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ECLI:EU:C:2018:478

Provisional text

JUDGMENT OF THE COURT (Third Chamber)

21 June 2018 (*)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Jurisdiction over individual contracts of employment — Article 20(2) — Employer sued before the courts of the Member State in which it is domiciled — Counter-claim by the employer — Determination of the court with jurisdiction)

In Case C-1/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte d'appello di Torino (Court of Appeal, Turin, Italy), made by decision of 21 December 2016, received at the Court on 2 January 2017, in the proceedings

Petronas Lubricants Italy SpA

v

Livio Guida,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, M. Safjan (Rapporteur), D. Šváby and M. Vilaras, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Petronas Lubricants Italy SpA, by L. Failla, G. Crespi and A. Valentini, avvocati,
- Mr Guida, by U. Oliva and C. Germano, avvocati,

- the Italian Government, by G. Palmieri, acting as Agent, and P. Pucciariello, avvocato dello Stato,
- the European Commission, by M. Heller and F. Moro, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 March 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 20(2) 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 Livio Guida, resident in Poland, and his former employer, the Italian company Petronas Lubricants Italy SpA ('PL Italy'), established in Italy, concerning the dismissal of Mr Guida by that company.

Legal context

3 Recitals 11, 12, 13 and 15 of Regulation No 44/2001 read as follows:

'(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 contracts and employment, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for.

...

(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 In accordance with Article 6, point 3, of the regulation, which forms part of Section 2, entitled 'Special jurisdiction', of Chapter II thereof, a person domiciled in a Member State may also be sued 'on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending'.

5 Section 5 of Chapter II of that regulation, which comprises Articles 18 to 21 thereof, sets out the rules of jurisdiction as regards individual contracts of employment.

6 Article 18(1) of that regulation provides:

‘In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.’

7 Article 19 of Regulation No 44/2001 provides:

‘An employer domiciled in a Member State may be sued:

1. in the courts of the Member State where he is domiciled, or
2. in another Member State:
 - (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or
 - (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.’

8 Article 20 of that regulation provides:

1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.’

9 Article 21 of that regulation is worded as follows:

‘The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen, or
2. which allows the employee to bring proceedings in courts other than those indicated in this Section.’

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

10 Mr Guida was employed by PL Italy in 1982 and posted in 1996 to the affiliated Polish company, Petronas Lubricants Poland sp. z o.o. (‘PL Poland’), wholly owned by PL Italy and in which he carried out the duties of Director-General, with the rank of director as from 1998. In 2001, he concluded a parallel fixed-term employment contract with PL Poland, subject to Polish law, which was extended on several successive occasions, the last extension expiring on 30 April 2016. By two letters of 17 and 29 April 2014, he was informed of a number of complaints of a disciplinary nature against him. He has been accused, in particular, of requesting and receiving on several occasions, from PL Poland, reimbursement of expenses for supposed business travel, which in reality related to periods during which he was on leave; of misleading PL Italy in respect of payment of sums intended to guarantee the net value of his salary received in Polish zlotys for 2012

and 2013, by notifying it of an exchange rate between the Polish zloty and the euro more favourable to him than the official rate; and of unduly causing PL Poland to pay compensation, annually, for leave entitlement not used between 2008 and 2014.

11 By letter of 28 May 2014, Mr Guida was dismissed, supposedly fairly, by PL Italy. By another letter of the same date, he was notified of the termination of his employment contract with PL Poland.

12 On 31 July 2014, Mr Guida sued PL Italy before the Tribunale di Torino (District Court, Turin, Italy), seeking a declaration that his dismissal was unjustified and, in any event, unlawful and an order that PL Italy pay the compensation provided for in that regard by Italian law, as well as compensation for the non-material damage suffered due to the unfair nature of his dismissal. To that end, Mr Guida argued that the disciplinary complaints made against him were out of time and general in nature and that the facts alleged against him had not occurred.

