

JUDGMENT OF THE COURT (Fourth Chamber)

17 November 2011 *

In Case C-412/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the High Court of Justice of England and Wales, Queen's Bench Division (United Kingdom), made by decision of 27 July 2010, received at the Court on 18 August 2010, in the proceedings

Deo Antoine Homawoo

v

GMF Assurances SA,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Prechal, K. Schiemann, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

* Language of the case: English.

Advocate General: P. Mengozzi,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 July 2011,

after considering the observations submitted on behalf of:

- Mr Homawoo, by J. Dingemans QC, M. Zurbrugg and K. Deal, Advocates, and by I. Mitchell, Solicitor,

- GMF Assurances SA, by N. Paines QC, P. Janusz, Advocate, and S. Ball and P. Thomas, Solicitors,

- the United Kingdom Government, by L. Seeboruth, acting as Agent,

- the Greek Government, by G. Karipsiadis and T. Papadopoulou, acting as Agents,

— the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 6 September 2011,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of Articles 31 and 32 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II') (OJ 1997 L 199, p. 40) ('the Regulation'), in combination with Article 297 TFEU.
- ² The reference has been made in proceedings between Mr Homawoo, domiciled in the United Kingdom, the victim of a road traffic accident during a stay in France, and GMF Assurances SA ('GMF'), an insurance company incorporated and established in France.

Legal context

European Union Law

3 Recitals 6, 13, 14 and 16 in the preamble to the Regulation are worded as follows:

‘(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

...

(13) Uniform rules applied irrespective of the law they designate may avert the risk of distortions of competition between Community litigants.

(14) The requirement of legal certainty and the need to do justice in individual cases are essential elements of an area of justice. ...

...

(16) Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. ...'

4 Article 4(1) of the Regulation states:

'Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.'

5 Article 15 of the Regulation, which is entitled 'Scope of the law applicable', provides:

'The law applicable to non-contractual obligations under this Regulation shall govern in particular:

...

(c) the existence, the nature and the assessment of damage or the remedy claimed;

...'

- 6 Article 28 of the Regulation, which is entitled 'Relationship with existing international conventions', provides:

'(1) This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations.

(2) However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.'

- 7 Article 29 of the Regulation, relating to the list of international conventions, provides, in paragraph 1:

'By 11 July 2008, Member States shall notify the Commission of the conventions referred to in Article 28(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.'

- 8 Article 30(2) of the Regulation is worded as follows:

'Not later than 31 December 2008, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the situation in the field of the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, taking into account

rules relating to freedom of the press and freedom of expression in the media, and conflict-of-law issues related to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [(OJ 1995 L 281, p. 31)]’

- 9 Article 31 of the Regulation, which is entitled ‘Application in time’, provides:

‘This Regulation shall apply to events giving rise to damage which occur after its entry into force.’

- 10 Article 32 of the Regulation, which is entitled ‘Date of application’, states:

‘This Regulation shall apply from 11 January 2009, except for Article 29, which shall apply from 11 July 2008.’

National legislation

- 11 In English law, conflict-of-law rules for tort are contained, as is apparent from the order for reference, in Part III of the Private International Law (Miscellaneous Provisions) Act 1995 and provide that the law applicable is the law of the country in which the events constituting the tort or delict in question occur. In respect of personal

injury, Article 11(2)(a) of the 1995 Act provides that the law applicable is the law of the country where the individual was when he sustained the injury.

- 12 Article 15A of the 1995 Act, inserted by the Law Applicable to Non-Contractual Obligations (England, Wales and Northern Ireland) Regulations 2008, SI 2008 No 2986, provides that nothing in Part III of the 1995 Act 'applies to affect the determination of issues relating to tort which fall to be determined under the ... regulation'.

- 13 So far as concerns the assessment of damages, the case-law, in particular the decision of the House of Lords in *Harding v Wealands* [2007] 2 AC 1, establishes that the assessment of damages is a procedural matter, governed by English law as the *lex fori*.

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

- 14 On 29 August 2007 during a stay in France, Mr Homawoo sustained a road traffic accident caused by vehicle being driven by a person insured by GMF.

- 15 On 8 January 2009, Mr Homawoo brought proceedings for personal injury and indirect damages before the High Court of Justice against, in particular, GMF.

