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Jurisdiction	Finland
Tribunal	Korkein oikeus (Finnish Supreme Court)
Date of the decision	14 October 2005
Case no./docket no.	2005:114/S2004/50
Case name	<i>Log house case</i>

Translation by Sami Koponen ***

Facts

Company A, [Seller] whose business was located in Finland, had sold a log house package to a German [Buyer]. On the same day, the [Seller] and the [Buyer] had entered into an agency agreement under which the [Buyer] would act as a sales representative of the [Seller] in Germany, marketing the log houses manufactured by the [Seller]. The house that was the subject of the sale was intended not only as an apartment for the [Buyer] and his family, but also as a so-called model house in the above-mentioned representation activities.

The [Seller] raised a claim against the [Buyer] in Finland, at the court of [Buyer's] place of residence, for unpaid purchase price of the house package.

The question concerning the jurisdiction of the court, and in particular, whether the house supply contract was connected with the [Buyer's] business activities in such a way that the case could not be considered to be a matter of consumer protection in accordance with the meaning of Article 13 of the Brussels Convention. Further, the case also included the question which court was to be regarded as the court of the place where the obligation referred to in the claim was fulfilled under Article 13(1), and under which law the latter question was to be assessed.

* All translations should be verified by cross-checking against the original text. For purposes of this translation, Claimant, a Finnish Company, is referred to as the [Seller]; Respondent, a German private person, is referred to as the [Buyer].

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Seller's arguments in the Court of First Instance

Claim in the District Court of Heinola

In its claim against the [Buyer], the [Seller] stated that the parties had concluded an agency agreement in Germany on 18 February 2000, according to which the [Buyer] would be responsible for marketing the log houses manufactured by the [Seller] in a certain economic area. Concerning the mentioned agency agreement, the parties had concluded a separate contract on the same day for the supply of a log house construction package to the [Buyer]. The price of the construction package was DEM 311.500, of which the [Buyer] was granted a discount of DEM 80.000 on the basis of the agency agreement which stated that the house was a model house which would be presented by the [Buyer] to its customers.

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The [Seller] had been responsible for the delivery of the construction package to Germany. The [Buyer] was responsible for the erection of the house. According to the contract, the house was delivered in several instalments, and before the delivery of each instalment the [Buyer] would pay the corresponding part of the purchase price. This was also the followed procedure for the first two instalments. After the first two instalments, the [Buyer] failed to pay DEM 97.346 for the delivery of the last instalment.

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The [Seller] claimed that the [Buyer] shall be ordered to pay the [Seller] the unpaid purchase price of DEM 97.346 as well as the so-called «model house discount» of DEM 80.000 which the [Buyer] had unduly received, both with accrued interest.

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Buyer's arguments in the Court of First Instance

The [Buyer] disputed the claim and requested firstly, that the claim should be ruled as inadmissible and, in the alternative, that it should be dismissed. The [Buyer's] claims were based on a house supply agreement made in Germany. The house had been delivered to Germany. The agreement did not contain a choice of jurisdiction clause. The fact that there was a choice of jurisdiction clause in the agency agreement which was concluded between the same parties on the same day as the house supply contract, did not give jurisdiction to the District Court of Heinola to hear the dispute arising out of the house supply contract. German court had the general jurisdiction to hear the dispute.

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The [Buyer] had merely received a discount of just under DEM 14.000 on the purchase price, and the discount was not based on the agency agreement between the parties. The discount had been the result of the price negotiations between the parties.

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The decision rendered by the Court of First Instance

The District Court separately decided the question of whether it had the jurisdiction to hear the claim of the [Seller].

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Choice of jurisdiction clause

On the following grounds, the court held, contrary to the views of the [Seller], that the parties had not agreed on the jurisdiction of the District Court of Heinola under the house supply contract.

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International jurisdiction of the court

The international jurisdiction of the District Court in the present case was based on the Brussels Convention on the jurisdiction and the enforcement of judgments in civil and commercial matters. The Council Regulation EC N. 44/2001, replacing the Brussels Convention, on the jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels I Regulation) entered into force on 1 March 2001 and it was applied only to proceedings which were started after the entry into force of the mentioned Regulation. Article 5(1) of the Brussels Convention stipulates that a person domiciled in a Contracting State may, in another Contracting State, be sued, in matters relating to a contract, in the courts for the place of performance of the obligation in question. In the present case, the obligation of the [Buyer] was the payment of the purchase price.

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For the reasons stated, the District Court held that the place where the obligation was to be fulfilled had not been expressly agreed.