13 On 5 December 2014, PL Italy participated in the proceedings before that court and requested that the form of order sought by Mr Guida be rejected. In a counter-claim, that company claimed that Mr Guida should be ordered to repay the sum of EUR 143 816.29 wrongfully received in respect of reimbursement of travel expenses, compensation for unused leave and overpayments due to the application of incorrect exchange rates between the Polish zloty and the euro, specifying that PL Poland had assigned those claims to it by act of 3 December 2014.

14 Mr Guida argued that, under Article 20(1) and (2) and Article 6, point 3, of Regulation No 44/2001, the Italian court lacked jurisdiction to hear the counter-claim made by PL Italy.

15 By judgment published on 14 September 2015, the Tribunale di Torino (District Court, Turin) ordered PL Italy to pay Mr Guida the sum of EUR 100 000 by way of compensation for the non-material damage suffered as a result of the unfair dismissal, dismissed the action as to the remainder and held that it did not have jurisdiction, in favour of the Polish courts, as regards the counter-claim brought by PL Italy.

16 In that regard, that court found that Mr Guida had proved on the evidence that he was domiciled in Poland.

17 However, it took the view that, although Article 20(2) of Regulation No 44/2001 provides for a derogation from the obligation on employers to bring proceedings only in the courts of the Member State in which the employee is domiciled, that derogation is applicable only when the employer intends to assert claims arising in the sphere of its own legal rights, and cannot, however, apply if the employer is asserting claims which are not its own but acquired subsequently through negotiation.

18 PL Italy appealed against that judgment before the referring court, the Corte d'appello di Torino (Court of Appeal, Turin, Italy), seeking to have the order against it to pay compensation for the non-material damage set aside and restating its counter-claim.

19 That court asks whether, under Article 20(2) of Regulation No 44/2001, an employer domiciled in the territory of an EU Member State, against which an action is brought by its former employee before the courts of that Member State, within the meaning of Article 19 of the regulation, may bring a counter-claim against the employee before the same court hearing the original action.

20 In the event that such a possibility could be inferred from Article 20(2) of Regulation No 44/2001, the referring court seeks to ascertain whether that provision also confers jurisdiction on the court seised of the original claim where, on the one hand, the counter-claim made by the employer concerns claims assigned by another person, which, under a parallel employment contract, is also employer of the same employee, and, on the other, the counter-claim is based on a claim-assignment agreement concluded between the employer being sued and the initial holder of the claim on a date subsequent to the employee lodging the original claim.

21 In those circumstances, the Corte d'appello di Torino (Court of Appeal, Turin) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Under Article 20(2) of Regulation No 44/2001, may an employer domiciled in the territory of an EU Member State, against which an action is brought by its former employee before the courts of a Member State in which that employer is domiciled (within the meaning of Article 19 of the regulation), bring a counter-claim against the employee before the same court hearing the original action?’

(2) If the answer to question 1 is in the affirmative, does Article 20(2) of Regulation No 44/2001 include the jurisdiction of the court hearing the original action even when the employer’s counter-claim is not based on a claim originating with the employer but on a claim originating with another party (which is, at the same time, an employer of the same employee under a parallel employment contract), and the counter-claim is based on a claim-assignment agreement, concluded by the employer and the party from which the claim originally derives, after the date on which the original action was brought by the employee?’

Consideration of the questions referred

22 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 20(2) of Regulation No 44/2001 must be interpreted as meaning that it gives an employer the right to bring, before the court properly seised of the original proceedings brought by an employee, a counter-claim based on a claim-assignment agreement concluded, after the introduction of the original proceedings, between the employer and the original holder of that claim.

23 In that regard, it must be borne in mind that, first, for disputes related to contracts of employment, Section 5 of Chapter II of Regulation No 44/2001 lays down a series of rules whose objective, as is stated in recital 13 of that regulation, is to protect the weaker party to the contract by means of rules of jurisdiction that are more favourable to his interests (judgment of 14 September 2017, *Nogueira and Others*, C-168/16 and C-169/16, EU:C:2017:688, paragraph 49).

