



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

16 January 2014*

(Request for a preliminary ruling — Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Liability for a defective product — Product manufactured in one Member State and sold in another Member State — Interpretation of the concept of ‘the place where the harmful event occurred or may occur’ — Place of the event giving rise to the damage)

In Case C-45/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Austria), made by decision of 28 November 2012, received at the Court on 28 January 2013, in the proceedings

Andreas Kainz

v

Pantherwerke AG,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Safjan (Rapporteur) and J. Malenovský, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Kainz, by K. Kozák, Rechtsanwalt,
- the Austrian Government, by A. Posch, acting as Agent,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the United Kingdom Government, by S. Brighthouse, acting as Agent, and by S. Lee, Barrister,
- the European Commission, by W. Bogensberger and A.-M. Rouchaud-Joët, 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 Mr Kainz, who is resident in Salzburg (Austria), and Pantherwerke AG, the registered office of which is in Germany, concerning a claim for damages on the basis of liability for a defective product brought by Mr Kainz following an accident which he suffered, in Germany, while riding a bicycle manufactured in that Member State by Pantherwerke AG but purchased from a retailer in Austria.

Legal context

Regulation No 44/2001

- 3 Recitals 2, 11, 12 and 15 in the preamble to Regulation No 44/2001 provide as follows:

'(2) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions 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 are essential.

...

(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. ...'

4 Articles 2 to 31 of Regulation No 44/2001, set out in Chapter II thereof, concern the rules governing jurisdiction.

5 In Section 1 of Chapter II, entitled 'General provisions', Article 2(1) is worded as follows:

'Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

- 6 Article 3(1) of Regulation No 44/2001, which comes under the same section, 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.’
- 7 Article 5(3) of Regulation No 44/2001 comes under Section 2 (entitled ‘Special jurisdiction’) of Chapter II. It provides as follows:
- ‘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.’

Regulation (EC) No 864/2007

- 8 Under recital 7 in the preamble to Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40):
- ‘The substantive scope and the provisions of this Regulation should be consistent with [Regulation No 44/2001] and the instruments dealing with the law applicable to contractual obligations.’
- 9 Regulation No 864/2007 provides in its Article 5, which is entitled ‘Product liability’:
- ‘1. Without prejudice to Article 4(2), the law applicable to a non-contractual obligation arising out of damage caused by a product shall be:
- (a) the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country; or, failing that,
- (b) the law of the country in which the product was acquired, if the product was marketed in that country; or, failing that,
- (c) the law of the country in which the damage occurred, if the product was marketed in that country.
- However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).
2. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.’

Directive 85/374/EEC

- 10 Article 11 of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29), as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999 (OJ 1999 L 141, p. 20), provides:

‘Member States shall provide in their legislation that the rights conferred upon the injured person pursuant to this Directive shall be extinguished upon the expiry of a period of 10 years from the date on which the producer put into circulation the actual product which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer.’

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

- 11 Pantherwerke AG is an undertaking established in Germany which manufactures and sells bicycles. On 3 November 2007, Mr Kainz, who is resident in Salzburg, purchased a bicycle manufactured by Pantherwerke AG from Funbike GmbH, a company established in Austria. On 3 July 2009, while riding that bicycle in Germany, Mr Kainz suffered a fall and was thereby injured.
- 12 Before the Landesgericht Salzburg (Regional Court, Salzburg), on the basis of a claim founded on liability for defective products, Mr Kainz sought from Pantherwerke AG the payment of EUR 21 200 plus interest and associated costs, and a declaration of liability on the part of that company for any future damage arising from the accident. According to Mr Kainz, his fall from the bicycle was caused by the fact that the fork ends had detached themselves from the wheel fork. Pantherwerke AG, as the manufacturer of the product, was, he claimed, liable in respect of that manufacturing defect.
- 13 For the purposes of establishing the jurisdiction of the court seised, Mr Kainz relies on Article 5(3) of Regulation No 44/2001. The place of the event giving rise to the damage is, he claims, located in Austria as the bicycle was brought into circulation there, in the sense that the product was there made available to the end user by way of commercial distribution.
- 14 Pantherwerke AG contests the international jurisdiction of the Austrian courts. The place of the event giving rise to the damage is, in its view, located in Germany. First, the process for the manufacture of the product took place in Germany and, second, the product was brought into circulation in that Member State when it was dispatched from that company’s place of business.
- 15 The courts adjudicating on the substance dismissed the action brought by Mr Kainz on grounds of lack of international jurisdiction, both at first instance and on appeal.
- 16 Hearing an appeal on a point of law (‘Revision’), the referring court considers it necessary to clarify the concept of the place of the event giving rise to the damage in relation to liability for defective products.
- 17 In those circumstances, the Oberster Gerichtshof (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. Is the “place where the harmful event occurred or may occur” in Article 5(3) of [Regulation No 44/2001] to be interpreted, in relation to product liability, as meaning:
- (a) that the place of the event giving rise to the damage (Handlungsort) is the place where the manufacturer is established;
 - (b) that the place of the event giving rise to the damage (Handlungsort) is the place where the product is put into circulation;

- (c) that the place of the event giving rise to the damage (Handlungsort) is the place where the product was acquired by the user?

2. If Question 1(b) is answered in the affirmative:

- (a) Is the product put into circulation when it has left the manufacturing process operated by the producer and enters a marketing process in the form in which it is offered to the public in order to be used or consumed?
- (b) Is the product put into circulation when it is marketed in a structured way to end users?’

