

Commercial Court No. 08 of Barcelona Avinguda Gran Via de les Corts Catalanes, 111, (Edifici C) Barcelona - C.P. 08075 TEL: 035549468 FAX: 93 5 549 668 E-MAIL. mercantil8.óarcelona@xij.gencat.cal G.I.N.: 0g0194712024 000033 9 Preliminary proceedings - 27/2024 -F Maferia Preliminary proceedings and preparatory acts Bank Pa aingresosencaa. oncep o: Payments by bank transfer: Beiaeficiaricanliarcelona Concept: Plaintiff/appellant: NATIONAL PROFESSIONAL FOOTBALL LEAGUE

Attorney at Law: Fco. Javier Manjarin Alberl Attorney at Law: Francisco Martinez Fernandez

Defendant/defendant: ORANGE ESPAGNE SAU,VODAFONE ON O SAU, MASM OVIL IB ERCOM SA, DIGI SPAIN TELECOM SLU, TELEFORICA DEESPAÑA SAU, TELEFONICA MOVÍ LES ESPAÑA SAU, ORANGE ESPAÑA VIRTUAL SLU, VODAFONE ESPAÑA SAU

Procurator: Lawyer

Judge presiding: Javier Ramos De La Peña Location: Barcelona Date: February 13, 2024

FACTS

FIRST.- On January 9, 2024, this Court received a request for preliminary proceedings filed by THE NATIONAL PROFESSIONAL FOOTBALL LEAGUE (LaLiga) under article 256.1.11 of the LEC against various providers of information society services.

SECOND.- Prior to deciding on the preliminary proceeding, the parties were notified so that they could formulate allegations on the territorial competence of this Court to hear the petition, allegations that were formulated by the petitioner and the Public Prosecutor's Office, respectively, on January 31 and February 1, 2024, which were later heard to be resolved.

LEGAL REASONING

FIRST.- Territorial jurisdiction.

Art. 257 LEC has the following wording:

1. The judge of first instance or the commercial judge, where appropriate, of the domicile of the person who, if applicable, is to testify, exhibit or otherwise

intervene in the proceedings to be agreed upon in preparation for the trial, shall be competent to rule on the petitions and applications referred to in the preceding article. In the cases of numbers 6, 7, 8 and 9 of paragraph 1 of the preceding Article, the court to which the particular action is to be brought shall have jurisdiction. If, in these cases, new proceedings are requested, following the outcome of the proceedings then carried out, they may be requested from the same court or from the court which, following the facts ascertained in the previous proceedings, would be competent to hear the same claim or new claims which may possibly be joined.

2. Declinatory jurisdiction will not be admitted in preliminary proceedings, but the judge to whom they are requested will review his competence and if he understands that he is not competent to hear the request, he will abstain from hearing it, indicating to the applicant the Court of First Instance to which he should go. If the latter declines to exercise jurisdiction, it shall refer the negative conflict to the next higher common court, as provided for in Article 60 of this Law.

In the case at hand, a request for preliminary proceedings is made under the provisions of art. 256.1.11°, so that, in principle, the general rule of art. 257.1 LEC would apply, which takes into account the domicile of the person who would have to testify, exhibit or otherwise intervene in the proceedings that would be agreed to prepare the trial.

All the providers of information society services against which the petitioner addresses the request for preliminary proceedings have their domicile in Madrid, Pozuelo de Alarcón or Alcobendas.

The Public Prosecutor's Office, in the transfer granted for this purpose, understands that this Court lacks territorial jurisdiction. The plaintiff, on the other hand, argues that this Court does have territorial jurisdiction. The exceptions to the general rule of art. 257.1 LEC are prior to the introduction of the preliminary diligence that concerns us, regulated in the 11th ordinal, the result of the reform operated in the LEC by law 21/2014, of November 4.

The jurisprudence of the Supreme Court has accepted the attribution of territorial jurisdiction for preliminary proceedings to different Courts of those in which the

registered office of the legal entity required to exhibit or provide data is located, provided that in the Court in question there is an establishment open to the public of the company and that the legal relationship has arisen or has a connection with the requested jurisdiction in question.

