Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

14 November 2013*

(Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 16(1) — Contract for travel concluded between a consumer domiciled in one Member State and a travel agency established in another Member State — Supplier of services used by the travel agency established in the Member State where the consumer is domiciled — Right of a consumer to bring an action against two undertakings before the court for the place of his domicile)

In Case C-478/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesgericht Feldkirch (Austria), made by decision of 20 September 2012, received at the Court on 24 October 2012, in the proceedings

Armin Maletic,

Marianne Maletic

v

lastminute.com GmbH,

TUI Österreich GmbH,

THE COURT (Eighth Chamber),

composed of C.G. Fernlund, President of the Chamber, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— TUI Österreich GmbH, by E. Reinitzer, Rechtsanwalt,

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

— the European Commission, by W. Bogensberger and A.-M. Rouchaud-Joët, acting as Agents,

* Language of the case: German.

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 16(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).

2 The request has been made in proceedings between Mr and Mrs Maletic ('the Maletics'), on the one hand, and lastminute.com GmbH ('lastminute.com') and TUI Österreich GmbH ('TUI'), on the other hand, seeking payment of EUR 1 201.38 together with interest and other costs arising from the booking by the applicants in the main proceedings through lastminute.com of a package holiday organised by TUI.

Legal context

3 Recitals 2, 11 to 13 and 15 in the preamble to Regulation No 44/2001 state:

'(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.

(13) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.

…

(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. There should be a clear and effective mechanism for resolving cases of lis pendens and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation, that time should be defined autonomously.'

4 Article 2(1) of that regulation provides that 'persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State'.

5 According to Article 3(1) of the Regulation (EC) No 44/2001, 'persons domiciled in a Member State may only be sued in the courts of another Member State by virtue of the rules set out in sections 2 to 7 of Chapter II on jurisdiction'.

6 As regards contractual matters, Article 5(1) of Regulation No 44/2001 provides that 'in matters relating to a contract, [a person domiciled in a Member State may, in another Member State, be sued] in the courts for the place of performance of the obligation in question'.

7 Article 6(1) of Regulation No 44/2001 provides that a person domiciled in a Member State may also be sued, where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

8 Article 15(1)(c) and (3) of that regulation provides:

'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 Article 5(5), if:

…

(c) in all other cases, 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.

…

3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.'

9 Article 16(1) of that regulation provides:

'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.'

10 Article 28(3) of Regulation No 44/2001 states:

'For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.'

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

11 The Maletics are domiciled in Bludesch (Austria), which lies within the jurisdiction of the Bezirksgericht Bludenz (District Court, Bludenz). On 30 December 2011, they booked and paid for themselves, as private individuals, a package holiday to Egypt on the website of lastminute.com for

EUR 1 858 from 10 to 24 January 2012. On its website, lastminute.com, a company whose registered office is in Munich (Germany), stated that it acted as the travel agent and that the trip would be operated by TUI, which has its registered office in Vienna (Austria).

12 The booking made by the applicants in the main proceedings concerned the Jaz Makadi Golf & Spa hotel in Hurghada (Egypt). That booking was confirmed by lastminute.com, which passed it on to TUI. Subsequently, the Maletics received a 'confirmation/invoice' of 5 January 2012 from TUI which, while it confirmed the information concerning the trip booked with lastminute.com, mentioned the name of another hotel, the Jaz Makadi Star Resort Spa in Hurghada.

13 It was only on their arrival in Hurghada that the applicants in the main proceedings noticed the mistake concerning the hotel and paid a surcharge of EUR 1 036 to be able to stay in the hotel initially booked on lastminute.com's website.

14 On 13 April 2012, in order to recover the surcharge paid and to be compensated for the inconvenience which affected their holiday, the applicants in the main proceedings brought an action before the Bezirksgericht Bludenz seeking payment from lastminute.com and TUI, jointly and severally of the sum of EUR 1 201.38 together with interest and costs.

15 The Bezirksgericht Bludenz limited its examination to verifying whether it had jurisdiction to hear the action and, by order of 4 July 2011, it dismissed the action in as far as it was brought against TUI on the ground that it lacked local jurisdiction. According to that court, Regulation No 44/2001 was not applicable to the dispute between the applicants in the main proceedings and TUI as the situation was purely domestic. It held that, in accordance with the applicable provisions of national law, the court with jurisdiction was the court of the defendant's domicile, that is, the court having jurisdiction in Vienna and not that in Bludenz.

16 However, that court held that, as regards lastminute.com, since that company has its registered office in Germany the condition laid down in Article 15(1)(c) of Regulation No 44/2001 concerning the activity directed to Austria was fulfilled. Therefore, it held that it had jurisdiction to hear the substantive proceedings. In that regard, the order became final in the absence of an appeal brought by lastminute.com.

17 The applicants in the main proceedings brought an appeal ('Rekurs') against that decision before the referring court, claiming that the booking they made was from the outset inseparably linked, as a uniform legal transaction, with lastminute.com as the travel agent and with TUI as the travel operator. Since a package holiday was involved, a combined reading of Articles 15(3) and 16(1) of Regulation No 44/2001 constituted the legal basis for the jurisdiction of the court seised, which also applied with respect to TUI.

18 In its reply, TUI argued that the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) had exclusive jurisdiction to hear the action against it and that the court of first instance had rightly excluded the existence of a uniform legal transaction in the present case. The dispute was based on two contracts which were in fact separate and it was necessary to determine the question of jurisdiction starting from that premiss.

