

JUDGMENT OF THE COURT (First Chamber)

17 February 2011 (*)

(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)

In Case C-283/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Sąd Rejonowy dla Warszawy Śródmieścia (Poland), made by decision of 17 July 2009, received at the Court on 23 July 2009, in the proceedings

Artur Weryński

v

Mediatel 4B spółka z o.o.,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel, A. Borg Barthet, M. Ilešič and M. Berger (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 1 July 2010,

after considering the observations submitted on behalf of:

- the Polish Government, by M. Dowgielewicz, M. Arciszewski and A. Siwek, acting as Agents,
- the Czech Government, by M. Smolek, acting as Agent,
- the German Government, by J. Möller, acting as Agent,
- Ireland, by D. O’Hagan, acting as Agent, and M. Noonan, Barrister,
- the Finnish Government, by A. Guimaraes-Purokoski, acting as Agent,
- the European Commission, by A.-M. Rouchaud-Joët and K. Herrmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 September 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ 2001 L 174, p. 1).

2 The reference has been made in the course of proceedings between Mr Weryński and his former employer, Mediatel 4B spółka z o.o., and, in essence, it is designed to ascertain whether the requested

court in Ireland may make the examination of a witness conditional on payment of witness expenses by the requesting court.

Legal context

Regulation No 1206/2001

- 3 Regulation No 1206/2001 aims to establish measures on judicial cooperation in civil matters that are applicable, as stated in Article 1(3) thereof, to all Member States except the Kingdom of Denmark. It replaces, to that extent, the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters concluded at The Hague on 18 March 1970 ('the Hague Convention'), to which recital 6 in the preamble to Regulation No 1206/2001 refers.
- 4 Recital 21 in the preamble to Regulation No 1206/2001 states that, in accordance with Article 3 of the Protocol, annexed to the Treaty on the European Union and to the Treaty establishing the European Community, on the position of the United Kingdom and Ireland on policies in respect of border controls, asylum and immigration, on judicial cooperation in civil matters and on police cooperation, Ireland gave notice of its wish to take part in the adoption and application of that regulation.
- 5 Recitals 2, 7, 8, 10, 11 and 16 in the preamble to Regulation No 1206/2001 state:
- '(2) For the purpose of the proper functioning of the internal market, cooperation between courts in the taking of evidence should be improved, and in particular simplified and accelerated.
- ...
- (7) As it is often essential for a decision in a civil or commercial matter pending before a court in a Member State to take evidence in another Member State, the Community's activity cannot be limited to the field of transmission of judicial and extrajudicial documents in civil or commercial matters which falls within the scope of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the serving in the Member States of judicial and extrajudicial documents in civil or commercial matters [OJ 2000 L 160, p. 37]. It is therefore necessary to continue the improvement of cooperation between courts of Member States in the field of taking of evidence.
- (8) The efficiency of judicial procedures in civil or commercial matters requires that the transmission and execution of requests for the performance of taking of evidence is to be made directly and by the most rapid means possible between Member States' courts.
- ...
- (10) A request for the performance of the taking of evidence should be executed expeditiously. If it is not possible for the request to be executed within 90 days of receipt by the requested court, the latter should inform the requesting court accordingly, stating the reasons which prevent the request from being executed swiftly.
- (11) To secure the effectiveness of this Regulation, the possibility of refusing to execute the request for the performance of taking of evidence should be confined to strictly limited exceptional situations.
- ...
- (16) The execution of the request, according to Article 10, should not give rise to a claim for any reimbursement of taxes or costs. Nevertheless, if the requested court requires reimbursement, the fees paid to experts and interpreters, as well as the costs occasioned by the application of Article 10(3) and (4), should not be borne by that court. In such a case, the requesting court is to take the necessary measures to ensure reimbursement without delay. Where the opinion of an expert is required, the requested court may, before executing the request, ask the requesting court for an adequate deposit or advance towards the costs.'

6 Article 10 of Regulation No 1206/2001, which contains general provisions on the execution of a request, provides:

‘1. The requested court shall execute the request without delay and, at the latest, within 90 days of receipt of the request.