- 16 Before the referring court, the applicant in the main proceedings claimed that the assessment of damages is governed by English law as the *lex fori*, as determined by conflict-of-law rules applicable to the dispute in the main proceedings. He submitted that the Regulation was not applicable *ratione temporis* because, in accordance with Articles 31 and 32 thereof, it does not apply to events giving rise to damage which occur, as in the case in the main proceedings, before 11 January 2009, the date set for its entry into force. In the alternative, the applicant submitted that the Regulation does not apply where, irrespective of the date on which the damage occurred, the relevant proceedings were commenced prior to that date.
- 17 GMF, whilst not disputing that the applicant's claim for compensation was well founded, claimed, however, that the assessment of those damages should be governed by French law, in accordance with the conflict-of-law rules laid down in the Regulation. According to GMF, the Regulation entered into force on the twentieth day following its publication in the *Official Journal of the European Union*, in accordance with the rule laid down in Article 297 TFEU. Consequently, as the event giving rise to damage occurred after that date and as the national court was called on to determine the applicable law after 11 January 2009, the Regulation is applicable to the dispute in the main proceedings.
- 18 The High Court of Justice takes the view, first, that Article 32 of the Regulation does not refer to the date on which proceedings were brought or to the date on which the judgment is delivered and that, accordingly, there is nothing to warrant interpreting that provision as meaning that the Regulation is applicable to all proceedings brought subsequent to the date laid down in that provision. Second, it observes that an interpretation to the effect that the Regulation applies to events giving rise to damage occurring after 11 January 2009 would ensure legal certainty because it would achieve a fixed date, irrespective of the different litigation procedures. However, in the light of the wording of Article 31 of the Regulation, it doubts whether such an interpretation may be reached.

19 In those circumstances the High Court of Justice of England and Wales decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are Articles 31 and 32 of [the Regulation], in conjunction with Article 297 TFEU, to be interpreted to require a national court to apply [the Regulation], and in particular Article 15(c) thereof, in a case where the event giving rise to the damage occurred on 29 August 2007?

(2) Is the answer to Question 1 affected by either of the following facts:

(a) that the proceedings seeking compensation for damage were commenced on 8 January 2009;

(b) that the national court had not made any determination of the applicable law before 11 January 2009?’

Consideration of the questions referred

20 By its questions, which it is appropriate to examine together, the referring court asks the Court, in essence, whether Articles 31 and 32 of the Regulation, read in conjunction with Article 297 TFEU, must be interpreted as requiring a national court to apply the Regulation only to events giving rise to damage occurring after 11 January 2009

and whether the date on which the proceedings seeking compensation for damage were brought and the date on which the applicable law was determined by the court seized have any bearing on determining the scope *ratione temporis* of the Regulation.

- 21 In the present case, in order to answer the questions referred for a preliminary ruling, the two provisions of the Regulation must be considered in order to determine the date of entry into force of the Regulation and the date from which the Regulation becomes applicable.
- 22 So far as concerns the date of entry into force of the Regulation, it must be borne in mind that, under the third subparagraph of Article 297(1) TFEU, legislative acts are to enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication in the *Official Journal of the European Union*.
- 23 In the present case, although the Regulation does not explicitly set the date for its entry into force, Article 31 thereof, entitled 'Application in time', provides that it applies to events giving rise to damage which occur after its entry into force and Article 32, entitled 'Date of application', provides that it applies from 11 January 2009, except for Article 29, which is not at issue in the present case.
- 24 In that regard, it is open to the legislature to separate the date for the entry into force from that of the application of the act that it adopts, by delaying the second in relation to the first. Such a procedure may in particular, once the act has entered into force and is therefore part of the legal order of the European Union, enable the Member States or European Union institutions to perform, on the basis of that act, the prior obligations which are necessary for its subsequent full application to all persons concerned.

