JUDGMENT OF THE COURT (Fourth Chamber)

9 July 2009 *

In Case C-204/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesgerichtshof (Germany), made by decision of 22 April 2008, received at the Court on 19 May 2008, in the proceedings

Peter Rehder

v

Air Baltic Corporation,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta, E. Juhász (Rapporteur), G. Arestis and J. Malenovský, Judges,

* Language of the case: German.

Advocate General: M. Poiares Maduro,
Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 1 April 2009,

after considering the observations submitted on behalf of:

— Mr Rehder, by J. Kummer, Rechtsanwalt,

— Air Baltic Corporation, by G.-S. Hök, Rechtsanwalt,

— the German Government, by M. Lumma and J. Kemper, acting as Agents,

— the Czech Government, by M. Smolek, acting as Agent,

— the Latvian Government, by E. Eihmane and U. Dreimanis, acting as Agents,

— the United Kingdom Government, by L. Seeboruth, acting as Agent,

— the Commission of the European Communities, by A.-M. Rouchaud-Joët and S. Grünheid, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the second indent of Article 5(1)(b) 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 reference has been made in the context of a dispute between Mr Rehder and Air Baltic Corporation ('Air Baltic') following the cancellation of a flight which he had booked with that company to take him from Munich (Germany) to Vilnius (Lithuania).

Legal context

Community legislation

3 Regulation No 44/2001 entered into force on 1 March 2002 and, in accordance with Article 68(1) thereof, supersedes the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as subsequently amended (OJ 1998 C 27, p. 1; the 'Brussels Convention').

4 Recital 1 in the preamble to Regulation No 44/2001 states that '[t]he Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. In order to establish progressively such an area, the Community should adopt, amongst other things, the measures relating to judicial cooperation in civil matters which are necessary for the sound operation of the internal market'.

5 The second sentence of recital 2 in the preamble to Regulation No 44/2001 states that '[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 are essential'.

6 The first sentence of recital 11 in the preamble to that regulation states that '[t]he 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'.

7 Recital 12 in the preamble to Regulation No 44/2001 states that '?i?n 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'.

8 The rules on jurisdiction laid down by Regulation No 44/2001 are set out in Chapter II thereof, which consists of Articles 2 to 31.

9 Article 2(1) of Regulation No 44/2001, which forms part of Section 1 ('General provisions') of Chapter II, 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.'

10 Article 3(1) of Regulation No 44/2001, 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.'

11 Article 5(1) of Regulation No 44/2001, which falls under Chapter II, Section 2, entitled 'Special jurisdiction', states:

'A person domiciled in a Member State may, in another Member State, be sued:

1. (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;

(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

— in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,

— in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided,

(c) if subparagraph (b) does not apply then subparagraph (a) applies'.

12 Article 60(1) of Regulation No 44/2001 provides:

'For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:

(a) statutory seat, or

(b) central administration, or

(c) principal place of business.'

13 Article 71(1) of Regulation No 44/2001 states:

'This Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.'

14 Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1) lays down the principle

of compensation of passengers in the context of international air transport in the case where a flight is cancelled. Article 5 of that regulation, entitled 'Cancellation', states:

'1. In case of cancellation of a flight, the passengers concerned shall:

…

(c) have the right to compensation by the operating air carrier in accordance with Article 7, unless … they are informed of the cancellation …'

15 Article 7(1) of Regulation No 261/2004, entitled 'Right to compensation', provides:

'Where reference is made to this Article, passengers shall receive compensation amounting to:

(a) EUR 250 for all flights of 1 500 kilometres or less;

…'

16 Article 12(1) of Regulation No 261/2004 states:

'This Regulation shall apply without prejudice to a passenger's rights to further compensation. The compensation granted under this Regulation may be deducted from such compensation'.

The Montreal Convention

17 The Convention for the Unification of Certain Rules for International Carriage by Air, concluded in Montreal on 28 May 1999 ('the Montreal Convention'), was signed by the European Community on 9 December 1999, approved on its behalf by Council Decision 2001/539/EC of 5 April 2001 (OJ 2001 L 194, p. 38) and entered into force, so far as the Community is concerned, on 28 June 2004. Article 19 of that Convention, entitled 'Delay', provides:

'The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. …'

18 Article 33(1) of the Montreal Convention, entitled 'Jurisdiction', is worded as following:

'An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.'

