

ECJ: Judgments in “Hadadi” and “Zuid-Chemie BV”

Yesterday, the ECJ delivered its judgments in cases C-189/08 (*Zuid-Chemie BV v. Philippo’s Mineralenfabriek NV/SA*) and C-168/08 (*Laszlo Hadadi (Hadady)*)

1. **Zuid-Chemie** concerns the interpretation of Art. 5 (3) Brussels I Regulation. The *Hoge Raad der Nederlanden* (Netherlands) had referred the following questions to the ECJ:

1. *Which damage is, in the case of unlawful conduct such as that which forms the basis for Zuid-Chemie’s claim, to be treated as the initial damage resulting from that conduct: the damage which arises by virtue of the delivery of the defective product or the damage which arises when normal use is made of the product for the purpose for which it was intended?*
2. *If the latter is the case, can then the place where that damage occurred be treated as “the place where the harmful event occurred” within the meaning of Article 5(3) of ... Regulation ... No 44/2001 ... only if that damage consists of physical damage to persons or goods, or is this also possible if (initially) only financial damage has been incurred?*

The ECJ now held as follows:

Article 5(3) 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 the context of a dispute such as that in the main proceedings, the words ‘place where the harmful event occurred’ designate 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.

See with regard to this case also our previous post on the referring decision which can be found [here](#).

2. The second case, **Hadadi**, concerns the interpretation of the Brussels II bis

Regulation. Here, the *Cour de cassation* (France) had referred the following questions to the ECj:

- (1) *Is Article 3(1)(b) [of Regulation No 2201/2003] to be interpreted as meaning that, in a situation where the spouses hold both the nationality of the State of the court seised and the nationality of another Member State of the European Union, the nationality of the State of the court seised must prevail?*
- (2) *If the answer to Question 1 is in the negative, is that provision to be interpreted as referring, in a situation where the spouses each hold dual nationality of the same two Member States, to the more effective of the two nationalities?*
- (3) *If the answer to Question 2 is in the negative, should it therefore be considered that that provision offers the spouses an additional option, allowing those spouses the choice of seising the courts of either of the two States of which they both hold the nationality?*

The Court now ruled as follows:

1. *Where the court of the Member State addressed must verify, pursuant to Article 64(4) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Council Regulation (EC) No 1347/2000, whether the court of the Member State of origin of a judgment would have had jurisdiction under Article 3(1)(b) of that regulation, the latter provision precludes the court of the Member State addressed from regarding spouses who each hold the nationality both of that State and of the Member State of origin as nationals only of the Member State addressed. That court must, on the contrary, take into account the fact that the spouses also hold the nationality of the Member State of origin and that, therefore, the courts of the latter could have had jurisdiction to hear the case.*
2. *Where spouses each hold the nationality of the same two Member States, Article 3(1)(b) of Regulation No 2201/2003 precludes the jurisdiction of the courts of one of those Member States from being rejected on the ground that the applicant does not put forward other links with that State. On the contrary, the courts of those Member States of which the spouses hold the nationality*

have jurisdiction under that provision and the spouses may seise the court of the Member State of their choice.

See also our previous posts on the AG's opinion as well as the reference.