- 25 As the Advocate General has noted in point 21 of his Opinion, the legislature has acted in such a way in respect of several acts adopted in the field of judicial cooperation in civil matters, such as, in particular, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (O) 2008 L 177, p. 6).
- 26 So far as concerns the Regulation, it is not disputed that neither Article 31 nor Article 32 fix the date of the Regulation's entry into force.
- 27 Admittedly, three language versions of the title of Article 32 of the Regulation ('Inwerkingtreding', 'Data intrării în vigoare' and 'Entrada en vigor') refer to the term 'Entry into force'. However, even in those three versions, the content of the article refers to 11 January 2009 as being the date set of application of the Regulation.
- 28 As the Advocate General has noted in point 39 of his Opinion, it is clear from the Court's case-law that the need for a uniform interpretation of European Union acts makes it impossible, in case of doubt, for the text of a provision to be considered in isolation but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages (see, in particular, Case 9/79 *Koschniske* [1979] ECR 2717, paragraph 6, and Case C-199/08 *Eschig* [2009] ECR I-8295, paragraph 54).
- 29 In the present case, in the light of the content of the provision which is the same in all of the language versions, it must be held that Article 32 of the Regulation does not set the date for its entry into force but sets the date of its application.

- 30 It follows that, as there is no specific provision that sets the date for the entry into force of the Regulation, that date must be determined in accordance with the general rule laid down in the third subparagraph of Article 297(1) TFEU. As the Regulation was published in the *Official Journal of the European Union* on 31 July 2007, it entered into force on 20 August 2007, that is to say the 20th day following that of its publication.
- 31 That finding is confirmed by the fact that the Regulation imposes certain obligations on Member States and on the Commission from that date. Thus, in accordance with Article 29 of that regulation, before the date of application of the Regulation, and specifically by 11 July 2008, Member States were required to notify the Commission of the international conventions adopted in this area to which they are parties, and the Commission was required to publish a list of those conventions in the *Official Journal of the European Union*.
- 32 Furthermore, pursuant to Article 30(2) of that regulation, the Commission was required to submit, not later than 31 December 2008, a study on the situation in the field of the law applicable to non-contractual obligations to the European Parliament, the Council and the European Economic and Social Committee. Those obligations had therefore to be fulfilled before 11 January 2009, the date laid down in Article 32 of the Regulation for its application to all persons concerned.
- 33 In those circumstances, Article 31 of that regulation which, according to its title concerns its 'Application in time', may not be interpreted without taking account of the date of application laid down in Article 32 of that regulation, that is to say 11 January 2009. It must therefore be held that, under Article 31, the Regulation applies to events giving rise to damage occurring after that date.

- 34 Such an interpretation is the only one which ensures, in accordance with recitals 6, 13, 14 and 16 of the Regulation, the full attainment of the Regulation's objectives, that is to say the predictability of the outcome of litigation, legal certainty as to the law applicable and the uniform application of that regulation in all the Member States.
- 35 By contrast, those objectives are likely to be compromised if the Regulation were applied to events occurring between its entry into force and the date set by Article 32. Indeed, as noted by the applicant in the main proceedings, the United Kingdom Government and the Commission, it cannot be ruled out that two events occurring on the same day, before 11 January 2009, might then be governed by different laws depending on the date on which the proceedings seeking compensation for damage were brought and that on which the applicable law was determined by the court seised. Furthermore, the obligations arising from an event occurring in the same place giving rise to damage to several people might be governed by different laws depending on the outcome of different legal proceedings.
- 36 Neither the date on which proceedings were brought nor that on which the applicable law was determined by the national court therefore have a bearing on determining the scope *ratione temporis* of the Regulation. As is apparent from Article 31 of the Regulation, the only time to be taken into account is that when the event causing the damage occurred.
- 37 In those circumstances, the answer to the questions referred is that Articles 31 and 32 of the Regulation, read in conjunction with Article 297 TFEU, must be interpreted as requiring a national court to apply the Regulation only to events giving rise to damage occurring after 11 January 2009 and that the date on which the proceedings seeking compensation for damage were brought or the date on which the applicable law was determined by the court seised have no bearing on determining the scope *ratione temporis* of the Regulation.

Costs

- ³⁸ 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:

Articles 31 and 32 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II'), read in conjunction with Article 297 TFEU, must be interpreted as requiring a national court to apply the Regulation only to events giving rise to damage occurring after 11 January 2009 and that the date on which the proceedings seeking compensation for damage were brought or the date on which the applicable law was determined by the court seised have no bearing on determining the scope *ratione temporis* of the Regulation.

[Signatures]