Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

6 September 2012*

(Jurisdiction in civil and commercial matters — Jurisdiction over consumer contracts — Regulation (EC) No 44/2001 — Article 15(1)(c) — Possible limitation of that jurisdiction to distance contracts)

In Case C-190/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Austria), made by decision of 23 March 2011, received at the Court on 22 April 2011, in the proceedings

Daniela Mühlleitner

v

Ahmad Yusufi,

Wadat Yusufi,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann, L. Bay Larsen, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: P. Cruz Villalón,

Registrar: C. Strömholm, Administrator,

after considering the observations submitted on behalf of:

— Ms Mühlleitner, by C. Schönhuber, Rechtsanwalt,

— Mr A. Yusufi and Mr W. Yusufi, by U. Schwab and G. Schwab, Rechtsanwälte,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and M. Russo, avvocato dello Stato,

— the Polish Government, by M. Szpunar and B. Majczyna, acting as Agents,

— the Portuguese Government, by L.I. Fernandes and S. Nunes de Almeida, acting as Agents,

— the Swiss Confederation, by D. Klingele, 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 24 May 2012,

* Language of the case: German.

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 15(1)(c) 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, 'the Brussels I Regulation').

2 The reference has been made in proceedings between Ms Mühlleitner and Mr A. Yusufi and Mr W. Yusufi concerning the rescission of a contract for the sale of a motor vehicle on the ground of hidden defects, reimbursement of the purchase price, and a claim for damages.

Legal context

European Union law

3 Article 13(3) of the Brussels 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 on the accession of new Member States to that Convention, ('the Brussels Convention') reads as follows:

'In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called "the consumer", jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5(5), if it is:

…

3. any other contract for the supply of goods or a contract for the supply of services, and

   (a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising, and

   (b) the consumer took in that State the steps necessary for the conclusion of the contract.'

4 According to recital 13 in the preamble to the Brussels I Regulation, 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.

5 Article 2 of the Brussels I Regulation lays down the principle that persons domiciled in a Member State, whatever their nationality, are to be sued in the courts of that Member State.

6 Article 15(1)(c) of the Brussels I Regulation reads as follows:

'1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5, if:

…

(c) … the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.'

7 In accordance with Article 16(1) and (2) of the Brussels I Regulation:

‘1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.’

8 Recital 7 in the preamble to 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, ‘the Rome I Regulation’), states that the substantive scope and the provisions of that regulation should be consistent with those of the Brussels I Regulation.

9 Recital 24 in the preamble to the Rome I Regulation reads as follows:

‘With more specific reference to consumer contracts … [c]onsistency with [the Brussels I Regulation] requires both that there be a reference to the concept of directed activity as a condition for applying the consumer protection rule and that the concept be interpreted harmoniously in [the Brussels I Regulation] and this Regulation, bearing in mind that a joint declaration by the Council and the Commission on Article 15 of [the Brussels I Regulation] states that “for Article 15(1)(c) to be applicable it is not sufficient for an undertaking to target its activities at the Member State of the consumer’s residence, or at a number of Member States including that Member State; a contract must also be concluded within the framework of its activities”. The declaration also states that “the mere fact that an Internet site is accessible is not sufficient for Article 15 to be applicable, although a factor will be that this Internet site solicits the conclusion of distance contracts and that a contract has actually been concluded at a distance, by whatever means. In this respect, the language or currency which a website uses does not constitute a relevant factor”.’

10 Article 6(1) of the Rome I Regulation provides:

‘1. Without prejudice to Articles 5 and 7, a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:

(a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or

(b) by any means, directs such activities to that country or to several countries including that country,

and the contract falls within the scope of such activities.’

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

11 According to the order for reference and the documents in the case-file, Ms Mühlleitner, domiciled in Austria, searched on the internet for a car of a German make which she wished to acquire for her private use. After connecting to the German search platform www.mobile.de, she entered the make and type of vehicle she wanted, thereby obtaining a list of vehicles corresponding to the characteristics specified.

12 After selecting the vehicle which corresponded best to her search criteria, she was directed to an offer from the defendants, Mr A. Yusufi and Mr W. Yusufi, who operate a motor vehicle retail business via Autohaus Yusufi GbR (‘Autohaus Yusufi’), a partnership established in Hamburg (Germany).

13 Wishing to obtain more information about the vehicle offered on the search platform, Ms Mühlleitner contacted the defendants, using the telephone number stated on the website of Autohaus Yusufi, which included an international dialling code. As the vehicle in question was no longer available, she was offered another vehicle, details of which were subsequently sent by email. She was also informed that her Austrian nationality would not prevent her from acquiring a vehicle from the defendants.

14 Ms Mühlleitner then went to Germany and, by a contract of sale signed on 21 September 2009 in Hamburg, bought the vehicle from Mr A. Yusufi and Mr W. Yusufi at a price of EUR 11 500, taking immediate delivery of it.

15 On her return to Austria Ms Mühlleitner discovered that the vehicle she had purchased was defective, and consequently asked the defendants to repair it.

