



## Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

22 January 2015\*

(Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Article 5(3) — Special jurisdiction in matters relating to tort, delict or quasi-delict — Copyright — Dematerialised content — Placing online — Determination of the place of the event giving rise to the damage — Criteria)

In Case C-441/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Handelsgericht Wien (Austria), made by decision of 3 July 2013, received at the Court on 5 August 2013, in the proceedings

**Pez Hejduk**

v

**EnergieAgentur.NRW GmbH,**

THE COURT (Fourth Chamber),

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

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- Ms Hejduk, by M. Pilz, Rechtsanwalt,
- EnergieAgentur.NRW GmbH, by M. Wukoschitz, Rechtsanwalt,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes and E. Pedrosa, acting as Agents,
- the Swiss Government, by M. Jametti, acting as Agent,
- the European Commission, by A.-M. Rouchaud-Joët and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 September 2014,

\* 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 Ms Hejduk, domiciled in Vienna (Austria), and EnergieAgentur.NRW GmbH ('EnergieAgentur'), which has its seat in Düsseldorf (Germany), concerning an application for a declaration of an infringement of copyright as a result of photographs created by Ms Hejduk being made available on the website of EnergieAgentur without her consent.

### Legal context

#### *Regulation No 44/2001*

- 3 It is apparent from recital 2 in the preamble to Regulation No 44/2001 that the regulation aims, in the interests of the proper functioning of the internal market, to put in place

'[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 of jurisdiction are set out in Chapter II of that regulation.
- 6 Article 2(1) of Regulation No 44/2001, which comes under Section 1 of Chapter II, entitled 'General provisions', reads as follows:

'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.'

7 Article 3(1) of that regulation, which also features in Section 1 of Chapter II, 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 In Section 2, (‘Special jurisdiction’) of Chapter II of that regulation, Article 5(3) provides the following:

‘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’.

#### *Directive 2001/29/EC*

9 Article 1(1) of 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) provides:

‘This Directive concerns the legal protection of copyright and related rights in the framework of the internal market, with particular emphasis on the information society.’

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

10 According to the order for reference, Ms Hejduk is a professional photographer of architecture and is the creator of photographic works depicting the buildings of the Austrian architect, Georg W. Reinberg. As part of a conference organised on 16 September 2004 by EnergieAgentur, Mr Reinberg used Ms Hejduk’s photographs in order to illustrate his buildings, which he was authorised to do by Ms Hejduk.

11 Subsequently, EnergieAgentur, without Ms Hejduk’s consent and without providing a statement of authorship, made those photographs available on its website for viewing and downloading.

12 Taking the view that her copyright had been infringed by EnergieAgentur, Ms Hejduk brought an action before the Handelsgericht Wien for damages in the sum of EUR 4 050, and for authorisation to publish the judgment at the expense of the defendant.

13 The referring court states that, in order to justify the selection of that jurisdiction, Ms Hejduk relies on Article 5(3) of Regulation No 44/2001. EnergieAgentur raised an objection that the Handelsgericht Wien lacked international and local jurisdiction, claiming that its website is not directed at Austria and that the mere fact that a website may be accessed from Austria is insufficient to confer jurisdiction on that court.

14 Accordingly, the Handelsgericht Wien 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, in a dispute concerning an infringement of rights related to copyright which is alleged to have been committed by keeping a photograph accessible on a website, the website being operated under the top-level domain of a Member State other than that in which the proprietor of the right is domiciled, there is jurisdiction only

- in the Member State in which the alleged perpetrator of the infringement is established; and
- in the Member State(s) to which the website, according to its content, is directed?’

### **Consideration of the question referred for a preliminary ruling**

- 15 By its question, the referring court asks, in essence, whether Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in the event of an allegation of infringement of rights related to copyright which are guaranteed by the Member State of the court seised, that court has jurisdiction to hear an action for damages in respect of an infringement of those rights resulting from the placing of protected photographs online on a website accessible in its territorial jurisdiction.
- 16 As a preliminary point, it should be noted, first, that Article 5(3) of Regulation No 44/2001 must be interpreted autonomously and strictly (see to that effect, judgment in *Coty Germany*, C-360/12, EU:C:2014:1318, paragraphs 43 to 45).
- 17 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 States in which the defendant is domiciled, that Section 2 of Chapter II of that regulation makes provision for certain special jurisdictional rules, such as that laid down in Article 5(3) of that regulation (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 44).
- 18 It is clear from the Court’s case-law 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 event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 46).
- 19 In that connection, according to settled case-law, the rule of special jurisdiction laid down in Article 5(3) of that regulation is based on the existence of a particularly close linking factor 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 relating to the sound administration of justice and the efficacious conduct of proceedings (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 47).
- 20 Since identification of one of the linking factors recognised by the case-law referred to in paragraph 18 above thus establishes the jurisdiction of the court objectively best placed to determine whether the elements establishing the liability of the person sued are present, it follows that only the court in whose jurisdiction the relevant linking factor is situated may validly be seised (judgment in *Coty Germany*, EU:C:2014:1318, paragraph 48 and the case-law cited).
- 21 Secondly, it must be stated that, although in the action in the main proceedings Ms Hejduk alleges an infringement of copyright by the placing of her photographs online on a website without her consent, that allegation, according to the referring court, specifically concerns rights related to copyright.
- 22 In that regard, it must be observed that, although copyright rights must be automatically protected, in particular in accordance with Directive 2001/29, in all Member States, they are subject to the principle of territoriality. Those rights are thus capable of being infringed in each Member State in accordance with the applicable substantive law (see judgment in *Pinckney*, C-170/12, EU:C:2013:635, paragraph 39).