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

19 Mr Rehder, who resides in Munich, booked a flight from Munich to Vilnius with Air Baltic, the registered office of which is in Riga (Latvia). The distance between Munich and Villnius is slightly less that 1 500 kilometres. Approximately 30 minutes before the scheduled time of departure from Munich, passengers were informed that their flight had been cancelled. After his booking had been changed by Air Baltic, the applicant took a flight via Copenhagen to Vilnius, where he arrived more than six hours after the flight which he had initially booked should have landed.

20 By an application to the Amtsgericht Erding, the court having territorial jurisdiction over Munich airport, Mr Rehder requested that Air Baltic be ordered to pay him compensation in the amount of EUR 250 in accordance with Articles 5(1)(c) and 7(1)(a) of Regulation No 261/2004. Holding that the air transport services are provided at the aircraft's place of departure, which implies that the place of performance of the contractual obligation, within the terms of the second indent of Article 5(1)(b) of Regulation No 44/2001, is that of the airport of departure, in this case Munich airport, the Amtsgericht Erding held that it had jurisdiction to deal with Mr Rehder's claim for compensation.

21 In an appeal by Air Baltic against that decision, the Oberlandesgericht München, taking the view that air transport services are provided at the place where the company operating the flight has its head office, overturned the decision of the first-instance court. Mr Rehder appealed to the Bundesgerichtshof on a point of law against the judgment of the Oberlandesgericht.

22 The referring court observes that the question whether the Amtsgericht Erding has jurisdiction in the circumstances of this case depends on the interpretation of the second indent of Article 5(1)(b) of Regulation No 44/2001. It maintains, with regard to the first indent of that provision, which deals with the sale of goods, that the Court of Justice first of all held that that rule of special jurisdiction in matters relating to a contract establishes the place of delivery as the autonomous linking factor to apply to all claims founded on one and the same contract for the sale of goods rather than merely to the claims founded on the obligation of delivery itself (Case C-386/05 *Color Drack* [2007] ECR I-3699, paragraph 26). The Court then went on to hold that that rule is also applicable where there are several places of delivery of the goods and that in that case 'place of performance' must be understood as the place with the closest linking factor, which, as a general rule, will be at the place of the principal delivery, which must be determined on the basis of economic criteria (*Color Drack*, paragraph 40). The Court finally held that, if it is not possible to determine the place of principal delivery, each of the places of delivery has a sufficiently close link of proximity to the material elements of the dispute and, accordingly, a significant link as regards jurisdiction. In such a case, the applicant may sue the defendant in the court for the place of delivery of his choice (*Color Drack*, paragraph 42).

23 However, the Bundesgerischtshof points out that the Court also expressly stated at paragraph 16 of *Color Drack* that its considerations applied solely to the case where there are several places of delivery within a single Member State and were without prejudice to the answer to be given where there are several places of delivery in a number of Member States.

24 The Bundesgerichtshof is thus unsure whether, regard being had to the objectives of Regulation No 44/2001, according to which the rules on jurisdiction should be harmonised and made predictable and according to which a single place of performance should be identified, if possible in the place presenting the closest

connection between the dispute and the court having jurisdiction, the second indent of Article 5(1)(b) of Regulation No 44/2001 should not be interpreted in the same way and, generally, whether jurisdiction in legal disputes concerning contractual obligations arising from contracts relating to air transport should not be concentrated in a single place of performance, despite the fact that, within the framework of such a contract, it is not easy to determine unequivocally the place where the services are mainly provided.

25 In the light of the foregoing, the Bundesgerichtshof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is the second indent of Article 5(1)(b) of Regulation [No 44/2001] to be interpreted as meaning that in the case also of journeys by air from one Member State to another Member State, the single place of performance for all contractual obligations must be taken to be the place of the main provision of services, determined according to economic criteria?

2. Where a single place of performance is to be determined: what criteria are relevant for its determination; is the single place of performance determined, in particular, by the place of departure or the place of arrival of the aircraft?'

The questions referred for a preliminary ruling

26 Before examining the questions referred by the Bundesgerichtshof, it should be noted, as a preliminary point, that some of the observations submitted to the Court raised the

question of the applicability, in a situation such as that which arises in the main proceedings, of Article 33 of the Montreal Convention for the purpose of determining which court has jurisdiction.

