

Court Rules on Jurisdiction under Article 5(1) of Brussels Convention

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October 11 2005

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Referring to an agreement between the parties, the plaintiff in a recent case claimed that the place of performance of an obligation under the agreement constituted the basis for jurisdiction of a Swedish district court pursuant to Article 5(1) of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. The plaintiff requested the court to order the defendant to effect payment under the agreement. The defendant disputed the existence of an agreement. The Supreme Court held that, when determining the issue of jurisdiction in cases involving 'facts of double relevance', courts must accept the circumstances claimed by the plaintiff pertaining to the existence of an agreement, provided that these claims are not obviously unfounded.

Facts

Article 2 of the convention provides that persons domiciled in a contracting state shall, whatever their nationality, be sued in the courts of that state. However, Article 5(1) states that, in matters relating to a contract, a person domiciled in a contracting state may be sued in another contracting state, at the place of performance of the obligation in question.

Arne Svensson filed a lawsuit at the Södra Roslag District Court against PLS Rambøll Management A/S (which was domiciled in Denmark), seeking payment by Rambøll of Dkr 4 million or the equivalent in Swedish kroner plus interest. Svensson alleged that, pursuant to an agreement between the parties, he was entitled to the claimed amount for helping Rambøll to establish a subsidiary company in Sweden, as he had fulfilled his part of the agreement. Svensson relied on Article 5(1) of the convention with regard to the jurisdiction of the district court.

Rambøll filed a motion to dismiss the case without further hearing, claiming that the district court did not have jurisdiction. Rambøll disputed the existence of the agreement, stating that, although such agreement had been discussed, no agreement had been concluded between the parties. Furthermore, Rambøll argued that the mere allegation of an agreement between the parties could not serve as a basis for jurisdiction.

Decision

On March 26 2002 the district court rejected Rambøll's motion to dismiss the case.⁽¹⁾ The court held that the existence of an agreement between the parties must be assumed when determining the issue of jurisdiction. The court stated that Article 5(1) of the convention would be rendered ineffective if a mere objection to the existence of an agreement could prevent the application of the article.

Rambøll appealed. On October 25 2002 the Svea Court of Appeal confirmed the district court's ruling and rejected Rambøll's motion.⁽²⁾

Rambøll subsequently appealed to the Supreme Court and filed a motion for the court to refer to the European Court of Justice for a preliminary ruling on: (i) whether it is sufficient for the plaintiff to allege that an agreement has been concluded in order for the court to have jurisdiction pursuant to Article 5(1) or whether the court must examine the plaintiff's evidence where the existence of an agreement is disputed; and (ii) if the court must examine the plaintiff's evidence, whether the plaintiff must prove the existence of an agreement or whether a lower level of evidence is sufficient.

Referring to principles established through case law, the Supreme Court held that the convention is not applicable to matters of evidence and examinations pertaining to the existence of agreements. Rambøll's motion was thus rejected. However, the court stated that national courts must ensure that the application of national regulations does not undermine the effect of the convention.

The court stated that, in general, factual circumstances relevant to the jurisdictional issue are not relevant to the merits of the case. However, in the case at hand, the same factual circumstances were relevant to the jurisdictional issue as well as the merits of the case ('facts of double relevance'). According to the court, the question was whether the plaintiff must prove such circumstances when the court determines the jurisdictional issue. The court concluded that, when determining the jurisdictional issue in such cases, the courts should accept the facts relied on by the plaintiff as constituting an agreement, provided that the allegation of an agreement does not appear to be obviously unfounded (based on the facts alleged by the plaintiff or any other reason). Such principle does not, in the opinion of the court, undermine the effect of the convention.

On July 21 2005 the court found that Svensson's claims regarding the existence of an agreement were not obviously unfounded. Thus, the district court had jurisdiction to hear the case.⁽³⁾

Comment

EU case law has emphasized that the convention aims to ensure the rule of law by allowing the parties to have advance knowledge of the court with jurisdiction in certain matters. Accordingly, plaintiffs in cases such as the case at hand should be able to determine the court with jurisdiction without difficulty. Similarly, the defendant should have the opportunity to examine the claims brought against it without having to consider the jurisdictional issue. The Supreme Court's decision is therefore in accordance with the aim

of the convention.

Considering that other solutions are found in other jurisdictions, there are several advantages - from a Swedish perspective - if the court does not examine the evidence regarding the existence of an agreement when determining the jurisdictional issue in cases such as the case at hand. For example, if a court takes a position by examining the evidence concerning the existence of an agreement when determining the jurisdictional issue, it runs the risk of being considered partial when deciding the same issue for the second time when trying the merits of the case. It could be difficult for parties to accept or understand that there was no in-depth examination of the evidence when the court ruled on jurisdiction, and that the court may change its mind when examining the evidence in depth as part of the merits of the case.

Finally, there are strong arguments supporting the view that, in the context of arbitration, arbitrators should not apply the principle of 'facts of double relevance' when determining the question of their competence.

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Endnotes

- (1) Case T 90-02.
- (2) Case Ö 4444-02.
- (3) Case Ö 4286-02.

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