

Case C-73/19

Request for a preliminary ruling

Date lodged:

31 January 2019

Referring court:

Hof van beroep te Antwerpen (Belgium)

Date of the decision to refer:

24 January 2019

Appellants:

Belgische Staat, vertegenwoordigd door de Minister van Werk,
Economie en Consumenten, belast met Buitenlandse handel

Belgische Staat, vertegenwoordigd door de Directeur-Generaal van
de Algemene Directie Economische Inspectie

Directeur-Generaal van de Algemene Directie Economische
Inspectie

Respondents:

Movic BV

Events Belgium BV

Leisure Tickets & Activities International BV

[...]

[administrative and procedural points]

Hof van beroep
(Court of Appeal)

Antwerp

Judgment

[...] [administrative and procedural points] **[Or.2]**

1. The **BELGIAN STATE**, represented by its Minister van Werk, Economie en Consumenten, belast met de Buitenlandse Handel (Minister for Work, Economic Affairs and Consumer Affairs, responsible for Foreign Trade), [...]
2. The **BELGIAN STATE**, represented by the Directeur-Generaal van de Algemene Directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie (Director-General of the Directorate-General Enforcement and Mediation within the Federal Public Service Economy, SMEs, Self-Employed and Energy), now the Algemene Directie Economische Inspectie (Directorate-General Economic Inspection), [...];
3. The **Directeur-Generaal van de Algemene Directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie** (Director-General of the Directorate-General Enforcement and Mediation within the Federal Public Service Economy, SMEs, Self-Employed and Energy), now the Algemene Directie Economische Inspectie (Directorate-General Economic Inspection), [...].

Appellants [...]

[...]

v

1. **BV MOVIC** [...]

1st Respondent [...]

2. [...] **EVENTS BELGIUM B.V.** [...]

3. [...] **LEISURE TICKETS & ACTIVITIES INTERNATIONAL BV** [...]
[Or. 3]

2nd and 3rd Respondents [...]

1. History and claims

On 2 December 2016 (1) the Belgian State represented by its Minister van Werk, Economie en Consumenten, belast met de Buitenlandse Handel, (2) the Belgian State, represented by the Directeur-Generaal van de Algemene Directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie, now the Algemene Directie Economische Inspectie and (3) the Directeur-Generaal van de Algemene Directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie, now the Algemene Directie Economische Inspectie,

issued a summons, on the one hand, to the company under Dutch law, B.V. Movic and, by separate writ of the same date, to the companies under Dutch law B.V. Events Belgium and B.V. Leisure Tickets & Activities International, to appear before the voorzitter (President) of the rechtbank van koophandel (Commercial Court) — now the ondernemingsrechtbank (Business Court) — Antwerp Division, Antwerp, hearing an application for interim relief[.]

The respondents were accused of systematically selling tickets for events in Belgium at inflated prices through various websites in violation of the provisions of the wet van 30 juli 2013 betreffende de verkoop van toegangsbewijzen tot evenementen (Law of 30 July 2013 regarding the sale of admission tickets to events), more specifically, Article 5 of that Law.

The appellants sought the determination of the infringements and an order that they cease.

In addition, an order was sought determining and seeking the cessation of the misleading and unfair commercial practices towards consumers, based on various provisions of Book VI of the WER [Wetboek van Economisch Recht: Code of Economic Law], more specifically, Articles VI.100, VI.97, VI.93 and VI.99 WER.

According to the summary of pleadings, the claim in both files sought

- a determination that the B.V. Movic on the one hand, and B.V. Events Belgium and B.V. Leisure Tickets & Activities International on the other hand

1. in Belgium, via the internet, perform acts entailing the regular resale of admission tickets for events, through the websites which they control
2. in Belgium, via the internet, through the websites they control, make proposals regarding the regular reselling of admission tickets for events
3. in Belgium, via the internet, through the websites they control, offer for sale admission tickets for events at a price that is higher than the price of [Or. 4] the admission ticket as stated by the original seller on the admission ticket
4. remove the price as originally stated on an admission ticket by the original seller, on the tickets they sell for events in Belgium [...]
5. remove and/or alter the name of the original buyer on an admission ticket for events in Belgium as inscribed by the organiser of the event
6. create or may create the impression with the resale of a ticket for events in Belgium that their offer is occasional

