



Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 29 July 2019¹

Case C-433/18

ML
v
OÜ Aktiva Finants

(Request for a preliminary ruling
from the Korkein oikeus (Supreme Court, Finland))

(Reference for a preliminary ruling — Judicial cooperation in civil and commercial matters — Jurisdiction, recognition and enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Article 43 — Effective rights of appeal and the requirement for adversarial proceedings — Appeal against a decision of enforceability concerning a judgment delivered by a court in a different Member State — Procedure for granting leave for further consideration of an appeal)

I. Introduction

1. On 7 December 2009, an Estonian court, the Harju Maakohus (Court of First Instance, Harju, Estonia) delivered a judgment ordering ML ('the appellant') to pay EEK 14 838.50 (approximately EUR 948) to the Estonian company OÜ Aktiva Finants. On application by Aktiva Finants, the Helsingin käräjäoikeus (District Court, Helsinki, Finland) declared that judgment to be enforceable in Finland on the basis of Regulation No 44/2001.² The appellant challenged that decision before the Helsingin hovioikeus (Court of Appeal, Helsinki, Finland). That court declined to grant him leave for further consideration, and the appellant has challenged that decision on appeal before the referring court, the Korkein oikeus (Supreme Court, Finland).

2. In Finland, the national system of appeals provides for a procedure for granting leave for further consideration in the context of appeals lodged against decisions of district courts. That procedure also applies to appeals against decisions at first instance declaring judgments delivered in a different Member State to be enforceable under Regulation No 44/2001.

3. This reference for a preliminary ruling invites the Court of Justice to determine whether, in the context of the system instituted by Regulation No 44/2001, a procedure for granting leave for further consideration, such as that at issue in the main proceedings, is compatible with the requirement for effective rights of appeal, guaranteed to both parties, as resulting from Article 43(1) of Regulation No 44/2001, and whether such a procedure complies with the rules governing procedure in contradictory matters, in accordance with Article 43(3) of that regulation.

¹ Original language: French.

² Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

II. Legal framework

A. *EU law*

4. Under Article 41 of Regulation No 44/2001:

‘The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought cannot at that stage of the proceedings make any submissions on the application.’

5. Pursuant to Article 43(1) to (3) of that regulation:

‘1. The decision on the application for a declaration of enforceability may be appealed against by either party.

2. The appeal is to be lodged with the court indicated in the list in Annex III.

3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.’

6. Article 45 of that regulation provides:

‘1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.

2. Under no circumstances may the foreign judgment be reviewed as to its substance.’

B. *Finnish law*

7. According to Chapter 25a, Paragraph 5(1), of the Oikeudenkäymiskaari (Code of judicial procedure), appeals against decisions of the district courts require leave for further consideration.

8. Paragraph 11(1) of that chapter reads as follows:

‘Leave for further consideration of an appeal is to be granted if:

- (1) there is cause to doubt the correctness of the judgment of the district court;
- (2) it is not possible to assess the correctness of the judgment of a district court without granting leave for further consideration of an appeal;
- (3) in the light of the application of the law in other, similar cases it is important to grant leave for further consideration of the appeal in the matter; or
- (4) there is another important reason for granting leave.’

9. In accordance with Paragraph 13 of that chapter, ‘before deciding on whether to grant leave for further consideration of the appeal, the court of appeal must, if necessary, invite the respondent to present a written response to the appeal before it’.

10. In accordance with Chapter 25a, Paragraph 14(1), of the Code of judicial procedure, ‘the court of appeal shall decide the question of whether to grant leave for further consideration in a written procedure on the basis of the judgment of the district court, the notice of appeal, any written response and, if necessary, also on the basis of other information in the file’.

11. Under Paragraph 17 of that chapter, if leave for further consideration is not granted, the judgment of the district court is to stand and the decision must set out the parties’ claims and responses.

12. In accordance with Paragraph 18 of that chapter, where the formation of the court consists of three members, leave for further consideration is to be granted if at least one of the members is in favour of granting leave. However, leave for further consideration can also be granted by a court formed by a single judge.

13. Under Chapter 26, Paragraph 1, of the Code of judicial procedure, where leave for further consideration is granted and the hearing of the appeal case is continued before the court of appeal, that court must examine whether and how the judgment of the district court is to be amended. Under Paragraph 3 of that chapter, the respondent is to be invited to present a written response to the notice of appeal within a time limit set by the court of appeal unless a response was already requested when the question of leave for further consideration of the appeal was being dealt with or where the invitation to submit a response is manifestly unnecessary.

III. Facts, proceedings and the questions referred

14. The appellant is a natural person who states that he has been domiciled in Finland since 26 November 2007. By judgment of 7 December 2009, the Harju Maakohus (Court of First Instance, Harju) ordered him to pay EEK 14 838.50 (approximately EUR 948) to Aktiva Finants.

15. Under Regulation No 44/2001 and on application by Aktiva Finants, the judgment delivered on 7 December 2009 against the appellant was declared enforceable in Finland by decision of the Helsingin käräjäoikeus (District Court, Helsinki).