This is observed in the ATS, Civil section 1 of September 20, 2022 (ROJ: ATS 13109/2022 - ECLI:ES:TS:2022!13109A) Appeal: 27/2022; in the ATS, Civil Section 1 of March 29, 2022 (ROJ: ATS 4766/2022 - ECLI: ES: TS: 2022:4766) Appeal: 61/2022; and in ATS, Civil Section 1 of March 29, 2022 June 2021 (ROJ: ATS 10786/2021 - ECLI:ES:TS:2021:10786A) Appeal: 131/2021.

A particularly illustrative example of the flexible interpretation made by the Supreme Court of the rules of territorial jurisdiction of art. 257.1 LEC is the Order of January 13, 2016 (conflict of jurisdiction 174/2015), in which a conflict arose between the Courts of First Instance of Madrid (where the requested party had its domicile) and those of Huelva (where the requested party had a branch office). Without Huelva even being the locality where the legal relationship that gave rise to the dispute had arisen (since the contracting took place in Lepe, Ayamonte, but the branch office in said municipality had been closed), the Supreme Court declared the Courts of said city to have jurisdiction in view of the following arguments:

"In the present case, the domicile of the petitioner and plaintiff is in Lepe, judicial district of Ayamonte, being also the place where the legal relationship was born because it was the place where the contract was entered into due to the opening of a branch office of the defendant at that time. Now, the conflict arises between the Court of First Instance of Huelva, the place where the defendant currently has an establishment open to the public, since the Lepe office, which was where the contract was formed and the stock purchase order for the acquisition of shares was subscribed, has been closed, and the Court of Madrid, since it is where the defendant's registered office is located.

Therefore, given that the question of jurisdiction does not arise between the Courts of Ayamonte and those of Madrid and that the contract or documentation whose exhibition is sought was not signed with a branch but with the Bankia entity, in order to resolve this question we must take into account Article 51 of the LEC, which allows legal persons to be sued in the place where the legal relationship is to take effect, provided that in said

place there is an establishment open to the public. In view of the above, jurisdiction corresponds to the duZC[dÓO ÓQ Huelva, since the entity obliged to exhibit the document, Bankia, has a branch office there and the legal relationship must produce effects in the judicial district of that locality. Any other solution would irremediably violate the right to the right of access.

In the case at hand, it is a notorious fact for the purposes of art. 281.4 LEC that all the information society service providers required to provide data have an establishment open to the public in Barcelona. On the other hand, with the precautions of this procedural stage and without prejudice to what would be accredited in a possible main proceeding, it is clear from the technical report accompanied with the letter of request for preliminary proceedings that the infringements referred to in the letter of La Liga are carried out by users of access operators throughout the Spanish territory. Therefore, the territorial competence of this Commercial Court to hear the present request for preliminary proceedings is justified, so that it is then necessary to assess whether or not the request should be granted.

SECOND - Preliminary proceedings requested. The request for preliminary proceedings is made under art. 256.1.11° LEC, which establishes that any trial may be prepared:

By means of the request, formulated by the holder of an intellectual property right who intends to exercise mrna action for infringement of the same, of. That a provider of services of the information society provides the necessary data to carry out the identification of a user of its services, with which they maintain or have maintained in the last twelve tables relations of provision of a service, on which there are reasonable indications that it is making available or disseminating directly or indirectly, contents, works or services object of such right without complying with the requirements established by the intellectual property law, and by means of acts that cannot be considered as being carried out by mere final consumers in good faith and without the aim of obtaining economic or commercial benefits, taking into account the appreciable volume ofprotected works and services not made available or disseminated.

The applicant states that, as the National Professional Soccer League, it exploits and markets the audiovisual rights of the National First Division League Championship, over which it holds ownership rights, protected by Royal Legislative Decree 1/1996, of April

12, 1996, which approved the Revised Text of the Intellectual Property Law (TRLPI). Specifically, this refers to the audiovisual content that is offered live and with exclusive access to residential customers and public establishments on pay television, with Movistar Plus+ satellite service customers being the only ones who have access for their exclusive consumption, by means of a satellite dish, decoder terminal and customer card.