16 When the defendants refused to repair the vehicle, Ms Mühlleitner brought proceedings in the court of her place of domicile, the Landesgericht Wels (Regional Court, Wels) (Austria), for rescission of the contract for the sale of the vehicle, which she claims to have concluded as a consumer with an undertaking directing its commercial or professional activities to Austria, a case falling within Article 15(1)(c) of the Brussels I Regulation.

17 The defendants contested Ms Mühlleitner's status of 'consumer' and the international jurisdiction of the Austrian courts, arguing that the dispute should be brought before the competent German courts. They also submitted that they did not direct their activities to Austria and that Ms Mühlleitner had concluded the contract at the seat of their undertaking in Germany.

18 On 10 May 2010 the court of first instance, the Landesgericht Wels, dismissed the action, declaring that it lacked jurisdiction. While not calling in question Ms Mühlleitner's status of 'consumer', the court nevertheless found that the fact that the website of Autohaus Yusufi could be consulted in Austria was not enough to give the Austrian courts jurisdiction, that the contract had been concluded on the basis of Ms Mühlleitner's telephone call, and that it did not follow from the correspondence subsequently sent that the defendants had directed their activities to Austria. Ms Mühlleitner appealed against that decision to the Oberlandesgericht Linz (Higher Regional Court, Linz).

19 On 17 June 2010 the Oberlandesgericht Linz confirmed the decision at first instance. It too did not call in question Ms Mühlleitner's status of 'consumer', but, recalling the joint statement by the Council and the Commission on Articles 15 and 73 of the Brussels I Regulation, made on the occasion of the adoption of that regulation ('the joint statement'), according to which a purely 'passive' internet site is not sufficient for it to be considered that an activity is directed to the consumer's State, it noted that the website of Autohaus Yusufi had the characteristics of such a 'passive' site. Moreover, observing that, according to the joint statement, the contract must be concluded at a distance, it found that that was not so in the present case. The court none the less gave leave for an appeal on a point of law, recognising that the legal scope of the joint statement was controversial.

20 Ms Mühlleitner brought an appeal on a point of law to the Oberster Gerichtshof (Supreme Court) against that judgment.

21 According to the documents in the case, the Oberster Gerichtshof considers that the defendants directed their activities to Austria within the meaning of Article 15(1)(c) of the Brussels I Regulation, having regard to the possibility of consulting Autohaus Yusufi's website in Austria and the existence of contacts at a distance between the parties to the contract, by telephone and email.

22 However, by judgment of 9 November 2010, the Oberster Gerichtshof stayed the proceedings pending delivery of the Court's judgment in the *Pammer* and *Hotel Alpenhof* cases (Joined Cases C-585/08 and C-144/09 *Pammer and Hotel Alpenhof* [2010] ECR I-12527), which was to clarify the concept of 'activity directed to the State of the consumer's domicile'.

23 The delivery of that judgment confirmed the Oberster Gerichtshof's view that Mr A. Yusufi and Mr W. Yusufi directed their commercial or professional activities to Austria. That court also entertains no doubts as to Ms Mühlleitner's status of 'consumer'.

24 Nevertheless, it raises the question whether it follows from paragraphs 86 and 87 of the *Pammer and Hotel Alpenhof* judgment that Article 15(1)(c) of the Brussels I Regulation applies only to distance contracts.

25 In those circumstances, the Oberster Gerichtshof decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Does the application of Article 15(1)(c) of [the Brussels I Regulation] presuppose that the contract between the consumer and the undertaking has been concluded at a distance?'

Consideration of the question referred

26 It should be recalled, first, that Article 15(1)(c) of the Brussels I Regulation constitutes a derogation both from the general rule of jurisdiction laid down in Article 2(1) of the regulation, which confers jurisdiction on the courts of the Member State in which the defendant is domiciled, and from the rule of special jurisdiction for contracts, set out in Article 5(1) of the regulation, which confers jurisdiction on the courts of the place of performance of the obligation on which the claim is based (*Pammer and Hotel Alpenhof*, paragraph 53).

27 It follows that such a derogation must necessarily be interpreted strictly, as any derogation from or exception to a general rule is to be interpreted strictly.

28 Next, it must be recalled that the concepts used in the Brussels I Regulation – in particular those which appear in Article 15(1)(c) of the regulation – must be interpreted independently, by reference principally to the system and objectives of the regulation, in order to ensure that it is uniformly applied in all the Member States (see, to that effect, Case C-27/02 *Engler* [2005] ECR I-481, paragraph 33, and *Pammer and Hotel Alpenhof*, paragraph 55).

29 The Court has previously held that, in the system established by the Brussels I Regulation, Article 15(1)(c) of the regulation, as is clear from recital 13 in the preamble to the regulation, occupies the same place and fulfils the same function of protecting the consumer as the weaker party as does point 3 of the first paragraph of Article 13 of the Brussels Convention (see Case C-180/06 *Ilsinger* [2009] ECR I-3961, paragraph 41).

30 Finally, it may be noted that there is no need to ascertain whether the commercial activities of Mr A. Yusufi and Mr W. Yusufi were directed to Austria, since the national court has already regarded this condition as satisfied.