16. After being served with that decision, the appellant appealed against it to the Helsingin hovioikeus (Court of Appeal, Helsinki) and requested that the decision of the Helsingin käräjäoikeus (District Court, Helsinki) be set aside in its entirety. In his application to the Helsingin hovioikeus (Court of Appeal, Helsinki), the appellant argued that the Estonian decision had been made in his absence, and that he had not been served with the document instituting the proceedings or other equivalent document in time and in such a manner that he was able to prepare his response in the case. The appellant also stated that he became aware of the entire proceedings only when the Helsingin käräjäoikeus (District Court, Helsinki) served him with the decision relating to the declaration of enforceability. Further, according to the appellant, the Estonian court did not have jurisdiction in the matter at issue, given that he had been domiciled in Finland since 26 November 2007. The appellant also based his objections on Articles 34 and 35 of Regulation No 44/2001.

17. The Helsingin hovioikeus (Court of Appeal, Helsinki) declined to grant the appellant leave for further consideration, and its handling of the appeal therefore came to an end.

18. The appellant applied to the referring court for leave to appeal against that decision of the Helsingin hovioikeus (Court of Appeal, Helsinki), which was granted on 24 January 2017. In his appeal to the Korkein oikeus (Supreme Court), he requested that the decision of the Helsingin hovioikeus (Court of Appeal, Helsinki) be set aside, that leave be granted for further consideration of his appeal, and that the matter be remitted to the Helsingin hovioikeus (Court of Appeal, Helsinki) for the appeal to be heard.

19. In the circumstances, the referring court states that it must ascertain whether a procedure for leave for further consideration of an appeal, such as that at issue in the main proceedings, applies where the subject of the appeal is the judgment of a district court to declare a decision delivered in a different Member State to be enforceable under Regulation No 44/2001. It adds that it must also rule on whether the procedure for granting leave for further consideration is compatible with Regulation No 44/2001, and more specifically with the rules governing procedure in contradictory matters to which Article 43(3) of that regulation refers.

20. In those circumstances, the Korkein oikeus (Supreme Court) stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

- ‘1. Is the procedure for granting leave for further consideration which is part of the national system of appeals compatible with the effective rights of appeal that are guaranteed for both parties in Article 43(1) of Regulation No 44/2001 where an appeal is lodged against the decision of a district court which relates to the recognition or enforcement of a judgment under Regulation No 44/2001?
2. In the procedure for granting leave for further consideration, are the requirements in relation to a procedure in contradictory matters within the meaning of Article 43(3) of Regulation No 44/2001 satisfied if the respondent is not heard in relation to the appeal before the decision on leave is taken? Are they satisfied if the respondent is heard before the decision on leave for further consideration is taken?
3. Does the fact that the appellant may be not only the party who has applied for enforcement and whose application has been refused, but also the party against whom enforcement has been applied for when that application has been allowed, have any significance for the above interpretation?’

21. The Finnish Government and the European Commission lodged written observations and presented oral submissions at the hearing held on 15 May 2019.

IV. Assessment

22. This Opinion is structured as follows. In the context of the first question referred, having examined the system instituted by Regulation No 44/2001 and the Finnish procedure for granting leave for further consideration at the appeal stage, I believe that Article 43 of that regulation does allow such a procedure, subject to certain conditions (A). In the context of the second and third questions referred, which I will address together, having examined the scope of the adversarial principle, my view is that a procedure for granting leave for further consideration, such as that at issue in the main proceedings, does not breach the requirement for an adversarial procedure (B).

A. The first question referred

23. By its first question referred for a preliminary ruling, the referring court asks the Court of Justice, in essence, whether the procedure for granting leave for further consideration, established by the Finnish system, is compatible with the effective rights of appeal under Article 43(1) of Regulation No 44/2001.

1. The system instituted by Regulation No 44/2001

24. In accordance with the principle of mutual trust and in line with the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters,³ as amended by subsequent conventions relating to the accession of new Member States to that convention,⁴ Regulation No 44/2001, which applies in the present case,⁵ is intended to make the recognition and enforcement of judgments simpler and more rapid. That instrument of secondary legislation simplifies the formalities, so that judgments delivered in one Member State are recognised automatically, without any special procedure being required, and the procedure for making a decision delivered in one Member State enforceable in another Member State is efficient and rapid.⁶

25. Enforcement proceedings nevertheless also enable a judgment delivered in a different Member State to be reviewed in the light of the grounds for non-enforcement exhaustively listed by the EU legislature in Articles 34 and 35 of Regulation No 44/2001. Enforcement proceedings therefore comprise two separate stages.

