JUDGMENT OF THE COURT (Fourth Chamber)

20 May 2010 *

In Case C-111/09,

REFERENCE for a preliminary ruling under Articles 68 EC and 234 EC from the Okresní soud v Chebu (Czech Republic), made by decision of 3 February 2009 and received at the Court on 23 March 2009, in the proceedings

Česká podnikatelská pojišťovna as, Vienna Insurance Group

v

Michal Bilas,

* Language of the case: Czech.

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader (Rapporteur), K. Schiemann, P. Kūris and L. Bay Larsen, Judges,

Advocate General: J. Mazák,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Czech Government, by M. Smolek, acting as Agent,

— the German Government, by M. Lumma, acting as Agent,

— the Slovak Government, by B. Ricziová, acting as Agent,

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

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 24 and 26 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 was submitted in the course of proceedings between Česká podnikatelská pojišťovna as, Vienna Insurance Group ('ČPP'), an insurance company established in the Czech Republic, and Mr Bilas, a policyholder domiciled in Slovakia, regarding the payment of an insurance premium.

Legal context

3 The rules of jurisdiction in matters relating to insurance are laid down in Chapter II, Section 3, of Regulation No 44/2001, which comprises Articles 8 to 14 of that regulation.

4 Article 8 of that regulation provides:

'In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 4 and point 5 of Article 5.'

5 Article 12(1) of that regulation provides:

'Without prejudice to Article 11(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.'

6 Article 13 of that regulation provides:

‘The provisions of this Section may be departed from only by an agreement:

(1) which is entered into after the dispute has arisen, or

…’

7 Article 22 of Section 6 of Chapter II of Regulation No 44/2001 sets out rules on ‘Exclusive jurisdiction’.

8 Article 24 of that regulation, contained in Section 7, entitled ‘Prorogation of jurisdiction’, of Chapter II, provides:

‘Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.’

9 Section 8, entitled ‘Examination as to jurisdiction and admissibility’, of Chapter II of Regulation No 44/2001 includes Articles 25 and 26.

10 Article 25 of that regulation provides:

'Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.'

11 Article 26(1) of that regulation states:

'Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.'

12 Article 35 of Regulation No 44/2001, included in Chapter III, entitled 'Recognition and Enforcement', under Section I, itself entitled 'Recognition', reads as follows:

'1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

...

3. Subject to the [provisions of] paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.'

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

13 On 14 April 2008, ČPP brought an action against Mr Bilas before the referring court seeking an order for the payment by the latter of the sum of CZK 1 755, plus default interest, as the premium due under an insurance policy concluded between those parties on 30 May 2002.

14 Having been called on by the Okresní soud v Chebu (Cheb District Court) to submit his observations, Mr Bilas challenged ČPP's claim as to its substance without contesting the jurisdiction of the court seised.

15 In its order for reference, the Okresní soud v Chebu observes that it follows from Regulation No 44/2001 that, where its jurisdiction has not been contested, that court cannot conduct an examination as to its own jurisdiction since the dispute does not fall within the situations provided for in Articles 25 and 26 of that regulation.

16 It also observes that, if it rules on the substance without examining its jurisdiction, its judgment cannot be recognised for the purpose of Article 35 of Regulation No 44/2001. That provision does not allow the recognition in a Member State of a judgment which has not been given by a court with jurisdiction for the purposes of the provisions of Sections 3, 4 and 6 of Chapter II of that regulation. According to the Okresní soud v Chebu, in so far as it was seised in breach of Article 12(1) of that

regulation, it will not be possible for its judgment to be recognised in another Member State.

17 The referring court is accordingly uncertain as to whether that conclusion is correct. It observes that either it should have the possibility to examine its jurisdiction irrespective of Article 26 of Regulation No 44/2001, or it should be able to apply Article 24 of that regulation to its jurisdiction, even though Article 8 of that regulation does not expressly provide for the possibility to apply that provision.

18 Having regard to those considerations, the Okresní soud v Chebu decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Should Article 26 of … Regulation … No 44/2001 … be interpreted as not authorising a court to review its international jurisdiction where the defendant participates in the proceedings, even when the case is subject to the rules on compulsory jurisdiction under Section 3 [of Chapter II] of the Regulation and the application is brought contrary to those rules?

(2) Can the defendant, by the fact that he participates in the proceedings, establish the international jurisdiction of the court within the meaning of Article 24 of … Regulation [No 44/2001] even where the proceedings are otherwise subject to the rules of compulsory jurisdiction in Section 3 [of Chapter II] of the Regulation and the application is brought contrary to those rules?

(3) If the answer to question (2) is in the negative, may the fact that the defendant participates in the proceedings before a court which otherwise under the Regulation

does not have jurisdiction in a case concerning insurance be regarded as an agreement on jurisdiction within the meaning of Article 13(1) of the Regulation?'

On the questions referred

The second question

19 By its second question, the referring court essentially inquires whether Article 24 of Regulation No 44/2001 must be interpreted as meaning that the court seised, where the rules in Section 3 of Chapter II of that regulation are not complied with, has jurisdiction where the defendant enters an appearance and does not contest the court's jurisdiction.

20 That question concerns whether, even for disputes to which the rules of special jurisdiction provided for by Regulation No 44/2001 apply, such as those contained in Section 3 of Chapter II of that regulation in matters relating to insurance, the entering of an appearance by the defendant, who does not contest the jurisdiction of the court seised, amounts to a tacit prorogation of jurisdiction.