19 The referring court wishes to know whether a situation, such as that at issue in the main proceedings, is a 'purely domestic situation' and, in that respect, how the concept of 'the other party to a contract' laid down in Article 16(1) of Regulation No 44/2001 is to be interpreted, in a situation in which a person who pursues commercial or professional activities, in a Member State other than that in which the consumer is domiciled, markets the services of another person who pursues commercial or professional activities, whose registered office is situated in the latter State, where a consumer brings an action against that 'other party', since that provision enables him to assert his right before the courts of the place of his domicile.

20 According to that court, since the rules on special jurisdiction in Article 15 et seq. of Regulation No 44/2001 in matters relating to consumer contracts are intended to protect the weaker party to the contract by granting him the possibility to choose the court and by limiting the possibility to conclude choice of jurisdiction clauses, that protection would be deprived of its effectiveness if it were not possible to rely on the rights that the consumer derives from a single booking transaction against the two contracting partners before the court with jurisdiction under Article 16(1) of Regulation No 44/2001.

21 In those circumstances, the Landgericht Feldkirch (Regional Court, Feldkirch) decided to stay the proceedings before it and to refer the following question to the Court for a preliminary ruling:

'Is Article 16(1) of [Regulation No 44/2001], which confers jurisdiction on the courts for the place where the consumer is domiciled, to be interpreted as meaning that, in the case where the other party to the contract (here, a travel agent having its seat abroad) has recourse to a contracting partner (here, a travel operator having its seat in the home country), Article 16(1) of Regulation No 44/2001 is, for the purpose of proceedings brought against those two parties, also applicable to the contracting partner in the home country?'

The question referred for a preliminary ruling

22 By its question, the referring court asks essentially whether the concept of 'the other party to a contract' laid down in Article 16(1) of Regulation No 44/2001 must be interpreted as meaning that it also covers, in circumstances such as those at issue in the main proceedings, the contracting partner of the operator with which the consumer concluded that contract, which has its registered office in the Member State in which the consumer is domiciled.

23 TUI argues that the provisions of Regulation No 44/2001 do not apply to it, and takes the view that the circumstances of the case in the main proceedings have the characteristics of a purely domestic situation, so that only the provisions of national law relating to local jurisdiction are applicable.

24 However, it is not disputed that Regulation No 44/2001 is applicable to lastminute.com and that the court for the place where the Maletics are domiciled has jurisdiction to adjudicate on the substantive proceedings with respect to that company.

25 Thus, it is necessary to determine whether, in the circumstances of the case in the main proceedings, Regulation No 44/2001 is applicable to a contracting partner such as TUI, and whether there is an international element capable of justifying its application.

26 As regards 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 accession conventions ('the Brussels Convention'), the Court has already held that for the jurisdiction rules of that convention to apply the existence of an international element is required and the international nature of the legal relationship at issue need not necessarily derive, for the purposes of the application of Article 2 of the Brussels Convention (now Article 2 of Regulation No 44/2001), from the involvement, either because of the subject-matter of the proceedings or the respective domiciles of the parties, of a number of Contracting States (see, to that effect, Case C-281/02 *Owusu* [2005] ECR I-1383, paragraphs 25 and 26).

27 It should be borne in mind that, in so far as Regulation No 44/2001 replaces the Brussels Convention, the interpretation provided by the Court in respect of the provisions of that convention is also valid for those of the regulation whenever the provisions of those instruments may be regarded as equivalent (Case C-533/08 *TNT Express Nederland* [2010] ECR I-4107, paragraph 36 and the case-law cited).

28 If, as stated in paragraph 26 of this judgment, the international character of the legal relationship at issue need not necessarily derive from the involvement, either because of the subject-matter of the proceedings or the respective domiciles of the parties, of a number of Contracting States, it must be held, as the Commission and the Portuguese Government have argued, that Regulation No 44/2001 is applicable *a fortiori* in the circumstances of the case at issue in the main proceedings, since the international element is present not only as regards lastminute.com, which is not disputed, but also as regards TUI.

29 Even assuming that a single transaction, such as the one which led the Maletics to book and pay for their package holiday on lastminute.com's website, may be divided into two separate contractual relationships, first, with the online travel agency lastminute.com and, second, with the travel operator TUI, the second contractual relationship cannot be classified as 'purely' domestic since it was inseparably linked to the first contractual relationship which was made through the travel agency situated in another Member State.

30 Furthermore, account must be taken of the objectives set out in recitals 13 and 15 in the preamble to Regulation No 44/2001 concerning the protection of the consumer as 'the weaker party' to the contract and the aim to 'minimise the possibility of concurrent proceedings … to ensure that irreconcilable judgments will not be given in two Member States'.

31 Those objectives preclude a solution which allows the Maletics to pursue parallel proceedings in Bludenz and Vienna, by way of connected actions against two operators involved in the booking and the arrangements for the package holiday at issue in the main proceedings.

32 Having regard to the foregoing considerations, the answer to the question referred is that the concept of 'other party to the contract' laid down in Article 16(1) of Regulation No 44/2001 must be interpreted as meaning, in circumstances such as those at issue in the main proceedings, that it also covers the contracting partner of the operator with which the consumer concluded that contract and which has its registered office in the Member State in which the consumer is domiciled.

Costs

33 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 (Eighth Chamber) hereby rules:

The concept of 'other party to the contract' laid down in Article 16(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 must be interpreted as meaning, in circumstances such as those at issue in the main proceedings, that it also covers the contracting partner of the operator with which the consumer concluded that contract and which has its registered office in the Member State in which the consumer is domiciled.

[Signatures]