

Deo Antoine Homawoo
v.
GMF Assurances SA

C-412/10
17 November 2011

*Judicial cooperation in civil matters – Law applicable to non-contractual obligations
– Regulation (EC) No 864/2007 – Scope ratione temporis*

OPERATIVE PART:

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 seized have no bearing on determining the scope *ratione temporis* of the Regulation.

EXCERPT FROM THE REASONS:

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

[3-13]

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.

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Deo Antoine Homawoo
protiv
GMF Assurances SA

C-412/10
17. studenoga 2011.

Pravosudna suradnja u građanskim stvarima – pravo mjerodavno za izvanugovorne obveze – Uredba (EZ) No 864/2007 – vremensko polje primjene

IZREKA:

Članke 31. i 32. Uredbe (EZ) br. 864/2007 Europskog parlamenta i Vijeća od 11. srpnja 2007. o pravu mjerodavnom za izvanugovorne obveze (Rim II) (u daljnjem tekstu: Uredba Rim II) u vezi s člankom 297. Ugovora o funkcioniranju Europske unije treba tumačiti tako da je nacionalni sud obavezan tu Uredbu primjenjivati samo na štetne događaje koji su nastupili nakon 11. siječnja 2009. te da trenutak pokretanja postupka radi naknade štete ili trenutak određivanja mjerodavnog prava od strane nacionalnog suda ne utječe na utvrđivanje njezine vremenske primjene.

IZ OBRAZLOŽENJA:

1 Prethodno pitanje odnosi se na tumačenje članaka 31. i 32. Uredbe (EZ) br. 864/2007 Europskog parlamenta i Vijeća od 11. srpnja 2007. o pravu mjerodavnom za izvanugovorne obveze (Rim II) (SL L 199, str. 40, u daljnjem tekstu: Uredba) u vezi s člankom 297. Ugovora o funkcioniranju Europske unije.

2 Pitanje je postavljeno u okviru spora između gospodina Homawooa, s prebivalištem u Velikoj Britaniji, koji je tijekom svog boravka u Francuskoj postao žrtvom prometne nezgode, i osiguravajućeg društva GMF Assurances SA (u daljnjem tekstu: GMF) sa sjedištem u Francuskoj.

Pravni okvir

[3-13]

Glavni postupak i prethodna pitanja

14 Gospodin Homawoo 29. kolovoza 2007. tijekom boravka u Francuskoj doživio je prometnu nezgodu koju je sa svojim vozilom prouzročio vozač koji je bio osiguran kod GMF-a.

15 Dana 8. siječnja 2009. gospodin Homawoo pri sudu *High Court of Justice* podigao je tužbu, među ostalim protiv GMF-a, radi naknade štete zbog fizičkih ozljeda i posljednjih šteta.

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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:

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

(ii) 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 seised have any bearing on determining the scope *ratione temporis* of the Regulation.

16 Pred nacionalnim sudom koji je postavio prethodno pitanje tužitelj je u glavnom postupku istaknuo da se šteta treba utvrditi prema engleskom pravu koje je, prema kolizijskim normama *lex fori* koje se primjenjuju na glavni postupak, određeno kao mjerodavno pravo. Naime, Uredba zbog svoje vremenske primjene nije mjerodavna budući da se sukladno člancima 31. i 32. ne primjenjuje na štetne događaje koji su, kao u odnosnom postupku, nastupili prije 11. siječnja 2009., dakle prije dana koji je određen kao datum stupanja na snagu Uredbe. Podredno je istaknuo da, neovisno o trenutku nastanka štete, Uredba nije mjerodavna ako je odnosni postupak pokrenut prije navedenoga dana.

17 GMF nije osporavao osnovanost tužbe radi naknade štete, ali je istaknuo da se sukladno kolizijskim normama Uredbe šteta utvrđuje prema francuskom pravu. Uredba je naime sukladno članku 297. Ugovora o funkcioniranju Europske unije stupila na snagu dvadesetoga dana nakon njezine objave u Službenom listu Europske unije. Sukladno tomu Uredba je primjenjiva, jer je štetni događaj nastupio nakon tog dana, a nacionalni sud mora odrediti pravo koje je primjenjivo nakon 11. siječnja 2009.