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In such a case the place of performance of the obligation would be determined according to the applicable law. The applicable law on the other hand is determined on the basis of the conflict-of-law rules. The contract is primarily governed by the law agreed by the parties (choice of law reference). The [Seller] argued that the parties had agreed that Finnish Law would be applied to the house supply contract. The District Court held that the parties had not, by agreeing that the agency agreement would be governed by Finnish law, intended that Finnish law would also govern the house supply contract.

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In the absence of an agreement regarding the applicable law, the applicable law was determined on the basis of the conflict-of-law rules. According to the District Court, the law applicable to the contractual obligations was to be determined under the 1980 Rome Convention. The District Court considered that, on the basis of Article 4(2) of the Rome Convention, the house supply contract should be governed by Finnish law. According to the Finnish law, unlike the German law, cash debt is to be paid at the creditor's place of business. Therefore, according to the Article 5(1) of the Brussels Convention, the claim could be assessed by the District Court of Heinola.

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However, Article 5 of the Rome Convention also contains provisions governing consumer contracts. According to subparagraph 1 of Article 5, the article is applied to a contract the object of which is the supply of goods to a person («the consumer») for a purpose which can be regarded as being outside his trade or profession. It follows from subparagraph 3 of Article 5 that notwithstanding the provisions of Article 4, a contract to which this Article applies shall, in the absence of choice of law in accordance with Article 3, be governed by the law of the country in which the consumer has his habitual residence, if the conclusion of the contract was preceded in that State by an express offer to the consumer or advertising, and the consumer had, in that State, taken measures in order to enter into the contract or if the consumer's contractual partner or its representative in the country of origin had received the consumer's order in that country. In the light of the facts presented by the [Buyer] the conditions mentioned latter are fulfilled. Thus, the relevant question is whether the [Buyer] could be regarded as a consumer within the meaning of the Rome Convention. Considering this question, the District Court stated, *inter alia*, the following.

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The house delivered under the house supply contract was not yet ready. The [Buyer] told, that his family intended to move into the house during 2003, after the finishing works of the house had been completed.

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According to the drawings of the house, there was a 79.5 m² detached apartment in the basement floor of the house. The living area of the first floor was 133 m². On the second floor there were two 20 m² rooms intended as office spaces. The upper floor had a living area of 107 m².

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The [Buyer] and his spouse told that according to the German tax code it was advantageous to rent a part of the house, in this case, the basement. The ideal situation would be that a relative would rent the basement apartment. Also, the witnesses heard in the District Court told that the intention of the [Buyer] and his spouse had been to rent out the basement apartment to a relative. The [Buyer] had told them that the rooms on the first floor were, on the one hand, intended for the performance of the duties of the agency agreement and, on the other hand, for work to be performed at home arising from his main job.

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The house supply contract and the agency agreement were linked together in the correspondence between the parties before the conclusion of the contracts. For example, in an email sent by the [Buyer] to the [Seller] on 5 January 2000, the [Buyer] had first asked for an offer on the house and then stated his intention of building a model house and act as the [Seller's] contact person and presentative in the federal state of Hessen. The [Buyer] told that he had first looked for a house to buy on the Internet. The [Buyer] had been in contact with the [Seller] by email. After this, the [Buyer] had been contacted by the [Seller's] representative in Germany. Initially, there had only been discussions concerning the house delivery. In his testimony, the representative told, that the idea about the agency agreement might have been raised by him during the negotiations. At a later stage of the negotiations, the witness had not acted as a representative of the company, but the [Buyer] had negotiated directly with the [Seller's] employees.

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The house supply contract contained a discount of DEM 80.000 categorized as «a model house discount». The [Buyer] had said that the discount was not an actual discount, but it was included in the contract by his request. In the negotiations between the parties, the house had a price of approximately DEM 231.000. In the house supply contract, the price was set at DEM 311.500 and the final price was DEM 231.500, including the model house discount. The above-mentioned way of expressing the final house price in the contract was related to the collateral negotiations between the [Buyer] and the bank. The narrative of the [Seller's] export manager and the afore-mentioned representative who were heard as witnesses were largely in line with the [Buyer's] report. According to the representative, a very large proportion of the house supply contracts contained a condition concerning model house discount and a condition that the [Seller] is entitled to use the house a few times for presentation purposes. According to the representative, the amount of the model house discount was depended on the circumstances.

