

CJEU Rules on Jurisdiction in Cases of Liability for Defective Products

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On 16 January 2014 the Court of Justice of the European Union (CJEU) has ruled on the interpretation of Art. 5 para. 3 Brussels I Regulation in cases of liability for defective products ([C-45/13 – Andreas Kainz ./ Pantherwerke AG](#)). The Court held that in such cases, the place of the event giving rise to the damage is the place where the product in question was manufactured.

The facts:

The claimant, Mr Kainz, is a resident of Salzburg in Austria. In a shop in Austria, he bought a bicycle which he rode in Germany, when the fork ends of that bicycle came loose and caused an accident from which Mr Kainz suffered injury. The bicycle had been manufactured by a company based in Germany. After having manufactured the bicycle, this company had shipped the bicycle to a shop in Austria from which Mr Kainz had finally purchased the item.

As a consequence of the suffered injury, Mr Kainz sued the German manufacturing company before the district court (*Landgericht*) in Salzburg. To establish jurisdiction, Mr Kainz

argued that the district court in Salzburg had jurisdiction according to Art. 5 para. 3 Brussels I Regulation, since the bicycle had been brought into circulation in Austria and only there was made available to the end user for the first time.

In the following proceedings, the Supreme Court of Austria (*Oberster Gerichtshof*) referred the question to the CJEU for a preliminary ruling, as to where the place of the event giving rise to the damage should be located in a case like the one at hand where the manufacturer of a defect product is sued. The Supreme Court offered three possibilities to the CJEU: (i) the place where the manufacturer is established, (ii) the place where the product is put into circulation and (iii) the place where the product was acquired by the user.

The ruling:

The CJEU decided for the first option and ruled that the place of the event giving rise to the damage must be located at the place where the product in question was manufactured.

To substantiate this ruling, the CJEU relied on two main arguments: First the Court held that it is at the place where the product in question was manufactured where it is most suitable to take evidence for a dispute that arises out of a defect product (para. 27). And secondly, the Court argued that locating the place where the event giving rise to the damage at the manufacturing site provides foreseeability and thereby legal certainty to the parties involved (para. 28).

In the further course of the reasoning, the CJEU also addressed the argument of the claimant, Mr Kainz, who had suggested to locate the place giving rise to the damage at the place where the product had been transferred to the end consumer (which would have led to a *forum actoris* for him). In this context, the CJEU ruled (para. 30 *et seq.*), that Art. 5 para. 3 Brussels I Regulation does not allow to take into account any such considerations to protect the claimant by

determining the place where the harmful event occurred.

The evaluation:

With this ruling, the CJEU has further completed the picture of the application of Art. 5 para. 3 Brussels I Regulation in cases of liability for defective products. In the former case *Zuid Chemie* C-189/08, the Court had already located the place where the damage occurred (*Erfolgsort*) at the “place where the initial damage occurred as a result of the normal use of the product for the purpose for which it was intended.” (para. 32). In *Zuid Chemie*, the location of the place giving rise to the damage (*Handlungsort*) had been left open by the Court since the parties of that case had agreed on the fact that this place should be located at the place where the defect product had been manufactured (para. 25). This interpretation has now been confirmed by the CJEU with the case at hand.

Another reason, why the Kainz ruling is interesting, is the statement of the CJEU on the relationship between the Brussels I Regulation and the Rome II Regulation. The Court clarified that these two pieces of legislation are to be interpreted independently, even if the legislator wanted them to be interpreted coherently (see therefore recital 7 of the Rome II Regulation). The interpretation of the Brussels I Regulation must not be influenced by the conception or the wording of the Rome II Regulation if this would be contrary to the scheme and the objectives of the Brussels I Regulation (para. 20).