JUDGMENT OF THE COURT (Sixth Chamber)
26 September 1996 *

In Case C-43/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Högsta Domstolen, Stockholm, for a preliminary ruling in the proceedings pending before that court between

Data Delecta Aktiebolag,

Ronny Forsberg

and

MSL Dynamics Ltd

on the interpretation of Article 6 of the EC Treaty,

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, G. F. Mancini and P. J. G. Kapteyn (Rapporteur), Judges,

* Language of the case: Swedish.

Advocate General: A. La Pergola,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Swedish Government, by Lotty Nordling, Rättschef, acting as Agent,

— the Greek Government, by Panagiotis Mylonopoulos, Legal Adviser in the Special Department for Community Legal Affairs of the Ministry of Foreign Affairs, Galateia Alexaki, Lawyer in that department, and Sofia Shala, Specialist Academic Collaborator in that department, acting as Agents,

— the Irish Government, by Michael Buckley, Chief State Solicitor, acting as Agent, assisted by Feichin McDonagh, BL, and Finola Flanagan, Office of the Attorney General,

— the Commission of the European Communities, by John Forman, Legal Adviser, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 23 May 1996,

gives the following

Judgment

1 By order of 21 February 1995, received at the Court on 24 February 1995, the Högsta Domstolen (Supreme Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the first paragraph of Article 6 of that Treaty.

2 The question was raised in an action for payment for the supply of goods which the English company MSL Dynamics Ltd ('MSL') had brought against the Swedish company Data Delecta Aktiebolag ('Data Delecta') and Mr Forsberg, a Swedish national.

3 As the defendants in the action, which was brought before the Solna Tingsrätt (District Court), Data Delecta and Mr Forsberg applied for security to be furnished by MSL to cover the costs of the judicial proceedings pursuant to Article 1 of Swedish Law 1980:307.

4 Under that provision, a foreign national not resident in Sweden or a foreign legal person wishing to bring an action before a Swedish court against a Swedish national or a Swedish legal person must, on application by the defendant, furnish security to guarantee payment of the costs of the judicial proceedings which the person or company may be ordered to pay. Article 5 of that Law provides, however, that this obligation is not to apply if this is so provided in international conventions binding on Sweden. Government Notice 1991:112 on certain exemptions from the requirement for foreign plaintiffs to furnish security for costs of judicial proceedings does not mention any such convention covering United Kingdom legal persons.

5 Nevertheless, the Solna Tingsrätt refused to grant the application for security for costs on the ground that, in this respect, Law 1980:307 is contrary to Law 1992:794, by which Sweden ratified the Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ('the Lugano Convention'), which has also been ratified by the United Kingdom.

6 On appeal, the Svea Hovrätt (Court of Appeal), applying the principle that a more recent law prevails over an older one, upheld that decision. It observed in particular that the Lugano Convention has the effect of making Swedish judgments directly enforceable in the United Kingdom.

7 Data Delecta and Mr Forsberg appealed against the Svea Hovrätt's decision to the Högsta Domstolen.

8 Considering that the outcome of the proceedings turned on the interpretation of Community law, the Högsta Domstolen stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is it contrary to the EC Treaty — primarily Article 6 (formerly Article 7) — to require a plaintiff who is a United Kingdom legal person to lodge such a security when no such security can be demanded from Swedish legal persons?'

9 By that question, the national court is essentially asking whether the first paragraph of Article 6 of the Treaty precludes a Member State from requiring a legal person established in another Member State, who has brought before one of its own courts an action against one of its own nationals or a company established on its own territory, to lodge security for the costs of those proceedings where no such requirement can be imposed on legal persons established in the first-mentioned State.

Scope of the first paragraph of Article 6 of the Treaty

10 The first paragraph of Article 6 provides that: 'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited'.

11 The first point to be considered, therefore, is whether a provision of a Member State which requires legal persons established in another Member State to furnish security for costs where they wish to bring legal proceedings against one of its nationals or a company established in that Member State, when legal persons from that State are not subject to such a requirement, falls within the scope of application of the EC Treaty.

