Petronas Lubricants: ECJ confirms that Art 20(2) Brussels I can be used by employer for assigned counter-claim

Last Thursday, the ECJ rendered a short (and rather unsurprising) decision on the interpretation of Art 20(2) Brussels I (= 22(2) of the Recast Regulation). In *Petronas Lubricants* (Case C 1/17), the Court held that an employer can rely on the provision to bring a counter-claim in the courts chosen by the employee even where said claim has been assigned to the employer after the employee had initiated proceedings.

The question had been referred to the ECJ in the context of a dispute between an employee, Mr Guida, and his two former employers, Petronas Lubricants Italy and Petronas Lubricants Poland. Mr Guida's parallel employment contracts with these two companies had been terminated among allegations of wrongly claimed reimbursements. Mr Guida, who is domiciled in Poland, had sued his Italian employer in Italy for wrongful dismissal and his employer had brought a counter-claim for repayment of the sums Mr Guida had allegedly wrongfully received, which had been assigned by the Polish employer.

Art 20(2) Brussels I contains an exception to the rule in Art 20(1), according to which an employee can only be sued in the courts of their country of domicile, to allow the employer to bring a counter-claim in the courts chosen by the employee. Similar exceptions can be found in Art 12(2) Brussels I (= Art 14(2) of the Recast; for insurance contracts) and Art 16(3) Brussels I (= Art 18(3) of the Recast; for consumer contracts), all of which incorporate the ground for special jurisdiction provided in Art 6 No 3 Brussels I (= Art 8(3) of the Recast). In the present case, the ECJ had to decide whether this exception would also be available for counter-claims that had been assigned to the employer after the employee had initiated proceedings.

The Court answered this question in the affirmative, pointing out that

> *[28] … 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) [Brussels I].*

At the same time, the Court emphasised that a counter-claim can only be brought in the court chosen by the employee if it fulfils the more specific requirements of Art 6 No 3 Brussels I, according to which the counter-claim must have arisen 'from the same contract or facts on which the original claim was based'. This has recently been interpreted by the ECJ (in Case C-185/15 *Kostanjevec*) as requiring that both claims have 'a common origin' (see [29]–[30] of the decision). Where this is the case – as it was here (see [31]–[32]) –, it does not matter that the relevant claims have only been assigned to the employer after the employee had initiated proceedings (see [33]).