



Reports of Cases

ORDER OF THE COURT (Eighth Chamber)

6 November 2014*

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court — Manifest inadmissibility — Absence of sufficient information concerning the factual background and the reasons justifying the need for an answer to the question referred for a preliminary ruling)

In Case C-366/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Budapesti XX., XXI. és XXIII. kerületi bíróság (Hungary), made by decision of 11 July 2014, received at the Court on 28 July 2014, in the proceedings

Herrenknecht AG

v

Hév-Sugár kft,

THE COURT (Eighth Chamber),

composed of C. Toader (Rapporteur), acting as President of the Eighth Chamber, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 53(2) of the Rules of Procedure of the Court of Justice,

makes the following

Order

- ¹ This request for a preliminary ruling concerns the interpretation of Article 23(1) of 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 of Article 3(1) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1) ('the Rome Convention').

* Language of the case: Hungarian.

- 2 The request has been made in proceedings between Herrenknecht AG ('Herrenknecht'), a company incorporated under German law, and Hév-Sugár kft ('Hév-Sugár'), a company incorporated under Hungarian law, concerning a request for payment of rent.

Legal context

European Union law

- 3 Article 23(1) of Regulation No 44/2001 provides:

'If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing, or
 - (b) in a form which accords with practices which the parties have established between themselves, or
 - (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.'
- 4 Article 3(1) of the Rome Convention provides:

'A contract shall be governed by the law chosen by the parties. The choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or a part only of the contract.'

Hungarian law

- 5 The applicable national provisions reproduce, in essence, the provisions of European Union law.

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

- 6 The order for reference states that, on 11 July 2008, Herrenknecht, as lessor, and Hév-Sugár, as lessee, concluded a mixed sale and lease contract in accordance with which the former leased building machinery to the latter for the purpose of tunnelling. In that contract, it was also agreed that Herrenknecht would sell the equipment that was the subject of the contract to Hév-Sugár on the expiry of the lease period.
- 7 There were five annexes attached to the contract at issue relating to various contractual matters and including, according to the referring court, terms conferring jurisdiction, in the event of a dispute, either to arbitrators, as set out in Annex 1 to that contract, or to the ordinary courts, as set out in Annexes 2 and 4 to that contract. In the latter case, it was provided that the applicant could choose, in the event of a dispute, between the German or Hungarian courts designated.

- 8 Likewise, in the event of a dispute, Annex 1 to the contract at issue, relating to the supply of goods, designated German law as the applicable law, whereas Annexes 2 and 4 to that contract, relating respectively to the supply of personnel and to the general lease conditions, designated Swiss law as the applicable law.
- 9 In the action relating to a request for payment of rent brought by Herrenknecht, since it considered that the parties had made provision in their contract for terms which conflicted as regards the courts which have jurisdiction, the referring court undertook an examination of its own motion of its own jurisdiction.
- 10 Thus, while confirming that it has general jurisdiction in Hungary to hear the case in the main proceedings, that court raises the question whether it or another court designated by the terms conferring jurisdiction agreed between the parties has exclusive international jurisdiction in accordance with Article 23(1) of Regulation No 44/2001 and whether Herrenknecht had the right to choose freely between the courts designated in the contract at issue.
- 11 Moreover, it questions which law is applicable in this case, in the light of Article 3(1) of the Rome Convention and given that the contracting parties made provision in the different annexes to the contract for both German law and Swiss law to be the applicable law.
- 12 In those circumstances, the Budapesti XX., XXI. és XXIII. kerületi bíróság decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) How should Article 23(1) of Regulation No 44/2001, relating to the court which is to have exclusive international jurisdiction, be interpreted where, in the terms and conditions of the contract, the contracting parties which are in dispute have conferred jurisdiction to hear disputes relating to that contract to various courts? Furthermore, is the applicant free to choose between the court designated which has exclusive jurisdiction and the court which has alternative jurisdiction, and can it be concluded that the court which is hearing the case has exclusive international jurisdiction?
- (2) How should Article 3(1) of the Rome Convention be interpreted as regards determining the substantive domestic law which is applicable during the examination of the contract where, in the terms and conditions relating to that contract, the contracting parties have designated the domestic law of several Member States as the law applicable to that contract?’

