



Press and Information

Court of Justice of the European Union

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Judgment in Case C-645/11

Land Berlin v Ellen Mirjam Sapir and Others

The regulation on jurisdiction applies to an action brought by a public body which, having sold land previously expropriated by a totalitarian regime, has mistakenly overpaid the successors in title and seeks the partial restitution of that sum

However, that regulation does not, in the present case, apply to defendants domiciled outside the EU, even where they are sued in a joint action with defendants domiciled in a Member State

Mr Julius Busse was the owner of a plot of land situated in the former East Berlin. He was persecuted under the Nazi regime and, in 1938, was forced to sell his land to a third party. That land was subsequently expropriated by the German Democratic Republic and incorporated, together with other publicly owned land, into a larger plot. Following the reunification of Germany, the entire parcel of land passed partly to the *Land Berlin* and partly to the Federal Republic of Germany. In 1990, a number of successors in title of Mr Busse, some domiciled in Israel (Ms Sapir and others), others in the United Kingdom and Spain, lodged an application for the return of the part of the land which had previously belonged to him.

However, in 1997, the *Land Berlin* and the Federal Republic of Germany sold the entire parcel of land, with the result that the return of the property was impossible and the successors in title were able only to obtain the corresponding share of the proceeds of the sale. When payment of that amount was made, the *Land Berlin* committed an error. It unintentionally paid the entire amount of the proceeds of the sale to the lawyer representing the successors in title of the former owner, and that lawyer then distributed it to those successors in title. The *Land Berlin* now seeks to recover the overpayment, which it estimates at €2.5 million, from those persons in an action before the Landgericht Berlin (Regional Court, Berlin).

The successors in title opposed that recovery, arguing that the Landgericht Berlin did not have international jurisdiction to decide the case with respect to the defendants in the main proceedings who were domiciled in the United Kingdom, Spain and Israel. They also maintained that they were entitled to claim payment of an amount greater than the share of the proceeds of the sale due to them because those proceeds amounted to less than the market value of the property which had belonged to Mr Julius Busse. The German courts at first instance and on appeal held that, according to EU law¹, they did not have international jurisdiction to rule on the action brought in Germany against defendants domiciled in the United Kingdom, Spain and Israel. According to those courts, that dispute did not concern a civil matter within the meaning of the regulation on jurisdiction², but was a matter of public law to which that regulation does not apply. The Bundesgerichtshof (Federal Court of Justice, Germany), before which the dispute was brought on final appeal, accordingly made a reference to the Court of Justice for a preliminary ruling.

The Court, in its judgment delivered today, states, first of all, that the regulation on jurisdiction applies to an action brought by a public body which, having sold land previously expropriated by a totalitarian regime, has mistakenly overpaid the successors in title and seeks partial restitution of that amount.

¹ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

² In particular within the meaning of Article 1(1) of Regulation No 44/2001.

In that regard, the Court points out that the action brought, on grounds of unjust enrichment, by the *Land* Berlin is civil in nature and is not connected to an exercise of public powers by that *Land*. The right to compensation underlying the action brought against the successors in title of Mr Busse is based on national provisions on compensation for the victims of the Nazi regime which imposed the same obligation in respect of compensation without distinguishing between the status of the owner of the property subject to such rights as a private person or as a State entity. Furthermore, that owner does not have any prior right to a decision as regards the determination of the victim's rights to restitution.

Next, the Court observes that, according to the regulation, **there is a close connection between claims brought against several defendants domiciled in other Member States who, in circumstances such as those in the main proceedings, rely on rights to additional compensation which must be determined on a uniform basis.**

However, that rule does not apply to defendants domiciled outside the EU in cases where they are sued in an action which is also brought against persons domiciled within the EU.

The regulation on jurisdiction provides that, in order to sue a co-defendant before the courts of one Member State because there is a close connection between the claims brought against several defendants, that person must be domiciled in another Member State. Furthermore, the regulation expressly and exhaustively governs the matter of disputes between persons domiciled outside the European Union, providing, subject to certain exceptions, that jurisdiction is to be governed by national law in each Member State.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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