Reports of Cases

OPINION OF ADVOCATE GENERAL
BOT
delivered on 7 March 2018 [1]

Case C-1/17

Petronas Lubricants Italy SpA
v
Livio Guida

(Request for a preliminary ruling
from the Corte d'appello di Torino (Court of Appeal, Turin, Italy))

(Reference for a preliminary ruling — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Jurisdiction over individual contracts of employment — Employer being sued in the courts of the Member State where he is domiciled — Employer's counter-claim — Determination of the court with jurisdiction)

1. This request for a preliminary ruling concerns the interpretation of Article 20(2) 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. [2]

2. The request has been made in proceedings between Mr Livio Guida, domiciled in Poland, and his former employer, a company incorporated under Italian law, Petronas Lubricants Italy SpA ('PL Italy'), established in Italy, concerning the dismissal notified to him by that company.

3. It will give the Court an opportunity to define for the first time the concept of 'counter-claim' appearing in one of the special provisions of Section 5 of Chapter II of Regulation No 44/2001 laying down the rules of jurisdiction over individual contracts of employment, in the light of its most recent case-law on the same concept as defined in Article 6, point 3, of that regulation, in Section 2 of that chapter dealing with special jurisdiction.

4. At the end of my analysis, which will be limited to the second question referred for a preliminary ruling, in accordance with the Court's request, I shall suggest that the provisions of Article 20(2) of Regulation No 44/2001 should be interpreted as meaning that that article gives the employer the right to bring a counter-claim in the court hearing the action brought by the employee, and that that court may give a ruling on such a claim provided it has been brought in order to litigate all their claims against each other that have a common origin.

1 Original language: French.

2 OJ 2001 L 12, p. 1.

I. Legal context

5. Recitals 11, 13 and 15 of Regulation No 44/2001 read:

'(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

…

(13) In relation to insurance, consumer contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.

…

(15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. There must be a clear and effective mechanism for resolving cases of *lis pendens* and related actions and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation that time should be defined autonomously.'

6. Under Article 6, point 3, of that regulation, which is in Section 2 of Chapter II thereof, entitled 'Special jurisdiction', a person domiciled in a Member State may be sued in another Member State 'on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending'.

7. Section 5 of Chapter II of that regulation, which contains Articles 18 to 21 thereof, lays down the rules of jurisdiction in matters relating to individual contracts of employment.

8. Article 18(1) of Regulation No 44/2001 provides:

'In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.'

9. Article 19 of that regulation provides:

'An employer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled; or

2. in another Member State:

   (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or

   (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.'

10. Article 20 of that regulation provides:

‘1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.

2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.’

11. Article 21 of Regulation No 44/2001 reads as follows:

‘The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen; or

2. which allows the employee to bring proceedings in courts other than those indicated in this section.’

II. The facts in the main proceedings and the questions referred for a preliminary ruling

12. Mr Guida was recruited by PL Italy in 1982, under a contract governed by Italian law, and in 1996 was posted to the affiliated Polish company Petronas Lubricants Poland sp.zo.o. (‘PL Poland’), since then carrying out the duties of Director General, with the rank of director as from 1998. In 2001 he entered into a ‘parallel’ fixed-term employment contract with PL Poland, under Polish law, which was extended on several successive occasions, the last contract being due to expire on 30 April 2016. By two letters, of 17 and 29 April 2014, he was notified of various allegations of misconduct. Mr Guida was subsequently dismissed by PL Italy ‘supposedly fairly’, by letter of 28 May 2014. By another letter of the same date, he was notified of the termination of his employment with PL Poland.

13. Mr Guida then sued PL Italy before the Tribunale di Torino (District Court, Turin, Italy), objecting to the lateness and general nature of the allegations of misconduct and claiming that the accusations against him were unfounded. He asked that court, firstly, to declare the dismissal notified to him by PL Italy unjustified and, in any event, unlawful and, secondly, to order that company to pay him compensation as provided for under Italian law in the event of unfair dismissal. Mr Guida also asked that PL Italy be ordered to pay compensation for the non-material harm he suffered on account of his unfair dismissal.