Consideration of the questions referred

- 18 By its questions, which should be examined together, the referring court asks, in essence, how, in the case where a manufacturer faces a claim of liability for a defective product, Article 5(3) of Regulation No 44/2001 is to be interpreted for the purpose of identifying the place of the event giving rise to the damage.
- 19 In order to answer that question, it should be borne in mind, first, that, according to settled case-law, the provisions of Regulation No 44/2001 must be interpreted independently, by reference to its scheme and purpose (see, *inter alia*, Case C-189/08 *Zuid-Chemie* [2009] ECR I-6917, paragraph 17, and Case C-170/12 *Pinckney* [2013] ECR, paragraph 23).
- 20 It must be stated next that, although it is apparent from recital 7 in the preamble to Regulation No 864/2007 that the European Union legislature sought to ensure consistency between Regulation No 44/2001, on the one hand, and the substantive scope and the provisions of Regulation No 864/2007, on the other, that does not mean, however, that the provisions of Regulation No 44/2001 must for that reason be interpreted in the light of the provisions of Regulation No 864/2007. The objective of consistency cannot, in any event, lead to the provisions of Regulation No 44/2001 being interpreted in a manner which is unconnected to the scheme and objectives pursued by that regulation.
- 21 In that regard, it should be borne in mind that the system of common rules of conferment of jurisdiction laid down in Chapter II of Regulation No 44/2001 is based on the general rule, set out in Article 2(1), that persons domiciled in a Member State are to be sued in the courts of that State, irrespective of the nationality of the parties. It is only by way of derogation from that fundamental principle attributing jurisdiction to the courts of the defendant’s domicile that Section 2 of Chapter II of Regulation No 44/2001 makes provision for certain special jurisdictional rules, such as that laid down in Article 5(3) of that regulation (Case C-147/12 *ÖFAB* [2013] ECR, paragraph 30 and the case-law cited).
- 22 Those rules of special jurisdiction must be interpreted restrictively and cannot give rise to an interpretation going beyond the cases expressly envisaged by that regulation (*ÖFAB*, paragraph 31 and the case-law cited).
- 23 It is, however, settled case-law that, in the case where the place in which the event which may give rise to liability in tort, delict or quasi-delict occurs and the place where that event results in damage are not identical, the expression ‘place where the harmful event occurred’ in Article 5(3) of Regulation No 44/2001 must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it, with the result that the defendant may be sued, at the option of the claimant, in the courts for either of those places (see, *inter alia*, *Zuid-Chemie*, paragraph 23, and *Pinckney*, paragraph 26).

- 24 Since identification of one of those connecting factors is intended to enable the court objectively best placed to determine whether the elements establishing the liability of the person sued are present to assume jurisdiction, only the court within the jurisdiction of which the relevant connecting factor is to be found is the court before which an action may properly be brought is (see *Pinckney*, paragraph 28 and the case-law cited).
- 25 In the context of the dispute in the main proceedings, it is common ground that the referring court expresses uncertainty solely with regard to the determination of the place of the event giving rise to the damage.
- 26 The Court has already held in this connection that, with regard to product liability, this is the place where the event which damaged the product itself occurred (see, to that effect, *Zuid-Chemie*, paragraph 27). This is, in principle, the place where the product in question was manufactured.
- 27 In so far as proximity to the place where the event which damaged the product itself occurred facilitates, on the grounds of, inter alia, the possibility of gathering evidence in order to establish the defect in question, the efficacious conduct of proceedings and, therefore, the sound administration of justice, the attribution of jurisdiction to the courts in that place is consistent with the rationale of the special jurisdiction conferred by Article 5(3) of Regulation No 44/2001, that is to say, the existence of a particularly close connecting factor between the dispute and the courts for the place where the harmful event occurred (see, to that effect, *Zuid-Chemie*, paragraph 24, and *Pinckney*, paragraph 27).
- 28 Attribution of jurisdiction to the courts for the place where the product in question was manufactured addresses, moreover, the requirement that rules governing jurisdiction should be predictable, in so far as both the manufacturer, as defendant, and the victim, as applicant, may reasonably foresee that those courts will be in the best position to rule on a case concerning, inter alia, the finding that the product in question is defective.
- 29 It must therefore be held that, in the case where a manufacturer faces a claim of liability for a defective product, the place of the event giving rise to the damage is the place where the product in question was manufactured.
- 30 As regards, lastly, Mr Kainz's argument that the interpretation of special jurisdiction in matters relating to tort, delict or quasi-delict must take into account not only the interests of the proper administration of justice but also those of the person sustaining the damage, thereby enabling him to bring his action before a court of the Member State in which he is domiciled, that argument cannot be upheld.
- 31 Not only has the Court already held that Article 5(3) of Regulation No 44/2001 is specifically not designed to offer the weaker party stronger protection (see, to that effect, Case C-133/11 *Folien Fischer and Fofitec* [2012] ECR, paragraph 46), but it should also be noted that the interpretation proposed by Mr Kainz that the place of the event giving rise to the damage is the place where the product in question was transferred to the end consumer or to the reseller likewise does not guarantee that that consumer will, in all circumstances, be able to bring an action before the courts in the place where he is domiciled since that place may be elsewhere or even in another country.
- 32 In any event, the fact that it may not be possible to establish, pursuant to the objective criteria for the interpretation of Article 5(3) of Regulation No 44/2001, the jurisdiction of the courts of the Member State in which the applicant is domiciled is consistent with the general rule, referred to in paragraph 21 above, that jurisdiction is vested in the courts for the defendant's place of domicile.
- 33 In the light of the foregoing, the answer to the questions referred is that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in the case where a manufacturer faces a claim of liability for a defective product, the place of the event giving rise to the damage is the place where the product in question was manufactured.

Costs

- ³⁴ 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, in the case where a manufacturer faces a claim of liability for a defective product, the place of the event giving rise to the damage is the place where the product in question was manufactured.

[Signatures]