ORDER OF THE COURT (Eighth Chamber)

20 November 2009 *

In Case C-278/09,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC from the Tribunal de grande instance de Paris (France), made by decision of 6 July 2009, received at the Court on 22 July 2009, in the proceedings

Olivier Martinez,

Robert Martinez

v

MGN Ltd,

* Language of the case: French.

THE COURT (Eighth Chamber),

composed of C. Toader (Rapporteur), President of the Chamber, P. Kūris and L. Bay Larsen, Judges,

Advocate General: E. Sharpston,
Registrar: R. Grass,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

makes the following

Order

1 This reference for a preliminary ruling concerns the interpretation of Articles 2 and 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 The reference has been made in the course of a dispute between Olivier Martinez and Robert Martinez, resident in France, and the company MGN Ltd ('MGN'), established in the United Kingdom, concerning the determination of the court with jurisdiction to hear an action relating to liability which they have brought against MGN.

Legal context

3 Article 61 EC states:

‘In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

…

(c) measures in the field of judicial cooperation in civil matters as provided for in Article 65 [EC];

…’

4 Article 2 of Regulation No 44/2001 provides:

‘1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.

2. Persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.'

5 Article 5(3) of Regulation No 44/2001 provides:

'A person domiciled in a Member State may, in another Member State, be sued:

…

(3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;

…'

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

6 On 28 August 2008, Olivier and Robert Martinez brought proceedings against MGN before the Tribunal de grande instance de Paris (Regional Court, Paris) seeking an order that that company pay them damages and interest. In their application, they claim to have suffered an infringement of personal rights by reason of the placing on-line of information and photographs on an internet site published by that company.

7 MGN raised an objection that that court lacked jurisdiction, relying on Articles 2 and 5(3) of Regulation No 44/2001. In the company's view, when the medium used for the harmful act is a press publication, that act must be understood as having been committed in all places where that publication is disseminated. Consequently, when the medium is the internet, which is, by reason of its technical characteristics, universally accessible and can be consulted in all Member States, a harmful act such as that at issue in the main proceedings can be regarded as having been committed on the territory of a single Member State only where there is a sufficient, substantial or significant connection to that territory. In the present case, there is no sufficient connection between the disputed on-line publication and the damage alleged on French territory.

8 According to the applicants in the main proceedings, the connection with French territory arises from the fact that Mr Olivier Martinez is French, that the material events took place in France, that those facts necessarily interest the French public and that they are likely to have repercussions in France. They add that, although published in English, the offending article, which was disseminated on the internet, is easily comprehensible to the French public.

9 The answer to the question which national court has jurisdiction to hear the dispute before it not being clear from Articles 2 and 5(3) of Regulation No 44/2001, the Tribunal

de grande instance de Paris decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 2 and Article 5(3) of … Regulation … No 44/2001 … be interpreted to mean that a court or tribunal of a Member State has jurisdiction to hear an action brought in respect on an infringement of personal rights allegedly committed by the placing on-line of information and/or photographs on an internet site published in another Member State by a company domiciled in that second State — or in a third Member State, but in any event in a State other than the first Member State:

— either on the sole condition that that internet site can be accessed from the first Member State,

— or only when there is between the harmful act and the territory of the first Member State a link which is sufficient, substantial or significant and, in that case, whether that link can be created by:

  — the number of hits on the page at issue made from the first Member State, as an absolute figure or as a proportion of all hits on that page,

  — the residence, or nationality, of the person who complains of the infringement of his personal rights or more generally of the persons concerned,

— the language in which the information at issue is broadcast or any other factor which may demonstrate the site publisher's intention to address specifically the public of the first Member State,

— the place where the events described occurred and/or where the photographic images put on-line were taken,

— other criteria?'

The jurisdiction of the Court

10 Under Article 92(1) of the Rules of Procedure, where it is clear that the Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible, the Court may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action.

11 It must be noted that the Tribunal de grande instance de Paris takes as the basis for making its reference for a preliminary ruling Article 267 of the Treaty on the Functioning of the European Union. Since that treaty is not in force, it must be held that, in the current position under Community law, the reference must be deemed to be made on the basis of Articles 68 EC and 234 EC.

12 Article 68(1) EC provides that Article 234 shall apply to Title IV of the EC Treaty where a question on the interpretation of acts of the institutions of the Community based on this Title is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law.

13 In the present case, the reference for a preliminary ruling concerns Regulation No 44/2001, which was adopted on the basis of Article 61(c) EC, which appears in Part Three, Title IV of the EC Treaty. In those circumstances, only a national court or tribunal against whose decisions there is no judicial remedy under national law may request the Court to give a preliminary ruling on the interpretation of that regulation.

14 It is not disputed here in the present case that decisions on jurisdiction taken by the Tribunal de grande instance de Paris in the main proceedings are amenable to appeal under national law.

15 Therefore, as the reference to the Court has not been made by a national court or tribunal as referred to in Article 68 EC, the Court has no jurisdiction to give a preliminary ruling on the interpretation of Regulation No 44/2001.

16 Consequently, Article 92(1) of the Rules of Procedure must be applied and it must be held that the Court clearly has no jurisdiction to rule on the question referred by the Tribunal de grande instance de Paris.

Costs

17 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.

On those grounds, the Court (Eighth Chamber) hereby orders:

The Court of Justice of the European Communities has no jurisdiction to answer the question referred by the Tribunal de grande instance de Paris in Case C-278/09.

[Signatures]