



Special jurisdiction under the art 6 Brussels I Regulation

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[The aims of the presentation]

- to understand the rationale and purpose of the rules of art. 6 in the system of Brussels I Regulation
- To put emphasis on art. 6(1) Brussels I Reg.
- Discussion on ECJ's relevant case law concerning art. 6(1) Reg.

[The art. 6 Brussels I Reg. - generally]

- Connected claims (6/1)
- An action on a warranty or guarantee or in any other third party proceedings(6/2)
- Counter-claims(6/3)
- Matters relating to a contract, if the action combined with an action against the same defendant in matters relating to rights in rem in immovable property (6/4)

The purpose of the rules

- Procedural economy
- Efficiency
- Convenience

Special jurisdiction under art.6 in [the context of the system of jurisdiction of Reg.]

- General rule:

- Defendant ought to be sued in the court of the MS of her domicile (art. 2)
- Only if there is a more closer link to another forum, a claimant may sue defendant elsewhere on the basis of special rules of the Reg.

The effect of the rules of special jurisdiction

- Defendant may be sued in another forum than that of her domicile
- Defendant may be sued still in the forum of her domicile
- Thus defendant can be sued in more MS' courts
- It is the choice for claimant where defendant will be sued
- These rules extend jurisdiction of the court which is competent to deal with a certain defendant or certain issue, to another defendant or another issue

[Connected claims (art. 6/1)]

- person may be also sued when she is:
- one of a **number** of defendants
- in the courts of **domicile** (MS) of one of them
- 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

Interpretation of the art. 6(1) Reg.

- At least 2 defendants
- Both domiciled in MS
- Domicile (art. 59 and 60 Reg.)
- Not allowed to join the claims based on the other criterions than that of domicile [e.g. place of performance of the obligation (5/1) and place where the harmful event occurred or may occur(5/3)]

Close connection

- Close connection means the legal or factual link between two or more claims
- Examples: joint debtors, joint tortfeasors, parental and subsidiary company, purchaser of a horse and veterinary doctor jointly liable for unsoundness of the horse (Gascoine v Pyrah)

Close connection

- It is on national court to establish that the requirement of close connection is fulfilled unless this would doubt the effectivity of the rule in art. 6(1) Reg.
- Different tests under different national laws
- Generally – the national courts have left no room for artificial claims with sole purpose of ousting the one of the defendants from the court of her domicile

Kalfelis

- Mr Kalfelis concluded with the bank established in Luxembourg, through the intermediary of the bank established in Frankfurt am Main and with the participation of the latter' s joint procuration-holder, a number of spot and futures stock-exchange transactions and for that purpose paid DM 344 868.52 to the bank in Luxembourg

Kalfelis 2

- Art. 6 (1) Brussels Convention
- The question was if the requirement of connection is fulfilled if the actions are essentially **the same in fact and law**
- **or must** a connection be assumed to exist only if it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings **compulsory joinder** ?

Reisch Montage

- Article 6(1) must be interpreted as that that provision may be relied on in the context of an action brought in a Member State against a defendant domiciled in that State and a co-defendant domiciled in another Member State **even when that action is regarded under a national provision as inadmissible** from the time it is brought in relation to the first defendant.
- the question of internal admissibility of claim and acceptance of international jurisdiction by national court

Freeport

- Claimant wanted to connect the claims before Swedish court
- One of the claims was from the very beginning doubtful due to a fact that the contracting party of the alleged contractual claim does not legally exist in the time of contracting

Freeport 2

- The question of **abuse** of the rule in the art. 6(1) by claimant
- AG Mengozzi mentioned this question in his Opinion on Freeport
- What was his conclusion?
- What was the conclusion of ECJ?

Opinion of GA Mengozzi in Freeport

- '...it will be for the national court hearing the case to determine whether, although the claims made against the different defendants are objectively connected, Article 6(1) of Regulation No 44/2001 has been relied upon with the sole object of removing one of those defendants from the courts of his own domicile.'
- '...**action** must, at the time when it was lodged **appear to be *manifestly* unfounded in all respects... [and]... of any real interest for the claimant.**'