14. On 5 December 2014, PL Italy entered an appearance before that court and sought the dismissal of the applicant’s claims. Pointing out that PL Poland had assigned its claims against Mr Guida to it by an agreement dated 3 December 2014, that company asked, by way of counter-claim, that Mr Guida be ordered to repay the sum of EUR 143 816.29 which he had unduly received in respect of travel expenses, compensatory payments for leave not taken and an overpayment due to the use of an incorrect zloty/euro exchange rate.

15. Mr Guida contended that, under Article 6, point 3, and Article 20 of Regulation No 44/2001, the Italian court lacked jurisdiction to hear and determine PL Italy’s counter-claim.

16. In a judgment published on 14 September 2015, the Tribunale di Torino (District Court, Turin) ordered PL Italy to pay Mr Guida EUR 100 000 in compensation for non-material harm on account of unfair dismissal, and declared that jurisdiction to rule on PL Italy’s counter-claim lay not with itself but with the Polish courts.

17. After finding that Mr Guida had proved that his domicile was established in Poland, the Tribunale di Torino (District Court, Turin) held, however, that although Article 20(2) of Regulation No 44/2001 provides a derogation from the obligation for employers to bring actions against their employees in the countries in which they are domiciled, that derogation is not applicable where the claims which the employer intends to assert were not originally its own but have been assigned to it under an agreement.

18. PL Italy lodged an appeal against that judgment before the Corte d'appello di Torino (Court of Appeal, Turin, Italy), the referring court, seeking to have the order to pay non-material damages set aside and restating its counter-claim.

19. That court seeks to ascertain whether Article 20(2) of Regulation No 44/2001 allows an employer to bring a counter-claim in the courts of the Member State in which it is domiciled against an employee who has brought an action against it in the same courts, under Article 19 of that regulation.

20. If so, the referring court asks what conclusions must be drawn from a finding that the employer's counter-claim is based on a claim originating with another party, which was at the same time the employer of the same employee under a 'parallel' employment contract, and that the counter-claim is based on an assignment-of-claim agreement, concluded by the employer and the party from which the claim originally derives, after the date on which the original action was brought by the employee.

21. In those circumstances, the Corte d'appello di Torino (Court of Appeal, Turin) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Under Article 20(2) of Regulation No 44/2001, may an employer domiciled in the territory of an EU Member State, against which an action is brought by its former employee before the courts of a Member State in which that employer is domiciled (within the meaning of Article 19 of the regulation), bring a counter-claim against the employee before the same court hearing the original action?

(2) If the answer to question 1 is in the affirmative, does Article 20(2) of Regulation No 44/2001 include the jurisdiction of the court hearing the original action even when the employer's counter-claim is not based on a claim originating with the employer but on a claim originating with another party (which is, at the same time, an employer of the same employee under a parallel employment contract), and the counter-claim is based on an assignment-of-claim agreement, concluded by the employer and the party from which the claim originally derives, after the date on which the original action was brought by the employee?'

III. My analysis

22. Before giving my analysis of the concept of 'counter-claim', appearing in Article 20(2) of Regulation No 44/2001,[3] I should like to clarify certain points that form the basis of my thinking. In the first place, the conditions for the application of that provision are not under discussion. It is settled therefore that the dispute concerns an 'individual contract of employment', within the meaning of Article 18(1) of that regulation,[4] existing between Mr Guida and PL Italy since 1982, that employee having also concluded other contracts of employment since 2001 with PL Poland, a 'company affiliated' to PL Italy, after he was posted to the Polish company from 1996. It is also settled that PL Italy, the

3 Applicable in the main proceedings since the employee's action was brought before 10 January 2015. As noted in the judgment of 21 December 2016, *Concurrence* (C-618/15, EU:C:2016:976, paragraph 9), Regulation No 44/2001 was repealed by Article 80 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1). Under Article 66(1) of that regulation, it applies only to legal proceedings instituted on or after 10 January 2015.