12 It is settled case-law that, whilst, in the absence of Community legislation, it is for each Member State's legal system to lay down the detailed procedural rules governing legal proceedings for fully safeguarding the rights which individuals derive from Community law, that law nevertheless imposes limits on that competence (Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 42). Such legislative provisions may not discriminate against persons to whom Community law gives the right to equal treatment or restrict the fundamental freedoms guaranteed by Community law (Case 186/87 *Cowan* v *Trésor Public* [1989] ECR 195, paragraph 19).

13 A national procedural rule, such as the one described above, is liable to affect the economic activity of traders from other Member States on the market of the State in question. Although it is, as such, not intended to regulate an activity of a commercial nature, it has the effect of placing such traders in a less advantageous position than nationals of that State as regards access to its courts. Since Community law guarantees such traders free movement of goods and services in the common market, it is a corollary of those freedoms that they must be able, in order to resolve any disputes arising from their economic activities, to bring actions in the courts of a Member State in the same way as nationals of that State.

14 As the Court held in Joined Cases C-92/92 and C-326/92 *Phil Collins and Others* [1993] ECR I-5145, paragraph 27, national legislative provisions which fall within the scope of application of the Treaty are, by reason of their effects on intra-Community trade in goods and services, necessarily subject to the general

principle of non-discrimination laid down by the first paragraph of Article 6 of the Treaty, without there being any need to connect them with the specific provisions of Articles 30, 36, 59 and 66 of the Treaty.

15 It must therefore be held that a rule of domestic civil procedure, such as the one at issue in the main proceedings, falls within the scope of the Treaty within the meaning of the first paragraph of Article 6 and is subject to the general principle of non-discrimination laid down by that article in so far as it has an effect, even though indirect, on trade in goods and services between Member States. Such an effect is liable to arise in particular where security for costs is required where proceedings are brought to recover payment for the supply of goods.

Discrimination within the meaning of the first paragraph of Article 6 of the Treaty

16 In prohibiting 'any discrimination on grounds of nationality', Article 6 of the Treaty requires perfect equality of treatment in Member States of persons in a situation governed by Community law and nationals of the Member State in question.

17 A provision such as the one at issue in the main proceedings manifestly constitutes direct discrimination on grounds of nationality.

18 The Swedish Government considers, however, that the principle of non-discrimination does not preclude a requirement for security to be furnished by a foreign plaintiff if any decision ordering him to pay the costs of proceedings cannot be enforced in the country of his domicile. It argues that, in such a case, the security has the aim of preventing a foreign plaintiff from being able to bring legal proceedings without running any financial risk in the event that he should lose the case.

19 The Swedish Government adds that its national legislation provides, moreover, for various exceptions to the requirement for security, based on the fact that a Swedish defendant may, in some circumstances, obtain a judgment giving leave for enforcement in the country of the plaintiff's domicile, in particular as a result of international conventions ratified by Sweden.

20 That argument cannot be accepted.

21 As the Court held in Case C-20/92 *Hubbard* [1993] ECR I-3777, the right to equal treatment laid down by Community law cannot be made dependent on the existence of international agreements concluded by the Member States.

22 Accordingly, the reply to be given to the national court's question is that the first paragraph of Article 6 of the Treaty precludes a Member State from requiring a legal person established in another Member State, who has brought before one of its own courts an action against one of its own nationals or a company established on its own territory, to lodge security for the costs of those proceedings where no such requirement can be imposed on legal persons established in the first-mentioned State and where the action is concerned with the exercise of fundamental freedoms guaranteed by Community law.

Costs

23 The costs incurred by the Swedish, Greek and Irish Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the

main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Högsta Domstolen by order of 21 February 1995, hereby rules:

The first paragraph of Article 6 of the EC Treaty precludes a Member State from requiring a legal person established in another Member State, who has brought before one of its own courts an action against one of its own nationals or a company established on its own territory, to lodge security for the costs of those proceedings where no such requirement can be imposed on legal persons established in the first-mentioned State and where the action is concerned with the exercise of fundamental freedoms guaranteed by Community law.

Kakouris Mancini Kapteyn

Delivered in open court in Luxembourg on 26 September 1996.

R. Grass C. N. Kakouris

Registrar President of the Sixth Chamber