



WORKING GROUP 1

DECLINATION OF JURISDICTION

On 4 April and 12 September 2010, JPM International, whose seat is in the United States, entered into, two non-exclusive distribution agreements with GSM. Under those agreements, GSM and its administrator, Mr. G, undertook to assign to the other contracting party the JPM trade marks which they had registered, or for which they had applied for registration, in Romania. Both contracts contain clauses conferring jurisdiction for the matters related with them on a court situated in the United States.

Following GSM and Mr. G refusal to fulfil that contractual obligation, on the 20th of February 2015, JPM brought an action before the Tribunalul Bucureşti (District Court, Bucharest). GSM and Mr. G entered an appearance before the Romanian court without challenging its jurisdiction.

LEGAL ASSESSMENT

1. Tribunalul Bucureşti (District Court, Bucharest):
 - a) should rule on the substance of the case and order the defendants to undertake all the formalities necessary for the registration of the assignment;
 - b) should decline the jurisdiction in favor of US courts;
 - c) should stay the proceedings until such time as the court indicated in the agreements declares that it has no jurisdiction under the agreements.



2. Fill in the blanks with appropriate words, in order to obtain true sentences, according to ECJ case law:
 - a) Regulation No 1215/2012 (is/is not) applicable in a dispute between a defendant domiciled in a Member State and an applicant from of a third country;
 - b) Art.26 of Regulation 1215/2012 (applies/ doesn't apply) also in cases where the court has been seised in breach of the provisions of a jurisdiction agreement between the parties;
 - c) Entering of an appearance by the defendant in the court seised, without challenging its jurisdiction ... (may be/may be not) considered to be a tacit acceptance of the jurisdiction of the court seised and thus a prorogation of that court's jurisdiction.

3. The following sentences are true or false:
 - a) Entering of an appearance by the defendant in the court seised, without challenging its jurisdiction is not tacit prorogation of jurisdiction of the court seised, where the dispute is one in respect of which Article 24 of Regulation 1215/2012 provides for rules on exclusive jurisdiction.
 - b) The parties are prevented from submitting their dispute to a court other than that stipulated in the agreement, so any other court shall decline its jurisdiction by its own motion.
 - c) Where a court not designated in an exclusive choice-of- court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties, the court first seised is required to stay its proceedings as soon as the designated court has been seised and until such time as the latter court declares that it has no jurisdiction under the exclusive choice-of-court agreement.



I. Read the following judgment. While reading it, provide the correct words missing.

JUDGMENT OF THE COURT (Sixth Chamber)

17 March 2016 (*)

In Case C-175/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), made by decision of 5 December 2014, received at the Court on 20 April 2015, in the proceedings

Taser International Inc.

v

SC Gate 4 Business SRL,

Cristian Mircea Anastasiu,

THE COURT (Sixth Chamber),

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

gives the following

Judgment

This (1) for a preliminary ruling concerns the interpretation of Articles 22(4), 23(5) and 24 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).

- (1) a) referring b) reference c) reference d) referral

The reference has been made in the context of a (2) between Taser International Inc. ('Taser International'), a company established in the United States, and both SC Gate 4 Business SRL ('Gate 4'), a company established in Romania, and Mr Cristian Mircea Anastasiu, administrator of Gate 4, regarding the (3) of the Romanian company's contractual obligation to (4) trade marks to Taser International.

- (2) a) procedure b) case c) fight d) dispute

- (3) a) realization b) achievement c) carrying out d) performance

- (4) a) confer b) give c) assign d) award

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

On 4 April and 12 September 2008, Taser International, whose (5) is in the United States, entered into, two non-exclusive distribution agreements with Gate 4. Under those agreements, Gate 4 and its administrator, Mr Anastasiu, undertook to assign to the other contracting party the Taser International trade marks which they had registered, or for which they had (6) for registration, in Romania.

- (5) a) domicile b) residence c) seat d) whereabouts

- (6) a) requested b) applied c) asked d) required



Following Gate 4's and Mr Anastasiu's refusal to (7) that contractual obligation, Taser International brought an action (8) the Tribunalul București (District Court, Bucharest). Regardless of the existence in those contracts of clauses conferring jurisdiction (9) a court situated in the United States, Gate 4 and Mr Anastasiu entered an (10) before the Romanian court without challenging its jurisdiction. By judgment of 31 May 2011, the Tribunalul București (District Court, Bucharest) ordered them to undertake all the formalities necessary for the registration of the assignment.

