

New references for preliminary rulings before the CJEU

Drawn to my attention by the Conflictus Legum are two recent requests for preliminary rulings on interpretation of the EU instruments in the field of private international law which are now pending before the Court of Justice of the EU.

One reference (C-315/10 *Companhia Siderúrgica Nacional, Csn Cayman Ltd v Unifer Steel SL, BNP-Paribas (Suisse), Colepccl SA, Banco Português de Investimento SA (BPI)*) was submitted by the Portuguese court on 1 July 2010, including the following questions:

1. Does the fact that the Portuguese judicial authorities have declared that they lack jurisdiction by reason of nationality to hear an action concerning a commercial claim constitute an obstacle to the connection between causes of action referred to in Articles 6(1) and [28] of Regulation No 44/2001, where the Portuguese court has another action pending before it, a Paulian action brought against both the debtor and the third-party transferee, in this case the transferee of a debt receivable, and the depositaries of the subject-matter of the claim assigned to the third-party transferee, the latter having their seats in Portugal, in order that they may all be bound by the res judicata decision to be given?
2. In the event of a negative response, may Article 6(1) of Regulation No 44/2001 be freely applied to the case?

The questions seem somewhat unclear, particularly in relation to declining jurisdiction on the basis of nationality and reference to Art 28. The reference is perhaps due to the same wording used in the two provisions, but might not have a direct connection with the case. The Portuguese court is evidently dealing with the action which is under the Portuguese law called “impugnação pauliana” (Arts. 610 et seq. of the Portuguese Civil Code). It is used to reverse the fraudulent conveyance of property, which is frequently resorted to by debtors on the eve of their insolvency. It might be relevant to know whether the debtor in this case is actually insolvent. Because certain information is missing, regardless of inquiries with some Portuguese colleagues, the situation cannot be fully appreciated for the time being.

The other reference (C-400/10 *J. McB. v L. E.*) of 6 August 2010 originates from

the Irish court in relation to (wrongful) removal of a child in case of father not married to the mother of the child. The question reads:

Does Council Regulation (EC) No 2201/2003 of 27 th November 2003 on the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) No 1347/2000, whether interpreted pursuant to Article 7 of the Charter of Fundamental Rights of the European Union or otherwise, preclude a Member State from requiring by its law that the father of a child who is not married to the mother shall have obtained an order of a court of competent jurisdiction granting him custody in order to qualify as having 'custody rights' which render the removal of that child from its country of habitual residence wrongful for the purposes of Article 2.11 of that Regulation?