CJEU rules on Storage Contracts and Article 5(1) (b) Brussels I Regulation

It has not yet been mentioned on this blog that the Court of Justice of the European Union (CJEU) rendered another interesting decision on Article 5(1)(b) Brussels I Regulation in November 2013 (C-496/12, Krejci Lager & Umschlagsbetriebs GmbH ./. Olbrich Transport & Logistik GmbH). The Commercial Court Vienna (Austria) had requested a preliminary ruling on whether a storage contract is a contract for the "provision of service" within the meaning of Article 5(1)(b) Brussels I Regulation (Article 7(1)(b) of the Brussels I recast of 2012). The CJEU answered the question in the affirmative:

> *It must be borne in mind that, according to the Court's case-law, the concept of service found in the second indent of Article 5(1)(b) of Regulation No 44/2001, implies, at the least, that the party who provides the service carries out a particular activity in return for remuneration (Case C-533/07 Falco Privatstiftung and Rabitsch [2009] ECR I-3327, paragraph 29).*
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> *In that regard, as the Austrian and Greek Governments as well as the European Commission submit in their written observations, the predominant element of a storage contract is the fact that the warehousekeeper undertakes to store the goods concerned on behalf of the other party to the contract. Accordingly, that commitment entails a specific activity, consisting, at the least, of the reception of goods, their storage in a safe place and their return to the other party to the contract in an appropriate state.*
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> *As regards the argument that the subject-matter of the contract at issue is the mere renting of an area of space, it must be noted that, in the context of proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and tribunals and the Court of Justice, any assessment of the facts is a matter for the national court or tribunal. In particular, the Court is empowered to rule only on the interpretation or the validity of European Union acts on the basis of the facts placed before it by the national court or tribunal (Case C-491/06 Danske Svineproducenter [2008] ECR*

I-3339, paragraph 23, and the judgment of 10 November 2011 in Joined Cases C-319/10 and C-320/10 X and X BV, paragraph 29).

According to the information provided by the order for reference, the contract at issue in the case in the main proceedings does not concern the rental of premises, but the storage of goods. Moreover, besides the fact that it is not for the Court to call into question that finding of fact, it must be noted that jurisdiction relating to the former type of contract is, in any event, governed by Article 22(1) of Regulation No 44/2001, relating to exclusive jurisdiction in the matter of tenancies of immovable property (see, as regards the Brussels Convention, Case 241/83 Rösler [1985] ECR 99, paragraph 24, and Case C-280/90 Hacker [1992] ECR I-1111, paragraph 10), under which only the courts and tribunals of the Member State where the property is situated have jurisdiction.

In the light of the foregoing, the answer to the question referred is therefore that the second indent of Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that a contract relating to the storage of goods, such as that at issue in the main proceedings, constitutes a contract for the 'provision of services' within the meaning of that provision.

The full decision is available here.