26. In the *first* stage, under Article 41 of Regulation No 44/2001, a party applies to enforce the judgment delivered in a different Member State in non-adversarial proceedings. At that stage, the grounds for refusing enforcement under Articles 34 and 35 of that regulation cannot be examined, either at the request of the parties or even by the court or authority of its own motion. Provided the application for enforcement is submitted by a party with *locus standi* for the court or authority with jurisdiction to hear it, and provided the formal requirements are satisfied, the court or authority applied to is bound to grant that application. Under recital 17 of that regulation, the declaration that a judgment is enforceable is therefore issued ‘virtually automatically’.

27. In the *second* stage, Article 43 of Regulation No 44/2001 provides that an appeal can be lodged against the decision on the application for a declaration of enforceability. According to Article 44 of that regulation, the judgment given on the appeal may itself be contested only by an appeal specific to each Member State, defined in Annex IV to that regulation. The appeal under Article 43 of Regulation No 44/2001 can be brought by the party applying to enforce a judgment if the declaration of enforceability was refused at the first stage, and by the party against whom enforcement is sought. In contrast to the first stage, this second stage is, under Article 43(3) of Regulation No 44/2001 itself, adversarial.

28. However, the system of appeals under Article 43 of that regulation is not as clear as the preceding point might suggest.

29. Uncertainties already emerge in its wording. Given the diverse terms that the EU legislature used in the various language versions of Regulation No 44/2001, it is difficult to ascertain whether, in Article 43 of that regulation, that legislature intended to establish an ‘action’ (*recours*) or an ‘appeal’ (*appel*).⁷

³ OJ 1998 C 27, p. 1.

⁴ ‘The Brussels Convention’.

⁵ Since the proceedings before the Estonian court were brought before 10 January 2015, Regulation No 44/2001 continues to apply *ratione temporis* by virtue of Article 66(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

⁶ See recitals 16 and 17 of Regulation No 44/2001. See also judgment of 14 December 2006, *ASML* (C-283/05, EU:C:2006:787, paragraph 23).

⁷ In a number of language versions of Regulation No 44/2001, such as those in Spanish, French and Italian, the term used for those second instance proceedings is that corresponding to an ‘action’ (*recours* in French), which suggests first instance proceedings, and therefore remains faithful in *functional* terms to the structure of the regulation. In other language versions, in contrast, the concept used is that of an ‘appeal’ (*appel* in French), as borne out by the versions in English (*appeal*) and Czech (*opravný prostředek*), which imply second instance proceedings, in line with the fact that, in *formal* terms, they are often heard by a second tier court.

30. In terms of the structure of the regulation, however, in reality the two stages of enforcement proceedings do not correspond to the distinction between first instance and appeal proceedings. The application for enforcement involves a formal check and, at that stage, Regulation No 44/2001 does not allow any review in the light of the grounds for refusing enforcement under Articles 34 and 35. These are therefore not first instance proceedings in the strict sense of the term. In the context of the appeal under Article 43 of that regulation, although no provision of the regulation restricts the pleas or arguments that can be relied upon in support of an appeal against the first instance decision, the court hearing the appeal can, however, refuse or revoke a declaration of enforceability only on one of the grounds laid down in Articles 34 and 35 of that regulation.⁸ These are therefore not appeal proceedings in the strict sense of the term.

31. The same uncertainties are also manifest in the designation of the courts before which an appeal under Article 43(2) of Regulation No 44/2001 must be lodged, apparent from the list in Annex III to that regulation. It follows from a reading of that annex that the courts designated by the Member States are rather disparate, both in formal terms (the formal level of the relevant court in the national system, including not only courts of first instance but appeal courts) and in procedural terms (with proceedings being brought not only directly before the appellate court and indirectly by the first instance court but also before different courts depending on whether the appeal is brought by the respondent or by the appellant).

32. Nevertheless, despite those uncertainties, it is clear that, under Article 43(3) of Regulation No 44/2001, proceedings before the designated courts must satisfy at least three requirements.

33. First, as the Commission emphasised in its written observations, Article 43 of that regulation establishes an unconditional right for both parties to lodge an appeal against the decision on the application for a declaration of enforceability.

34. Second, the fundamental purpose of the appeal procedure instituted in Article 43 of Regulation No 44/2001 is to enable a court to ascertain the existence of any of the grounds for non-enforcement, set out in Articles 34 and 35 of that regulation,⁹ that can defeat enforcement of the judgment delivered in a different Member State.

35. Third, as regards the detailed procedural rules governing the appeal under Article 43 of Regulation No 44/2001, that article must be interpreted in the light of fundamental rights and, in particular of Article 47(2) of the Charter of Fundamental Rights of the European Union.¹⁰ Such a remedy must therefore be effective.

2. The Finnish procedure for granting leave for further consideration of an appeal

36. It is apparent from the case file available to the Court of Justice and information provided by the Finnish Government at the hearing that the procedure for granting leave for further consideration has the following characteristics.

37. That procedure is laid down for all appeal proceedings against decisions of the district courts, in contentious and non-contentious matters, with the exception of certain criminal cases. It also applies, as the Finnish Government stated, to the appeals established by Regulation No 44/2001.

⁸ In accordance with Article 45 of Regulation No 44/2001.