4 Judgment of 10 September 2015, *Holterman Ferho Exploitatie and Others* (C-47/14, EU:C:2015:574, paragraph 34).

defendant employer, against which an action was brought before the court of the Member State in which that employer was domiciled, having jurisdiction by reason of the choice exercised by the employee under Article 19 of that regulation, lodged a claim for a separate judgment against the applicant and not a defence. [5]

23. In the second place, there is no doubt that both the employer and the employee are entitled to lodge a counter-claim, which justifies an affirmative answer to the first question referred. It would be contrary to a literal interpretation of the provisions of Article 20(2) of Regulation No 44/2001 [6] to infer, in the absence of a restriction in the legislation, that the option to lodge a counter-claim is reserved for employees. [7] It seems to me that such procedural equality between an employee and an employer has already been referred to indirectly by the Court. [8] It reflects the general objective of sound administration of justice, which implies observance of the principle of economy of procedure. [9]

24. It is thus accepted that, by a counter-claim, the employer may obtain examination of a claim made against an employee, in a court which is not the court of the Member State in which the latter is domiciled, but one which the employee has chosen because he regards it as being closest to his interests. [10]

25. That being said, it is appropriate to explain how the concept of 'counter-claim', within the meaning of Article 20(2) of Regulation No 44/2001, can be defined, as the referring court asks in essence in its second question.

26. First of all, it should be noted that the EU legislature chose a different wording from that of Article 6, point 3, of that regulation, which is in Section 2 of Chapter II on rules of secondary jurisdiction, competing with the principle that the courts of the Member State in which the defendant is domiciled should have jurisdiction. That provision also states that it must be a claim 'arising from the same contract or facts on which the original claim was based.' [11] Those words, unchanged since the entry into force of the Brussels Convention, do not appear either in the sections concerning the rules of jurisdiction protecting insured persons or consumers. Nor was that clarification added on the occasion of the insertion into Chapter II of Regulation No 44/2001 of Section 5, concerning jurisdiction over individual contracts of employment, [12] or in the drafting of Regulation No 1215/2012, which has applied since 10 January 2015.

5 Judgment of 13 July 1995, *Danværn Production* (C-341/93, EU:C:1995:239, paragraphs 15 and 18).

6 It should be pointed out that the same provisions appear in the other sections laying down rules of jurisdiction to protect a weaker party (Article 12(2) regarding insurance, Article 16(3) regarding consumer contracts). The wording of those articles, deriving from that of Articles 11 and 14 of 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 thereto ('the Brussels Convention'), was also used unchanged in Articles 14 and 18 of Regulation No 1215/2012.

7 Legal academic thinking is unanimous in that regard, irrespective of which regulation applies, see, inter alia, Gaudemet-Tallon, H., *Compétence et exécution des jugements en Europe, Matières civile et commerciale, Règlements 44/2001 et 1215/2012, Conventions de Bruxelles (1968) et de Lugano (1998 et 2007)*, 5th Edition, Librairie générale de droit et de jurisprudence, collection Droit des affaires, Paris, 2015, p. 394, paragraph 302, subparagraph 2; Blanco-Morales Limones, P., Garau Sobrino, F.F., Lorenzo Guillén M.L., Montero Muriel, F.J., *Comentario al Reglamento (UE) nº 1215/2012 relativo a la competencia judicial, el reconocimiento y la ejecución de resoluciones judiciales en materia civil y mercantil, Reglamento Bruselas I refundido*, Thomson Reuters Aranzadi, Madrid, 2016, p. 495, paragraph 2, subparagraph 7; Magnus, U., Mankowski, P., *European Commentaries on Private International Law, Brussels Ibis Regulation*, Volume 1, Sellier European Law Publishers, Otto Schmidt, Cologne, 2015, p. 554, paragraph 5; Czernich, D., Kodek, G., Mayr, P., *Europäisches Gerichtsstands- und Vollstreckungsrecht Brüssel Ia-Verordnung (EuGVVO 2012) und Übereinkommen von Lugano 2007 Herausgeber*, LexisNexis, Vienna, 2015, p. 296, paragraph 3.

8 Judgment of 22 May 2008, *Glaxosmithkline and Laboratoires Glaxosmithkline* (C-462/06, EU:C:2008:299, paragraph 29).

9 Judgments of 10 April 2003, *Pugliese* (C-437/00, EU:C:2003:219, paragraphs 17 and 22); of 22 May 2008, *Glaxosmithkline and Laboratoires Glaxosmithkline* (C-462/06, EU:C:2008:299, paragraph 27); and of 12 October 2016, *Kostanjevec* (C-185/15, EU:C:2016:763, paragraph 37).

10 Expression taken from judgment of 14 September 2017, *Nogueira and Others* (C-168/16 and C-169/16, EU:C:2017:688, paragraph 50 and the case-law cited).

