, having regard to the fact that Article 6 of the Rome I Regulation is not only specific, but also exhaustive, so that the conflict-of-law rules laid down in that article cannot be amended or supplemented by other conflict-of-law rules laid down in that regulation, unless they are expressly referred to in that article, no other law can be accepted, even though that other law, determined in particular on the basis of the connecting factors laid down in Article 4 of that regulation, would be more favourable to the consumer (see, to that effect, judgment of 14 September 2023, *Club La Costa and Others*, C-821/21, EU:C:2023:672, paragraphs 78 and 85).

31 An interpretation to the contrary, whereby it would be possible to derogate from the conflict-of-law rules laid down by the Rome I Regulation for determining the law applicable to a consumer contract, on the ground that another law would be more favourable to the consumer, would necessarily seriously undermine the general requirement of predictability of the applicable law and, therefore, the principle of legal certainty in contractual relationships involving consumers (judgment of 14 September 2023, *Club La Costa and Others*, C-821/21, EU:C:2023:672, paragraph 86 and the case-law cited).

32 By designating the law of the country where the consumer has his or her habitual residence as being applicable, the EU legislature considered that that law offers adequate protection to the consumer, although that designation must not necessarily lead to the application, in all cases, of the law most favourable to the consumer (judgment of 14 September 2023, *Club La Costa and Others*, C-821/21, EU:C:2023:672, paragraph 87 and the case-law cited).

33 In the light of the foregoing, the answer to the question referred is that Article 6(1) of the Rome I Regulation must be interpreted as meaning that, where a consumer contract fulfils the requirements set out in that provision and in the absence of a valid choice of law applicable to that contract, that law must be determined in accordance with that provision, notwithstanding the fact that the law applicable to the contract in accordance with Article 4 of that regulation may be more favourable to the consumer.

Costs

34 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.

On those grounds, the Court (Seventh Chamber) hereby orders:

Article 6(1) of 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)

must be interpreted as meaning that where a consumer contract fulfils the requirements set out in that provision and in the absence of a valid choice of law applicable to that contract, that law must be determined in accordance with that provision, notwithstanding the fact that the law applicable to the contract in accordance with Article 4 of that regulation may be more favourable to the consumer.

[Signatures]