⁹ I would point out here that, although Regulation No 1215/2012 abolished the exequatur, it did not abolish review of the grounds under Articles 34 and 35 of Regulation No 44/2001, as Articles 45 and 46 of Regulation No 1215/2012 testify.

¹⁰ 'The Charter'. See, to that effect, judgment of 11 September 2014, *A* (C-112/13, EU:C:2014:2195, paragraph 51 and the case-law cited), bearing in mind that an action brought under Article 43 of Regulation No 44/2001 to contest a decision declaring enforceability constitutes implementation of EU law within the meaning of Article 51 of the Charter (order of 13 June 2012, *GREP* (C-156/12, not published, EU:C:2012:342, paragraph 31)).

38. Appeals before the court of appeal are therefore in two stages. First, the court of appeal determines whether the requirements for granting leave for further consideration are satisfied, in the light of the grounds laid down by the legislation. Second, if the requirements are satisfied, the proceedings continue and the court of appeal carries out a comprehensive examination of the appeal.

39. In the first stage of the appeal, the party lodging the appeal must, in the document instituting the proceedings, specify the pleas and evidence relied upon in support of the application to set aside the judgment of the lower court. That party must also indicate, in the document instituting the proceedings, the ground and the arguments on the basis of which leave for further consideration should be granted.

40. On the basis of those elements, the court of appeal must, of its own motion, check each of the four reasons that justify granting leave for further consideration, set out in Chapter 25a, Paragraph 11(1), of the Code of judicial procedure. To that end, it takes into account the judgment of the district court, the document instituting the proceedings, the case file, including the foreign judgment, and the information to be provided under Article 54 of Regulation No 44/2001.

41. If one of the reasons for granting leave is present and at least one member of the court of appeal is in favour of granting leave, the court of appeal must grant leave for further consideration and has no discretion in that respect. Leave is not granted if it is clear that none of the four reasons for granting leave applies.

3. The procedure for granting leave for further consideration and the principle of effectiveness

42. According to the settled case-law of the Court of Justice, in the absence of any relevant EU rules governing the matter, it is for each Member State, by virtue of the principle of the procedural autonomy of the Member States, to determine the detailed procedural rules intended to safeguard the rights which individuals derive from EU law.¹¹

43. As regards the procedure for granting leave for further consideration at issue in the main proceedings, it is apparent from the observations of the Finnish Government that the national legislature instituted that procedure in the light of two series of objectives. On the one hand, according to that Government, the procedure is intended to address the increase in the workload of the courts of appeal and the resulting increase in the length of proceedings. On the other, it responds to the need to handle appeals in accordance with an effective procedure that protects the rights of the parties. Accordingly, the procedure, it is claimed, takes into account the nature of the case brought before the court of appeal for examination so that cases where review by the court of appeal is not justified by important reasons relating to the legal protection of the appellant and the general interest of the case can be handled under a more streamlined procedure.

44. There is, to my mind, no doubt that those objectives, which ultimately reflect objectives relating to the speed of proceedings and better allocation of judicial resources, are legitimate.¹²

¹¹ See judgment of 8 November 2005, *Leffler* (C-443/03, EU:C:2005:665, paragraph 49).

¹² The European Court of Human Rights has already been called upon to rule on whether mechanisms that filter appeals at the level of appeals and of cassation appeals are compatible with Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. That Court has repeatedly held that the right of access to a court can be limited, provided that the limitations do not impair the very essence of Article 6 of that Convention and provided that they pursue a legitimate aim. That Court has found aims relating to fair administration of justice and preventing courts from becoming overloaded with cases to be legitimate [ECtHR, 13 July 1995, *Tolstoy Miloslavsky v. United Kingdom* (CE:ECHR:1995:0713JUD001813991, § 61); 19 December 1997, *Brualla Gómez de la Torre v. Spain* (CE:ECHR:1997:1219JUD002673795, § 36) and 11 October 2001, *Rodríguez Valín v. Spain*, CE:ECHR:2001:1011JUD004779299, § 22)].

45. However, in accordance with established case-law, the detailed procedural rules governing the actions laid down by the Member States cannot be less favourable than those governing similar actions established to protect rights which originate in domestic law (principle of equivalence) and they cannot render virtually impossible or excessively difficult the exercise of rights conferred by the legal order of the European Union (principle of effectiveness).¹³

46. In the present case, since it seems that the Finnish procedure for granting leave for further consideration applies to all appeals against decisions of district courts in contentious or non-contentious matters, it can be immediately ruled out that the principle of *equivalence* is infringed.

47. As regards compliance with the principle of *effectiveness*, it is necessary to determine whether the procedure for granting leave for further consideration makes it impossible or excessively difficult to bring the appeal under Article 43 of Regulation No 44/2001.

