

ECJ Defines Concept of International Character of Consumer Contracts

On 14 November 2013, the Court of Justice of the European Union delivered its judgment in *Armin Maletic and Marianne Maletic v lastminute.com GmbH and TUI Österreich GmbH*. 

The issue for the Court was whether the Brussels I Regulation applied to a consumer contract concluded with a professional based in the same jurisdiction as the consumer.

On 30 December 2011, two Austrian consumers, the Maletics, booked and paid for themselves, as private individuals, a package holiday to Egypt on the website of lastminute.com for EUR 1 858 from 10 to 24 January 2012. On its website, lastminute.com, a company whose registered office is in Munich (Germany), stated that it acted as the travel agent and that the trip would be operated by TUI, which has its registered office in Vienna (Austria).

The booking concerned the Jaz Makadi Golf & Spa hotel in Hurghada (Egypt). That booking was confirmed by lastminute.com, which passed it on to TUI. Subsequently, the Maletics received a 'confirmation/invoice' of 5 January 2012 from TUI which, while it confirmed the information concerning the trip booked with lastminute.com, mentioned the name of another hotel, the Jaz Makadi Star Resort Spa in Hurghada. It was only on their arrival in Hurghada that the applicants in the main proceedings noticed the mistake concerning the hotel and paid a surcharge of EUR 1 036 to be able to stay in the hotel initially booked on lastminute.com's website.

On 13 April 2012, in order to recover the surcharge paid and to be compensated for the inconvenience which affected their holiday, the applicants in the main proceedings brought an action before an Austrian Court seeking payment from lastminute.com and TUI, jointly and severally of the sum of EUR 1 201.38 together with interest and costs.

The Austrian court retained jurisdiction over Lastminute on the ground of Article

15 of the Brussels Regulation, but declined it with respect to the Austrian party, ruling that the Regulation did not apply to a domestic dispute, and that another Austrian court had jurisdiction pursuant to Austrian civil procedure.

The CJEU held that the dispute was international in character.

28 If, as stated in paragraph 26 of this judgment, the international character of the legal relationship at issue need not necessarily derive from the involvement, either because of the subject-matter of the proceedings or the respective domiciles of the parties, of a number of Contracting States, it must be held, as the Commission and the Portuguese Government have argued, that Regulation No 44/2001 is applicable a fortiori in the circumstances of the case at issue in the main proceedings, since the international element is present not only as regards lastminute.com, which is not disputed, but also as regards TUI.

29 Even assuming that a single transaction, such as the one which led the Maletics to book and pay for their package holiday on lastminute.com's website, may be divided into two separate contractual relationships, first, with the online travel agency lastminute.com and, second, with the travel operator TUI, the second contractual relationship cannot be classified as 'purely' domestic since it was inseparably linked to the first contractual relationship which was made through the travel agency situated in another Member State.

30 Furthermore, account must be taken of the objectives set out in recitals 13 and 15 in the preamble to Regulation No 44/2001 concerning the protection of the consumer as 'the weaker party' to the contract and the aim to 'minimise the possibility of concurrent proceedings ... to ensure that irreconcilable judgments will not be given in two Member States'.

31 Those objectives preclude a solution which allows the Maletics to pursue parallel proceedings in Bludenz and Vienna, by way of connected actions against two operators involved in the booking and the arrangements for the package holiday at issue in the main proceedings.

Ruling:

The concept of 'other party to the contract' laid down in Article 16(1) 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, in circumstances such as those at issue in the main proceedings, that it also covers the contracting partner of the operator with which the consumer concluded that contract and which has its registered office in the Member State in which the consumer is domiciled.