11 The report by Mr P. Jenard on the [Brussels] Convention (OJ 1979 C 59, p. 1) states that 'in order to establish this jurisdiction the counter-claim must be related to the original claim. Since the concept of related actions is not recognised in all the legal systems, the provision in question, following the draft Belgian Judicial Code states that the counter-claim must arise from the contract or from the facts on which the original claim was based' (p. 28).

12 See, for a detailed account of the legislative history, judgments of 22 May 2008, *Glaxosmithkline and Laboratoires Glaxosmithkline* (C-462/06, EU:C:2008:299, paragraphs 14 to 17), and of 14 September 2017, *Nogueira and Others* (C-168/16 and C-169/16, EU:C:2017:688, paragraph 46).

27. We learn from the *travaux préparatoires* that 'the jurisdiction conferred by this section is substituted for that conferred by Sections 1 and 2'[13] and that 'the provisions concerning jurisdiction in relation to employment contracts undergo little change of substance but are regrouped in a specific section as is the case for insurance and consumer contracts'.[14] It can be inferred from this that the legislature did not choose any special provisions for employment disputes despite the objective of protecting the weaker party, which could have justified laying down special conditions regarding the employer's claim, such as the condition suggested by Mr Guida in his written observations.

28. Next, it is appropriate to recall the principles laid down by the Court where an interpretation is sought of one of the four articles (18 to 21) which comprise Section 5 of Chapter II of Regulation No 44/2001, concerning 'jurisdiction over individual contracts of employment':

– that section lays down a series of rules whose objective, as stated in recital 13 of that regulation, is to protect the weaker party to the contract by means of rules of jurisdiction that are more favourable to his interests;[15]

– it is apparent from the wording of the provisions of that section that they are not only specific but also exhaustive;[16] and

– in order to ensure the full effectiveness of Regulation No 44/2001, the legal concepts it uses must be given an independent interpretation common to all the Member States.[17]

29. Lastly, it should be noted that the Court has held that the rule laid down in Article 6, point 3, of Regulation No 44/2001, concerning the case of counter-claims, has been incorporated in Article 20(2) of that regulation, thus making a connection between those provisions.[18]

30. The Court has also held, with regard to the expression 'arising from the same contract or facts on which the original claim was based', that it must be given an autonomous interpretation, having regard to the objectives of that regulation.[19]

31. In that regard, the Court has noted that it is in the interests of the sound administration of justice that the special jurisdiction for counter-claims enables the parties, in the same proceedings and before the same court, to litigate all their claims against each other that have a common origin. Unnecessary multiple proceedings are thus avoided.[20] Accordingly, it was held that 'in circumstances such as those of the main proceedings, the counter-claim for reimbursement on the ground of unjust enrichment must be regarded as arising from the leasing contract from which the lessor's original action originated. The alleged enrichment in the amount of the sum paid in enforcement of the judgment that has since been set aside would not have taken place without that contract'.[21] A strict link with the substance of the case is therefore a decisive factor.

13 That sentence had been used previously in judgment of 22 May 2008, *Glaxosmithkline and Laboratoires Glaxosmithkline* (C-462/06, EU:C:2008:299, paragraph 24).

14 See Proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (COM(1999) 348 final), explanatory memorandum.

15 Judgments of 22 May 2008, *Glaxosmithkline and Laboratoires Glaxosmithkline* (C-462/06, EU:C:2008:299, paragraphs 17 and 30), and of 14 September 2017, *Nogueira and Others* (C-168/16 and C-169/16, EU:C:2017:688, paragraph 49 and the case-law cited).

16 Judgments of 22 May 2008, *Glaxosmithkline and Laboratoires Glaxosmithkline* (C-462/06, EU:C:2008:299, paragraph 18), and of 14 September 2017, *Nogueira and Others* (C-168/16 and C-169/16, EU:C:2017:688, paragraph 51 and the case-law cited).

17 See, with regard to Article 18 of that regulation, judgment of 10 September 2015, *Holterman Ferho Exploitatie and Others* (C-47/14, EU:C:2015:574, paragraphs 36 and 37 and the case-law cited), and, with regard to Article 19, point 2, of that regulation, judgment of 14 September 2017, *Nogueira and Others* (C-168/16 and C-169/16, EU:C:2017:688, paragraphs 47 and 48 and the case-law cited).