48. It must be noted, as a preliminary issue, that the principle of effectiveness does not generally involve any requirements going beyond those deriving from the right to effective judicial protection guaranteed by the Charter.¹⁴ However, that right is not an absolute prerogative. Accordingly, the Court of Justice, relying explicitly on the case-law of the European Court of Human Rights, has already held that the ‘right to a court’,¹⁵ of which the right of access to a court is one aspect, is not absolute and is subject to limitations permitted by implication, since, by its very nature, it calls for regulation by the State, which enjoys, in that regard, a certain margin of appreciation. In the view of the Court of Justice, those limitations must not restrict a litigant’s access in such a way or to such an extent that the very essence of the right to a court is impaired. Lastly, they must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.¹⁶

49. In the present case, it appears that the procedure for granting leave for further consideration at issue in the main proceedings does comply with the principle of effectiveness, provided, first, that it allows the grounds for non-enforcement to be taken into account and, secondly, that any decision refusing to grant leave duly states reasons.

50. First, it is necessary to ensure that the procedure for granting leave for further consideration does not undermine the purpose of the appeal established in Article 43 of Regulation No 44/2001, that is to say, enabling a court to verify whether there are grounds, as laid down in Articles 34 and 35 of that regulation, for refusing enforcement of a judgment delivered in a different Member State. Although it is for the referring court alone to examine whether Finnish law enables those grounds to be taken into account when a court is examining an application for leave for further consideration, the following points are intended to provide some guidance on the matter.

51. It appears in that respect that the reasons for granting leave for further consideration set out in Paragraph 11(1) of Chapter 25a of the Code of judicial procedure are such as to enable Articles 34 and 35 of Regulation No 44/2001 to be taken into account.

¹³ See, as regards judicial cooperation in civil matters, judgments of 8 November 2005, *Leffler* (C-443/03, EU:C:2005:665, paragraph 50), and of 9 November 2016, *ENEFI* (C-212/15, EU:C:2016:841, paragraph 30).

¹⁴ See judgments of 26 September 2018, *Belastingdienst v Toeslagen* (Suspensory effect of an appeal) (C-175/17, EU:C:2018:776, paragraph 47), and of 26 September 2018, *Staatssecretaris van Veiligheid en justitie* (Suspensory effect of an appeal) (C-180/17, EU:C:2018:775, paragraph 43).

¹⁵ Which is not the same thing as a right to more than one level of jurisdiction. It is clear from the case-law of the Court of Justice that the principle of effective judicial protection affords an individual a right of access to a court or tribunal but not to a number of levels of jurisdiction (judgment of 28 July 2011, *Samba Diouf* (C-69/10, EU:C:2011:524, paragraph 69)).

¹⁶ See order of 16 November 2010, *Internationale Fruchtimport Gesellschaft Weichert v Commission* (C-73/10 P, EU:C:2010:684, paragraph 53 and the European Court of Human Rights case-law cited).

52. Specifically, it does indeed seem that the grounds for non-enforcement laid down by the EU legislature in Articles 34 and 35 of Regulation No 44/2001 are covered by the first and fourth reasons for granting leave for further consideration, according to which leave for further consideration must be granted if there is cause to doubt the correctness of the judgment of the district court or if there is another important reason for granting leave.

53. It appears therefore that, from the stage of granting leave for further consideration, the courts of appeal are able to verify whether, in the context of an appeal brought under Article 43 of Regulation No 44/2001, the grounds for non-enforcement under Articles 34 and 35 of that regulation call for a thorough examination of the judgment at first instance on the application for a declaration of enforceability.

54. Second, the procedure for granting leave for further consideration appears to be organised in such a way that it does in practice enable the correctness of the judgment at first instance to be assessed at that stage, albeit from the perspective of procedural economy.

55. The procedure for granting leave for further consideration, as established in Finnish law, cannot in fact be treated as a preliminary filter intended to examine whether an appeal is *admissible*. As the Finnish Government has pointed out, at the stage of granting leave for further consideration the court of appeal verifies whether there is cause to doubt the correctness of the judgment of the district court's, in the light in particular of the decision of the lower court and the case file. The assessment carried out, at that stage, by the court of appeal can indeed therefore be treated as a preliminary, albeit summary, examination of the very *substance* of the judgment at first instance.¹⁷

56. Furthermore, although the right to effective judicial protection implies the right of access to a court or tribunal, it does not thereby imply automatic access to a uniform procedure, even where the appeal is bound to be dismissed. It would appear that further consideration is refused, in practice, only where it is evident to all the members of the court of appeal that the appeal is completely unfounded. Indeed, according to the Finnish Government, the reasons for granting leave for further consideration must be interpreted flexibly and in favour of the party applying for that leave.¹⁸ It is therefore only where an appeal is manifestly unfounded that it can be dismissed as early as at the stage of leave for further consideration. In all other cases, the appeal will ultimately be examined thoroughly after leave having been given therefor by the court of appeal.

57. Third, the procedure at issue in the main proceedings is compatible with Article 43 of Regulation No 44/2001 only if any decisions refusing leave duly state reasons.