7. in their sale offers via the internet for events in Belgium, do not mention the original price of the event ticket as determined by the original seller
8. on the admission tickets to events in Belgium which they sell via the Internet, retain the words 'normal price', whereas their selling price does not correspond to the original price as determined by the original seller
9. when selling tickets on the internet for events in Belgium, do not mention that, and by how much, they have increased the original price
10. through the results of the ranking obtained by search engines on the internet, pretend to be the original sellers and/or official sales point for the tickets they sell for events in Belgium
11. when offering event tickets for events in Belgium, do not mention, in print that is at least as large, before the actual offer and on the same page as the offer, that they are not the original sellers and/or that they are acting as resellers of event tickets,

- a declaration that the practices found infringe the provisions of Article[s] [1]4§1, 5§1 and 5§2 of the wet van 30 juli 2013 betreffende de verkoop van toegangsbewijzen tot evenementen (Law of 30 July 2013 regarding the sale of admission tickets to events) and of Articles VI.100, VI.97, VI.99 and VI.93 of the WER, if necessary in conjunction with articles 193b to 193g of Book 6 of the Nederlands Burgerlijk Wetboek (Dutch Civil Code), and an order that this cease

- an order for a publication measure in one daily newspaper, one weekly newspaper and in one publication of a consumer organisation and on the home pages of the websites concerned [...] with the respondents ordered to pay the costs

- the imposition of a fine of EUR 10 000.00 for each identified infringement since the handing down of the judgment [**Or.5**]

- a ruling that it will be possible to determine the infringements simply by an official report in accordance with Article XV.2 ff. WER drawn up by a sworn official of the Algemene Directie Economische Inspectie.

[...]

[points relating to the contested judgment]

[...] The original applicants lodged an appeal [...].

They are of the opinion that the court of first instance wrongly declared itself to lack international jurisdiction and they affirm their original claims.

The respondents claim, primarily, that the Appeal is unfounded due to lack of jurisdiction[.]

At the hearing of 22 November 2018 the matter was dealt with only in relation to the issue of the jurisdiction of the Belgian court.

2. Assessment

1.

At first instance Movic B.V. and Events Belgium B.V. and Leisure Tickets & Activities International B.V. raised a preliminary objection alleging lack of international jurisdiction on the part of the Belgian court.

In the contested judgment the court of first instance declared itself to lack international jurisdiction.

That position was based on the arguments of the current respondents that the current appellants could not invoke the rules of the Brussels Ibis Regulation or of the WIPR because their scope is limited to civil and commercial matters and the claims lodged do not fall within that scope.

In order to reach that decision, the court of first instance ruled that, in bringing the current actions, the current appellants were exercising public powers. **[Or.6]**

2.

Primarily, the appellants rely on European Regulation 1215/2015 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Ibis Regulation). At issue is a transnational dispute in which the original defendants, now the respondents, are Dutch companies without a registered office in the Belgian territory.

The material scope of the Brussels Ibis Regulation is limited to civil and commercial matters. In principle, all civil and commercial disputes fall within the scope of the Regulation except for the exceptions expressly provided for.

The concept of civil and commercial matters must be interpreted autonomously, with the elements which characterise the nature of the legal dispute or the subject matter of the dispute being decisive (see, inter alia, Court of Justice, 11 April 2013, *Sapir and Others*, C-645/11,)[.]

The nature of the legal dispute concerns an action for a prohibitory injunction brought by the Belgian Government (Belgian State, Minister en de Algemene Directie van de Economische Inspectie) against Dutch companies which, from the Netherlands, via websites, focus on a mainly Belgian clientele for the resale of tickets for events taking place in Belgium.

The appellants allege that the respondents are infringing the wet van 30 juli 2013 betreffende de verkoop van toegangsbewijzen tot evenementen and are not informing consumers sufficiently and/or are misleading them, and that infringements of the provisions of Book VI WER have also been committed.

Disputes between a public authority and a person governed by private law may also be covered by the concept of ‘civil and commercial matters’ unless the public authority is acting in the exercise of its public powers (see, inter alia, CJEU, 14 October 1976, 29/76 *LTU v Eurocontrol*, CJEU 14 November 2002, C-271/00 *Gemeente Steenbergen*).

The respondents maintain that, since in essence the current dispute is an action for a prohibitory injunction brought by a Belgian public authority, it does not fall within the material scope of the Brussels Ibis Regulation on the ground that in the present case the public authority is acting in the exercise of its public powers.

They argue that the Belgian authorities are not pursuing their own interests nor enforcing their own rights, but are acting in the ‘general interest’ and in so doing derive their power from the fact that they are public authorities. [Or. 7]

3.

