



## Reports of Cases

### JUDGMENT OF THE COURT (Fourth Chamber)

3 April 2014\*

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — International jurisdiction in matters relating to tort, delict or quasi-delict — Act committed in one Member State consisting in participation in an act of tort or delict committed in another Member State — Determination of the place where the harmful event occurred)

In Case C-387/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 28 June 2012, received at the Court on 15 August 2012, in the proceedings

**Hi Hotel HCF SARL**

v

**Uwe Spoering,**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Safjan (Rapporteur), C.G. Fernlund, J. Malenovský and A. Prechal, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 5 September 2013,

after considering the observations submitted on behalf of:

- Hi Hotel HCF SARL, by H. Leis, Rechtsanwalt,
- Mr Spoering, by P. Ruppert, Rechtsanwalt,
- the German Government, by T. Henze and F. Wannek, acting as Agents,
- the United Kingdom Government, by A. Robinson, acting as Agent,
- the European Commission, by W. Bogensberger and M. Wilderspin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

\* Language of the case: German.

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 The request has been made in proceedings between Hi Hotel HCF SARL ('Hi Hotel'), established in Nice (France), and Mr Spoering, residing in Cologne (Germany), concerning a claim for an order to cease an infringement of copyright and for compensation.

### Legal context

- 3 According to recital 2 in the preamble to Regulation No 44/2001, the regulation is intended, in the interests of the sound operation of the internal market, to implement '[p]rovisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation'.
- 4 Recitals 11, 12 and 15 in the preamble to that regulation state:
  - '(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.
  - (12) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.
- ...
- (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. ...'

- 5 The rules on jurisdiction appear in Chapter II, 'Jurisdiction', of Regulation No 44/2001.
- 6 Article 2(1) of that regulation, which is in Chapter II, Section 1, 'General provisions', provides:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'
- 7 Article 3(1), which is also in Chapter II, Section 1, of the regulation, provides:

'Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.'

- 8 Article 5(3) of the regulation, which forms part of Chapter II, Section 2, ‘Special jurisdiction’, provides:
- ‘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.’

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

- 9 According to the order for reference, Mr Spoering is a photographer who in February 2003, on behalf of Hi Hotel, took 25 transparencies of interior views of various rooms in the hotel run by that company in Nice. Mr Spoering granted Hi Hotel the right to use the photographs in advertising brochures and on its website. There was no written agreement on the rights of use. Hi Hotel paid the invoice for the photographs, in the amount of EUR 2 500, which contained the note ‘include the rights — only for the hotel hi’.
- 10 In 2008 Mr Spoering noticed in a bookshop in Cologne an illustrated book with the title ‘Innenarchitektur weltweit’ (‘Interior Architecture Worldwide’), published by Phaidon-Verlag of Berlin (Germany), containing reproductions of nine of the photographs he had taken of the interior of the hotel in Nice run by Hi Hotel.
- 11 Since he considered that Hi Hotel had infringed his copyright in the photographs by passing them on to a third party, namely Phaidon-Verlag, Mr Spoering brought proceedings against Hi Hotel in Cologne. He sought inter alia an order that Hi Hotel should cease reproducing or causing to be reproduced, distributing or causing to be distributed or exhibiting or causing to be exhibited within the Federal Republic of Germany, without his prior consent, the photographs mentioned in the preceding paragraph (claim for a prohibitory order), and should pay compensation for all damage which he had sustained or would sustain as a result of the conduct of Hi Hotel.
- 12 The order for reference states that Hi Hotel submitted that Phaidon-Verlag also has a place of business in Paris (France) and that the manager of Hi Hotel could have made the photographs in question available to that publisher. Hi Hotel stated that it did not know whether the publisher had then passed them on to its German sister company.
- 13 The court of first instance allowed Mr Spoering’s claim, and the appeal by Hi Hotel was unsuccessful. The Bundesgerichtshof (Federal Court of Justice), before which Hi Hotel brought an appeal on a point of law, is uncertain as to whether international jurisdiction of the German courts may be established on the basis of Article 5(3) of Regulation No 44/2001.
- 14 The Bundesgerichtshof observes that, in view of the submissions of Hi Hotel summarised in paragraph 12 above, which have not been contradicted by Mr Spoering, the international jurisdiction of the German courts under Article 5(3) of Regulation No 44/2001 must be examined on the basis of the assumption that Phaidon-Verlag of Berlin distributed the photographs in question in Germany in breach of copyright and that Hi Hotel assisted it in so doing by handing them over to Phaidon-Verlag of Paris.