18 Judgment of 22 May 2008, *Glaxosmithkline and Laboratoires Glaxosmithkline* (C-462/06, EU:C:2008:299, paragraph 22).

19 Judgment of 12 October 2016, *Kostanjevec* (C-185/15, EU:C:2016:763, paragraph 36).

20 Judgment of 12 October 2016, *Kostanjevec* (C-185/15, EU:C:2016:763, paragraph 37).

21 Judgment of 12 October 2016, *Kostanjevec* (C-185/15, EU:C:2016:763, paragraph 38).

32. In those circumstances, does the protection due to an employee as the weaker party justify the adoption of a different interpretation of the concept of 'counter-claim', in the absence of clarification in Article 20(2) of Regulation No 44/2001? Like the Commission, I consider that the concept of 'counter-claim' must be uniform where the rules of jurisdiction of the European courts are being applied, especially since the criteria in the case of secondary jurisdiction have, to date, not given rise to many difficulties of interpretation, and, as in the case of related cases, they also meet the objective of avoiding the risk of irreconcilable judgments resulting from separate proceedings. [22]

33. Consequently, that outcome offers the advantage of avoiding the use of concepts that would be more difficult to apply, such as that of the existence of an 'objective link through the subject matter or the cause of action', proposed by the Italian Government. However, I do not consider that too strict an interpretation of 'claim arising from the contract of employment', such as that proposed by the Commission, based on the 'employment relationship relied on by the employee in his original claim', should be adopted for a number of reasons.

34. In the first place, the Court adopted a broad interpretation of the concept of 'claim arising from the contract', [23] when it accepted that a claim for reimbursement on the ground of unjust enrichment arises from the leasing contract concluded between the parties to the main proceedings, in specific procedural circumstances. That was in respect of a claim for reimbursement of a sum corresponding to the amount agreed in an extrajudicial settlement, which had been brought in fresh legal proceedings between the same parties, following the setting aside of the judgment delivered in the original proceedings between them, the enforcement of which gave rise to the extrajudicial settlement. Thus, it was not so much the direct link with the contract that was taken into account by the Court as the fact that there would have been no unjust enrichment without that contract, which shows that 'these claims are based on the same facts'. [24]

35. In the second place, it must be possible to take into account overlapping of contractual relationships in the field of employment, [25] which frequently happens where workers are posted and the original employment contract may be maintained and exist alongside a local employment contract.

36. In the present case, the parties are agreed that PL Italy was the sole owner of PL Poland and that, with effect from July 2001, a specific 'parallel' contract was entered into with PL Poland to lay down the special conditions for that employment relationship. Moreover, it should be noted that the proceedings brought by Mr Guida related to the initial contract and not the last contract he entered into with PL Poland.

37. In the third place, it is clear from the grounds for the dismissal and from PL Italy's monetary claim that they are based on the same facts, concerning both companies alike. In the present case, it was alleged that Mr Guida had on several occasions unduly obtained from PL Poland reimbursement of expenses for business travel and pay in lieu of leave not taken and had also misled PL Italy, in respect

22 See judgment of 11 April 2013, *Sapir and Others* (C-645/11, EU:C:2013:228, paragraph 42), concerning Article 6(1) of Regulation No 44/2001, and commentary of Czernich, D., Kodek, G., and Mayr, P., *Europäisches Gerichtsstands- und Vollstreckungsrecht Brüssel Ia-Verordnung (EuGVVO 2012) und Übereinkommen von Lugano 2007 Herausgeber*, LexisNexis, Vienna, 2015, p. 296 paragraph 3.

23 See analysis of the provisions of Article 6(1) of Regulation No 44/2001 in Magnus, U., Mankowski, P., *European Commentaries on Private International Law, Brussels Ibis Regulation*, Volume 1, Sellier European Law Publishers, Otto Schmidt, Cologne, 2015, p. 401, in particular regarding the expression 'same contract' appearing in the English-language version of that regulation.