58. The hearing revealed a major disagreement on that point between the Finnish Government and the Commission. The Finnish Government argued that, under the Code of judicial procedure, such a decision had to state reasons, whereas the Commission, relying on the same code, asserted that this was not necessarily the case.

59. It is not for the Court of Justice to arbitrate between those opposing positions on the correct interpretation of national law, but to identify the requirements resulting from EU law. EU law does, in fact, require decisions, such as a refusal to grant leave for further consideration of an appeal, mandatorily to state reasons.

¹⁷ In that respect the procedure for granting leave for further consideration can be compared with the application for leave to seek judicial review at issue in *North East Pylon Pressure Campaign and Sheehy* (judgment of 15 March 2018, C-470/16, EU:C:2018:185).

¹⁸ Furthermore, it seems to be apparent from Chapter 25a, Paragraph 18, of the Code of judicial procedure that leave for further consideration is to be granted, where the formation of the court consists of three members, if at least one of the members is in favour of granting leave.

60. First of all, the obligation to state reasons is justified, in general terms, by the two functions of that obligation. It enables the persons concerned to know the reasons that led the court to make a decision and provides a court before which an appeal against that decision may be brought with sufficient information to carry out its judicial review.¹⁹ In that context, the Court has already held that the observance of the right to a fair trial requires that all judgments state reasons to enable the respondent to see why judgment has been pronounced against him and to bring an appropriate and effective appeal against it.²⁰

61. Accordingly, were the court of appeal not bound to give reasons for its decision, in particular where it refuses to grant leave for further consideration, the right laid down in Finnish law to appeal against that refusal decision to the Supreme Court would be to a large extent hypothetical. Without a statement of reasons, it would be difficult, to say the least, appropriately to challenge the decision of the court of appeal, and the Supreme Court would be unable to assess whether that decision was well-founded.

62. Next, the obligation to state reasons in respect of a decision on appeal is especially fundamental in the context of the appeal system instituted by Regulation No 44/2001. It should be noted that, on the one hand, the decision on the application for a declaration of enforceability made *at first instance* is not subject to an obligation to state reasons. On the other, it would appear that, in Finland as in other Member States, an *appeal to the Supreme Court* against an appeal decision is also subject to a system of prior leave to proceed.

63. As a result, a decision made on conclusion of the appeal provided for in Article 43 of Regulation No 44/2001 is the first (and potentially also the last) decision in which the grounds for non-enforcement established in Articles 34 and 35 of that regulation must be taken fully into consideration. It is inconceivable that a party should be able to make use of the possibilities available under that regulation to defeat enforcement of a judgment delivered in a different Member State without ever being the addressee of a reasoned decision.²¹

64. Lastly, the fact that, in the present case, the procedure for granting leave for further consideration concerns the appeal stage is decisive as regards the obligation to state reasons. Indeed, having regard to that fact, the — completely reasonable — position of the European Court of Human Rights that a decision made in the context of a filtering procedure *at the stage of cassation* (a ‘second appeal’ before the supreme courts, generally limited to points of law) does not necessarily have to state reasons,²² cannot logically apply to the procedure for granting leave for further consideration at the appeal stage where that appeal is, in reality, a *first appeal remedy* enabling account to be taken of the grounds for non-enforcement of the judgment delivered in a different Member State.

65. As a result, it is for the referring court to ascertain whether decisions refusing leave for further consideration of an appeal must state reasons. Were the courts of appeal not to be bound by such an obligation, the procedure for granting leave for further consideration would, to my mind, be incompatible with Article 43 of Regulation No 44/2001. Indeed, should it be found that the procedure for granting leave for further consideration was introduced into the national appeal system without taking into account the special characteristics of the system instituted by Regulation No 44/2001, that fact could lead to the procedure being followed mechanically, in a manner difficult to reconcile with the requirements of Regulation No 44/2001.

19 See, inter alia, judgment of 15 November 2012, *Council v Bamba* (C-417/11 P, EU:C:2012:718, paragraph 49).

20 See judgment of 6 September 2012, *Trade Agency* (C-619/10, EU:C:2012:531, paragraph 53).

21 The importance of being the addressee of a reasoned decision is also reinforced by the fact that a reading of Article 44 of Regulation No 44/2001, in conjunction with Annex IV thereto, shows that the Member States are not bound to provide for an appeal against the decision made on conclusion of the appeal provided for in Article 43 of that regulation.

22 See ECtHR decisions on admissibility of 9 March 1999, *société anonyme Immeuble groupe Kosser v. France* (CE:ECHR:1999:0309DEC003874897); of 28 January 2003, *Burg and Others v. France* (CE:ECHR:2003:0128DEC003476302), and of 6 September 2005, *Glender v. Sweden* (CE:ECHR:2005:0906DEC002807003).

66. In the light of the foregoing, I consider that Article 43(1) of Regulation No 44/2001 does permit a procedure for granting leave for further consideration, such as that at issue in the main proceedings, provided that, in substantive terms, the grounds of non-enforcement in Articles 34 and 35 of Regulation No 44/2001 can be adduced and taken into account as reasons for granting leave for further consideration and that, in procedural terms, decisions refusing leave for further consideration are mandatorily required to state reasons.

