



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

28 July 2016*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Scope *ratione materiae* — Recovery of sum not due — Unjust enrichment — Debt arising from the unjustified repayment of a fine for infringement of competition law))

In Case C-102/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Ítéltábla (Regional Court of Appeal, Budapest, Hungary), made by decision of 16 February 2015, received at the Court on 2 March 2015, in the proceedings

Gazdasági Versenyhivatal

v

Siemens Aktiengesellschaft Österreich,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader (Rapporteur), A. Rosas, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: N. Wahl,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 14 January 2016,

after considering the observations submitted on behalf of:

- Gazdasági Versenyhivatal, by L. Bak, irodavezető (Jogi Iroda),
- Siemens Aktiengesellschaft Österreich, by C. Bán and Á. Papp, ügyvédek,
- Hungary, by M.Z. Fehér, G. Koós and A.M. Pálffy, acting as Agents,
- the German Government, by T. Henze, J. Kemper and J. Mentgen, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent and F. Varrone, avvocato dello Stato,
- European Commission, by A. Tokár and M. Wilderspin, acting as Agents,

* Language of the case: Hungarian.

after hearing the Opinion of the Advocate General at the sitting on 7 April 2016,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 5(3) 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).
- 2 This request has been made in proceedings between the Gazdasági Versenyhivatal (Hungarian Competition Authority) and Siemens Aktiengesellschaft Österreich ('Siemens') concerning an action for recovery of sums not due on the ground of unjust enrichment brought by the former against the latter.

Legal context

EU law

- 3 Recitals 7 and 19 of Regulation No 44/2001 state:

'(7) The scope of this Regulation must cover all the main civil and commercial matters apart from certain well-defined matters.

...

- (19) Continuity between the [Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1978 L 304, p. 36), as amended by the successive conventions relating to the accession of new Member States to that convention] and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation of [that] Convention by the Court of Justice of the European [Union] and the Protocol [of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1975 L 204, p. 28)] should remain applicable also to cases already pending when this Regulation enters into force.'
- 4 Article 1(1) of Regulation No 44/2001 defines the scope *ratione materiae* of the regulation as follows:

'This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.'
- 5 Article 2(1) of Regulation No 44/2001 provides:

'Subject to the provisions of this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'
- 6 Article 5 of that regulation, in Section 2, entitled 'Special jurisdiction', of Chapter II thereof, states:

'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;

...'

Hungarian law

Law on unfair market practices

7 Article 83(5) of the *tisztességtelen piaci magatartás és a versenykorlátozás tilalmáról szóló 1996. évi LVII. törvény* (Law No LVII of 1996 on the prohibition of unfair market practices and the restriction of competition ('Law on unfair market practices') provides:

'Where the decision of the Competition Council dealing with the case infringes a legal rule and, if as a result a party is entitled to reimbursement of the fine, interest must be paid on the sum which has to be reimbursed at a rate equal to twice the current base rate of the Central Bank.'

Civil Procedure Code

8 Pursuant to Article 130(1)(a) of the Civil Procedure Code, a court must declare an action to be inadmissible without service on the parties if, under the law or an international agreement, the jurisdiction of the Hungarian courts is excluded.

9 Under Article 157/A(1)(b) of the Civil Procedure Code, in the event that it is not appropriate to declare an action to be inadmissible without service on the parties on a ground specified in Article 130(1)(a), but it is also not possible to confirm the jurisdiction of the Hungarian courts on the basis of any rule of jurisdiction, a court shall discontinue the proceedings if the defendant pleads lack of jurisdiction.

The Civil Code

10 Under Article 301(1) of Law No IV of 1959 establishing the Civil Code, in the case of a pecuniary debt, unless otherwise provided, the debtor is to pay interest of an amount equivalent to the current base rate of the central bank on the last day prior to the calendar half-year in which the delay occurs, even if the debt concerned does not bear interest. The obligation to pay interest is to arise even if the debtor justifies the delay.

