

Case C-283/09

Artur Weryński

v

Mediatel 4B spółka z o.o.

(Reference for a preliminary ruling
from the Sąd Rejonowy dla
Warszawy Śródmieścia)

(Judicial cooperation in civil matters — Taking of evidence — Examination of a witness by the requested court upon application by the requesting court — Payment of witness expenses)

Opinion of Advocate General Kokott delivered on 2 September 2010	I - 605
Judgment of the Court (First Chamber), 17 February 2011	I - 621

Summary of the Judgment

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Act based on Title IV in Part Three of the EC Treaty — Referral by a court against whose decisions there is a right of appeal under national law — Referral during the transitional period preceding the entry into force of the Treaty of Lisbon — Included*
(Art. 267 TFEU)
2. *Questions referred for a preliminary ruling — Reference to the Court — National court's need of a preliminary ruling in order to give its judgment — Concept*
(Art. 267(2) TFEU)

3. *Questions referred for a preliminary ruling — Reference to the Court — National court for the purpose of Article 267 TFEU — Concept — Court acting on the basis of the cooperation between the courts of the Member States in the taking of evidence*
(Art. 267(2) TFEU; Council Regulation No 1206/2001)

4. *Judicial cooperation in civil matters — Taking of evidence in civil or commercial matters — Regulation No 1206/2001 — Definition of costs*
(Council Regulation No 1206/2001, Arts 14 and 18(1) and (2))

1. Having regard to the extension of the right to refer questions for a preliminary ruling effected by the Treaty of Lisbon, henceforward courts of first instance too have the right to refer where acts adopted in the field of Title IV of the EC Treaty, entitled ‘Visas, asylum, immigration and other policies related to free movement of persons’, are concerned.

The objective pursued by Article 267 TFEU of establishing effective cooperation between the Court of Justice and the national courts and the principle of procedural economy are arguments in favour of the admissibility of references for a preliminary ruling made by lower courts during the transitional period shortly preceding the entry into force of the Treaty of Lisbon and not examined by the Court until after that treaty entered

into force. Rejection on the ground of inadmissibility would, in those circumstances, merely lead the referring court, which would in the meantime have acquired the right to make a reference, to refer the same question for a preliminary ruling once more, resulting in excessive procedural formalities and unnecessary lengthening of the duration of the main proceedings. Therefore, it must be held that since 1 December 2009 the Court has had jurisdiction to hear and determine a reference for a preliminary ruling from a court against whose decisions there is a judicial remedy under national law even when the reference was lodged before that date.

(see paras 28-31)

2. In many cases in which questions of the interpretation of Regulation No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence or in civil or commercial matters arise, concerning the taking of evidence, an interpretation by means of a reference for a preliminary ruling would be impossible if the requirements imposed as to the relevance of the question to the resolution of the dispute were too stringent. Most questions regarding the taking of evidence will concern the main proceedings only indirectly.

the referring court is required to apply in order to give judgment. In other words, that concept covers the entire process of creating the judgment, including all issues relating to the responsibility for the costs of the proceedings.

(see paras 39, 41, 42)

3. A national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature.

It follows that only a broad interpretation of the concept 'give judgment' within the meaning of the second paragraph of Article 267 TFEU would make it possible to prevent many procedural questions, in particular those which arise in the application of Regulation No 1206/2001, from being regarded as inadmissible and from being unable to be the subject of interpretation by the Court.

Although it is true that cooperation between the courts of the Member States in the taking of evidence does not necessarily lead to the drawing-up of a judicial decision, the fact remains that examination of a witness by a court, which is at issue here, is an act undertaken in the context of judicial proceedings intended to lead to a decision of a judicial nature. The issue of who is to bear the costs of the examination falls within the context of those proceedings. There is, therefore, a direct connection between the question referred for a preliminary ruling concerning those costs and the performance by the referring court of a judicial function.

That concept must therefore be understood as encompassing the whole of the procedure leading to the judgment of the referring court, in order that the Court of Justice may interpret all procedural provisions of European Union law that

(see paras 44-45)

4. Articles 14 and 18 of Regulation No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters must be interpreted as meaning that a requesting court is not obliged to pay an advance to the requested court for the expenses of a witness or to reimburse the expenses paid to the witness examined.

It would run counter to the spirit and purpose of Regulation No 1206/2001, which is intended to enable requests for the taking of evidence to be executed quickly and simply, for the question of costs to be made dependent on the national definition of that concept. Thus, as regards the

terms used in Article 18(1) of that regulation, ‘taxes’ should be understood as meaning sums received by the court for carrying out its functions, whereas ‘costs’ are to be understood as the sums paid by the court to third parties in the course of proceedings, in particular to experts or witnesses. It follows that expenses paid to a witness examined by the requested court are costs within the meaning of Article 18(1) of Regulation No 1206/2001. Therefore, the requesting court can be obliged to provide reimbursement only if one of the exceptions laid down in Article 18(2) of that regulation is applicable.

(see paras 58-59, 61, 63, 69,
operative part)