27 In that regard, the right which the applicant in the main proceedings relies on in the present case, which is based on Article 7 of Regulation No 261/2004, is a passenger's right to a standardised and lump-sum payment following the cancellation of a flight, a right which is independent of compensation for damage in the context of Article 19 of the Montreal Convention (see Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraphs 43 to 46). The rights based respectively on those provisions of Regulation No 261/2004 and of the Montreal Convention accordingly fall within different regulatory frameworks.

28 It follows that, since it was introduced on the basis of Regulation No 261/2004 alone, the claim in the main proceedings must be examined in the light of Regulation No 44/2001.

29 By its questions, which it is appropriate to examine together, the referring court essentially asks the Court to specify how the words 'the place in a Member State where, under the contract, the services were provided or should have been provided' in the second indent of Article 5(1)(b) of Regulation No 44/2001 are to be interpreted in the case of the air transport of persons from one Member State to another, in the context of a claim for compensation based on Regulation No 261/2004.

30 In reality, by those questions, the Court is being asked whether, in the case of a provision of services such as those at issue in the main proceedings, the same interpretation should be given to those words as that which the Court gave to the first indent of Article 5(1)(b) in *Color Drack,* in the case where there are several places of delivery within a single Member State.

31 In paragraph 18 of *Color Drack*, in order to answer the question posed, the Court based itself on the origins, objectives and scheme of Regulation No 44/2001.

32 In that context, the Court noted, first, that the rule of special jurisdiction set out in Article 5(1) of Regulation No 44/2001 in matters relating to a contract, which complements the rule that jurisdiction is generally based on the defendant's domicile, reflects an objective of proximity and the reason for that rule is the existence of a close link between the contract and the court called upon to hear and determine the case (*Color Drack*, paragraph 22).

33 The Court next noted that, regarding the place of performance of the obligations arising from contracts for the sale of goods, Regulation No 44/2001, in the first indent of Article 5(1)(b), defines that criterion of a link autonomously, in order to reinforce the objectives of unification of the rules of jurisdiction and predictability. Accordingly, in such cases the place of delivery of the goods is established as the autonomous linking factor to apply to all claims founded on one and the same contract of sale (*Color Drack*, paragraphs 24 and 26).

34 In the light of the objectives of proximity and predictability, the Court held that the rule set out in the first indent of Article 5(1)(b) of Regulation No 44/2001 is also applicable where there are several places of delivery of goods within a single Member State, since one court must have jurisdiction to hear all the claims arising out of the contract (*Color Drack,* paragraphs 36 and 38).

35 Finally, where there are several places of delivery of the goods in a single Member State, the Court took the view that the place with the closest linking factor between the contract and the court having jurisdiction is that of the principal delivery, which must be determined on the basis of economic criteria, and that, if it is not possible to determine the place of the principal delivery, each of the places of delivery has a sufficiently close link of proximity to the material elements of the dispute, in which case

the applicant may sue the defendant in the court for the place of delivery of his choice (*Color Drack*, paragraphs 40 and 42).

36 The factors on which the Court based itself in order to arrive at the interpretation set out in *Color Drack* are also valid with regard to contracts for the provision of services, including the cases where such provision is not effected in one single Member State. The rules of special jurisdiction provided for by Regulation No 44/2001 for contracts for the sale of goods and the provision of services have the same origin, pursue the same objectives and occupy the same place in the scheme established by that regulation.

37 Where the services in question are provided at several places in different Member States, a differentiated approach cannot be applied to the objectives of proximity and predictability, which are pursued by the centralisation of jurisdiction in the place of the provision of services under the contract at issue and by the determination of sole jurisdiction for all claims arising out of that contract. Apart from the fact that there is no basis for it in the provisions of Regulation No 44/2001, such a differentiated approach would contradict the objectives for which it was adopted, which, through the unification of the rules governing conflict of jurisdiction in civil and commercial matters, contributes to the development of an area of freedom, security and justice, as well as to the proper functioning of the internal market within the Community (see recitals 1 and 2 in the preamble to Regulation No 44/2001).

38 Consequently, where there are several places at which services are provided in different Member States, it is also necessary to identify the place with the closest linking factor between the contract in question and the court having jurisdiction, in particular the place where, pursuant to that contract, the main provision of services is to be carried out.