18 *High Court of Justice* prvenstveno je mišljenja da se članak 32. Uredbe ne odnosi na trenutak podizanja tužbe ili donošenja sudske odluke te da stoga ne postoji opravdanje za to da se ta odredba tumači tako da se Uredba primjenjuje na svaku tužbu koja je pokrenuta nakon dana utvrđenog u toj odredbi. Sud kao drugo navodi da bi tumačenje prema kojem se Uredba primjenjuje na štetne događaje koji su nastupili nakon 11. siječnja 2009. omogućilo pravnu sigurnost, jer bi predstavljalo fiksni trenutak koji nije povezan s pokretanjem sudskih postupaka. Međutim, s obzirom na odredbu iz članka 31. dvoji može li se članak 32. tumačiti na taj način.

19 *High Court of Justice (England & Wales), Queen's Bench Division* stoga je prekinuo postupak i Sudu u okviru prethodnog postupka postavio sljedeća pitanja:

1. Treba li članke 31. i 32. Uredbe u vezi s člankom 297. Ugovora o funkcioniranju Europske unije tumačiti tako da nacionalni sud tu Uredbu, a posebice članak 15. točku c) mora primijeniti i u slučaju kada je štetni događaj nastupio 29. kolovoza 2007.?

2. Utječe li neka od niže navedenih okolnosti na odgovor na pitanje br. 1):

a) okolnost da je postupak u kojem se utužuje naknada štete pokrenut 8. siječnja 2009.;

b) okolnost da nacionalni sud do 11. siječnja nije odredio mjerodavno pravo?

O pitanjima iz zahtjeva za prethodnim tumačenjem

20 Sud na temelju svojih pitanja koje treba sagledati zajedno traži od Suda tumačenje treba li članke 31. i 32. Uredbe u vezi s člankom 297. Ugovora o funkcioniranju Europske unije tumačiti tako da je nacionalni sud obavezan Uredbu primjenjivati samo na štetne događaje koji su nastupili nakon 11. siječnja 2009. i ima li trenutak određivanja mjerodavnog prava od strane suda ikakva utjecaja na utvrđivanje vremenske primjene ove Uredbe.

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) (OJ 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.

21 Kako bi se moglo odgovoriti na pitanja nacionalnog suda, u ovom se predmetu moraju preispitati obje odredbe Uredbe da bi se utvrdio dan stupanja na snagu Uredbe i datum od kada se ona primjenjuje.

22 S obzirom na dan stupanja na snagu Uredbe, treba voditi računa o tomu da sukladno članku 297. stavku 1. podstavku 3. Ugovora o funkcioniranju Europske unije zakonski akti stupaju na snagu s danom koji je u njima određen, a u protivnom dvadesetoga dana nakon objave u Službenom listu Europske unije.

23 U ovom slučaju u Uredbi doduše nije izričito utvrđen datum njezina stupanja na snagu, ali ona s jedne strane sadrži članak 31. koji je naslovljen "Primjena u vremenu", prema kojemu se Uredba primjenjuje na štetne događaje koji su nastupili nakon njezina stupanja na snagu, a s druge strane sadrži članak 32. koji je naslovljen "Početak primjene", prema kojem se ona primjenjuje od 11. siječnja 2009. godine, osim jednog članka koji nije važan za glavni postupak.

24 U tom kontekstu treba ukazati na to da zakonodavac može uvesti razliku između datuma stupanja na snagu i početka primjene propisa koji donosi, na način da je potonji datum nakon prvoga. Takvo postupanje može omogućiti posebice državama članicama ili tijelima Unije, nakon što je pravni akt stupio na snagu, da na temelju tog pravnog akta ispunje svoje prethodno postojeće obveze koje su neizostavno nužne za kasniju potpunu primjenu pravnog akta na sve pravne subjekte za koje on vrijedi.

25 Kao što je naveo nezavisni odvjetnik u točki 21. svog mišljenja, zakonodavac je tako postupio u više pravnih akata koji su doneseni u području pravosudne suradnje u građanskim predmetima, kao posebice kod Uredbe (EZ) br. 593/2008 Europskoga parlamenta i Vijeća od 17. lipnja 2008. o pravu mjerodavnom za ugovorne obveze (Rim I) (Sl. L 177, str. 6).

26 S obzirom na Uredbu, utvrđeno je da datum njezina stupanja na snagu nije određen ni u članku 31. ni članku 32. Uredbe.

27 Tri jezične verzije naslova članka 32. Uredbe ukazuju, doduše, na pojam stupanja na snagu ("Inwerkingtreding", "Data intrării în vigoare" und "Entrada en vigor"), ali i u tim se verzijama u tom članku kao datum početka primjene Uredbe navodi 11. siječnja 2009.