24 Those rules enable an employee to sue his employer before the court which he regards as closest to his interests, by giving him the option of proceeding before the courts of the Member State in which the employer is domiciled or the courts of the place in which the employee habitually carries out his work or, where that work is not carried out in any one country, before the courts of the place where the business which hired the employee is situated. The provisions of that section also limit the choice of jurisdiction by an employer suing an employee, and the possibility of derogating from the rules of jurisdiction laid down by that regulation (judgment of 14 September 2017, *Nogueira and Others*, C-168/16 and C-169/16, EU:C:2017:688, paragraph 50).

25 Secondly, the provisions included in Chapter II, Section 5, of Regulation No 44/2001 are not only specific but also exhaustive (judgment of 14 September 2017, *Nogueira and Others*, C-168/16 and C-169/16, EU:C:2017:688, paragraph 51).

26 As regards counter-claims, the rule in Article 6, point 3, of Regulation No 44/2001 has been incorporated in Article 20(2) of that regulation (judgment of 22 May 2008, *Glaxosmithkline and Laboratoires Glaxosmithkline*, C-462/06, EU:C:2008:299, paragraph 22).

27 However, it is apparent from the very wording of Article 20(2) of Regulation No 44/2001 that the recourse, by the employee, to rules of jurisdiction more favourable to his interests should not affect the right to bring a counter-claim in the court in which the original claim is pending.

28 It follows that, provided that the choice by the employee of the court having jurisdiction to examine his application is respected, the objective of favouring that employee is achieved and there is no reason to limit the possibility of examining that claim together with a counter-claim within the meaning of Article 20(2) of Regulation No 44/2001.

29 As for the concept of ‘counter-claim’, which is not defined in Article 20(2) of Regulation No 44/2001, it is necessary, in the light of what is recalled in paragraph 26 of this judgment, to take account of the concept of ‘counter-claim’ in Article 6, point 3, of Regulation No 44/2001, as interpreted by the Court. It is clear from the case-law of the Court that, in the interests of the sound administration of justice, the special jurisdiction for counter-claims enables the parties, in the same proceedings and before the same court, to litigate all their claims against each other that have a common origin. Thus, unnecessary multiple proceedings are avoided (judgment of 12 October 2016, *Kostanjevec*, C-185/15, EU:C:2016:763, paragraph 37).

30 Such a common origin of the original claim and the counter-claim may be found in a contract or, as the Advocate General has observed in point 42 of his Opinion, in a factual situation, such as that at issue in the main proceedings.

31 In that regard, it must be recalled that Mr Guida had concluded an employment contract with PL Italy, which wholly owns PL Poland, before concluding a specific ‘parallel’ employment contract with PL Poland, on which PL Italy bases its counter-claim. Although the proceedings brought by Mr Guida concern the initial contract, his dismissal by PL Italy, which Mr Guida contests in this procedure, arises from the same facts as those underlying the counter-claim brought by PL Italy.

32 In such circumstances, the view must be taken that the reciprocal claims of Mr Guida and PL Italy have a common origin, within the meaning of the case-law cited in paragraph 29 of this judgment, and, consequently, that the court seised of the original claim has jurisdiction to examine the counter-claim.

33 Finally, since the employer does not know in advance the court seised of the original proceedings brought by the employee, the fact that it did not acquire the claims on which the counter-claim is based until after the court was seised cannot be relevant.

34 It follows from all of the foregoing that Article 20(2) of Regulation No 44/2001 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, it gives an employer the right to bring, before the court properly seised of the original proceedings brought by an employee, a counter-claim based on a claim-assignment agreement concluded, after the introduction of the original proceedings, between the employer and the original holder of that claim.

Costs

35 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 (Third Chamber) hereby rules:

Article 20(2) 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 a situation such as that at issue in the main proceedings, it gives an employer the right to bring, before the court properly seised of the original proceedings brought by an employee, a counter-claim based on a claim-assignment agreement concluded, after the introduction of the original proceedings, between the employer and the original holder of that claim.

[Signatures]

* Language of the case: Italian.