2. The requested court shall execute the request in accordance with the law of its Member State.

3. The requesting court may call for the request to be executed in accordance with a special procedure provided for by the law of its Member State, using form A in the Annex. The requested court shall comply with such a requirement unless this procedure is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties. If the requested court does not comply with the requirement for one of these reasons it shall inform the requesting court using form E in the Annex.

4. The requesting court may ask the requested court to use communications technology at the performance of the taking of evidence, in particular by using videoconference and teleconference.

The requested court shall comply with such a requirement unless this is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties.

If the requested court does not comply with the requirement for one of these reasons, it shall inform the requesting court, using form E in the Annex.

If there is no access to the technical means referred to above in the requesting or in the requested court, such means may be made available by the courts by mutual agreement.’

7 Article 14 of Regulation No 1206/2001 is worded as follows:

‘1. A request for the hearing of a person shall not be executed when the person concerned claims the right to refuse to give evidence or to be prohibited from giving evidence,

(a) under the law of the Member State of the requested court; or

(b) under the law of the Member State of the requesting court, and such right has been specified in the request, or, if need be, at the instance of the requested court, has been confirmed by the requesting court.

2. In addition to the grounds referred to in paragraph 1, the execution of a request may be refused only if:

...

(d) a deposit or advance asked for in accordance with Article 18(3) is not made within 60 days after the requested court asked for such a deposit or advance.

...’

8 Article 18 of Regulation No 1206/2001 is worded as follows:

‘1. The execution of the request, in accordance with Article 10, shall not give rise to a claim for any reimbursement of taxes or costs.

2. Nevertheless, if the requested court so requires, the requesting court shall ensure the reimbursement, without delay, of:

– the fees paid to experts and interpreters, and

– the costs occasioned by the application of Article 10(3) and (4).

The duty for the parties to bear these fees or costs shall be governed by the law of the Member State of the requesting court.

3. Where the opinion of an expert is required, the requested court may, before executing the request, ask the requesting court for an adequate deposit or advance towards the requested costs. In all other cases, a deposit or advance shall not be a condition for the execution of a request.

The deposit or advance shall be made by the parties if that is provided for by the law of the Member State of the requesting court.'

The Hague Convention

9 The Hague Convention aims to improve mutual judicial cooperation in civil and commercial matters.

10 Article 14 of the Hague Convention states:

'The execution of the Letter of Request shall not give rise to any reimbursement of taxes or costs of any nature.

Nevertheless, the State of execution has the right to require the State of origin to reimburse the fees paid to experts and interpreters and the costs occasioned by the use of a special procedure requested by the State of origin under Article 9, paragraph 2.

The requested authority whose law obliges the parties themselves to secure evidence, and which is not able itself to execute the Letter, may, after having obtained the consent of the requesting authority, appoint a suitable person to do so. When seeking this consent the requested authority shall indicate the approximate costs which would result from this procedure. If the requesting authority gives its consent it shall reimburse any costs incurred; without such consent the requesting authority shall not be liable for the costs.'

National law

11 Article 85 of the Law of 28 July 2005 on judicial costs in civil matters (ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych) (Dz. U. 2005, No 167, heading 1398), as amended, allows a witness to request reimbursement of the costs connected with a court appearance.

12 Paragraph 101(4) of the Regulation of the Minister for Justice of 23 February 2007 laying down rules concerning the operation of the ordinary courts (rozporządzenie Ministra Sprawiedliwości z dnia 23 lutego 2007 r. Regulamin urzędowania Sądów powszechnych) (Dz. U. 2007, No 38, heading 249), which sets out principles for the settlement of accounts between the requested court and the requesting court, is worded as follows:

'If the requested court has accorded to persons taking part in the proceedings remuneration or the reimbursement of travel expenses, it must make payment by means of an advance in respect of expenditure or, in the absence of an advance, from the budgetary resources of the State Treasury, and in that event it must attach to the documents in the case a request that that expenditure be reimbursed by the requesting court, while observing the requirements concerning the defining of expenditure that are contained in separate provisions.'

