JUDGMENT OF THE COURT (Third Chamber)

9 February 2006 *

In Case C-473/04,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC from the Hof van Cassatie (Belgium), made by decision of 22 October 2004, received at the Court on 9 November 2004, in the proceedings

Plumex

v

Young Sports NV,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J. Malenovský (Rapporteur), A. La Pergola, S. von Bahr and A. Borg Barthet, Judges,

* Language of the case: Dutch.

Advocate General: A. Tizzano,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Finnish Government, by T. Pynnä, acting as Agent,

— the Swedish Government, by A. Falk, acting as Agent,

— the United Kingdom Government, by E. O'Neill, acting as Agent,

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

after hearing the Opinion of the Advocate General at the sitting on 17 November 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 4 to 11 and 14 of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 2000 L 160, p. 37, 'the Regulation').

2 The reference was made in the course of an appeal brought by Plumex against the Hof van Beroep te Gent's dismissal for being out of time of an appeal against a judgment at first instance ruling on a dispute between Plumex and Young Sports NV.

Relevant provisions

Community legislation

3 In the words of the second recital in the preamble to the Regulation, the proper functioning of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

4 The Regulation thus has the objective of improving efficiency and speed in judicial procedures by establishing the principle of direct transmission of judicial and extrajudicial documents.

5 Article 1(1) provides that the Regulation is to apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there.

6 Chapter II of the Regulation contains provisions which provide for various means of transmission and service of judicial documents. It is divided into two sections.

7 Section 1 of that chapter, comprised of Articles 4 to 11, relates to the first method of transmission and service ('service through agencies'), under which a judicial document to be served is first to be transmitted directly and as soon as possible between the agencies designated by the Member States, referred to as 'transmitting agencies' and 'receiving agencies'. Next, the receiving agency is itself to serve that document or have it served, either in accordance with the law of the Member State addressed or in the particular manner requested by the transmitting agency, unless such a method is incompatible with the law of that Member State.

8 Article 7 of the regulation provides that all steps required for service of the document are to be effected as soon as possible.

9 Section 2 of Chapter II of the Regulation provides for '[o]ther means of transmission and service of judicial documents', namely transmission by consular or diplomatic channels (Article 12), service by diplomatic or consular agents (Article 13), service by post (Article 14) and direct service (Article 15).

10 As regards service by post in particular, Article 14 of the Regulation provides:

'1. Each Member State shall be free to effect service of judicial documents directly by post to persons residing in another Member State.

2. Any Member State may specify, in accordance with Article 23(1), the conditions under which it will accept service of judicial documents by post.'

11 According to the information communicated by the Member States in accordance with Article 23 of the Regulation (OJ 2001 C 151, p. 4), as amended, inter alia, by its first update (OJ 2001 C 202, p. 10), the Portuguese Republic has accepted service by post, provided it is made by registered letter with advice of delivery and is accompanied by a translation.

National legislation

12 Under Article 1051 of the Belgian Judicial Code the time-limit for lodging an appeal is one month from service of the judgment.

13 Under the same provision, read in conjunction with Article 55 of the Judicial Code, the time-limit for an appeal is extended by 30 days if one of the parties on which the judgment is served does not reside or have a registered address or an address for service in Belgium, where that party resides in a European country other than the United Kingdom or the countries bordering on Belgium.

14 Article 40(1) of the Judicial Code provides that, as regards persons who do not have a known residence or registered address or address for service in Belgium, the copy of the document is to be sent by the process server by letter registered with the postal service to their residence or their registered address abroad and service is deemed to have been effected when the document is handed to the postal service in return for a certificate of posting, in accordance with the formal requirements under that article.

The main proceedings and the questions referred for a preliminary ruling

15 Plumex, a company incorporated under Portuguese law with a registered office in Portugal, was served at its address in Portugal with a judgment from a Belgian court of first instance delivered in a case between Plumex and Young Sports NV. Service was effected both through agencies and by post.

16 On 17 December 2001, Plumex lodged an appeal against that judgment before the Hof van Beroep. That court dismissed the appeal for being out of time, holding that the time-limit for an appeal provided for in Article 1051 of the Belgian Judicial Code had expired on 11 December 2001 since the period had begun to run on the day on which the first service was validly effected, in this case the service by post.

17 Plumex brought an appeal against that decision before the Hof van Cassatie, claiming that the Regulation had to be interpreted as meaning that service through agencies constituted the primary method of service taking precedence over service by post. Accordingly, the time-limit for an appeal must be calculated from the date of the 'primary' service — which took place after the service by post — since the latter was only 'secondary' service.

18 In those circumstances, the Hof van Cassatie decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the service contemplated by Articles 4 to 11 the primary method of service and service directly by post contemplated by Article 14 a secondary method of service, whereby the former method takes precedence over the latter when both are effected in accordance with the legal requirements?