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According to the [Buyer], the parties had intended that [Buyer] would first build the house and afterwards, as a side activity, represent the [Seller]. In order for the representative sales work to be full-time, he would have to be able to sell 10 houses per year. According to the [Buyer's] spouse, it was clear that, at least at the start, the agency work would be a sideline activity. If the representative activity would expand sufficiently, it might become a full-time activity in the future. The [Seller's] export manager had told that the house had been bought as a residence for the [Buyer's] family. At a later stage, the house was also intended to be used for representation activities in accordance with the agency agreement.

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According to the District Court, the facts presented in the case undisputedly showed that the [Buyer] had acquired the house primarily for the purpose of housing his family. The fact that the separate basement apartment was intended to be rented to an outsider, preferably a relative, did not indicate otherwise. The fact that two rooms were designed and built to the first floor which would possibly be used in future representation activities, did not indicate that the primary use of the house was for a purpose other than housing of the [Buyer's] family. The house supply contract and the agency agreement were linked. Both agreements had been negotiated at the same time and the agreements were signed simultaneously. On the basis of the presented facts, it was not the intention of the parties that the [Buyer] would directly start to represent the [Buyer] and resign from his full-time position. The clause concerning the model house discount in the house supply contract was not an actual discount. If the discount of DEM 80.000 had been actual, the connection between the contracts would have been stronger. The agency activity was never actually started. The disagreements relating to the house supply contract had ended the cooperation of the parties concerning the duties of the agency agreement.

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The company had referred to the Benincasa judgment of the Court of Justice of the European Union (CJEU) of 3 July 1997 as a basis for its position that the [Buyer] should not be regarded as a consumer. According to the judgment, regulations protecting consumers as economically weaker parties are only applied to contracts which are concluded for the satisfaction of a person's private consumption needs. Such protection was not necessary in the case of contracts,

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which were intended for professional activity, even if this activity would only be carried out in the future. According to the District Court, the CJEU's judgment had no relevance in this case. The decisive factor in the case was whether the contract was concluded primarily in the role of a professional businessman or as a consumer. The case would have had relevance in this case only if it was held that [Buyer] concluded the contract primarily in the role of a professional businessman.

On basis of the afore mentioned, the District Court decided that the [Buyer] was a consumer and thus ruled the claim of the [Seller] as inadmissible. 23

The judgment rendered by the Court of Appeal of Kouvola on 13 November 2003

The [Seller] appealed to the Court of Appeal. The Court of Appeal upheld the judgment of the District Court on the following grounds. 24

Jurisdiction of the court

According to the District Court, the question of the international jurisdiction of the court, is to be decided under the rules of the Brussels Convention. Pursuant to Articles 13(1) and 14(2), a contracting party may bring a claim against the consumer only in the courts of the Contracting State in which the consumer is domiciled. 25

The Court of Appeal upheld the district court's decision on the [Buyer's] consumer status. The [Buyer] had bought the house primarily for his family's residence. Thus, when agreeing on the sale, he had primarily been a consumer and only secondarily a professional businessman. The [Seller] should have known this, as the contracting party was the [Buyer's] family. Therefore, the claim relating to this contract had to be brought against the [Buyer's] family in the courts of their domicile. 26

Choice of jurisdiction clause

Taking into account the provisions of Article 15 of the Brussels Convention which restrict the applicability of choice of jurisdiction clauses to consumers, the Court of Appeal upheld the District Court's decision that the parties had not agreed on the competent court for solving the disagreements arising from the house supply contract. 27

[Seller's] appeal in the Supreme Court

The [Seller] was granted a permission to leave an appeal. In its appeal, the [Seller] requested the Supreme Court to annul the Court of Appeal's judgment, and the case to be remitted to the District Court. 28

B responded to the appeal and asked for the appeal to be dismissed.

Interim Measure

At the request of the Supreme Court, the parties submitted their views on the relevance of the CJEU's judgment C-464/01 (Gruber) and the Vienna Convention of 11 April 1980 on the Convention on Contracts for the International Sale of Goods regarding the assessment of court's jurisdiction.

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Judgment of the Supreme Court**Background**

1.

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The [Seller] and the [Buyer] had concluded a contract in Germany on 18 February 2000 for the sale of the [Seller's] log house construction package manufactured in Finland to the [Buyer's] family in Germany. In the same context, the [Seller] and the [Buyer] had concluded an agency agreement under which the [Buyer], as the [Seller's] sales agent, was to market the log houses manufactured by the [Seller] in a certain area of Germany. The parties intended that the log house sold to the [Buyer] would serve as a house for the [Buyer] and his family, but also as a model house when the [Buyer] was conducting representation activities for the [Seller]. In its claim against the [Buyer], the [Seller] demanded the [Buyer] to pay the remaining instalment of the purchase price and to return the model house discount granted to the [Buyer].

