JUDGMENT OF THE COURT (Grand Chamber)

17 January 2006 *

In Case C-1/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesgerichtshof (Germany), made by decision of 27 November 2003, received at the Court on 2 January 2004, in the proceedings

Susanne Staubitz-Schreiber

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and J. Malenovský, Presidents of Chambers, A. La Pergola, J.-P. Puissochet (Rapporteur), R. Schintgen, N. Colneric, S. von Bahr, J. Klučka, U. Lõhmus and E. Levits, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

* Language of the case: German.

after considering the observations submitted on behalf of:

— the German Government, by A. Tiemann, acting as Agent,

— the Netherlands Government, by H.-G. Sevenster and N.A.J. Bel, acting as Agents,

— the Commission of the European Communities, by S. Grünheid and A.-M. Rouchaud-Joët, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 September 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) ('the Regulation').

2 The reference was made in the course of proceedings brought before the Bundesgerichtshof by Ms Staubitz-Schreiber ('the applicant in the main proceedings') after her application to open insolvency proceedings ('Insolvenzverfahren') was dismissed by the Amtsgericht-Insolvenzgericht Wuppertal and subsequently, on appeal, by the Landgericht Wuppertal.

Legal background

3 According to the fourth and sixth recitals in the preamble, the Regulation defines the rules of jurisdiction for opening insolvency proceedings with cross-border effects and for judgments which are delivered directly on the basis of such proceedings and are closely connected with them. It also contains provisions regarding the recognition of those judgments and the applicable law, and in particular aims to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position.

4 It follows from the 12th recital in the preamble to the Regulation that the latter provides for the main insolvency proceedings to be opened in the Member State where the debtor has the centre of his main interests. Those proceedings have universal scope and aim in principle at encompassing all the debtor's assets, subject, in particular, to the opening of parallel secondary proceedings in the Member State or States in which the debtor has an establishment, the effects of which are limited to the assets located in that State or those States.

5 According to Article 1(1), the Regulation is to apply, subject to special cases set out in paragraph 2, 'to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator'.

6 Under Article 2 of the Regulation:

'(a) "insolvency proceedings" shall mean the collective proceedings referred to in Article 1(1). These proceedings are listed in Annex A;

...

(d) "court" shall mean the judicial body or any other competent body of a Member State empowered to open insolvency proceedings or to take decisions in the course of such proceedings;

(e) "judgment" in relation to the opening of insolvency proceedings or the appointment of a liquidator shall include the decision of any court empowered to open such proceedings or to appoint a liquidator;

(f) "the time of the opening of proceedings" shall mean the time at which the judgment opening proceedings becomes effective, whether it is a final judgment or not;

...'

7 Article 3 of the Regulation lays down the following rules on international jurisdiction:

'1. The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary.

2. Where the centre of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2 shall be secondary proceedings. These latter proceedings must be winding-up proceedings.

4. Territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:

(a) where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the centre of the debtor's main interests is situated; or

(b) where the opening of territorial insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the Member State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.'

8 Article 4(1) of the Regulation states that the law applicable to the insolvency proceedings and their effects 'shall be that of the Member State within the territory of which such proceedings are opened, hereafter referred to as the "State of the opening of proceedings"'. Several exceptions to the law of the State of the opening of proceedings are, however, provided for by Articles 5 to 15 of the Regulation.

9 Under Article 16(1) of the Regulation, '[a]ny judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings. This rule shall also apply where, on account of his capacity, insolvency proceedings cannot be brought against the debtor in other Member States'.

10 According to Article 17(1) of the Regulation, '[t]he judgment opening the proceedings referred to in Article 3(1) shall, with no further formalities, produce the same effects in any other Member State as under this law of the State of the opening of proceedings, unless this Regulation provides otherwise and as long as no proceedings referred to in Article 3(2) are opened in that other Member State'.

11 Article 38 of the Regulation provides that '[w]here the court of a Member State which has jurisdiction pursuant to Article 3(1) appoints a temporary administrator in order to ensure the preservation of the debtor's assets, that temporary administrator shall be empowered to request any measures to secure and preserve any of the debtor's assets situated in another Member State, provided for under the law of that State, for the period between the request for the opening of insolvency proceedings and the judgment opening the proceedings'.

12 Pursuant to the transitional provisions, Article 43 of the Regulation provides, under the heading 'Applicability in time':

'The provisions of this Regulation shall apply only to insolvency proceedings opened after its entry into force. Acts done by a debtor before the entry into force of this Regulation shall continue to be governed by the law which was applicable to them at the time they were done.'

13 Article 44 of the Regulation also provides, under the heading 'Relationship to Conventions':

'1. After its entry into force, this Regulation replaces, in respect of the matters referred to therein, in the relations between Member States, the Conventions concluded between two or more Member States ...

2. The Conventions referred to in paragraph 1 shall continue to have effect with regard to proceedings opened before the entry into force of this Regulation.

...'

14 Pursuant to Article 47, the Regulation entered into force on 31 May 2002. Annex A mentions the 'Insolvenzverfahren' in German law as insolvency proceedings referred to in Article 2(a) of the Regulation.

