ECJ Rules on Res Judicata of Judgments Declining Jurisdiction

Dr. Olaf Hartenstein practices at Dabelstein & Passehl, Hamburg.

On November 15th, the European Court of Justice delivered its judgment in case C-456/11 *Gothaer Allgemeine Versicherung and others*. It ruled that the judgment of a Member state which declined jurisdiction on the ground of the existence of a jurisdiction clause was res judicata and was thus binding on courts of other Member states.

A German company (Krones) sold a brewing installation to a buyer in Mexico and charged another German company (Samskip) with the task of organizing the transport from Antwerp to Mexico. Among the transport documents there was a bill of lading which stipulated an exclusive jurisdiction of the courts of Iceland. Alleging a transport damage, the transport insurers of Krones sued Samskip in Antwerp. The appeal instance dismissed the claim on the basis that transport insurers were bound by the jurisdiction clause. Transport insurers and Krones then sued Samskip in Germany. Samskip argued that German courts had no jurisdiction because of the jurisdiction clause and that German courts were bound by the Belgian judgment under the Brussels Regulation.

Under German law a judgment dismissing a claim for lack of jurisdiction is qualified as a procedural judgment, and there is a strong opinion in German legal literature which holds the view that procedural judgments have no recognizable contents. Also, under German civil procedure law the concept res judicata is very restrictive and the reasoning of a judgment does often not participate in the res judicata effect. The Court of Bremen, therefore, sent the file to the ECJ for a preliminary ruling asking whether the Belgian judgment was a judgment in the sense of the Brussels Regulation and if so whether the Bremen court would have to recognize not only that Belgian courts do not have jurisdiction but also that the jurisdiction clause is valid.

In its above mentioned judgment of 15 November 2012 the ECJ ruled that a judgment by which the court of a member state declines jurisdiction on the basis of a jurisdiction clause was a judgment in the meaning of art. 32 of the Brussels

Regulation even if it was categorized as a mere procedural judgment under the national law of a member state. The ECJ further ruled that the court before which the recognition of such a judgment is sought is bound by the finding regarding the validity of the jurisdiction clause even if such finding were made in the grounds of the judgment.

The fact that the ECJ held that judgments which were categorized as "procedural judgments" in the law of a certain member state are nevertheless judgments in the sense of the Regulation is little surprising. What is more remarkable is that the court, in respect of judgments declining jurisdiction on the basis of a jurisdiction clause, amends its previous case law, particularly the doctrine of the *Hoffmann/Krieg* judgment of 4 February 1988 (C-145/86): If the dismissal of the claim is based on the validity of a jurisdiction clause then such validity is to be recognized; the definition of the res judicata effect of the judgment in the national law of the state of origin is as irrelevant as the one in the state of recognition. The ECJ applies an autonomous European concept of res judicata to certain member state judgments (albeit for yet a very limited number of cases).

> *1. Article 32 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 it also covers a judgment by which the court of a Member State declines jurisdiction on the basis of a jurisdiction clause, irrespective of how that judgment is categorised under the law of another Member State.*
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> *2. Articles 32 and 33 of Regulation No 44/2001 must be interpreted as meaning that the court before which recognition is sought of a judgment by which a court of another Member State has declined jurisdiction on the basis of a jurisdiction clause is bound by the finding – made in the grounds of a judgment, which has since become final, declaring the action inadmissible – regarding the validity of that clause.*