The appellants rely on Article 14§1 of the wet van 30 juli 2013:

‘§1

The voorzitter of the rechtbank van koophandel — now the ondernemingsrechtbank [-] shall determine the existence and order the cessation of an act that infringes the provisions of Article 5. The application for an injunction shall be brought by:

1° the Minister;

2° the directeur-generaal van de algemene directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie;

3° the interested parties.

The voorzitter of the rechtbank van koophandel [-] now the ondernemingsrechtbank [-] can order that his decision or the summary thereof that he draws up shall be displayed or made public in some other way during the period determined by him and at the expense of the offender. Such disclosure measures of disclosure may only be imposed if they are capable of contributing to the cessation of the act or its effects’.

They also rely on Article XVII.7 WER with respect to the infringements of the provisions of Book VI WER:

‘An action based on Article XVII.7 shall be instituted at the request of:

1° the interested parties;

2° the Minister responsible for this matter or the directeur-generaal van de algemene directie Controle en Bemiddeling van de FOD Economie, K.M.O., Middenstand en Energie, unless the request relates to an act as referred to in Article VI.104;

3° a public authority that regulates a profession, a professional or interprofessional association with legal personality;

4° an association which protects the interests of consumers which has legal personality and in so far as it is represented in the [...] [Special Advisory Commission for Consumer Affairs] [...] or recognised by the Minister, in accordance with criteria established by a koninklijk besluit (royal decree), established after consultation in the Ministerraad (Council of Ministers), unless the request relates to an act as referred to in Article VI.104.

By way of derogation from the provisions in Articles 17 and 18 of the Gerechtelijk Wetboek (Judicial Code), the associations referred to in the first paragraph, 3 ° and 4 °, may take legal action to defend their statutorily defined collective interests.' [Or. 8]

4.

A public authority will be deemed to be acting by virtue of public authority if it exercises powers which fall outside the scope of the rules applicable to relations between individuals.

The parties disagree as to whether, in the present case, the exercise of the powers of a public authority to institute legal proceedings for the purpose of curbing infringements of the wet van 30 juli 2013 betreffende de verkoop van toegangsbewijzen tot evenementen and the provisions of the WER, book VI [,] in a transnational situation, may or may not constitute an act by virtue of public authority.

The appellants argue that they are not defending any public authority interests in the dispute in respect of the respondents, but rather, a general interest by promoting respect for the regulation of commercial practices which in turn seeks to protect the private interests of both businesses and consumers and which is governed by common law rules applicable in the relationship between individuals.

In their view, therefore, an action for a prohibitory injunction does not concern the exercise of a public authority prerogative, so that consequently the dispute fits within the scope of civil and commercial matters of the Brussels Ibis Regulation.

The respondents, on the other hand, maintain that the appellants are acting on the basis of powers which are based on provisions by which the national legislature conferred on the public authorities a prerogative of their own, by which they,

unlike an ordinary individual or company, can institute proceedings for a prohibitory injunction without having their own interest in the matter. They maintain that the appellants are therefore acting on the basis of their public authority, since they are not themselves affected.

For that reason, the dispute does not fall within the scope of the Brussels Ibis Regulation.

5.

Given that the existing case-law of the Court of Justice does not seem to be applicable to the specific situation in the current dispute and given the importance of a uniform application of European Union law, the Hof van beroep considers it appropriate to refer a question to the Court of Justice for a preliminary ruling.

The answer to the question referred seems necessary to enable it to settle the objection raised regarding international jurisdiction under European treaty law. **[Or. 9]**

3. Decision

[...] [procedural points]

Before giving judgment in accordance with Article 267 of the Treaty on the Functioning of the European Union (TFEU), the Hof van beroep will refer the following question to the Court of Justice of the European Union for a preliminary ruling:

'Is an action concerning a claim aimed at determining and stopping infringing market practices and/or commercial practices towards consumers, instituted by the Belgian Government in respect of Dutch companies which from the Netherlands, via websites, focus on a mainly Belgian clientele for the resale of tickets for events taking place in Belgium, pursuant to Article 14 of the wet van 30 juli 2013 betreffende de verkoop van toegangsbewijzen tot evenementen (Law of 30 July 2013 regarding the sale of admission tickets to events) and pursuant to Article XVII.7 WER, a civil or commercial matter within the meaning of Article 1(1) of the European Regulation 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and can a judicial decision in such a case, for that reason, fall within the scope of that Regulation?'

[...]

[closing formula, signatures administrative notices]