11 According to Article 339(1) of that code, every person who unlawfully causes harm to another is obliged to pay compensation. A person who proves that he acted in a way that, in general, is to be expected in similar circumstances is exempt from liability.

12 Article 361 of the Civil Code is worded as follows:

'(1) A person who obtains an economic advantage to which he is not legally entitled to the detriment of a third party is obliged to restore that advantage.

(2) A person who has lost that enrichment prior to a claim being made for restitution is not obliged to make good the enrichment except where:

(a) he ought to have anticipated the obligation to make good and can be held to be responsible for the loss of the enrichment, and

(b) he obtained the enrichment in bad faith.

...'

13 Under Article 364 of the Civil Code, the rules governing compensation for unjust enrichment must be applied by analogy.

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

14 Siemens, a company domiciled in Austria, was fined 159 000 000 Hungarian forints (HUF) (approximately EUR 507 000) by the Competition Authority for breaching competition law rules. Siemens challenged that fine before the Hungarian administrative courts. However, as such a legal action does not have suspensory effect in Hungarian law, it paid the fine.

15 At first instance, the administrative court reduced the amount of the fine to HUF 27 300 000 (approximately EUR 87 000). That decision was upheld on appeal.

16 On the basis of the judgment of the Administrative Court of Appeal, on 31 October 2008, the Competition Authority repaid Siemens HUF 131 700 000 (approximately EUR 420 000), representing the difference between the amount of the fine as originally set by that authority and the amount deducted by the administrative courts at first instance and on appeal. The Competition Authority also paid Siemens HUF 52 016 230 (approximately EUR 166 000) for interest accrued on that sum on the basis of Article 83(5) of the Law on unfair market practices.

17 However, the Competition Authority brought an appeal against the judgment of the Administrative Court of Appeal and the Kúria (Supreme Court, Hungary) held that the fine originally imposed was justified. As a consequence, on 25 November 2011, Siemens repaid to the Competition Authority HUF 131 700 000, but refused to repay HUF 52 016 230, corresponding to the interest paid by that authority.

18 On 12 July 2013, the Competition Authority brought an action for recovery of sums not due on the ground of undue enrichment before the Fővárosi Törvényszék (Municipal Court, Budapest, Hungary), pursuant to Article 361(1) of the Civil Code, seeking the repayment of HUF 52 016 230 plus interest on late payment, which began to run on 2 November 2008, the first working day after the date of the improper repayment of the sum of HUF 131 700 000 to Siemens.

19 The Competition Authority also requested Siemens to pay it HUF 29 183 277 (approximately EUR 93 000), corresponding to interest calculated on the HUF 131 700 000 for the period between 2 November 2008 and 24 November 2011, the day before the date on which the latter sum was repaid to the Competition Authority, claiming that that sum should have been in its possession from the time its initial decision was deemed to be legal *ex tunc*.

20 Before the Fővárosi Törvényszék (Municipal Court, Budapest), the Competition Authority submitted that unjust enrichment falls within tort, *delict* or *quasi-delict*, so that the rule of special jurisdiction laid down in Article 5(3) of Regulation No 44/2001 is applicable in the present case.

21 Siemens raised a plea of lack of jurisdiction, by which it sought the discontinuation of the proceedings, arguing that Article 5(3) of Regulation No 44/2001 was not applicable to the present case and that, therefore, in accordance with Article 2(1) thereof, it is the Austrian courts and not the Hungarian courts which have jurisdiction over the proceedings at issue.