Admissibility of the request for a preliminary ruling

- 13 Under Article 53(2) of the Rules of Procedure of the Court, where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.
- 14 According to the Court’s settled case-law, the procedure provided for in Article 267 TFEU is an instrument of cooperation between the Court and the national courts, by means of which the former provides the latter with the points of interpretation of European Union law which they need in order to decide the disputes before them (see, to that effect, judgments in *Geistbeck*, C-509/10, EU:C:2012:416, paragraph 47 and the case-law cited, and *Impacto Azul*, C-186/12, EU:C:2013:412, paragraph 26 and the case-law cited).
- 15 It is also settled case-law that the need to provide an interpretation of European Union law which will be of use to the national court makes it necessary for that court to define the factual and legal context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. The order for reference must also set out the precise reasons why the national

court is unsure as to the interpretation of European Union law and considers it necessary to refer a question to the Court for a preliminary ruling (judgment in *Mulders*, C-548/11, EU:C:2013:249, paragraph 28 and the case-law cited).

- 16 Those requirements concerning the content of a request for a preliminary ruling are set out explicitly in Article 94 of the Rules of Procedure and are also reflected in the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2012 C 338, p. 1). It is apparent, in particular from point 22 of those recommendations, that a request for a preliminary ruling must 'be succinct but sufficiently complete and must contain all the relevant information to give the Court and the interested persons entitled to submit observations a clear understanding of the factual and legal context of the main proceedings' (see, to that effect, order in *D'Aniello and Others*, C-89/13, EU:C:2014:299, paragraph 20).
- 17 In that regard, it is important to point out that the information contained in the orders for reference serves not only to enable the Court to give helpful answers, but also to enable the governments of the Member States and other interested parties to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It is the Court's duty to ensure that that opportunity is safeguarded, bearing in mind that, by virtue of the abovementioned provision, only the orders for reference are notified to the interested parties (see orders in *Adiamix*, C-368/12, EU:C:2013:257, paragraph 24, and *Mlamali*, C-257/13, EU:C:2013:763, paragraph 24).
- 18 In this case, it must be held that the order for reference does not manifestly satisfy the requirements noted in paragraphs 15 and 16 of the present order.
- 19 First of all, while the referring court defines the subject-matter of the dispute in the main proceedings, without further clarification, as 'a request for payment of rent', it fails nevertheless to present the facts on which the two questions are based. In particular, it fails to set out the existence of a possible connection between the subject-matter of that dispute and a specific contractual term included in the contract at issue or in one of the annexes thereto.
- 20 If such a connection had been identified, for example, by means of Annexes 2 or 4 to the contract at issue in the main proceedings, an assumption which cannot however be accepted on the basis of the order for reference, the referring court would have jurisdiction in accordance with the principle of recognition of the independent will of the parties to a contract in deciding which courts are to have jurisdiction and the only applicable law would be Swiss law.
- 21 Next, there is also no express information concerning the possible challenge by the parties of the referring court's jurisdiction, since the latter merely relies on an assessment of its own motion of its jurisdiction. Such information would in particular have been useful to confirm the will of the parties expressed in the contractual terms conferring jurisdiction or in those designating the applicable law.
- 22 Finally and having regard to those considerations, the referring court fails to set out sufficiently clearly and precisely the reasons which have led it to raise the question of the interpretation of European Union law.
- 23 In those circumstances, the Court is unable to give a useful response to the questions referred and it is necessary to hold, at this stage in the proceedings, in accordance with Article 53(2) of the Rules of Procedure, that the request for a preliminary ruling is manifestly inadmissible.

Costs

- ²⁴ 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.

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

The request for a preliminary ruling brought by the Budapesti XX., XXI. és XXIII. kerületi bíróság (Hungary), by decision of 11 July 2014 (Case C-366/14), is manifestly inadmissible.

[Signatures]