

German Federal Court of Justice: Article 26 Brussels Ia Regulation Applies to Non-EU Defendants

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In its decision of 21 July 2023 (V ZR 112/22), the German Federal Court of Justice confirmed that Art. 26 Brussels Ia Regulation applies regardless of the defendant's domicile. The case in question involved an art collector filing suit against a Canadian trust that manages the estate of a Jew who was persecuted by the German Nazi regime. The defendant published a wanted notice in an online Lost Art database for a painting that the plaintiff bought in 1999. The plaintiff considers this as a violation of his property right.

In general, following the procedural law principle of *actor sequitur forum rei*, the Canadian trust should be brought to court in Canadian courts. Special rules are required for jurisdictions that deviate from this principle. The lower German court confirmed its authority based on national rules on jurisdiction. Under sec. 32 German Civil Procedure Code, tort claims can be brought to the court where the harmful act happened regardless of the defendant's domicile. The German Federal Court of Justice established its jurisdiction on Art. 26 Brussels Ia Regulation as the *lex specialis*.

This may appear surprising as the scope of the Brussels Ia Regulations is generally limited to defendants domiciled in a member state of the EU, Artt. 4, 6 Brussels Ia Regulation. Exceptions to this rule are stated in Art. 6 Brussels Ia Regulation and - relying on its wording - limited to the Artt. 18 I, 21 II, 24 and 25 Brussels Ia Regulation. Nevertheless, due to the common element of party autonomy in Art. 25 and Art. 26 Brussels Ia Regulation, some parts of the literature - and now the German Federal Court of Justice - apply Art. 26 Brussels Ia Regulation to non-EU-domiciled defendants as well. The German Federal Court of Justice even considers this interpretation of Art. 26 Brussels Ia Regulation as *acte clair* and thus, it sees no need for a preliminary ruling of the CJEU under Art. 267 TFEU.

However, the Court's argumentation is not completely persuasive. Firstly, the wording of Art. 26 Brussels Ia Regulation is open to other - even opposing - interpretations. Secondly, although it contains a party-autonomous element, Art. 26 Brussels Ia Regulation does not depend on the defendant's choice of court. In fact, courts are not required to verify defendant's awareness of jurisdictional risks in order to proceed in a court lacking jurisdiction. And unlike Art. 25 Brussels Ia Regulation, Art. 26 Brussels Ia Regulation can be part of a litigation strategy detrimental to the defendant

A detailed analysis on the court's ruling in German is available [here](#).