- 15 In those circumstances the Bundesgerichtshof decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Is Article 5(3) of Regulation ... No 44/2001 to be interpreted as meaning that the harmful event occurred in one Member State (Member State A) if the tort or delict which forms the subject-matter of the proceedings or from which claims are derived was committed in another Member State (Member State B) and consists in participation in the tort or delict (principal act) committed in the first Member State (Member State A)?’

### **Consideration of the question referred**

#### *Admissibility of the request for a preliminary ruling*

- 16 Hi Hotel submits that the request for a preliminary ruling is inadmissible because it is not relevant to the dispute in the main proceedings, since it has not yet been determined whether there was a complete assignment of the copyright to Hi Hotel. If that were the case, no infringement of copyright would be possible.
- 17 In that respect, it must be recalled that, according to settled case-law of the Court, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining enjoy a presumption of relevance (Case C-327/12 *SOA Nazionale Costruttori* EU:C:2013:827, paragraph 20 and the case-law cited).
- 18 The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (*SOA Nazionale Costruttori* EU:C:2013:827, paragraph 21 and the case-law cited).
- 19 However, that is not the case here. As is clear from the order for reference, an interpretation of Article 5(3) of Regulation No 44/2001 is necessary for the resolution of the main proceedings, since Hi Hotel has pleaded that the German courts do not have jurisdiction to hear the case and the referring court must necessarily rule on that plea before ruling on the substance.
- 20 For the application of Article 5(3) of Regulation No 44/2001, the court seised may regard as established, solely for the purpose of ascertaining whether it has jurisdiction under that provision, the applicant’s assertions as regards the conditions for liability in tort, delict or quasi-delict.
- 21 Whether those assertions are well founded falls solely within the scope of the examination of the substance of the case (see Case C-170/12 *Pinckney* EU:C:2013:635, paragraph 40). Since Hi Hotel’s argument that the extent of the assignment of copyright to Hi Hotel has not yet been determined forms part of the substance of the main proceedings, it is not therefore capable of affecting the admissibility of the referring court’s question.
- 22 The request for a preliminary ruling must accordingly be considered admissible.

*Substance*

- 23 By its question the referring court essentially asks whether Article 5(3) of Regulation No 44/2001 is to be interpreted as meaning that, where there are several supposed perpetrators of the damage allegedly caused to rights of copyright protected in the Member State of the court seised, that provision allows jurisdiction to be established with respect to one of those perpetrators who did not act within the jurisdiction of that court.
- 24 It should be recalled at the outset that the provisions of Regulation No 44/2001 must be interpreted independently, by reference to its scheme and purpose (Case C-228/11 *Melzer* EU:C:2013:305, paragraph 22 and the case-law cited).
- 25 Moreover, it is only by way of derogation from the fundamental principle laid down in Article 2(1) of Regulation No 44/2001, attributing jurisdiction to the courts of the Member State in which the defendant is domiciled, that Chapter II, Section 2, of the regulation makes provision for certain cases of special jurisdiction, including that laid down in Article 5(3) of the regulation (*Melzer* EU:C:2013:305, paragraph 23).
- 26 As the jurisdiction of the courts for the place where the harmful event occurred or may occur is a rule of special jurisdiction, it must be interpreted strictly and may not be given an interpretation going beyond the cases expressly envisaged by the regulation (*Melzer* EU:C:2013:305, paragraph 24).
- 27 The fact remains that the expression ‘place where the harmful event occurred or may occur’ in Article 5(3) of Regulation No 44/2001 is intended to cover both the place where the damage occurred and the place of the causal event giving rise to the damage, so that the defendant may be sued, at the option of the applicant, in the courts for either of those two places (*Melzer* EU:C:2013:305, paragraph 25 and the case-law cited).
- 28 In that respect, it is settled case-law that the rule of jurisdiction in Article 5(3) of that regulation is based on the existence of a particularly close connection between the dispute and the courts of the place where the harmful event occurred or may occur, which justifies the attribution of jurisdiction to those courts for reasons of the sound administration of justice and the efficacious conduct of proceedings (*Melzer* EU:C:2013:305, paragraph 26 and the case-law cited).
- 29 Since the identification of one of the points of connection recognised by the case-law mentioned in paragraph 27 above must enable the jurisdiction to be established of the court objectively best placed to determine whether the elements establishing the liability of the person sued are present, it follows that the only court which may properly be seised is the court within whose jurisdiction the relevant point of connection is situated (see, to that effect, Case C-133/11 *Folien Fischer and Fofitec* EU:C:2012:664, paragraph 52, and *Melzer* EU:C:2013:305, paragraph 28).
- 30 As regards the place of the causal event, it is clear that, according to the order for reference, several persons are supposed to have brought about the alleged harmful event. Hi Hotel, the only party sued in the main proceedings, acted in France, in other words outside the jurisdiction of the court in which it was sued.
- 31 As the Court has already noted, in circumstances in which one only of several supposed perpetrators of alleged damage is sued in a court within whose jurisdiction he has not acted, it cannot be considered that the causal event occurred within the jurisdiction of that court for the purposes of Article 5(3) of Regulation No 44/2001 (see *Melzer* EU:C:2013:305, paragraph 40).
- 32 Consequently, Article 5(3) of that regulation does not allow jurisdiction to be established on the basis of the place of the causal event with respect to one of the supposed perpetrators of the damage who has not acted within the jurisdiction of the court seised (see *Melzer* EU:C:2013:305, paragraph 41).