13 Under Paragraph 53 of the Regulation of the Minister for Justice of 28 January 2002 concerning particular acts of courts in matters regarding international civil and criminal procedure in international relations (rozporządzenie Ministra Sprawiedliwości z dnia 28 stycznia 2002 r. w sprawie szczegółowych czynności sądów w sprawach z zakresu międzynarodowego postępowania cywilnego oraz karnego w stosunkach międzynarodowych) (Dz. U. 2002, No 17, heading 164), costs connected with legal assistance are to be fixed in Polish złoty. Those costs are to be met by the State Treasury. After execution of the request, the court is to ask for reimbursement of the costs in Polish currency or in a convertible currency in a sum equivalent to the amount expressed in Polish currency. According to the referring court, reimbursement of those costs is not to be demanded if an international convention guarantees the grant of free legal assistance.

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

- 14 Mr Weryński brought an action before the Sąd Rejonowy dla Warszawy Śródmieścia (District Court for Warsaw City Centre) (Poland) against Mediatel 4B spółka z o.o., his former employer, for damages arising from a non-compete agreement.
- 15 In those proceedings, the referring court requested the Dublin Metropolitan District Court (Ireland) on 6 January 2009 to examine a witness on the basis of Regulation No 1206/2001. However, the requested court made the examination of the witness conditional on payment, by the requesting court, of witness expenses of EUR 40 under Irish law. By letter of 12 January 2009, it requested the Polish court to pay that amount.
- 16 The referring court contested the legitimacy of that demand.
- 17 Recourse to the central bodies in Poland and Ireland, established in accordance with Article 3 of Regulation No 1206/2001 and responsible for seeking solutions to any difficulties which arise in respect of a request to take evidence, did not prove fruitful.
- 18 According to the requested court and the Irish central body, the prohibition on charging payment set out in Article 18(1) of Regulation No 1206/2001 does not include witness expenses. Under Irish law, witnesses are entitled to reimbursement of expenses. That law is stated to be applicable in the present case because, in accordance with Article 10(2) of the regulation, the taking of evidence is governed by the law of the requested court. Since Article 18(2) and (3) of the regulation does not contain any provision relating to the reimbursement of witness expenses, the requested court may ask the requesting court to reimburse them. The Irish central body also relies on a similar practice in England and Wales.
- 19 The referring court takes the view that the position of the requested court and the Irish central body is unfounded.
- 20 According to the referring court, a textual analysis of Article 18(1) and (2) of Regulation No 1206/2001 shows that there are only three exceptions to the general prohibition on any request for ‘reimbursement of taxes and costs’. Article 10(2) of the regulation, being a general rule, does not apply to the relations between the requested court and the requesting court. Given that state of affairs, even if Irish law lays down the obligation to demand the reimbursement of witness expenses from the requesting court, that provision does not apply in the present case on account of the principle of the primacy of Community law. Apart from fees payable to experts and interpreters and the costs arising from the use of a special procedure called for by the requesting court (Article 10(3) of the regulation) or of communications technology (Article 10(4) of the regulation), it is not possible to ask the requesting court to reimburse taxes or costs.
- 21 In those circumstances, the Sąd Rejonowy dla Warszawy Śródmieścia decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Under [Regulation No 1206/2001], does the requested court have the right to demand from the requesting court an advance for witness expenses or reimbursement of the expenses paid to the witness heard, or must it cover them out of its own financial resources?’

The jurisdiction of the Court and the admissibility of the reference for a preliminary ruling

- 22 The European Commission expresses doubts as to the jurisdiction of the Court and the admissibility of the reference for a preliminary ruling.
- 23 First, it draws the Court’s attention to the fact that an appeal lies against judgments given by the referring court and that under Article 68(1) EC only courts or tribunals of a Member State against whose decisions there is no judicial remedy under national law are empowered to make a reference to the Court for a preliminary ruling for an interpretation of acts of the institutions of the Community

based on Title IV of the EC Treaty, entitled ‘Visas, asylum, immigration and other policies related to free movement of persons’.

24 Second, it takes the view that the question relating to the interpretation of Regulation No 1206/2001 does not appear necessary for the resolution of the dispute in the main proceedings and, furthermore, relates to the administrative functioning of the courts. Therefore, it fails to comply with the requirements laid down in the case-law on the admissibility of references for a preliminary ruling.