B. The second and third questions referred

67. By its second question, the referring court asks the Court of Justice, in essence, to determine whether a procedure for the granting of leave for further consideration of appeals, such as that at issue in the main proceedings, in which the respondent, or the party that has not brought the appeal, is not heard, is compatible with the adversarial principle set out in Article 43(3) of Regulation No 44/2001.

68. As regards the referring court's third question, I understand it as seeking to ascertain the consequences of the fact that Article 43(1) of that regulation provides that appeals can be brought not only by the party seeking enforcement but also by a party against whom enforcement has been granted.

69. It is clear from the foregoing that, in essence, both of those questions share the same aim: they seek to determine whether the procedure at issue in the main proceedings is compatible with Article 43(3) of Regulation No 44/2001. I therefore propose to address them together.

70. At the outset, I do not see why such a procedure which, for legitimate reasons of the sound administration of justice, seeks above all to enable manifestly unfounded actions to be dealt with rapidly, would be incompatible with the adversarial principle.

71. Indeed, although Article 43(3) of Regulation No 44/2001 provides unambiguously that the appeal is to be dealt with in accordance with the rules governing procedure in contradictory matters, it is nevertheless clear that the EU legislature has not further clarified the requirements associated with the fact that the procedure is adversarial. Organisation of the appeal procedure is therefore within the scope of the procedural autonomy of the Member States, provided the adversarial principle, understood in the light of the special characteristics of the enforcement system established by Regulation No 44/2001, is observed.

72. The adversarial principle is crucial in the context of the system instituted by Regulation No 44/2001 to ensure the free movement of judicial decisions within the European Union. Indeed, as stated above,²³ the enforcement system is intended to enable an appellant to obtain enforcement of a judgment delivered with the necessary safeguards in a different Member State,²⁴ simply and rapidly, within a non-adversarial procedure.²⁵ In contrast, since the first 'instance' is not adversarial, the EU legislature expressly required that the appeal procedure should be.²⁶

²³ See points 24 to 26 of this Opinion.

²⁴ See, in the context of the Brussels Convention, judgments of 21 May 1980, *Denilauler* (125/79, EU:C:1980:130, paragraph 14); of 12 July 1984, *P.* (178/83, EU:C:1984:272, paragraph 11), and of 10 July 1986, *Carron* (198/85, EU:C:1986:313, paragraph 8).

²⁵ Article 41 of Regulation No 44/2001 states unambiguously that 'the party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.'

²⁶ See judgment of 11 May 2000, *Renault* (C-38/98, EU:C:2000:225, paragraph 21 and the case-law cited).

73. As regards the requirements associated with the adversarial principle, the Court of Justice has already stated repeatedly that, in the context of both administrative and judicial proceedings, that principle means, as a rule, that the parties to administrative or court proceedings have the right to be given an opportunity to comment on the facts and documents on which an administrative or judicial decision will be based and to discuss the evidence produced and the observations made to the administrative authority or court as well as the pleas in law raised by the authority or court of its own motion on which it intends to base its decision.²⁷

74. Specifically, that rule protects a party in respect of the matters that *determine*²⁸ the adoption of a decision affecting its interests.²⁹ Compliance with the adversarial principle is therefore inextricably linked to the notion that the matters that serve as the basis of a decision adopted to the detriment of a party must be discussed by that party.³⁰

75. So, having regard to that definition of the adversarial principle, I see no reason for finding that a procedure for granting leave for further consideration, such as that at issue in the main proceedings, infringes that principle.

76. Since the court of appeal cannot, at the stage of granting leave for further consideration, adopt a decision unfavourable to or adversely affecting the respondent, that is to say, the party that did not bring the appeal, that party's right to adversarial proceedings is not breached if, at that stage, it does not submit any observations.

77. Accordingly, first, a refusal to grant leave for further consideration has the effect of confirming the judgment at first instance in favour of that party and, unless there is an appeal to the Supreme Court, makes it irrevocable. That decision therefore cannot adversely affect the beneficiary of the³¹ judgment at first instance.

78. Second, at the hearing, the Finnish Government, without being contradicted by the Commission, confirmed that, irrespective of the status of the party bringing the appeal, a court of appeal cannot, at the stage of granting leave for further consideration, amend the substance of the decision. In particular, it cannot, for example, find the appeal to be *manifestly well founded* without the respondent being heard,³² and would otherwise quite clearly be committing a serious breach of the adversarial principle.

27 As regards administrative proceedings in the context of implementing EU law in the Member States, see judgments of 22 October 2013, *Sabou* (C-276/12, EU:C:2013:678, paragraph 38 and the case-law cited); of 5 November 2014, *Mukarubega* (C-166/13, EU:C:2014:2336, paragraph 46 and the case-law cited), and of 9 November 2017, *Ispas* (C-298/16, EU:C:2017:843, paragraph 26). In relation to administrative or judicial proceedings before the courts or authorities of the European Union, see judgment of 17 December 2009, *Réexamen M v EMEA* (C-197/09 RX-II, EU:C:2009:804, paragraph 41 and the case-law cited).

