

Re:

Reference for a preliminary ruling — Tribunale di Bergamo — Interpretation of Article 11(2) of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (OJ 1987 L 42, p. 48) — Consumer credit — Right of the consumer to pursue remedies against the grantor of credit for breach of the contract of sale relating to the goods financed by the credit

Operative part of the judgment

Article 11(2) of Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit is to be interpreted as meaning that, in a situation such as that in the main proceedings, an agreement between a supplier and a grantor of credit whereunder credit is made available exclusively by that grantor of credit to customers of that supplier is not a necessary condition for the right of those customers to pursue remedies against the grantor of credit — where the supplier is in breach of contract — in order to obtain the termination of the credit agreement and the subsequent reimbursement of the sums already paid to the grantor of credit.

⁽¹⁾ OJ C 37, 9.2.2008.

**Judgment of the Court (Third Chamber) of 2 April 2009
(reference for a preliminary ruling from the Korkein
hallinto-oikeus (Finland)) — proceedings brought by A**

(Case C-523/07) ⁽¹⁾

(Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility — Regulation (EC) No 2201/2003 — Substantive scope — Definition of ‘civil matters’ — Decision relating to the taking into care and placement of children outside the family home — Child’s habitual residence — Protective measures — Jurisdiction)

(2009/C 141/22)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Party to the main proceedings

Applicant: A

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Articles 1(2)(d), 8(1), 13(1) and 20(1) of

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1) — Enforcement of a single decision concerning the immediate taking into care of a child and placement outside the family home, adopted as a public-law decision in connection with child protection — Situation of a child with a permanent residence in one Member State but staying in another Member State with no fixed dwelling place

Operative part of the judgment

1. Article 1(1) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that a decision ordering that a child be immediately taken into care and placed outside his original home is covered by the term ‘civil matters’, for the purposes of that provision, where that decision was adopted in the context of public law rules relating to child protection.
2. The concept of ‘habitual residence’ under Article 8(1) of Regulation No 2201/2003 must be interpreted as meaning that it corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a Member State and the family’s move to that State, the child’s nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that State must be taken into consideration. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances specific to each individual case.
3. A protective measure, such as the taking into care of children, may be decided by a national court under Article 20 of Regulation No 2201/2003 if the following conditions are satisfied:
 - the measure must be urgent;
 - it must be taken in respect of persons in the Member State concerned, and
 - it must be provisional.

The taking of the measure and its binding nature are determined in accordance with national law. After the protective measure has been taken, the national court is not required to transfer the case to the court of another Member State having jurisdiction. However, in so far as the protection of the best interests of the child so requires, the national court which has taken provisional or protective measures must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.

4. Where the court of a Member State does not have jurisdiction at all, it must declare of its own motion that it has no jurisdiction, but is not required to transfer the case to another court. However, in so far as the protection of the best interests of the child so requires, the national court which has declared of its own motion that it has no jurisdiction must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.

(¹) OJ C 22, 26.01.2008.

**Judgment of the Court (Fourth Chamber) of 23 April 2009
(reference for a preliminary ruling from the Oberster
Gerichtshof — Austria) — Falco Privatstiftung, Thomas
Rabitsch v Gisela Weller-Lindhorst**

(Case C-533/07) (¹)

(Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Special jurisdiction — Article 5(1)(a) and the second indent of Article 5(1)(b) — The concept of ‘provision of services’ — Contract assigning intellectual property rights)

(2009/C 141/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicants: Falco Privatstiftung, Thomas Rabitsch

Defendant: Gisela Weller-Lindhorst

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 5(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Meaning of ‘provision of services’ and of the ‘place in a Member State where the services should have been provided’ — Jurisdiction over a case relating to the payment of royalties in respect of a licence to exploit a musical work

Operative part of the judgment

1. The second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and

enforcement of judgments in civil and commercial matters, is to be interpreted to the effect that a contract under which the owner of an intellectual property right grants its contractual partner the right to use that right in return for remuneration is not a contract for the provision of services within the meaning of that provision.

2. In order to determine, under Article 5(1)(a) of Regulation No 44/2001, the court having jurisdiction over an application for remuneration owed pursuant to a contract under which the owner of an intellectual property right grants to its contractual partner the right to use that right, reference must continue to be made to the principles which result from the case-law of the Court of Justice on Article 5(1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic.

(¹) OJ C 37, 09.02.2008.

**Judgment of the Court (Third Chamber) of 23 April 2009
(Reference for a preliminary ruling from the Wojewódzki
Sąd Administracyjny we Wrocławiu (Poland)) — Uwe
Rüffler v Dyrektor Izby Skarbowej we Wrocławiu
Ośrodek Zamiejscowy w Wałbrzychu**

(Case C-544/07) (¹)

(Article 18 EC — Income tax legislation — Reduction of income tax by the amount of health insurance contributions paid in the Member State of taxation — Refusal of reduction by the amount of contributions paid in other Member States)

(2009/C 141/24)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny we Wrocławiu

Parties to the main proceedings

Applicant: Uwe Rüffler

Defendant: Dyrektor Izby Skarbowej we Wrocławiu Ośrodek Zamiejscowy w Wałbrzychu

Re:

Reference for a preliminary ruling — Wojewódzki Sąd Administracyjny we Wrocławiu (Poland) — Interpretation of the first paragraph of Article 12 EC and of Article 39(1) and (2) EC — National legislation on income tax limiting the right to deduct health insurance contributions from that tax to contributions paid solely in the Member State concerned