25 Although they do not constitute actual objections, the Court considers it appropriate to examine those issues of its own motion.

26 As regards the possibility that the Court lacks jurisdiction, it must be recalled that the reference for a preliminary ruling concerns Regulation No 1206/2001, adopted on the basis of Articles 61(c) EC and 67(1) EC in Title IV of the EC Treaty.

27 The reference was lodged on 23 July 2009, that is to say, before the entry into force of the Treaty of Lisbon. According to Article 68 EC, which was in force on that date, it would therefore have been necessary to determine whether the referring court could be regarded, in the main proceedings, as acting as a court against whose decisions there was no judicial remedy.

28 However, Article 68 EC was repealed on 1 December 2009. The Treaty of Lisbon thereby rendered inoperative the former limitation in Article 68(1) EC on the right of referral, a limitation which has not been replaced. Henceforward, it is the general rules governing references for a preliminary ruling under Article 267 TFEU which apply to references for preliminary rulings on the interpretation of acts adopted in the area of visas, asylum, immigration and other policies related to the free movement of persons. Consequently, Article 267 TFEU also applies to references relating to Regulation No 1206/2001.

29 Therefore, 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 also have the right to refer where acts adopted in the field of Title IV of the EC Treaty are concerned.

30 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 regarding references for a preliminary ruling as admissible where they were lodged by lower courts during the transitional period that elapsed shortly before the entry into force of the Treaty of Lisbon and have not been examined by the Court until after its entry into force. Rejection on the ground of inadmissibility would, in those circumstances, only 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.

31 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 where the reference was lodged prior to that date.

32 Consequently, even if the present reference for a preliminary ruling failed to fulfil the requirements of Article 68(1) EC at the time when it was lodged, that defect would have been cured by the repeal of that provision and the corresponding extension of the jurisdiction of the Court.

33 In those circumstances, the Court has jurisdiction to adjudicate on the reference for a preliminary ruling.

34 As regards the first issue relating to inadmissibility referred to by the Commission, which is based on the fact that interpretation of Regulation No 1206/2001 does not appear to be necessary for the resolution of the dispute in the main proceedings, it must be recalled that the presumption that questions referred by national courts for a preliminary ruling are relevant may be rebutted only in exceptional cases, where it is quite obvious that the interpretation which is sought of the provisions of European Union law referred to in the questions bears no relation to the purpose of the main action

(see, inter alia, Case C-105/03 *Pupino* [2005] ECR I-5285, paragraph 30, and Case C-467/05 *Dell'Orto* [2007] ECR I-5557, paragraph 40).

- 35 Consequently, it must be determined whether the question referred to the Court is necessary to enable the referring court to 'give judgment' within the meaning of the second paragraph of Article 267 TFEU.
- 36 In that connection it must be observed, first, that the question referred is designed to ascertain whether the requesting court is obliged to bear certain costs connected with the examination of a witness by the requested court.
- 37 Second, at the hearing the Polish Government stated that the witness had been examined in accordance with the requesting court's request, but only after the requesting court had paid, on 28 April 2009, the EUR 40 asked for by the requested court. The payment of that sum was also confirmed by Ireland in its written observations.
- 38 Although it is true that, despite that payment and the examination of the witness, the question referred remains relevant as regards the legal basis of the advance and, in particular, the possible refund of the payment if it should prove not to have been due, the fact remains that the answer to that question has no direct impact on the outcome of the dispute between Mr Weryński and Mediatel 4B spółka z o.o., which concerns the payment of compensation under a non-compete clause.
- 39 However, as the Advocate General observed in point 36 of her Opinion, most questions as to the interpretation of Regulation No 1206/2001 regarding the taking of evidence will concern the main proceedings only indirectly. In many cases an interpretation by means of a request for a preliminary ruling would not be possible if the requirements imposed as to the relevance of the question to resolution of the dispute were too stringent.
- 40 In that connection, it is necessary to take into consideration the need to clarify an issue which has hindered cooperation between courts and which will remain an obstacle so long as it is not resolved. In the main proceedings neither the courts of the Member States concerned nor the central bodies in Poland and Ireland have been able to find a solution. In such a situation only a decision of the Court of Justice will enable Regulation No 1206/2001 to perform effectively its function, which is that of helping to simplify and speed up judicial proceedings in civil or commercial matters.
- 41 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.
- 42 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 is able to interpret all procedural provisions of European Union law that 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 proceedings.
- 43 As regards the second ground of potential inadmissibility of the reference for a preliminary ruling, the Commission observes that the question asked by the referring court concerns its administrative functioning, that is to say, the cooperation between the courts of the Member States with respect to the taking of evidence in civil or commercial matters. That question is therefore said not to relate to the performance by the referring court of its judicial functions. The Commission has dwelt on the fact that, in the present case, the referring court acts as a public administrative body so far as concerns the issue of the costs of executing the request for the taking of evidence by the court of another Member State.
- 44 It must be recalled that, according to settled case-law, 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 (see, in particular, the order in Case C-447/00 *Holto* [2002] ECR I-735, paragraph 17, and Case C-296/08 *PPU Santesteban Goicoechea* [2008] ECR I-6307, paragraph 40).