- 22 As the Fővárosi Törvényszék (Municipal Court, Budapest) upheld the plea of lack of jurisdiction, by order of 12 June 2014, the Competition Authority brought an appeal against that order before the referring court.
- 23 The referring court observed that the case-law of the Court, in particular the judgment of 18 July 2013 in *ÖFAB* (C-147/12, EU:C:2013:490), does not provide any clear indications enabling it to decide whether the Hungarian courts have special jurisdiction within the meaning of Article 5(3) of Regulation No 44/2001 to adjudicate on a dispute such as that at issue in the main proceedings. It considers that the debt allegedly owed by Siemens to the Competition Authority is not a contractual debt. However, it takes the view that the application of the rule of special jurisdiction laid down in that provision cannot be excluded.
- 24 In particular, that court is unsure whether the principle of an independent but strict interpretation, which applies to Article 5(3) of Regulation No 44/2001, must be interpreted as meaning that that rule of special jurisdiction may be applied in a case, such as that in the main proceedings, in which the defendant's liability is based exclusively on unjust enrichment and not on the existence of a fault or other ground of liability.
- 25 In those circumstances, the Fővárosi Ítéltábla (Regional Court of Appeal, Budapest, Hungary) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'Does the concept of a claim in matters relating to *quasi-delict* under Article 5(3) of Regulation No 44/2001 cover a debt which has its origin in the reimbursement of a fine imposed in competition proceedings and paid by a party domiciled in another Member State, the reimbursement to whom was subsequently held to be unjustified, which the competition authority makes against that party in order to obtain the return of interest which must legally be paid on reimbursement and which was paid by the authority concerned?'

The question referred for a preliminary ruling

- 26 By its question, the referring court asks essentially whether Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that matters relating to tort, *delict* and *quasi-delict* within the meaning of that provision includes an action for recovery of sums not due on the ground of unjust enrichment by which the competition authority of a Member State seeks to obtain the repayment of interest from a company domiciled in another Member State that it paid to that company following the decision of the administrative courts of the first Member State to reduce the fine which had been imposed on that company by the competition authority after the Supreme Court set aside that decision and reinstated the initial amount of that fine.
- 27 As a preliminary point, it must be determined whether such an action falls within the scope *ratione materiae* of Regulation No 44/2001.
- 28 In that connection, it should be recalled that in so far as Regulation No 44/2001 replaces the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the successive conventions relating to the accession of new Member States to that convention ('the Brussels Convention', the interpretation provided by the Court in respect of the provisions of the Brussels Convention is valid also for those of the regulation whenever the provisions of those instruments may be regarded as equivalent (judgment of 14 November 2013 in *Maletic*, C-478/12, EU:C:2013:735, paragraph 27 and the case-law cited).
- 29 Thus, as is clear from Article 1(1) of Regulation No 44/2001, the scope of that regulation is, like that of the Brussels Convention, limited to the concept of 'civil and commercial matters'.