The illicit access to such contents can be made through the Internet, being necessary, it is reported, the judicial assistance through the present preliminary proceedings to request the Internet access providers to complete the identification of the client who contracts the referred service through which he/she accesses these contents.

One of the modalities of illicit access is the so-called 'Cardsharing', which uses the protocols "CCCam and IKS", which presupposes the participation in the piracy network, on the one hand, of users with conditional access to pay for satellite connection, offering them on the network to profit illicitly, and, on the other hand, of users who acquire satellite connection equipment enabled to access original card codes without authorization. The operation can be summarized as follows: information from a legitimate card associated with a personal computer or satellite decoder receiver, which is permanently connected to the Internet providing decrypted access codes, is shared and sent to other external receivers (using CCCam and other protocols), imitating the legitimate subscriber's card that is subscribed to the service and accesses the encrypted signal.

The basic element of identification of Internet connections, the IP address, can be detected both to show the identification of servers and the connections of users participating in the hacking platform. LaLiga provides in its request the IP addresses and port of the servers, as well as the time of the request, data obtained legitimately. With this initial data, it is possible, after the issuance of the requirement contained in art. 256.1.11° LEC to the providers listed in the petition, to carry out the complete identification of the users of their services participating in the scheme of piracy described above. All this would be at the service of a future lawsuit against the persons thus identified for infringement of intellectual property rights in accordance with articles 138 and following TRLPI. THIRD.-

Examination of the application.

The above narration of facts and the expert report attached to the preliminary proceedings constitute sufficient elements to grant the preliminary proceeding requested under art. 256.1.11° LEC. From a reading of the latter, it is clear, for the mere purposes of the assessment to be made at this procedural stage and without prejudice to what is subsequently accredited in a possible main proceeding, that all users of this system use altered decoders with the purpose of, at least, defrauding the payment of service subscribers' fees and, in other cases, unlawfully capturing the signal for distribution, thereby enriching themselves.

In the 2022/2023 season, LaLiga's inspection forces in public establishments identified a total of 8,747 establishments that were broadcasting pirated content through the CCam/IKS system, which could result in losses of up to 27.7 million euros per year. Therefore, there are reasonable indications that content, works or services that are the object of LaLiga's audiovisual rights are being made available or disseminated directly or indirectly without respecting the provisions of the TRPI.

Given the cardsharing operation described above, it cannot be considered that the registered illegal activity associated with the identified LPs has been carried out by mere end consumers in good faith and without the intention of obtaining economic or commercial benefits.

Moreover, in view of the above-mentioned figures, we are faced with a considerable threshold of unauthorized protected works and performances made available or disseminated. In short, all the requirements of art. 256.1.11° LEC are met. Finally, the measure passes the test of necessity and proportionality, typical of any weighing of fundamental rights (arts. 18 and 24 EC). As already

The CJEU stated in its judgment of 17 June 2021 (Case C-597-19), a measure of communication of the names and postal addresses of users to the data controller or to a third party in order to enable him to bring a claim for compensation before the civil courts for the damage allegedly caused by those users does not preclude the provisions of Regulation (EU) Data Protection Regulation (EU) of 27 April 2016, provided, however, that the initiatives and claims to that effect by the said holder or third party are justified, proportionate and not abusive and are legally based on a national legal measure.

Finally, it is considered appropriate to offer a guarantee of 100 euros for each information society service

provider requested. P A R T I C I P A T E D I S P O S S I
T I V E I T I S A G R E E D that the preliminary proceedings
requested by LaLiga, consisting of:

1. The sending to the Internet Access Operators identified at the end of this resolution of the Technical Documents attached to LaLiga's request: Technical Report, File with Server Identification Table (IP address or port information), Proof of protected audiovisual content accessed illegally, Guide of information requested.
2. The delivery by the required Internet Access Operators of a file containing the following information is agreed upon:
 1. IP address assigned to the user when he/she accessed the server that provided him/her with the unlawful sharing of the audiovisual content;
 2. Name and Surname of the holder of the Internet access service contract;
 3. Postal address of the line installation and billing address;
 4. Identification document [NIF, NIE, other], with respect to the information on the IP address of the server to which he/she has connected. Port of the server to which you have connected and Time of the request (GMT+0 time).
1. The execution of the delivery of the File indicated in point 2 will be carried out directly by the Operators to LaLiga by means of a secure electronic channel without the need for an appearance in court.