- 33 However, in contrast to the *Melzer* case (EU:C:2013:305), in the present case the referring court has not limited its question to the interpretation of Article 5(3) of the regulation for the sole purpose of establishing the jurisdiction of the German courts on the basis of the causal event of the alleged damage.
- 34 Accordingly, it must also be examined whether, in circumstances such as those at issue in the main proceedings, where several supposed perpetrators of the alleged damage have acted in different Member States, Article 5(3) of Regulation No 44/2001 allows jurisdiction to be attributed, on the basis of the occurrence of the damage, to the courts of a Member State with respect to one of the supposed perpetrators of the damage, even though he did not act within the jurisdiction of the court seised.
- 35 It should be noted that jurisdiction to hear an action in tort, delict or quasi-delict may be established in favour of the court seised of a claim for a finding of a breach of copyright, where the Member State in which that court is situated protects the rights of copyright relied on by the applicant and the alleged damage may occur within the jurisdiction of the court seised (see *Pinckney* EU:C:2013:635, paragraph 43).
- 36 In the main proceedings Mr Spoering is claiming a breach of various rights of copyright, namely the rights to reproduce, distribute and exhibit the photographs in question. It is common ground that those rights are protected in Germany in accordance with Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).
- 37 In circumstances such as those at issue in the main proceedings, it must be considered that the fact that damage may occur follows from the possibility of acquiring a reproduction of the work to which the copyright relied on by the applicant attaches in a bookshop located within the jurisdiction of the court seised. As appears from the facts referred to in paragraph 14 above, the handing over of the photographs in question to Phaidon-Verlag of Paris gave rise to the reproduction and distribution of the photographs, and thereby to the possibility that the damage alleged might occur.
- 38 On the other hand, in so far as the protection afforded by the Member State of the court seised applies only in that Member State, the court seised on the basis of the place where the damage occurs has jurisdiction only to determine the damage caused in the territory of that State (*Pinckney* EU:C:2013:635, paragraph 45).
- 39 The courts of other Member States in principle retain jurisdiction, in the light of Article 5(3) of Regulation No 44/2001 and the principle of territoriality, to rule on the damage to copyright caused in their respective Member States, given that they are best placed, first, to ascertain whether the rights of copyright guaranteed by the Member State concerned have in fact been infringed and, secondly, to determine the nature of the damage caused (see *Pinckney* EU:C:2013:635, paragraph 46).
- 40 In the light of the above considerations, the answer to the question is that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, where there are several supposed perpetrators of damage allegedly caused to rights of copyright protected in the Member State of the court seised, that provision does not allow jurisdiction to be established, on the basis of the causal event of the damage, of a court within whose jurisdiction the supposed perpetrator who is being sued did not act, but does allow the jurisdiction of that court to be established on the basis of the place where the alleged damage occurs, provided that the damage may occur within the jurisdiction of the court seised. If that is the case, the court has jurisdiction only to rule on the damage caused in the territory of the Member State to which it belongs.

## Costs

- 41 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 (Fourth Chamber) hereby rules:

**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 must be interpreted as meaning that, where there are several supposed perpetrators of damage allegedly caused to rights of copyright protected in the Member State of the court seised, that provision does not allow jurisdiction to be established, on the basis of the causal event of the damage, of a court within whose jurisdiction the supposed perpetrator who is being sued did not act, but does allow the jurisdiction of that court to be established on the basis of the place where the alleged damage occurs, provided that the damage may occur within the jurisdiction of the court seised. If that is the case, the court has jurisdiction only to rule on the damage caused in the territory of the Member State to which it belongs.**

[Signatures]