24 Expression taken from the Opinion of Advocate General Kokott in *Kostanjevec* (C-185/15, EU:C:2016:397, point 44).

25 See, for a general summary of the particularities of a contract of employment, judgment of 15 January 1987, *Shenavai* (266/85, EU:C:1987:11, paragraph 16). For an illustration of several contractual relationships, see judgment of 10 April 2003, *Pugliese* (C-437/00, EU:C:2003:219, paragraphs 4 to 9), and, specifically with regard to companies belonging to the same group, judgments of 22 May 2008, *Glaxosmithkline and Laboratoires Glaxosmithkline* (C-462/06, EU:C:2008:299, paragraphs 7 to 10), and of 10 September 2015, *Holterman Ferho Exploitatie and Others* (C-47/14, EU:C:2015:574 paragraphs 12 to 18).

of the payment of the amount of his salary, by notifying it of a zloty-euro exchange rate more favourable to him than the official rate. It is common ground that those facts formed the basis of the decisions taken by PL Italy and PL Poland to sever the employment relationship and that the purpose of the counter-claim is to recover the corresponding amounts unduly paid.

38. That close relationship between the employee's challenge of the reasons for his dismissal and the employer's claim for reimbursement leads the arguments put forward by Mr Guida and the Commission concerning the unpredictability of the defendant's claim to be rejected, due to the claim-assignment which enables the defendant to bring it.

39. In the fourth place, it should be noted that Mr Guida chose to challenge the validity of only one of the decisions to sever his employment relationship, the relationship that had existed with PL Italy, and to sue that company not in the courts of the Member State of the place where he habitually carried out his work, as Article 19, point 2(a), of Regulation No 44/2001 allowed him to do, but in the courts for the place where PL Italy is domiciled. That choice should not have any consequences as regards the autonomous interpretation of the concept of 'counter-claim'. It should be noted in that regard that, despite the EU legislature's choice to lay down a number of rules of jurisdiction protecting employees, no decision was taken to lay down criteria restricting the employer's entitlement to lodge a counter-claim.

40. For the same reasons, the argument based on the law applicable to the contract of employment, which, according to Mr Guida and the Commission, justifies an interpretation strictly limited to the contract of employment referred to in the original claim, must be dismissed. Even though, as regards determination of jurisdiction according to the place of performance of the contract of employment, which justifies favouring the concordance of judicial and legislative competence, the Court has held that the corresponding provisions in the 1980 Rome Convention on the law applicable to contractual obligations [26] should be taken into account, [27] the view must be taken that the question of jurisdiction in the case of a counter-claim must be clearly separate from that concerning the law applicable to the substance.

41. Consequently, I consider that the circumstances in the main proceedings show that the concept of 'counter-claim' should not be interpreted by limiting it merely to the context of a contract. The fact that the original claim is based on the same facts should also be taken into account. Thus, in the case before us, acceptance, in the interests of sound administration of justice, that the same court may consider whether the accusations used to justify the dismissal are well founded and draw the appropriate financial conclusions does not seem to me to conflict with the interests of the employee. The absence of conflicting judgments is also ensured, in line with the objective stated in recital 15 of Regulation No 44/2001. It is of little relevance in such circumstances that assignment of the claim, relied on by the employer, took place after the matter was referred to the court with jurisdiction.

42. It therefore seems to me feasible to give an interpretation of the concept of 'counter-claim', in general terms in the interests of clarity and efficiency, that would lead national courts to determine the common nature of the origin of the parties' claims, whether contractual or factual, taking into consideration all the circumstances of the case.

26 For a recent illustration, see judgment of 14 September 2017, *Nogueira and Others* (C-168/16 and C-169/16, EU:C:2017:688, paragraph 55), as regards the autonomous interpretation of Article 19(2) of Regulation No 44/2001.

27 OJ 1998 C 27, p. 34. Article 6 of that convention is applicable to contracts concluded up until 17 December 2009. After that date, Article 8 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), is applicable, under Article 28 of that regulation.

43. As a result of all these considerations it is proposed that the Court should rule that Article 20(2) of Regulation No 44/2001 must be interpreted as giving both the employer and the employee the right to bring a counter-claim before the court hearing the original action and that that court has jurisdiction to hear and determine such a claim provided it has been brought in order to litigate all their claims against each other that have a common origin, which is a matter for the referring court to determine.

IV. Conclusion

44. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Corte d'appello di Torino (Court of Appeal, Turin, Italy) as follows:

Article 20(2) 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 must be interpreted as giving both the employer and the employee the right to bring a counter-claim before the court hearing the original action and that that court has jurisdiction to hear and determine such a claim provided it has been brought in order to litigate all their claims against each other that have a common origin, which is a matter for the referring court to determine.