The question to be solved

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The question in the case is whether, pursuant to the Brussels Convention, the District Court of Heinola has jurisdiction to hear the case against the [Buyer].

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The provisions of the Brussels Convention which apply to the assessment of jurisdiction depend on whether the case in question is to be regarded as a consumer dispute within the meaning of Title II, Section 4 (Articles 13-15) of the Brussels Convention. According to Article 14(2) of the Brussels Convention, contracting party may bring proceedings against a consumer only in the courts of the Contracting State in which the consumer is domiciled. Article 15 of the Brussels Convention provides that the parties can derogate from the provisions of Section 4 by agreement only in certain situations, which are not present in this case.

Is the [Buyer] a consumer in accordance with the Brussels Convention?

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The [Seller's] argues, that the [Buyer] cannot be regarded as a consumer within the meaning of the Brussels Convention. Therefore, the parties could have validly agreed on a jurisdiction. The [Buyer] argues that he concluded the contract at issue as a consumer. The lower instances have held that, when concluding the contract, the [Buyer] was primarily a consumer within the meaning of the Brussels Convention and that the proceedings must therefore be brought in the Contracting State in which the [Buyer] is domiciled.

5.

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According to Article 13 of the Brussels Convention, consumer protection is at stake when the matter concerns a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession. The CJEU has consistently held in its jurisprudence that consumer protection is a matter which must be assessed under the rules and objectives of the Brussels Convention and not under a particular national law (e.g., Case 150/77 Bertrand, judgment of 21 June 1978, ECR 1978, p. 1431, 14-16, Case C-89/91 Shearson Lehman Hutton [1993] ECR I-139, paragraph 13, Case C-269/95 Benincasa [1997] ECR I-3767, paragraph 12, Case C-99/96 Mietz, judgment of 27 April 1999, ECR 1999, p. I-2277, paragraph 26 and Case C-96/00, Gabriel, judgment of 11 July 2002, [2002] ECR I-6367, paragraph 37, and Case C-464/01 Gruber, judgment of 20 January 2005, paragraph 31). On this basis, when assessing the question of jurisdiction in consumer protection disputes, the CJEU has also, in some of its judgments, referred to the well-established general principle of Brussels Convention, that the court of the Contracting State in which the defendant is domiciled has international jurisdiction, unless provided otherwise. Any interpretation of jurisdiction departing from this general principle must not go further than the cases provided for in the Brussels Convention (for example, Benincasa judgment, paragraph 13).

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The special system of consumer disputes, established in the Title II, Section 4 (Articles 13-15) of the Brussels Convention, was intended to provide adequate protection for consumers, taking into account the fact that the consumer is considered to be economically weaker and legally in a less experienced position compared to the business professional acting as the contracting party (cf., for example, Gabriel, cited above, paragraph 39). In the Benincasa judgment (cited above), the CJEU held, that pursuant to the wording and purpose of Article 13 of the Brussels Convention, and also taking into account the relevant case-law, a consumer is understood to mean only a private consumer who is not engaged in a commercial or professional business activity. The concept of consumer must therefore be interpreted restrictively. The wording and purpose of Articles 13-15 make it clear that the provisions of those articles, the special system of protection which they establish, applies only to contracts which are concluded separately from any existing or future professional activity. Therefore, the CJEU held

that the concept of consumer under the Brussels Convention could not be extended to a claimant who had concluded a contract for the purpose of pursuing a future professional activity (Benincasa, paragraphs 15-19).

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In Gruber, the CJEU held (paragraph 54 of the judgment) that a person who has concluded a contract for a good which is partly used for his professional business, does not have the right to rely on the specific jurisdiction provisions of Articles 13-15 of the Brussels Convention, unless the purpose of his professional business is of secondary importance i.e., of minor nature taking into account the professional business as a whole. According to the judgment, the fact that a non-professional purpose is the primary or principal purpose does not have effect in this respect.

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In the present case, it is undisputed that on the same day, the parties concluded the house supply contract and the agency agreement, pursuant to which the [Buyer] was to become the [Seller's] sales representative in Germany. The house package delivered to the [Buyer] was intended to serve as a model house of the [Seller] in the [Buyer's] representative activity. The house supply contract and the agency agreement were negotiated and signed simultaneously. As the lower courts have considered, it is obvious that the [Buyer] acquired the house mainly and primarily for residential use. Nevertheless, the connection of the delivery of the house to the business between the [Buyer] and the [Seller] had been expressly agreed in connection with the supply of the house, so that the house was to be used as a model house for the [Buyer's] representation activity under the agency agreement and that some part of the premises, although apparently a smaller part than the residential part, was even intended to be used in the representation activities. Therefore, the connection of the house delivery to a business activity agreed between the [Buyer] and the [Seller] cannot be regarded as of «minor nature» taking into account the contractual context as a whole, within the Gruber judgment of the CJEU. The fact that the agency business between the [Buyer] and the [Seller] had never started because of the disagreements between the parties is, in light of the Benincasa judgment, irrelevant when assessing whether the matter in question must be regarded as a dispute concerning consumer protection within the meaning of the Brussels Convention.