28 Kao što je nezavisni odvjetnik istaknuo u točki 39. svoga mišljenja, prema stalnoj sudskoj praksi Europskoga suda se, zbog nužnosti jedinstvenog tumačenja prava Unije, neka odredba u slučaju dvojbe ne smije promatrati zasebno, već se mora tumačiti tako da se u obzir uzmu i njezine verzije u drugim službenim jezicima (vidi posebice presude od 12. srpnja 1979. u predmetu 9/79, *Koschniske*, [1979] ECR 2717, točka 6., i od 10. rujna 2009., *Eschig*, C-199/08, [2009] ECR I-8295, točka 54.).

29 U konkretnom se slučaju, s obzirom na sadržaj propisa u svim jezičnim verzijama mora ustanoviti da čl. 32. Uredbe ne utvrđuje datum stupanja na snagu Uredbe, nego datum početka njezine primjene.

30 Prema tomu se, kako nema posebne odredbe koja bi odredila datum stupanja na snagu Uredbe, taj datum mora odrediti prema općoj odredbi iz članka 297. stavka 1. podstavka 3. Ugovora o funkcioniranju Europske unije. Budući da je Uredba 31. srpnja 2007. godine objavljena u *Službenom listu Europske unije*, stupila je na snagu dvadesetoga dana nakon njezine objave, tj. 20. kolovoza 2007.

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.

31 U korist tomu govori i okolnost da Uredba od toga datuma propisuje i obveze za države članice i Komisiju. Tako su države članice prema članku 29. bile obvezne Komisiju prije početka primjene, konkretno do 11. srpnja 2008., obavijestiti o relevantnim međunarodnim konvencijama što su ih potpisale, a Komisija je popis tih konvencija trebala objaviti u *Službenom listu Europske unije*.

32 Nadalje, Komisija je sukladno članku 30. stavku 2. Uredbe najkasnije do 31. prosinca 2008. Parlamentu, Vijeću te Europskom gospodarskom i socijalnom odboru morala podnijeti studiju o situaciji u području prava mjerodavnog za izvanugovorne obveze. Te je obveze dakle morala ispuniti prije 11. siječnja 2009., tj. dana koji je u članku 32. Uredbe predviđen kao datum početka njezine primjene na sve pravne subjekte.

33 Pod ovim se okolnostima kod tumačenja članka 31. Uredbe, koji se prema svom naslovu odnosi na "primjenu u vremenu", u obzir mora uzeti i datum početka primjene koji je utvrđen u članku 32. Uredbe, tj. 11. siječnja 2009. Iz tog razloga dakle treba polaziti od toga da se Uredba prema članku 31. primjenjuje na štetne događaje koji su nastupili nakon tog datuma.

34 Ovo je tumačenje jedino koje prema uvodnim izjavama 6, 13, 14 i 16 Uredbe jamči potpuno ostvarenje ciljeva Uredbe, tj. predvidivost ishoda sporova, sigurnost u odnosu na mjerodavno pravo i jedinstvenu primjenu ove Uredbe u svim državama članicama.

35 Nasuprot tomu, ti bi ciljevi mogli biti ugroženi ako bi se Uredba primjenjivala na događaje koji su nastupili između dana njezina stupanja na snagu i datuma utvrđenog u članku 32. Kao što su naime istaknuli tužitelj u glavnom postupku, Vlada Velike Britanije i Komisija, nije isključeno da bi se u tom slučaju dva događaja koja su nastupila istoga dana prije 11. siječnja 2009. rješavala prema različitim pravnim porecima, ovisno o trenutku pokretanja postupka u kojem se utužuje naknada štete ili ovisno o trenutku određivanja mjerodavnog prava od strane nacionalnog suda. Osim toga, obveze koje proizlaze iz događaja uslijed kojeg je na jednom te istome mjestu oštećeno više osoba mogle bi se ravnati prema različitim pravnim porecima, ovisno o rezultatu različitih sudskih postupaka.

36 Zbog toga za utvrđivanje vremenske primjene Uredbe nisu relevantni ni datum pokretanja postupka ni datum određivanja mjerodavnog prava od strane nacionalnog suda. Kao što proizlazi iz članka 31. Uredbe, jedini datum koji se treba uzeti u obzir jest dan nastanka štetnog događaja.

37 Iz tog razloga odgovor na postavljena pitanja treba glasiti da članke 31. i 32. Uredbe u vezi s člankom 297. Ugovora o funkcioniranju Europske unije treba tumačiti tako da je nacionalni sud obavezan tu Uredbu primjenjivati samo na štetne događaje koji su nastupili nakon 11. siječnja 2009. te da dan pokretanja postupka radi utuživanja naknade štete ili dan određivanja mjerodavnog prava od strane nacionalnog suda nemaju nikakva utjecaja na određivanje vremenske primjene ove Uredbe.