The operators to whom this preliminary diligence is addressed are the following:

Vodafone España [Vodafone España, S.A.U. (NIF: A80907397) and Vodafone ONO, S.A.U. (NIF: A62186556)], with registered offices at Avenida de América 115, 28042 Madrid. 2. Orange Espagne, S.A.U. (NIF: A-82009812), with registered office at Paseo del Club Deportivo nº1. Parque Empresarial La Finca, Edificio 8. 28223. Pozuelo de Alarcón (Madrid). 3. Orange España Virtual, S.L.U. (NIF: B-85057974), with registered office at Paseo del Club Deportivo nº1. Parque Empresarial La Finca, Edificio 8. 28223. Pozuelo de Alarcón (Madrid) 4. MASMOVIL IBERCOM, S.A. (NIF: A-20609459), with registered office at Avenida de Bruselas 38, 28108 Alcobendas (Madrid). 5. Digi Spain

Telecom, S.L.U. (NIF: B-84919760), with address at Calle Francisca Delgado, 11, 28108, Alcobendas (Madrid). 6. Telefónica España [Telefónica de España, S.A.U. (NIF: A82018474) and Telefónica Móviles España, S.A.U. (NIF: A78923125)], domiciled at: Gerencia de Ordenación Jurídica, Distrito Telefónica, Plaza Sur, Edificio 2, 2º planta, Ronda de la Comunicación, sin, 28050 Madrid. I hereby inform the applicant that within THREE working days from the day following the notification of this resolution, it must provide security in the amount of 100 euros for each information society service provider in any of the following forms: in cash, by means of a joint and several guarantee of indefinite duration and payable on first demand

requirement, issued by a credit institution or guarantee company; or by any other means which, in the opinion of this judicial body, guarantees the immediate availability, if any, of the amount expressed. And I warn you that, if you do not provide the guarantee within the indicated term, the proceedings will be definitively filed. Once the bond has been posted, the necessary summons and/or subpoenas will be issued to carry out the preliminary proceedings. No appeal is allowed against this decision, without prejudice to the possibility of filing an opposition in accordance with art. 260 of Law 1/2000, of January 7, of Civil Procedure. In such case, if appropriate, the corresponding hearing will be scheduled. I also warn the applicant that, if after ONE MONTH from the termination of the proceedings, he/she has not filed the claim, without sufficient justification, he/she will forfeit the bond (article 256.3 LEC). I agree and sign. The Magistrate You can check the status of your file in the private area of se1.gencat.cat. The interested parties are hereby informed that their personal data have been included in the case file of this Judicial Office, where they will be kept confidential, under the safeguard and responsibility of the same, where they will be treated with the utmost diligence. You are informed that the data contained in these documents are confidential or confidential and that the treatment that may be made of them is subject to the law in force. The personal data that the parties become aware of through the process must be treated by the parties in accordance with the general data protection regulations. This obligation is incumbent upon the professionals representing and insulating the parties, as well as any others involved in the proceedings.

The illegitimate use of the same may give rise to the legally established responsibilities. In relation to the processing of data for legal purposes, the rights of

information, access, rectification, deletion, opposition and limitation shall be processed in accordance with the rules applicable to the process in which the data were collected. These rights must be exercised before the judicial body or j u d i c i a l office in which the procedure is being processed, and the petitions must be resolved by whoever has the competence attributed in the organic and procedural regulations. All this in accordance with the provisions of Regulation EU 2016/679 of the European Parliament and of the Council, in the Organic Law 3/2018, of December 6, 2018, on the protection of personal data and guarantee of digital rights and in Chapter I Bis, of Title III of Book III of the Organic Law 6/1985, of July 1, 1985, of the Judiciary.