31 It is in the light of those considerations that the question referred must be answered.

32 By its question the referring court essentially asks whether Article 15(1)(c) of the Brussels I Regulation must be interpreted as requiring the contract between the consumer and the trader to be concluded at a distance. In that context, the court asks whether it follows from paragraphs 86 and 87 of *Pammer and Hotel Alpenhof* that the scope of Article 15(1)(c) of the Brussels I Regulation is limited solely to consumer contracts concluded at a distance.

33 On this point, it is true that, while the aim of Article 15(1)(c) of the Brussels I Regulation is to protect consumers, that does not imply that that protection is absolute (see *Pammer and Hotel Alpenhof*, paragraph 70). Moreover, the need for the consumer contracts to be concluded at a distance is mentioned in the joint statement and in recital 24 in the preamble to the Rome I Regulation, which cites the joint statement.

34 However, all the governments which have submitted observations and the Commission put forward arguments relating to a literal interpretation, the origin and a teleological interpretation of that provision which militate in favour of a negative answer to the question referred.

35 In the first place, Article 15(1)(c) of the Brussels I Regulation does not expressly make its application conditional on the fact that the contracts falling within its scope have been concluded at a distance.

36 According to the wording of that provision, it applies where two specific conditions are satisfied. It is thus necessary, first, that the trader pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State and, secondly, that the contract at issue falls within the scope of such activities.

37 It should be observed, moreover, that in the explanatory memorandum accompanying the proposal for a Council Regulation (EC) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, presented by the Commission in Brussels on 14 July 1999 (COM(1999) 348 final), the Commission considers that 'the fact that the condition in old Article 13 [of the Brussels Convention] that the consumer must have taken the necessary steps in his State has been removed means that Article 15, first paragraph, point (3), [now Article 15(1)(c) of the Brussels I Regulation] applies to contracts concluded in a State other than the consumer's domicile'.

38 The Court has also noted that the wording of Article 15(1) of the Brussels I Regulation is not identical in every respect to that of the first paragraph of Article 13 of the Brussels Convention. In particular, it has found that the conditions for application which consumer contracts must fulfil are now worded more generally than they were, in order to ensure better protection for consumers with regard to new means of communication and the development of electronic commerce (see *Pammer and Hotel Alpenhof*, paragraph 59).

39 The European Union legislature thus replaced the conditions requiring, first, the trader to have addressed a specific invitation to the consumer or to have advertised in the State of the consumer's domicile and, secondly, the consumer to have taken in that State the steps necessary for the conclusion of the contract with conditions applicable to the trader alone (*Pammer and Hotel Alpenhof*, paragraph 60).

40 It is not irrelevant to note here that the report of 18 September 2000 of the European Parliament's Committee on Legal Affairs and the Internal Market on the proposal for what became the Brussels I Regulation (final document A5-0253/2000, amendment 23 and explanatory statement) takes note of the discussions concerning the advisability of adding the condition that consumer contracts must be concluded at a distance, and of the arguments which eventually led to such an amendment not being adopted.

41 The new, less restrictive, wording of the old Article 13 of the Brussels Convention is also, as the Advocate General observes in point 17 of his Opinion, reflected in parallel agreements to the Brussels Convention and the Brussels I Regulation, in particular in Article 15(1)(c) of the convention annexed to Council Decision 2007/712/EC of 15 October 2007 on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2007 L 339, p. 1).

42 In the second place, as regards a teleological interpretation of Article 15(1)(c) of the Brussels I Regulation, it should be noted that the addition of a condition concerning the conclusion of consumer contracts at a distance would run counter to the objective of that provision in its new, less restrictive formulation, in particular the objective of protecting consumers as the weaker parties to the contract.

43 In the third place, with respect to the judgment in *Pammer and Hotel Alpenhof*, the Court held in paragraphs 86 and 87 of that judgment, in response to the arguments put forward by Hotel Alpenhof to the effect that Article 15(1)(c) of the Brussels I Regulation could not apply because the contract with the consumer had been concluded on the spot and not at a distance, that those arguments were ineffective in that case because, on the facts, the hotel room had been reserved and the reservation confirmed at a distance.

44 As the Advocate General observes in points 36 to 38 of his Opinion in the present case, paragraphs 86 and 87 of that judgment represent only the Court's reply to the arguments adduced by Hotel Alpenhof, and their significance cannot extend beyond the particular circumstances of that case. It remains the case that the essential condition to which the application of Article 15(1)(c) of the Brussels I Regulation is subject is that relating to a commercial or professional activity directed to the State of the consumer's domicile. In that respect, both the establishment of contact at a distance, as in the present case, and the reservation of goods or services at a distance, or *a fortiori* the conclusion of a consumer contract at a distance, are indications that the contract is connected with such an activity.

45 In the light of the above considerations, the answer to the question referred is that Article 15(1)(c) of the Brussels I Regulation must be interpreted as not requiring the contract between the consumer and the trader to be concluded at a distance.

Costs

46 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 15(1)(c) 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 not requiring the contract between the consumer and the trader to be concluded at a distance.

[Signatures]