21 In this connection, it must be observed that the first sentence of Article 24 of Regulation No 44/2001 provides for a rule of jurisdiction based on the entering of an appearance by the defendant in respect of all disputes where the jurisdiction of the court seised is not derived from other provisions of that regulation. That provision applies also in cases where the court has been seised in breach of the provisions of

that regulation and implies that the entering of an appearance by the defendant may be considered to be a tacit acceptance of the jurisdiction of the court seised and thus a prorogation of that court's jurisdiction.

22 The second sentence of Article 24 of Regulation No 44/2001 provides for exceptions to that general rule. It determines that there is no tacit prorogation of jurisdiction of the court seised where the defendant contests the jurisdiction, thereby expressing his intention not to accept that court's jurisdiction, or where the dispute is one in respect of which Article 22 of that regulation provides for rules on exclusive jurisdiction.

23 That second sentence contains a rule which delimits the scope of the general rule. Consequently, as has been observed by the Czech, German and Slovak Governments, and by the Commission of the European Communities, it must be regarded as an exception and must be interpreted restrictively.

24 It follows that the second sentence of Article 24 of Regulation No 44/2001 cannot be understood as enabling the application of the general rule set out in the first sentence of that article to be excluded in respect of disputes other than those to which it expressly refers.

25 According to the case-law relating to Article 18 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), a provision essentially identical to Article 24 of Regulation No 44/2001, in the situations which are not expressly included in the exceptions provided for in the second sentence of Article 18, the general rule on the tacit prorogation of jurisdiction applies. Ruling in proceedings where the parties had concluded an agreement on jurisdiction, the Court stated that neither the general scheme nor the objectives of that convention provide grounds for the view that the parties are prevented from submitting their dispute to a court other than that stipulated in the agreement (see Case 150/80 *Elefanten Schuh* [1981] ECR 1671, paragraph 10, and Case 48/84 *Spitzley* [1985] ECR 787, paragraphs 24 and 25).

26 Accordingly, since the rules on jurisdiction set out in Section 3 of Chapter II of Regulation No 44/2001 are not rules on exclusive jurisdiction, the court seised, where those rules are not complied with, must declare itself to have jurisdiction where the defendant enters an appearance and does not contest that court's jurisdiction.

27 In its order for reference, the Okresní soud v Chebu inquires whether, by declaring itself to have jurisdiction on the basis of Article 24 of Regulation No 44/2001, where, however, the rules of Section 3 of Chapter II of that regulation were not complied with, its judgment might not be recognised, in accordance with Article 35(1) of that regulation.

28 In this connection, Article 35 provides that a basis for non-recognition is conflict with the rules on special jurisdiction, in particular those on matters relating to insurance, whose aim is to ensure stronger protection of the weaker party.

29 That provision concerns non-recognition of judgments given by a court without jurisdiction which has not been seised in accordance with those rules. It is therefore not applicable where the judgment is given by a court with jurisdiction. That is true, inter alia, of a court seised, even though those rules on special jurisdiction are not complied with, before which the defendant enters an appearance and does not contest that court's jurisdiction. Such a court in fact has jurisdiction on the basis of Article 24 of Regulation No 44/2001. Therefore, Article 35 of that regulation does not prevent the recognition of the judgment given by that court.

30 Accordingly, although in the fields concerned by Sections 3 to 5 of Chapter II of that regulation the aim of the rules on jurisdiction is to offer the weaker party stronger protection (see, in that regard, Case C-463/06 *FBTO Schadeverzekeringen* [2007] ECR I-11321, paragraph 28), the jurisdiction determined by those sections cannot

be imposed on that party. If that party deliberately decides to enter an appearance, Regulation No 44/2001 leaves him the option to defend himself as to substance before a court other than those determined on the basis of those sections.

31 The Czech and Slovak Governments pointed out in their observations that, in order to treat the entering of an appearance by the defendant as amounting to the prorogation of jurisdiction in a dispute such as that in the main proceedings, the defendant, the weaker party, should be put in a position to be fully aware of the effects of his defence as to substance. The court seised should therefore ascertain of its own motion, in the interest of the protection of the weaker party, whether that party's manifestation of intention is in fact deliberate and designed to give that court jurisdiction.

32 Such an obligation could not be imposed other than by the introduction into Regulation No 44/2001 of an express rule to that effect. However, it is always open to the court seised to ensure, having regard to the objective of the rules on jurisdiction resulting from Sections 3 to 5 of Chapter II of that regulation, which is to offer stronger protection of the party considered to be the weaker party, that the defendant being sued before it in those circumstances is fully aware of the consequences of his agreement to enter an appearance.

33 It is apparent from the foregoing that the answer to the second question is that Article 24 of Regulation No 44/2001 must be interpreted as meaning that the court seised, where the rules in Section 3 of Chapter II of that regulation were not complied with, must declare itself to have jurisdiction where the defendant enters an appearance and does not contest that court's jurisdiction, since entering an appearance in that way amounts to a tacit prorogation of jurisdiction.

On the first and third questions

34 In the light of the affirmative answer given to the second question, there is no need for the Court to consider the third question, since it was put by the referring court only in case the second question should be answered in the negative.

35 As regards the first question, concerning the interpretation of Article 26(1) of Regulation No 44/2001, it is sufficient to state that, since it follows from the answer given by the Court to the second question that the referring court must, in the present case, declare that it has jurisdiction under that regulation, an examination of the provision, which, in accordance with its actual wording, may be applied only where the court's jurisdiction is not derived from the provisions of the regulation, would be irrelevant.

Costs

36 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 (Fourth Chamber) hereby rules:

Article 24 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 must be interpreted as meaning that the court seised, where the rules in Section 3 of Chapter II of that regulation were not complied with, must declare itself to have jurisdiction where the defendant enters an appearance and does not contest that court's jurisdiction, since entering an appearance in that way amounts to a tacit prorogation of jurisdiction.

[Signatures]