(2) In the case of service being effected twice, once in accordance with Articles 4 to 11, and once directly by post in accordance with Article 14, does the time-limit for an appeal begin to run against the person on whom service was effected on

the date of the service effected in accordance with Articles 4 to 11 and not on the date of service in accordance with Article 14?'

On the questions referred for a preliminary ruling

The first question

19 By its first question, the national court asks, essentially, whether any hierarchy exists between service through agencies and service by post, whereby the first method takes precedence over the second where both have been validly effected.

20 It must be observed at the outset that there is nothing in the wording of the Regulation to indicate that it introduced a hierarchy between those methods of service. Neither the recitals in its preamble nor its provisions state that a method of transmission and service, used in accordance with the rules of the Regulation, would rank below the method of service through agencies.

21 Moreover, it follows from the spirit and purpose of the Regulation that it is intended to ensure that judicial documents are served effectively, while respecting the legitimate interests of the persons on whom they are served. Although all the methods of service provided for by the Regulation can ensure, as a rule, that those

interests are respected, it must be conceivable, in view of that purpose, to use one or other, or indeed two or more at once of those methods of service which appear the most suitable or appropriate in light of the circumstances of the case.

22 In view of the foregoing, the answer to the first question must be that the Regulation does not establish any hierarchy between service through agencies and service by post and, consequently, it is possible to serve a judicial document by one or other or both of those methods.

The second question

23 By its second question, the national court asks, essentially, to the date of which service must reference be made to determine vis-à-vis the person on whom service is effected the point from which time starts to run for the purposes of a procedural time-limit linked to effecting service where service is being effected both through agencies and by post.

24 In the observations which they submitted to the Court, the Austrian Government and the Commission of the European Communities state that they are uncertain as to whether the Court has jurisdiction to answer that question, since it concerns only the interpretation of national law. Where a Member State makes it possible to serve a judgment in various ways, the time-limit for an appeal starts to run under Belgian law, as a rule, from the first service which was valid. That date is determined in accordance with the law of the Member State addressed and, in any event, in accordance with national law,

25 In that respect, it should be recalled that, according to settled case-law, it is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court. Consequently, where the questions referred involve the interpretation of Community law, the Court is, in principle, obliged to give a ruling (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38, and Case C-18/01 *Korhonen and Others* [2003] ECR I-5321, paragraph 19).

26 The second question relates to the relationship between the various methods of service provided for by the Regulation and it therefore involves the interpretation of Community law.

27 Accordingly, the Court is obliged to give a ruling.

28 As to the substance, first of all it follows from the answer to the first question that no hierarchy exists between service through agencies and service by post.

29 Secondly, in order not to render meaningless the provisions of the Regulation governing those methods of service, all the legal effects which follow when one of those methods is validly effected must be taken into account irrespective of subsequent successful service by another method.

30 Finally, it must be observed that, in accordance with the second recital in the preamble thereof, the Regulation is intended to expedite the transmission of judicial documents for service and, therefore, the conduct of judicial proceedings. If, for the purposes of computing a procedural time-limit, the first service of the document in question is taken into consideration, the person on whom that document is served — to whom such a time-limit applies — is required to defend judicial proceedings earlier, which can enable the competent court to give a ruling within shorter time-limits.

31 It follows from all those considerations that, where service is effected more than once in accordance with the Regulation, account must be taken of the service effected first. There is nothing in the Regulation to preclude the application of such an approach to the relationship between service through agencies and service by post. Accordingly, where service is effected by both those methods, in order to determine vis-à-vis the person on whom service is effected the point from which time starts to run for the purposes of a procedural time-limit linked to effecting service, reference must be made to the date of service by post, where that occurred first.

32 That conclusion does not adversely affect in any way the interests of the person on whom a judicial document is served since the first service validly effected enables him in fact to become acquainted with the document and to have a sufficient period of time in which to defend the proceedings. The fact that he is subsequently served with the same judicial document by a different method does not alter the fact that the first service has already complied with those requirements.

33 The answer to the second question must therefore be that, where service is being effected both through agencies and by post, in order to determine vis-à-vis the person on whom service is effected the point from which time starts to run for the purposes of a procedural time-limit linked to effecting service, reference must be made to the date of the first service validly effected.

Costs

34 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 (Third Chamber) hereby rules:

1. **Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters must be interpreted as meaning that it does not establish any hierarchy between the method of transmission and service under Articles 4 to 11 thereof and that under Article 14 thereof and, consequently, it is possible to serve a judicial document by one or other or both of those methods.**

2. **Regulation No 1348/2000 must be interpreted as meaning that, where transmission and service are effected by both the method under Articles 4 to 11 thereof and the method under Article 14 thereof, in order to determine vis-à-vis the person on whom service is effected the point from which time starts to run for the purposes of a procedural time-limit linked to effecting service, reference must be made to the date of the first service validly effected.**

[Signatures]