45 Although it is true that cooperation between the courts of the Member States in the taking of evidence does not necessarily lead to the elaboration 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 that are intended to lead to a decision of a judicial nature. The issue of the responsibility for the costs of examining a witness falls within the framework of those proceedings. Therefore, there is a direct connection between the question referred for a preliminary ruling and the performance by the referring court of a judicial function.

46 Since none of the possible grounds of inadmissibility has been accepted, the reference for a preliminary ruling must be regarded as admissible.

Consideration of the question referred

47 The referring court asks in essence whether it was obliged to pay the costs incurred by the witness examined by the requested court, be it in the form of an advance or a reimbursement of expenses.

48 Under Article 1(1) of Regulation No 1206/2001, the facts of the main proceedings fall within scope of that regulation where the court of a Member State requests the competent court of another Member State to take evidence. The examination of a witness is expressly mentioned as the subject of a request in Article 4(1)(e) of the regulation.

49 According to Article 10(2) of Regulation No 1206/2001, the requested court is to execute the request in accordance with the law of its Member State. Under Irish law a witness is obliged to appear before a court only if he has first received payment for his travel expenses ('a viaticum'). The question concerns whether the obligation to pay those expenses fell to the responsibility of the requested court or the requesting court.

50 First, it is necessary to clarify whether the requesting court was obliged to pay the requested court an advance for witness expenses and, therefore, whether the requested court was entitled to refuse to proceed with the examination of the witness until the requesting court had paid that advance.

51 Article 14 of Regulation No 1206/2001 sets out the grounds for refusal of a request. Article 14(2)(d) concerns the case in which payment of a deposit or advance asked for in accordance with Article 18(3) has not been made by the requesting court. According to Article 18(3) the requested court may, before executing the request, require an advance for an expert's costs. Article 18(3) does not provide, however, that an advance for examining a witness may be required.

52 As the Advocate General noted in point 45 of her Opinion, it could be consistent with Article 14 of Regulation No 1206/2001 to make execution of a request conditional on the payment of witness expenses only if the cases referred to in that provision were not listed exhaustively, but merely by way of example.

53 The wording of Article 14(2) of Regulation No 1206/2001 militates against such an interpretation. That provision states that, in addition to the grounds referred to in Article 14(1), the execution of a request for the hearing of a person 'may be refused only' in certain cases. Furthermore, recital 11 in the preamble to Regulation No 1206/2001 states that, to secure the effectiveness of the regulation, the possibility of refusing to execute the request for the performance of taking of evidence should be confined to strictly limited exceptional situations. It follows that the grounds on which execution of such a request may be refused are those exhaustively listed in Article 14 of the regulation.

54 The requested court was not therefore entitled to make the examination of a witness conditional on prior payment of an advance covering his witness expenses. Therefore, the requesting court was not obliged to pay such an advance.