The dispute in the main proceedings and the question referred for a preliminary ruling

15 The applicant in the main proceedings was resident in Germany where she operated a telecommunications equipment and accessories business as a sole trader. She ceased to operate that business in 2001 and requested, on 6 December 2001, the opening of insolvency proceedings regarding her assets before the Amtsgericht-Insolvenzgericht Wuppertal. On 1 April 2002, she moved to Spain in order to live and work there.

16 By order of 10 April 2002, the Amtsgericht-Insolvenzgericht Wuppertal refused to open the insolvency proceedings applied for on the ground that there were no assets. The appeal brought by the applicant in the main proceedings against that order was dismissed by the Landgericht Wuppertal, by orders of 14 August 2002 and 15 October 2003, on the ground that the German courts did not have jurisdiction to open insolvency proceedings in accordance with Article 3(1) of the Regulation, since the centre of the main interests of the applicant in the main proceedings was situated in Spain.

17 The applicant in the main proceedings brought an appeal before the Bundesgerichtshof in order to have the above orders set aside and the case referred back to the Landgericht Wuppertal. She submits that the question of jurisdiction should be examined in the light of the situation at the time when the request to open insolvency proceedings was lodged, or, in this case, by taking account of her domicile in Germany in December 2001.

18 The national court states, first of all, that the case before it falls, in principle, within the scope of the Regulation, in accordance with Articles 43 and 44(2), since no positive judgment opening insolvency proceedings was delivered prior to the entry into force, on 31 May 2002, of the Regulation.

19 That court goes on to point out that the applicant in the main proceedings moved the centre of her main interests to Spain after she had requested the opening of insolvency proceedings in Germany, but before such proceedings were opened or produced their effects under German law.

20 In those circumstances, the Bundesgerichtshof decided to stay the proceedings before it and to refer the following question to the Court for a preliminary ruling:

'Does the court of the Member State which receives a request for the opening of insolvency proceedings still have jurisdiction to open insolvency proceedings if the debtor moves the centre of his or her main interests to the territory of another Member State after filing the request but before the proceedings are opened, or does the court of that other Member State acquire jurisdiction?'

The question referred for a preliminary ruling

21 The first sentence of Article 43 of the Regulation lays down the principle governing the temporal conditions for application of that regulation. That provision must be interpreted as applying if no judgment opening insolvency proceedings has been delivered before its entry into force on 31 May 2002, even if the request to open

proceedings was lodged prior to that date. That is in fact the case here, since the request by the applicant in the main proceedings was lodged on 6 December 2001 and no judgment opening insolvency proceedings was delivered before 31 May 2002.

22 It follows that, in the case in the main proceedings, the national court must determine whether it has jurisdiction in the light of Article 3(1) of the Regulation.

23 That provision, which states that the courts of the Member State within the territory of which the centre of a debtor's main interests is situated are to have jurisdiction to open insolvency proceedings, does not specify whether the court originally seised retains jurisdiction if the debtor moves the centre of his main interests after submitting the request to open proceedings but before the judgment is delivered.

24 However, a transfer of jurisdiction from the court originally seised to a court of another Member State on that basis would be contrary to the objectives pursued by the Regulation.

25 In the fourth recital in the preamble to the Regulation, the Community legislature records its intention to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position. That objective would not be achieved if the debtor could move the centre of his main interests to another Member State between the time when the request to open insolvency proceedings was lodged and the time when the judgment opening the proceedings was delivered and thus determine the court having jurisdiction and the applicable law.

26 Such a transfer of jurisdiction would also be contrary to the objective, stated in the second and eighth recitals in the preamble to the Regulation, of efficient and effective cross-border proceedings, as it would oblige creditors to be in continual pursuit of the debtor wherever he chose to establish himself more or less permanently and would often mean in practice that the proceedings would be prolonged.

27 Furthermore, retaining the jurisdiction of the first court seised ensures greater judicial certainty for creditors who have assessed the risks to be assumed in the event of the debtor's insolvency with regard to the place where the centre of his main interests was situated when they entered into a legal relationship with him.

28 The universal scope of the main insolvency proceedings, the opening, where appropriate, of secondary proceedings and the possibility for the temporary administrator appointed by the court first seised to request measures to secure and preserve any of the debtor's assets situated in another Member State constitute, moreover, important guarantees for creditors, which ensure the widest possible coverage of the debtor's assets, particularly where he has moved the centre of his main interests after the request to open proceedings but before the proceedings are opened.

29 The answer to be given to the national court must therefore be that Article 3(1) of the Regulation must be interpreted as meaning that the court of the Member State within the territory of which the centre of the debtor's main interests is situated at the time when the debtor lodges the request to open insolvency proceedings retains jurisdiction to open those proceedings if the debtor moves the centre of his main interests to the territory of another Member State after lodging the request but before the proceedings are opened.

Costs

30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the court of the Member State within the territory of which the centre of the debtor's main interests is situated at the time when the debtor lodges the request to open insolvency proceedings retains jurisdiction to open those proceedings if the debtor moves the centre of his main interests to the territory of another Member State after lodging the request but before the proceedings are opened.

[Signatures]