



Reports of Cases

Case C-572/14

Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte GmbH

v

Amazon EU Sàrl and Others

(Request for a preliminary ruling from the Oberster Gerichtshof)

(Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Jurisdiction in civil and commercial matters — Article 5(3) — Concept of ‘tort, delict or quasi-delict’ — Directive 2001/29/EC — Harmonisation of certain aspects of copyright and related rights in the information society — Article 5(2)(b) — Reproduction right — Exceptions and limitations — Reproduction for private use — Fair compensation — Non-payment — Whether included in the scope of Article 5(3) of Regulation (EC) No 44/2001)

Summary — Judgment of the Court (First Chamber), 21 April 2016

Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Regulation No 44/2001 — Special jurisdiction — Jurisdiction in tort, delict or quasi-delict — Concept — Claim seeking to obtain payment of remuneration due by virtue of national law implementing the fair compensation system laid down by Article 5(2)(b) of Directive 2001/29 — Included — Obligation to pay remuneration to a copyright-collecting society — No effect

(Council Regulation No 44/2001, Art. 5, point 3; European Parliament and Council Regulation No 2001/29, Art. 5(2)(b))

Article 5(3) of Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that a claim seeking to obtain payment of remuneration due by virtue of a national law implementing the fair compensation system provided for in Article 5(2)(b) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society, which provides that the author is entitled to fair compensation where it is to be anticipated that, by reason of the nature of a broadcast work, made available to the public or captured on an image- or sound-recording medium manufactured for commercial purposes, it will be reproduced for personal or private use when recording material is placed on the domestic market on a commercial basis and for consideration.

The concept of matters relating to tort, delict or quasi-delict covers all actions which seek to establish the liability of a defendant and which are not related to a contract within the meaning of Article 5(1)(a) of Regulation No 44/2001.

In that connection, first, such a connecting factor is lacking since the obligation was not freely consented to by the person responsible for payment, but was imposed on it by national law by reason of the making available, for commercial purposes and for consideration, of recording media suitable for reproduction of protected works.

Second, that claimant seeks to establish the liability of a defendant since that claim is based on an infringement, by the latter, of the provisions of national law concerned imposing on it the obligation to pay fair compensation and that infringement is an unlawful act causing harm to the claimant. The failure to collect the fair compensation constitutes a harmful event, within the meaning of Article 5(3) of Regulation No 44/2001, since that compensation is intended to compensate authors for the private copy made without their authorisation of their protected works, so that it must be regarded as compensation for the harm suffered by the authors resulting from such unauthorised copy by the latter. The fact that that fair compensation must be paid not to the holders of an exclusive reproduction right that it aims to compensate, but to a copyright-collecting society is irrelevant in that respect, since, according to the national law concerned, those societies alone are authorised to exercise the right to that remuneration.

(see paras 32, 37, 38, 43-46, 50, 53, operative part)