SUMMARY

# ECJ 21 June 2018, C-1/17 (Petronas Lubricants), Private international law, Competency<br />
 

***<p>An employer may lodge a counterclaim at the forum chosen by the employee even if the counterclaim does not arise in relation to its own legal rights but is assigned to it after the employee has commenced proceedings.<br />
Petronas Lubricants Italy SpA – v – Livio Guida</p>***

## Facts

Mr Guida was employed by PL Italy and at a certain point posted to the affiliated Polish company, PL Poland. In 2014, Mr Guida's parallel employment contracts with these two companies were terminated among allegations of wrongly-claimed reimbursements. Mr Guida, who is domiciled in Poland, sued his Italian employer in Italy for wrongful dismissal. PL Italy later brought a counterclaim for repayment of sums it said Mr Guida had wrongfully received, but this was based, not on its own legal rights, but on an assignment to it of claims by PL Poland, made after the original proceedings had started. Mr Guida argued that under Article 20(1) and (2) and Article 6(3) of Regulation No 44/2001 (Brussels Regulation), the Italian court lacked jurisdiction to hear the counterclaim.

## Legal background

The case revolves around the Brussels Regulation (Regulation No 44/2001). There is a recast version of this Regulation (Regulation No 1215/2012) with similar wording, but the original Regulation applies to the case at hand, as the proceedings were initiated before 10 January

2015. However, the outcome of the case is also relevant for the Recast Regulation.

Article 20(1) of the Brussels Regulation states that an employer can only bring a claim against an employee in the court of the Member State in which the employee is domiciled. In this case, this would mean that PL Italy could only bring the claim for repayment of the sums it said Mr Guida had wrongfully received before the Polish court, as Mr Guida was domiciled in Poland. However, Article 20(2) contains an exception to the rule, allowing the employer to bring a counterclaim in the courts chosen by the employee, which, in this case, were the Italian courts. Moreover, Article 6(3) of the Brussels Regulation states that a party can also be sued via a counterclaim arising from the contract or facts on which the original claim was based in the court in which the original claim is pending – which, again, would be Italy. The dispute in this case revolves around the question of whether that exception is also available for counterclaims assigned to the employer after the commencement of proceedings.

**National proceedings**

The District Court of Turin found Mr Guida's dismissal unfair and held that it did not have jurisdiction to hear the counterclaim brought by PL Italy. It took the view that the exception in Article 20(2) applied only if an employer was claiming in relation to its own legal rights, and did not apply if the employer was asserting claims that acquired from elsewhere. PL Italy appealed against the judgment in relation to the counterclaim to the Court of Appeal of Turin. This Court decided to refer a question to the ECJ.

Question put to the ECJ (rephrased by the ECJ)

Must Article 20(2) of the Brussels Regulation be interpreted as meaning that an employer has the right to bring a counterclaim after commencement of the original proceedings, based on a claim-assignment agreement between the employer and the holder of that claim, before the court which is properly seised of the original proceedings brought by the employee?

**ECJ's findings**

The ECJ first recalled that the objective of the rules relating to contracts of employment within the Brussels Regulation was to protect the weaker party to the contract by means of rules of jurisdiction that were more favourable to his or her interests. However, it is apparent from the wording of Article 20(2) that this should not affect the employer's right to bring a counterclaim in the court in which the original claim is pending. Provided the choice of court made by the employee is respected, the objective of favouring the employee is achieved and there is no reason to limit the possibility of examining both the claim and counterclaim.

However, a counterclaim can only be brought in the court chosen by the employee if it fulfils the more specific requirements of Article 6(3) of the Regulation (as this concept is not defined in Article 20(2) itself). According to Article 6(3), the counterclaim must have arisen from the contract or facts on which the original claim was based. The ECJ refers to prior case law (Kostanjevec, C-185-15) which illustrates that both claims must have 'a common origin'. This may be found in a contract or from the facts. In this case, Mr Guida's dismissal arose from the same facts as those underlying the counterclaim brought by PL Italy – and it therefore did not matter that the counterclaim had in fact been assigned to the employer after the commencement of proceedings.

**Ruling**

Article 20(2) of the Brussels Regulation must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, an employer has the right to bring a counterclaim before a court properly seised of the original claim by the employee, based on a claim-assignment agreement concluded after commencement of the original proceedings and made between the employer and the original holder of that claim.

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**Creator**: European Court of Justice (ECJ)
**Verdict at**: 2018-06-21
**Case number**: C-1/17