Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

24 September 2019*

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Right to effective legal protection — Legal precedent — Arbitral tribunal — Manifest inadmissibility and lack of jurisdiction of the Court of Justice — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice)

In Case C-185/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj (Arbitral Tribunal of the Arbitration Association at the Cluj Bar, Romania), by a decision of 12 February 2019, received at the Court on 25 February 2019, in the proceedings

KE

v

LF,

THE COURT (Sixth Chamber),

composed of C. Toader, President of the Chamber, A. Rosas and M. Safjan (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 53(2) of the Rules of Procedure of the Court of Justice,

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Article 6(1) TEU and Articles 20 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 It was made in the context of proceedings between KE and LF, two lawyers practising in Romania, concerning the lawfulness of comments that LF posted on his Facebook page about an article published by KE.

* Language of the case: Romanian.

Romanian law

3 Article 30(6) of the Romanian Constitution provides that:

'Freedom of expression may not damage a person's dignity, honour or private life or the right to one's own image.'

4 Article 58 of the Romanian Civil Code, entitled 'Rights relating to personality', provides as follows:

'(1) Everyone has a right to life, health, physical and mental integrity, dignity, one's own image and respect for private life and the other rights of that nature recognised by law.

(2) Those rights are not transferable.'

5 Article 72 of the Romanian Civil Code, entitled 'Right to dignity', provides that:

'(1) Everyone has a right to respect for his or her dignity.

(2) Any damage to a person's honour and reputation without that person's consent or in breach of the limitations laid down in Article 75 is prohibited.'

6 According to Article 252 of the Romanian Civil Code, entitled 'Protection of the human person':

'All natural persons have a right to the protection of the values intrinsic to human beings such as life, health, physical and mental integrity, dignity, privacy and freedom of conscience and scientific, artistic, literary and technical creation.'

7 Article 253 of the Romanian Civil Code, entitled 'Remedies' states that:

'(1) A natural person whose non-material rights have been infringed or threatened can at any time bring proceedings applying for:

(a) a prohibition on performing the unlawful acts, where such acts are imminent;

(b) cessation of the infringement and its prohibition in the future, if it continues;

(c) a finding that the facts that have occurred are unlawful, if the problems they have caused persist.

(2) By derogation from the provisions of paragraph 1, where non-material rights are infringed as a result of exercise of freedom of expression, the court may adopt only the measures under paragraph 1(b) and (c).

(3) Furthermore, a person in respect of whom such rights have been infringed may apply to the court to order the infringer to comply with any measure that the court considers necessary in order to restore the right that has been infringed, such as:

(a) an obligation on the infringer, at its own expense, to publish the judgment against it;

(b) any other measure necessary to end the unlawful act or to remedy the damage caused.

(4) Similarly, the person whose rights have been infringed may apply for damages or, where applicable, a financial remedy for the damage caused to him or her, including non-pecuniary damage, if that damage is attributable to the person who committed the harmful act. In those situations, the right of appeal is subject to extinctive limitation.'

8 According to Article 6 of the Romanian Code of Civil Procedure, entitled 'Right to a fair trial as promptly as conceivably possible':

'(1) Everyone is entitled to have his or her case heard fairly, as promptly as conceivably possible, by an independent and impartial tribunal established by law. The courts must therefore take all the measures authorised by law and ensure that proceedings are conducted swiftly.

(2) The provisions of paragraph 1 will apply *mutatis mutandis* to enforcement proceedings.'

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

9 KE and LF are lawyers and members of the Cluj bar (Romania). KE states that, on 22 February 2018, the *Jurnalul Baroului Cluj* (*Journal of the Cluj Bar*), the journal of the professional association of lawyers belonging to that bar, published an article written by KE, entitled 'Exercitarea dreptului la apărare prin declarații conținând afirmații necorespunzătoare adevărului în fața organelor judiciare' ('Exercise of the rights of the defence before the courts using declarations containing untruthful statements').

10 KE draws attention to the fact that, although initially LF, who is the editor of that journal, had no objection to publication of that scientific article, after it was published, he expressed a number of criticisms, which KE believes are unjustified, culminating in the publication of a post on his Facebook page, the contents of which are not set out in the decision to refer.

11 According to KE, statements of that kind do not in any respect fall within the category of criticism covered by the right to freedom of expression.

12 On 28 January 2019, KE brought an action against LF before the Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj (Arbitral Tribunal of the Arbitration Association at the Cluj Bar, Romania). KE applied to that arbitral tribunal:

– to find that the post that LF published on his Facebook page on 7 January 2019 is unlawful and

– under Article 252(3)(a) and (b) of the Romanian Civil Code, to order LF to publish the judgment on his Facebook page and to continue to publish it for at least as long as the period during which the unlawful post existed on that page.

