Hotel contracts and jurisdiction clauses before Greek courts

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A recent judgment of the Mytilene Court of First Instance raised a very topical issue, related to the acceptance of international jurisdiction by Greek Courts in the case of hotel contracts, nothwistanding the prorogation clause in favour of the court of some other member state (in this case the courts of the Netherlands).

The guarantee contracts

The position of the court was that such a contract (a so-called guarantee) that essentially guarantees the payment of a certain number of hotel rooms by the tour operator, irrespective of the actual use of the reserved rooms, can be characterised as a lease contract for immovable property under the meaning of art. 24 of the Brussels Ia Regulation. The underlying idea is that such a contract is predominantly a lease contract regarding immovable property and the services aspect that coexists with the lease character of the same contract is diluted into the latter. Under this line of arguments, the court found that, nothwistanding the prorogation clause in favour of the courts of the Netherlands, the court of the place of the immovable property (Greece and in particular Mytilene) should be the only competent to hear the case (art. 24 of Brussels Ia Regulation).

The allotment contracts

Interestingly, similar judgments of other courts of touristic destinations in Greece (Dodecanese islands, like Kos and Rhodes or of the Ionian island of Corfu) have issued similar judgments in the past, also in relation to the so-called allotment hotel contracts. Under them, the tour operator reserves rooms spanning from a minimum to a maximum pre-agreed number and agrees to use as many of them as it can and at the same time to lift by an agreed d-day, the reservation for the ones

that are not to be used. Therefore, under the allotment contract, the reservation is not "guaranteed" for the totality of the rooms in question, as is the case with the "guarantee" contract. This point is generally downplayed by Greek courts who seem to be in favour of the application of art. 24 par. 1 of the Brussels I Regulation in every hotel contract, by emphasising on the fact that the primary character of such contracts is the lease.

Critique

This approach, although it does generally make sense, it also merits some qualification. To start with, the prorogation clause is a clause to be preserved by the parties. As is well known, one of the two ways to depart from such a clause in the context of Brussels Ia Regulation (the other is the tacit prorogation), is the case of the so-called exclusive jurisdiction of art. 24, the case of immovable property being one of them: This is the case among others "in proceedings which have as their object …tenancies of immovable property". As explained, under Greek case law, it is admitted that this is the case and such contracts are predominantly lease of property contracts. Essentially, the question of pinpointing the legal nature of the guarantee and the allotment hotel contracts, is one of characterisation of private international law. It is generally submitted that characterisation should not be made *lege fori* and it should take into account the meaning of the relevant juridical categories in a wider/ international environment. This been said, it looks that Greek courts tend to do the characterisation *lege fori* in relation to hotel contracts, presumably in order to feel more comfortable with an argumentation made in the context of Greek law only. To be noted that this approach in relation to art. 24 of the Brussels Ia Regulation has a strong support also by the doctrine, which at least partly, supports the *lege situs* interpretation,[1] which in our case coincides with the *lex fori*. Nevertheless, the suggestion of approaching the matter without a strict *lege situs* or *lege fori* approach, that is under the so-called autonomous interpretation, widely used under the various EU PIL Regulations, should not be underplayed. The Hacker case (C-280/90) is also relevant, to the extent that it excludes the application of art. 24 par. 1 in the case of package holidays. Therefore, the predominantly lease dimension of the hotel contracts under Greek law, should not always be taken for granted. The main question is whether the above described hotel contracts are contracts for lease of property under the above points. As a matter of fact, in

hotel contracts, the counter signatory of the hotel owner is not the actual user of the property, but a tour operator who then “sells” a package to the end user. On the other hand, from the hotel owner point of view, the contract is predominantly a lease contract. Another critical point is that in real life, the imbalance of powers between a north European tour operator and a local 25 rooms family hotel can be enormous. Especially In the case that the tour operator simply reserves the totality of the hotel rooms and cancels the reservation without good cause, it puts the hotel owner in the extremely burdensome situation to have to file an action somewhere in Europe, usually in “unknown territory” and under generally uncomfortable conditions. If, therefore the totality of the hotel rooms (or almost the totality) is involved, it can be said that the lease dimension of the agreement should indeed always prevail, and this should generally be the case in guarantee hotel contracts. This should be so no matter if the autonomous or the *lege situs* characterisation is followed. This is not necessarily the case if a small number of the rooms of hotels are reserved or in the case of allotment. In the latter case, perhaps the reservation of the totality of the rooms should again direct us towards the application of art. 24 par. 1, but following a closer examination of the terms of the hotel agreement in order for us to be able to examine if *in casu* the lease dimension again prevails and if the cancellation of the agreement should end up to a damage to the owner, similar to the one it would suffer in the case of cancellation of a guarantee contract. In this context, the rest of the facts of the case, i.e percentage of the rooms in relation to overall number of rooms of the hotel in question, the degree of power imbalance of the parties, the rest of the services involved (see for example Pammer case C-585/08) cannot be ignored.

[1] De Lima Pinheiro, in Magnus/ Mankowski Brussels I Regulation 2nd ed. Seller 2012, art. 22 par. 25.