- 30 In order to ensure, as far as possible, that the rights and obligations which derive from Regulation No 44/2001 for the Member States and the persons to whom it applies are equal and uniform, ‘civil and commercial matters’ should not be interpreted as a mere reference to the internal law of one or other of the States concerned. That concept must be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of that regulation and, second, to the general principles which stem from the corpus of the national legal systems (judgment of 23 October 2014 in *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 24 and the case-law cited).
- 31 In order to determine whether a matter falls within the scope of that regulation, the elements which characterise the nature of the legal relationships between the parties to the dispute or the subject matter thereof must be examined (see, to that effect, judgments of 11 April 2013 in *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 32 and the case-law cited, and 12 September 2013 in *Sunico and Others*, C-49/12, EU:C:2013:545, paragraph 33 and the case-law cited).
- 32 The Court has thus held that, although certain actions between a public authority and a person governed by private law may come within the scope of Regulation No 44/2001, it is otherwise where the public authority is acting in the exercise of its public powers (see, to that effect, judgments of 11 April 2013 in *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 33 and the case-law cited, and 12 September 2013 in *Sunico and Others*, C-49/12, EU:C:2013:545, paragraph 34).
- 33 In order to determine whether that is the case in a dispute such as that in the main proceedings, it is necessary to identify the legal relationship between the parties to the dispute and to examine the basis of, and the detailed rules applicable to, the action brought (see, to that effect, judgments of 15 May 2003 in *Préservatrice foncière TIARD*, C-266/01, EU:C:2003:282, paragraph 23; 11 April 2013 in *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 34; and 12 September 2013 in *Sunico and Others*, C-49/12, EU:C:2013:545, paragraph 35).
- 34 In that connection, it must be observed that, while private actions brought to ensure compliance with competition law fall within the scope of Regulation No 44/2001 (see, to that effect, judgments of 23 October 2014 in *flyLAL-Lithuanian Airlines*, C-302/13, EU:C:2014:2319, paragraph 28 and the case-law cited, and 21 May 2015 in *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 56), as the Advocate General pointed out in point 34 of his Opinion, it is equally evident that a penalty imposed by an administrative authority in the exercise of the regulatory powers conferred upon it under national legislation comes within the concept of ‘administrative matters’, excluded from the scope of Regulation No 44/2001 in accordance with Article 1(1) thereof. That applies, in particular, to a penalty imposed by reason of an infringement of provisions of national law prohibiting restrictions on competition.
- 35 In the present case, although the dispute in the main proceedings does not directly concern the fine imposed on Siemens by the Competition Authority by reason of a breach of competition law rules, the fact remains that that dispute is intrinsically linked to the fine and to the dispute between the parties in the main proceedings concerning its legality. The debts relied on by the Competition Authority in that dispute are based on the fact that that fine, which was initially paid by Siemens, was then partially repaid by the Competition Authority following the decision of the administrative courts at first instance and on appeal to reduce the amount of the fine, and, finally, was again paid in full by Siemens following the decision of the Kúria (Supreme Court) to reinstate its original amount.
- 36 As regards the claim relating to interest paid by the Competition Authority to Siemens at the time of the partial repayment, that is HUF 52 016 230, it must be held, as the Advocate General pointed out in point 39 of his Opinion, that it was generated automatically by the application of Article 83(5) of the Law on unfair market practices.

- 37 It is apparent from Hungarian administrative procedural practice that each time that a fine imposed by the Competition Authority is annulled or reduced by the administrative courts, the undertaking concerned receives interest in accordance with Article 83(5) of the Law on unfair market practices, which that authority then seeks to recover if the fine is subsequently reinstated in its original amount.
- 38 It follows that the dispute in the main proceedings, in which the Competition Authority seeks the payment of a debt by Siemens which arises from a fine which it imposed on that undertaking, is an administrative matter.
- 39 The fact that the Competition Authority brought an action against Siemens before the Hungarian civil courts does not alter that situation.
- 40 On those grounds, the Court held that, whatever the nature of the proceedings afforded by national law, the fact that in recovering those costs the applicant acts pursuant to a debt which arises from an act of public authority is sufficient for its action to be treated as being outside the ambit of the Brussels Convention (see, to that effect, judgment of 16 December 1980 in *Rüffer*, 814/79, EU:C:1980:291, paragraph 15).
- 41 In addition, and unlike the case which gave rise to the judgment of 11 April 2013 in *Sapir and Others* (C-645/11, EU:C:2013:228) which concerned an action for recovery of the amount overpaid in error by an administrative authority, the debt at issue in the main proceedings was not paid in error by Siemens, but arose by virtue of the law applicable to the administrative procedure at issue in those proceedings.
- 42 It follows that an action for recovery of sums not due, such as that at issue in the main proceedings, does not fall within the scope of Regulation No 44/2001.
- 43 Having regard to the foregoing considerations, the answer to the question referred is that an action for recovery of sums not due on the ground of unjust enrichment, such as that at issue in the main proceedings, which has its origin in the repayment of a fine imposed in competition law proceedings does not fall within ‘civil and commercial matters’ within the meaning of Article 1 of Regulation No 44/2001.

Costs

- 44 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 (Second Chamber) hereby rules:

An action for recovery of sums not due on the ground of unjust enrichment, such as that at issue in the main proceedings, which has its origin in the repayment of a fine imposed in competition law proceedings does not fall within ‘civil and commercial matters’ within the meaning of Article 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.

[Signatures]