13 LF asked the Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj (Arbitral Tribunal of the Arbitration Association at the Cluj Bar) to refer a question to the Court of Justice for a preliminary ruling.

14 According to that arbitral tribunal, it is faced with, on the one hand, the duty of the Romanian courts to respond to all the parties' applications and requested remedies, and therefore to a request for a reference to the Court of Justice, and, on the other hand, the fact that it is bound by legal precedent, in so far as that tribunal believes it cannot adopt an outcome that departs from the relevant legal precedent unless it identifies a way to apply the legislation at issue more in conformity with the letter of the law.

15 In those circumstances the Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj (Arbitral Tribunal of the Arbitration Association at the Cluj Bar) stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Must the provisions of the [EU] Treaty, and Article 6(1) in particular, according to which the [European] Union recognises the rights, freedoms and principles set out in the Charter …, which shall have the same legal value as the Treaties, and the provisions of the Charter, in particular Article 20, which establishes that everyone is equal before the law, and Article 47, which establishes that everyone is entitled to a fair hearing, be interpreted as meaning that a Romanian national court is obliged:

– to respond to all the parties' applications and requested remedies and to examine them effectively, because the parties are entitled to expect a specific and explicit response in respect of all the pleas in law that are decisive in determining the case at issue, and

– to be bound by legal precedent, where the legal precedent is a final judgment of the same court, or of a different Romanian national court, in a case in which the national court hearing the case has established that it is relevant to invoke that precedent and finds the cases to be "legally similar", given that the binding nature of that precedent means that a court that finds cases to be "legally similar" can adopt a different outcome only if it justifies its divergent approach on the grounds that it is applying the legislation more in conformity with the letter of the law?'

Admissibility of the request for a preliminary ruling and the jurisdiction of the Court of Justice

16 Under Article 53(2) of the Rules of Procedure of the Court, where the Court clearly has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.

17 That article should be applied in the present case.

18 It needs stating in that respect that the request for a preliminary ruling is manifestly inadmissible under Article 94(c) of the Rules of Procedure, given that it cannot be found from the evidence set out in this request that the request is admissible in the light of the requirement that it must be from a 'court or tribunal' within the meaning of Article 267 TFEU. The Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj (Arbitral Tribunal of the Arbitration Association at the Cluj Bar) has in fact not provided any evidence capable of demonstrating that it is such a court or tribunal.

19 Since it does not appear that the national legislation requires recourse to that tribunal as the only means of settling the dispute in the main proceedings and precludes the parties from recourse to the ordinary courts, that arbitral tribunal should have established why, in the situation under analysis, proceedings had to be brought before it. The decision to refer does not in fact make any mention of the provisions of the Code of Civil Procedure governing official arbitration. This request for a preliminary ruling must therefore be found to be manifestly inadmissible.

20 As regards the jurisdiction of the Court to interpret certain provisions of the Charter, it is worth adding that, even assuming the request to be admissible, there is no evidence in the order for reference to indicate that the objective of the main proceedings concerns the interpretation or application of a rule of Union law other than those set out in the Charter.

21 The context of the question referred is in fact a dispute between two individuals concerning an application for a finding that a post on a Facebook page is unlawful. In those circumstances, the Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj (Arbitral Tribunal of the Arbitration Association at the Cluj Bar) is seeking to apply Article 6(1) TEU and Articles 20 and 47 of the Charter in order to assess a number of procedural obligations.

22 However, under Article 51(1) of the Charter, the provisions of the Charter are addressed to the Member States only when they are implementing EU law. Indeed, according to the Court's settled case-law, the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by European Union law, but not outside such situations (judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 19, and order of 11 January 2017, *Boudjellal*, C-508/16, not published, EU:C:2017:6, paragraph 17).

23 That being so, it must be found, under Article 53(2) of the Rules of Procedure of the Court, that the request for a preliminary ruling made by the Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj (Arbitral Tribunal of the Arbitration Association at the Cluj Bar), by a decision of 12 February 2019, is manifestly inadmissible and that, in any event, the Court clearly lacks jurisdiction to hear and determine that request.

Costs

24 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 (Sixth Chamber) hereby orders:

The request for a preliminary ruling made by the Tribunalul Arbitral de pe lângă Asociația de arbitraj de pe lângă Baroul Cluj (Arbitral Tribunal of the Arbitration Association at the Cluj Bar, Romania), by a decision of 12 February 2019, is manifestly inadmissible and, in any event, the Court of Justice of the European Union clearly lacks jurisdiction to hear and determine that request.

[Signatures]