39 In that regard, it must be noted at the outset that, as has been pointed out by the national court, the place of the registered office or the principal place of establishment of the airline concerned does not have the necessary close link to the contract. The operations

and activities undertaken from that place, such as, in particular, the provision of an adequate aircraft and crew, are logistical and preparatory measures for the purpose of carrying out a contract relating to air transport and are not services the provision of which is linked to the actual content of the contract. The same is true with regard to the place where the contract for air transport is concluded and the place where the ticket is issued.

40 The services the provision of which corresponds to the performance of obligations arising from a contract to transport passengers by air are the checking-in and boarding of passengers, the on-board reception of those passengers at the place of take-off agreed in the transport contract in question, the departure of the aircraft at the scheduled time, the transport of the passengers and their luggage from the place of departure to the place of arrival, the care of passengers during the flight, and, finally, the disembarkation of the passengers in conditions of safety at the place of landing and at the time scheduled in that contract. From that point of view, places where the aircraft may stop over also do not have a sufficient link to the essential nature of the services resulting from that contract.

41 The only places which have a direct link to those services, provided in performance of obligations linked to the subject-matter of the contract, are those of the departure and arrival of the aircraft, since the words 'places of departure and arrival' must be understood as agreed in the contract of carriage in question, made with one sole airline which is the operating carrier.

42 It must, however, be pointed out in that regard that, unlike deliveries of goods to different locations, which are distinct and quantifiable operations for the purpose of determining the principal delivery on the basis of economic criteria, air transport consists, by its very nature, of services provided in an indivisible and identical manner from the place of departure to that of arrival of the aircraft, with the result that a separate part of the service which is the principal service, which is to be provided in a specific place, cannot be distinguished in such cases on the basis of an economic criterion.

43 In those circumstances, both the place of arrival and the place of departure of the aircraft must be considered, in the same respect, as the place of provision of the services which are the subject of an air transport contract.

44 Each of those two places has a sufficiently close link of proximity to the material elements of the dispute and, accordingly, the close connection required by the rules of special jurisdiction set out in Article 5(1) of Regulation No 44/2001. Accordingly, a person claiming compensation on the basis of Regulation No 261/2004 may sue, as a matter of choice which he must make, the defendant in the court in whose jurisdiction one of those places may be found on the basis of the second indent of Article 5(1)(b) of Regulation No 44/2001.

45 Such a choice granted to the applicant, apart from respecting the criterion of proximity, also satisfies the requirement of predictability, in so far as it allows the applicant, as well as the defendant, easily to identify the courts before which proceedings may be brought. What is more, it is consistent with the objective of legal certainty, since the applicant's choice is limited to two possible judicial fora within the framework of the second indent of Article 5(1)(b) of Regulation No 44/2001. It must also be borne in mind that the applicant retains the option of bringing the matter before the courts of the defendant's domicile, as provided for by Article 2(1) of Regulation No 44/2001, that is to say, in the circumstances of the present case, pursuant to Article 60(1) of that regulation, the court with the jurisdictional district of which the air carrier has its registered office, central administration or principal place of business, which is in conformity with Article 33 of the Montreal Convention.

46 Furthermore, such a choice for an applicant, even when it concerns courts situated in different Member States, is also recognised by the Court's established case-law, in the context of the special jurisdiction in tort, delict or quasi-delict, provided for in Article 5(3) of the Brussels Convention and also reiterated in Article 5(3) of Regulation No 44/2001 (see, inter alia, Case 21/76 *Bier 'Mines de potasse d'Alsace'* [1976] ECR 1735, paragraphs 24 and 25, and Case C-168/02 *Kronhofer* [2004] ECR I-6009, paragraph 16 and the case-law cited).

47 Regard being had to all of the foregoing considerations, the answer to the questions referred is that the second indent of Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that, in the case of air transport of passengers from one Member State to another Member State, carried out on the basis of a contract with only one airline, which is the operating carrier, the court having jurisdiction to deal with a claim for compensation founded on that transport contract and on Regulation No 261/2004 is that, at the applicant's choice, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in that contract.

Costs

48 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:

The second indent of Article 5(1)(b) 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 of air transport of passengers from one Member State to another Member State, carried out on the basis of a contract with only one airline, which is

the operating carrier, the court having jurisdiction to deal with a claim for compensation founded on that transport contract and on Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, is that, at the applicant's choice, which has territorial jurisdiction over the place of departure or place of arrival of the aircraft, as those places are agreed in that contract.

[Signatures]