55 Second, it is necessary to ascertain whether the requested court was authorised to require the reimbursement of witness expenses by the requesting court.

- 56 Article 18(1) of Regulation No 1206/2001 provides that the execution of a request to take evidence is not to give rise to a claim for any reimbursement of taxes or costs. It is therefore decisive whether witness expenses may be classified as taxes or costs within the meaning of that provision.
- 57 The requested court observes that under Irish law witnesses are obliged to attend to testify before a court only if they have first received payment for their expenses, which are the responsibility of the party which summons the witnesses and not the court. Therefore, according to the requested court, court costs are not involved. That arrangement is stated to be in keeping with the adversarial nature of Irish civil proceedings.
- 58 However, the concept of costs must be defined autonomously under European Union law and does not depend on the classification under national law. If the question of costs were to be made dependent on the national definition of that concept, that 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.
- 59 As regards the terms used in Article 18(1) of the 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.
- 60 As the Advocate General noted in point 54 of her Opinion, such an interpretation is supported by a systemic argument. If Article 18(1) of Regulation No 1206/2001 concerned only institutional costs it would not then be necessary to provide in Article 18(2), by way of exception to the prohibition laid down in Article 18(1), for a reimbursement of experts’ costs. Since experts’ costs cannot be classified as institutional costs they would be excluded from that prohibition from the outset.
- 61 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.
- 62 As regards the obligation to reimburse those costs, it must be recalled that according to recitals 2, 7, 8, 10 and 11 in the preamble to Regulation No 1206/2001 the aim of the regulation is to make the taking of evidence in a cross-border context simple, effective and rapid. The taking, by a court of one Member State, of evidence in another Member State must not lead to the lengthening of national proceedings. That is why Regulation No 1206/2001 established a regime binding on all the Member States, with the exception of the Kingdom of Denmark, to remove obstacles which may arise in that field.
- 63 Therefore, the requesting court can be obliged to provide reimbursement only if one of the exceptions laid down in Article 18(2) of Regulation No 1206/2001 is applicable.
- 64 Article 18(2) of Regulation No 1206/2001 provides for the reimbursement of fees paid to experts and interpreters and of costs occasioned by the application of Article 10(3) and (4). Article 10(3) concerns the case in which the requesting court asks for the request to be executed in accordance with a special procedure and Article 10(4) governs the use of modern communications technology in order to take evidence. However, witness expenses are not mentioned.
- 65 Furthermore, as stated by the Commission and by the Advocate General in points 60 and 61 of her Opinion, the origin of Regulation No 1206/2001 also supports the view that witness expenses are not reimbursable. It is clear from recital 6 in the preamble to the regulation and Article 21(1) thereof that the regulation replaces the Hague Convention. Consequently, the relevant provisions of the Hague Convention may be relied on in order to interpret the regulation.
- 66 The content of Article 18 of Regulation No 1206/2001 corresponds to that of Article 14 of the Hague Convention, the second paragraph of which provides that the State of execution has the right to require the State of origin to reimburse the fees paid to experts and interpreters and the costs occasioned by the use of a special procedure requested by the State of origin under the second paragraph of Article 9.
- 67 In this context, it must be pointed out that the Hague Convention amended the wording of Article 16 of the Hague Convention of 1 March 1954 on Civil Procedure. That article still explicitly laid down

that fees paid to witnesses were in principle to be reimbursed. It is clear from the explanatory report on the Hague Convention that the number of instances in which costs were to be reimbursable was to be deliberately reduced compared to the 1954 Convention. For that reason the reimbursement of fees paid to witnesses, precisely because of the small amount typically involved, was deliberately dropped.

68 The fact that Regulation No 1206/2001 reproduced the text of Article 14 of the Hague Convention is thus an argument against regarding witness expenses as reimbursable. Under Article 18(1) of that regulation there is therefore no need to reimburse those expenses.

69 In those circumstances, the answer to the question referred is that Articles 14 and 18 of Regulation No 1206/2001 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.

Costs

70 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 (First Chamber) hereby rules:

Articles 14 and 18 of Council Regulation (EC) No 1206/2001 of 28 May 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.

[Signatures]

* Language of the case: Polish.