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Thus, the Supreme Court considers that the contract for the supply of a house is related to the [Buyer's] business activities in such an extent that the [Buyer] cannot be regarded as a consumer within the meaning of Article 13 of the Brussels Convention. Therefore, the jurisdictional provision in Article 14(2) of the Brussels Convention does not prohibit bringing proceedings in a court other than that the court of the State in which the [Buyer] is domiciled.

What is considered as the place of performance of the obligation under the Brussels Convention?

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According to Article 5(1)(1) of the Brussels Convention, a claim concerning a contract can be brought in the courts of the place of performance of the obligation in question. Therefore, the question is, which law determines the place where the obligation in the claim is to be performed. In that regard, the district court held that the place was to be determined on basis of the Convention of 19 June 1980 on the law applicable to contractual obligations (Rome Convention)

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The Supreme Court finds that, pursuant to Article 21 of the Rome Convention, the Rome Convention does not preclude the application of international agreements to which the Contracting State is, or becomes a party. Both Finland and Germany are parties to the Vienna Convention on Contracts for the International Sale of Goods of 11 April 1980 (hereinafter referred to as the «CISG»). It follows from Article 1(1) of the CISG that the Convention shall apply to contracts relating to the sale of goods, *inter alia* between contracting parties having their places of business in different Contracting States. In such a case, the CISG must be applied, regardless of the law that would be applied on basis of the rules of private international law. Consequently, the Supreme Court considers that the CISG is applicable in this case.

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According to Article 2(a) of the CISG, the Convention is not applied to private, so-called consumer sales, i.e., sales of goods purchased for personal, family or household use, unless the seller did not know and should not have known at the time of or before the conclusion of the contract that the goods were being purchased for such use. In view of the drafting history of the Article, it is reasonable to interpret that this limitation of the scope of the CISG means that the CISG also applies to sale of goods which is partly connected with the buyer's business and partly for private use within the meaning of Article 2(a), irrespective of which of the activities is to be regarded as the principal or main purpose. The role of the main purpose of the purchased goods was also explicitly envisaged in the drafting phase of the provision but this proposal was rejected. It was considered that Article 2(a) of the CISG should be interpreted restrictively, so that this provision would only apply to situations where the goods purchased were intended exclusively for private use (see Peter Schlechtriem, Commentary on the UN Convention on the International Sale of Goods (CISG), 1998, p. 32, and Jan Ramberg - Johnny Herre, *Internationella köplagen (CISG)*, 2004, p. 93).

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It has been established above that the sale of the house in question was also connected with the business activity to be started at a later date, between the [Seller] and the [Buyer], even though the main purpose of the purchase of the house was to provide housing for the [Buyer's] family and the agency activity had not yet even begun. However, for the purposes of Article 2(a) of the CISG, the decisive factor is the intended purpose of the goods and not the actual use of the goods. Therefore, the Supreme Court considers that the contract for the supply of house between the parties was not subject to the limitation of Article 2(a) of the CISG. Thus, the CISG is applicable, according to which the obligation to pay the purchase price is determined.

14.

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According to Article 57(1)(a) of the CISG, if the buyer is not obliged to pay the purchase price at another specific place, he must pay it to the seller at the seller's place of business. The purchase price referred to in the claim must therefore be paid at the place of business of the [Seller], i.e. in Heinola.

Conclusion

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Since the claim concerns a matter relating to a private contract, and the contractual obligation is enforceable within the jurisdiction of the Heinola District Court, the Supreme Court holds that, pursuant to Article 5(1) of the Brussels Convention, the said District court has jurisdiction to hear the [Seller's] claim. Therefore, the fact whether the parties have agreed on the jurisdiction of the said court or whether the payment is to be made in Heinola, are not relevant in this case.

Judgment of the Supreme Court

The judgments of the Court of Appeal and the District Court are annulled. The matter is remitted to the District Court of Heinola, which shall lawfully take up the matter on his own initiative and, taking into account the reason for the remittance.

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