- (7) a) fulfill b) achieve c) accomplish d) realize
- (8) a) in b) to c) in front of d) before
- (9) a) to b) for c) on d) before
- (10) a) presence b) attendance c) appearance d) participation

Following the Curtea de Apel București's (Court of Appeal, Bucharest) decision to (11) that judgment, Gate 4 and Mr Anastasiu brought an appeal before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice). Although the jurisdiction of the Romanian courts to decide this case has never been (12) by the parties, the referring court considers that it must rule on that point of its own motion.

- (11) a) keep b) maintain c) preserve d) uphold
- (12) a) challenged b) refused c) rejected d) opposed

It is in this context that the referring court seeks clarification as to whether Regulation No 44/2001 is applicable to the dispute before it, since the parties elected, for the (13) of their disputes, the courts of a third country outside the European Union and not one of the courts of a Member State, as provided for in Article 23(1) of that regulation. The

referring court considers that such a clause conferring jurisdiction on a third country may, for this reason alone, preclude the tacit prorogation of jurisdiction under Article 24 of that regulation.

- (13) a) solving b) resolving c) solution d) resolution

On the assumption, however, that that latter rule is applicable, the referring court seeks to (14) whether it should, nevertheless, (15) jurisdiction on another ground.

- (14) a) assure b) ascertain c) insure d) ensure

- (15) a) refuse b) dispute c) decline d) challenge

Furthermore, it is necessary to determine whether Article 22 of Regulation No 44/2001 is applicable, in order to establish whether a dispute concerning an obligation to assign a trade mark, likely to result in a registration under national law, falls within paragraph 4 of that article.

In those circumstances, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 24 of Regulation No 44/2001 be interpreted as meaning that the expression “jurisdiction derived from other provisions of this Regulation” also covers the situation in which the parties to a contract for the assignment of rights to a trade mark registered in a Member State of the European Union have decided, unequivocally and undisputedly, to confer jurisdiction to settle any dispute regarding fulfilment of contractual obligations on the courts of a State which is not a Member State of the European Union and in which the applicant is domiciled (has its seat), while the applicant has seised a court of a Member State of the European Union in whose territory the defendant is domiciled (has its seat)?

(2) If the answer is in the affirmative:

(a) Must Article 23(5) of Regulation No 44/2001 be interpreted as not referring to a clause conferring jurisdiction on a State that is not a Member State of the European Union, so that the



court seised pursuant to Article 2 of the regulation will determine jurisdiction according to the rules of private international law in its own national legislation?

(b) Can a dispute relating to the enforcement, through the courts, of the obligation to assign rights to a trade mark registered in a Member State of the European Union, assumed under a contract between the parties to that dispute, be regarded as referring to a right “required to be deposited or registered” within the meaning of Article 22(4) of the regulation, having regard to the fact that, under the law of the State in which the trade mark is registered, the assignment of rights to a trade mark must be entered in the Trade Mark Register and published in the Official Industrial Property Bulletin?

(3) If the answer [to the first question] is in the negative, does Article 24 of Regulation No 44/2001 preclude a court seised pursuant to Article 2 of the regulation, in a situation such as that described in the [first] question, from declaring that it does not have jurisdiction to determine the case, even though the defendant has entered an appearance before that court, including in the final instance, without contesting the jurisdiction?’

On those grounds, the Court (Sixth Chamber) hereby rules:

1. Articles 23(5) and 24 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 dispute concerning the non-performance of a contractual obligation, in which the applicant has brought proceedings before the courts of the Member State in which the defendant has its seat, the jurisdiction of those courts may stem from Article 24 of that regulation, where the defendant does not dispute their jurisdiction, even though the contract between the two parties contains a clause conferring jurisdiction on the courts of a third country.

2. Article 24 of Regulation No 44/2001 must be interpreted as precluding, in a dispute between parties to a contract which contains a clause conferring jurisdiction on the courts



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of a third country, the court of the Member State in which the defendant has its seat, which has been seised, from declaring of its own motion that it does not have jurisdiction, even though the defendant does not contest the jurisdiction of that court.

II. Explain the following words and phrases or provide synonyms for them.

- (1) the referring court seeks clarification
- (2) main proceedings
- (3) preclude the tacit prorogation of jurisdiction
- (4) to stay the proceedings
- (5) to settle any dispute

III. Answer the following questions:

- (1) What legal aspects are involved in this judgment?
- (2) Can the Romanian court decline jurisdiction in this case? Account for your answer.