- 23 In the first place, it must be stated that the causal event, defined as the event which gives rise to the alleged damage (see judgment in *Zuid-Chemie*, C-189/08, EU:C:2009:475, paragraph 28), is not relevant for the purpose of attributing jurisdiction to the court before which a case such as that in the main proceedings has been brought.
- 24 In a situation such as that at issue in the main proceedings, in which the alleged tort consists in the infringement of copyright or rights related to copyright by the placing of certain photographs online on a website without the photographer's consent, the activation of the process for the technical display of the photographs on that website must be regarded as the causal event. The event giving rise to a possible infringement of copyright therefore lies in the actions of the owner of that site (see, by analogy, judgment in *Wintersteiger*, C-523/10, EU:C:2012:220, paragraphs 34 and 35).
- 25 In a case such as that in the main proceedings, the acts or omissions liable to constitute such an infringement may be localised only at the place where EnergieAgentur has its seat, since that is where the company took and carried out the decision to place photographs online on a particular website. It is undisputed that that seat is not in the Member State from which the present reference is made.
- 26 It follows that in circumstances such as those at issue in the main proceedings, the causal event took place at the seat of that company and therefore does not attribute jurisdiction to the court seised.
- 27 It is therefore necessary to examine, secondly, whether that court may have jurisdiction on the basis of the place where the alleged damage occurred.
- 28 Thus, the Court must determine the conditions in which, for the purposes of Article 5(3) of Regulation No 44/2001, the damage arising out of an alleged infringement of copyright occurs or is likely to occur in a Member State other than the one in which the defendant took and carried out the decision to place photographs online on a particular website.
- 29 In that regard, the Court has stated not only that the place where the alleged damage occurred within the meaning of that provision may vary according to the nature of the right allegedly infringed, but also that the likelihood of damage occurring in a particular Member State is subject to the condition that the right whose infringement is alleged is protected in that Member State (see judgment in *Pinckney*, EU:C:2013:635, paragraphs 32 and 33).
- 30 With regard to the second aspect, in the case in the main proceedings, Ms Hejduk alleges infringement of her copyright as a result of the placing of her photographs online on the website of EnergieAgentur. It is not disputed, as is clear in particular from paragraph 22 above, that the rights on which she relies are protected in Austria.
- 31 With regard to the likelihood of the damage occurring in a Member State other than the one where EnergieAgentur has its seat, that company states that its website, on which the photographs at issue were published, operating under a country-specific German top-level domain, that is to say 'de', is not directed at Austria and that consequently the damage did not occur in that Member State.
- 32 It is clear from the Court's case-law that, unlike Article 15(1)(c) of Regulation No 44/2001, which was interpreted in the judgment in *Pammer and Hotel Alpenhof* (C-585/08 and C-144/09, EU:C:2010:740), Article 5(3) does not require, in particular, that the activity concerned be 'directed to' the Member State in which the court seised is situated (see judgment in *Pinckney*, EU:C:2013:635, paragraph 42).
- 33 Therefore, for the purposes of determining the place where the damage occurred with a view to attributing jurisdiction on the basis of Article 5(3) of Regulation No 44/2001, it is irrelevant that the website at issue in the main proceedings is not directed at the Member State in which the court seised is situated.

- 34 In circumstances such as those at issue in the main proceedings, it must thus be held that the occurrence of damage and/or the likelihood of its occurrence arise from the accessibility in the Member State of the referring court, via the website of EnergieAgentur, of the photographs to which the rights relied on by Ms Hejduk pertain.
- 35 The issue of the extent of the damage alleged by Ms Hejduk is part of the examination of the substance of the claim and is not relevant to the stage in which jurisdiction is verified.
- 36 However, given that the protection of copyright and rights related to copyright granted by the Member State of the court seised is limited to the territory of that Member State, a court seised on the basis of the place where the alleged damage occurred has jurisdiction only to rule on the damage caused within that Member State (see, to that effect, judgment in *Pinckney*, EU:C:2013:635, paragraph 45).
- 37 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 or rights related to copyright caused in their respective Member States, given that they are best placed, first, to ascertain whether those rights guaranteed by the Member State concerned have in fact been infringed and, secondly, to determine the nature of the damage caused (see, to that effect, judgment in *Pinckney* EU:C:2013:635, paragraph 46).
- 38 Having regard to all the foregoing considerations, the answer to the question referred is that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in the event of an allegation of infringement of copyright and rights related to copyright guaranteed by the Member State of the court seised, that court has jurisdiction, on the basis of the place where the damage occurred, to hear an action for damages in respect of an infringement of those rights resulting from the placing of protected photographs online on a website accessible in its territorial jurisdiction. That court has jurisdiction only to rule on the damage caused in the Member State within which the court is situated.

### Costs

- 39 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 event of an allegation of infringement of copyright and rights related to copyright guaranteed by the Member State of the court seised, that court has jurisdiction, on the basis of the place where the damage occurred, to hear an action for damages in respect of an infringement of those rights resulting from the placing of protected photographs online on a website accessible in its territorial jurisdiction. That court has jurisdiction only to rule on the damage caused in the Member State within which the court is situated.**

[Signatures]