28 See judgments of 2 December 2009, *Commission v Ireland and Others* (C-89/08 P, EU:C:2009:742, paragraph 56), and of 17 December 2009, *Réexamen M v EMEA* (C-197/09 RX-II, EU:C:2009:804, paragraph 41). See, by analogy, the position of the ECtHR in the judgment of 20 July 2001, *Pellegrini v. Italy* (CE:ECHR:2001:0720JUD003088296, § 44).

29 In administrative cases, for it to be found that there has been infringement of a party's rights of the defence such as to give rise to annulment of an EU decision, the interests of that party must have been adversely affected (see, for an example of that case-law being applied, judgment of 2 October 2003, *Corus UK v Commission* (C-199/99 P, EU:C:2003:531, paragraphs 19 to 25)). As regards infringement of the adversarial principle before the EU courts, I would note that, under Article 58(1) of the Statute of the Court of Justice of the European Union, only breaches of procedure before the General Court that adversely affect the interests of the appellant can be grounds for an appeal.

30 For both the Court of Justice and the European Court of Human Rights, the extent of the guarantees associated with upholding the adversarial principle, considered on its own or as a component of the rights of the defence, can vary depending, in particular, on the specific circumstances of the proceedings at issue (judgment of 5 November 2014, *Mukarubega* (C-166/13, EU:C:2014:2336, paragraph 54)). See, in general, Fricero, N., 'Le droit à une procédure civile contradictoire dans la jurisprudence de la Cour européenne des droits de l'homme', *Revue trimestrielle des droits de l'homme*, Anthemis, Wavre, 2016, pp. 381 to 393, particularly pp. 388 to 390.

31 Under Chapter 25a, Paragraph 17, of the Code of judicial procedure, if leave for further consideration is not granted, the decision of the district court stands.

32 An analogy can be drawn in that respect with the simplified handling of appeals by the Court of Justice. Where an appeal is *manifestly unfounded*, the Court can decide to dismiss that appeal by reasoned order without hearing the parties. Conversely, where an appeal is *manifestly well founded*, the Court can declare it to be manifestly well founded only after hearing the parties (see Articles 181 and 182 respectively of the Rules of Procedure of the Court of Justice).

79. Third, the decision made at the stage of granting leave for further consideration is a preliminary decision the scope of which is, by definition, limited to the further consideration of the appeal. Accordingly, it does not prejudice the ruling on the appeal following the comprehensive examination thereof. Consequently, where leave is granted without the party that did *not* bring the appeal — whether the appellant for enforcement or the person against whom the enforcement decision is made, as the case may be — having been invited to submit observations, that decision likewise is not of itself capable of adversely affecting that party's interests.

80. At the hearing, in keeping with its written observations, the Commission asserted that the adversarial principle is so important that it cannot be limited and that the Finnish system of granting of leave for further consideration therefore failed to uphold that principle.

81. Apart from the fact that such an 'absolutist' view prevents the requirements of protecting the rights of the defence from being reconciled with other entirely legitimate interests, such as, for example, those relating to the swift and sound administration of justice, I would comment above all that the Commission has not been able to demonstrate any specific infringement of the adversarial principle in the present case.

82. Lastly, I would point out that it is apparent from the observations of the Finnish Government that the party that did not bring the appeal must in all cases be invited to express its views during the stage of the full examination of the appeal. It therefore appears that, in accordance with Article 43(3) of Regulation No 44/2001, observance of the adversarial principle is ensured at the stage at which the court of appeal's decision can adversely affect that party.

83. In the light of the foregoing, my view is that Article 43(3) of Regulation No 44/2001 must be interpreted as meaning that a procedure for granting leave for further consideration, such as that at issue in the main proceedings, does not breach the requirement for adversarial proceedings, since the decision made at the stage of granting leave for further consideration is not, of itself, capable of adversely affecting the interests of the respondent.

V. Conclusion

84. In the light of the foregoing considerations, I invite the Court of Justice to reply as follows to the questions referred for a preliminary ruling by the Korkein oikeus (Supreme Court, Finland):

1. Article 43(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters does permit a procedure for granting leave for further consideration, such as that at issue in the main proceedings, provided that, in substantive terms, the grounds of non-enforcement in Articles 34 and 35 of that regulation can be adduced and taken into account as reasons for granting leave for further consideration and provided that, in procedural terms, decisions refusing leave for further consideration are mandatorily required to state reasons.
2. Article 43(3) of Regulation No 44/2001 must be interpreted as meaning that a procedure for granting leave for further consideration, such as that at issue in the main proceedings, does not breach the requirement for adversarial proceedings, since the decision made at the stage of granting leave for further consideration is not, of itself, capable of adversely affecting the interests of the respondent.