Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 2 December 2008 — Friedrich Schulze, Jochen Kolenda, Helmar Rendenz v Deutsche Lufthansa AG

(Case C-529/08)

(2009/C 44/52)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Claimants: Friedrich Schulze, Jochen Kolenda, Helmar Rendenz

Defendant: Deutsche Lufthansa AG

Questions referred

1. Can a technical defect which causes a cancellation be an extraordinary circumstance within the meaning of Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 ([1])?

2. If so, does the concept of an extraordinary circumstance in the form of a technical defect include also those faults which affect the airworthiness of the aircraft or the safe completion of the flight?

3. Has the operating air carrier taken all reasonable measures where it has complied with the manufacturer's servicing and maintenance programme for the aircraft in question and with the safety standards and instructions of the competent authority or manufacturer, or where the fault could not have been avoided even if the carrier had complied with that programme or those directions?

4. If the answer to question 3 is in the affirmative, is that sufficient to release the air carrier from its obligation to pay compensation, or is further evidence required that the cancellation, that is to say, the fact of the relevant aircraft being taken out of operation and the cancelling of the flight owing to the lack of a replacement aircraft, would also not have been avoided by the taking of all reasonable measures?

([1]) OJ 2004 L 46, p. 1.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 3 December 2008 — TNT Express Nederland BV v AXA Versicherung AG

(Case C-533/08)

(2009/C 44/53)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: TNT Express Nederland BV

Respondent: AXA Versicherung AG

Questions referred

1. Must the second subparagraph of Article 71(2)(b) of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters be interpreted as meaning: (i) that the rules on recognition and enforcement laid down in Regulation No 44/2001 yield to those of a special convention only if the rules of the special convention claim exclusivity; or (ii) that, in the event of the simultaneous applicability of the conditions for recognition and enforcement laid down in the special convention and those laid down in Regulation No 44/2001, the conditions laid down in the special convention must always be applied and those laid down in Regulation No 44/2001 are not to be applied, even though the special convention makes no claim to exclusive effect vis-à-vis other international rules on recognition and enforcement?

2. Does the Court of Justice have jurisdiction, with a view to forestalling divergent judgments in respect of the concurrence referred to in the first question, to interpret — in a manner binding on the courts of the Member States — the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956 (the CMR Convention), in so far as the matters governed by Article 31 of that convention are concerned?

3. If the answer to the second question is in the affirmative and the answer to part (i) of the first question is likewise in the affirmative, must the rules on recognition and enforcement laid down in Article 31(3) and (4) of the CMR Convention be interpreted as meaning that that convention does not claim exclusivity and leaves room for the application of other international enforcement rules making recognition or enforcement possible, such as Regulation No 44/2001?

   Should the Court of Justice answer part (ii) of the first question in the affirmative and likewise answer the second question in the affirmative, the Hoge Raad also refers the following three questions for the further appraisal of the appeal in cassation:

4. In the event of an application for a declaration of enforceability, does Article 31(3) and (4) of the CMR Convention permit the court of the State addressed to examine whether the court of the State of origin had international jurisdiction to take cognisance of the dispute?

5. Must Article 71(1) of Regulation No 44/2001 be interpreted as meaning that, in the event of the concurrence of the *lis pendens* rules of the CMR Convention and those of Regulation No 44/2001, the *lis pendens* rules of the CMR Convention take precedence over those of Regulation No 44/2001?

6. Do the declaration in law applied for in the present case in the Netherlands and the action in Germany seeking compensation in respect of damage relate to 'the same grounds' within the meaning of Article 31(2) of the CMR Convention?

([1]) 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).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 3 December 2008 — KLG Europe Eersel BV v Reedereikontor Adolf Zeuner GmbH

(Case C-534/08)

(2009/C 44/54)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: KLG Europe Eersel BV

Respondent: Reedereikontor Adolf Zeuner GmbH

Questions referred

1. Does the term 'between the same parties' in Article 34(3) of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters refer to the rules on the subjective scope of the operation of judgments of the Member States concerned, or is it intended to give to the subjective scope of the operation of the competing judgments a more precise interpretation in isolation from that regulation?

2. If the answer to the first question is that the term 'the same parties' is intended to give to the subjective scope of the operation of the competing judgments a more precise interpretation in isolation from Regulation No 44/2001:

   (i) must, in the interpretation of that term in Article 34(3) of Regulation No 44/2001, support be sought in the interpretation which the Court of Justice of the European Communities gave to the term 'between the same parties' in Article 21 of the Brussels Convention (now Article 27 of Regulation No 44/2001) in its judgment in Case C-351/96 *Drouot assurances* v *CMI and Others* [1998] ECR I-3075; and

   (ii) must K-Line, which was a party to the Rotterdam proceedings, but not to the Düsseldorf proceedings, be deemed, because of the assignment and mandate, to be 'the same party' as Zeuner, which was a party to the Düsseldorf proceedings, but not to the Rotterdam proceedings?

3. If reliance on the ground for refusal laid down in Article 34(3) of Regulation No 44/2001 is to succeed,

   (i) must the judgment given in the Member State in which recognition is sought have acquired the force of *res judicata*?

   (ii) must the judgment given in the Member State in which recognition is sought precede the submission of the application for enforcement or the granting of the order for enforcement?

([1]) 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).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 4 December 2008 — Staatssecretaris van Financiën v X

(Case C-536/08)

(2009/C 44/55)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: X