



## Reports of Cases

### JUDGMENT OF THE COURT (First Chamber)

12 December 2019\*

(Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Requirement for adversarial proceedings and an effective remedy — Decision of a national court declaring enforceable a judgment delivered by a court of another Member State — National procedure granting leave for further consideration of an appeal)

In Case C-433/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein oikeus (Supreme Court, Finland), made by decision of 28 June 2018, received at the Court on 2 July 2018, in the proceedings

**ML**

v

**Aktiva Finants OÜ,**

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, M. Safjan, L. Bay Larsen and C. Toader, Judges,

Advocate General: M. Bobek,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 15 May 2019,

after considering the observations submitted on behalf of:

- the Finnish Government, by H. Leppo and J. Heliskoski, acting as Agents,
- the European Commission, by M. Heller and M. Huttunen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 July 2019,

gives the following

\* Language of the case: Finnish.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 43(1) and (3) 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 (OJ 2001 L 12, p. 1).
- 2 The request was made in proceedings between ML and Aktiva Finants OÜ concerning the enforcement of a decision of an Estonian court ordering ML to pay a sum of money to that company.

### Legal context

#### *European Union law*

- 3 Recitals 6 and 16 to 18 of Regulation No 44/2001 state:
  - ‘(6) In order to attain the objective of free movement of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a Community legal instrument which is binding and directly applicable.

...

  - (16) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.
  - (17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by that regulation.
  - (18) However, respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected.’
- 4 Article 41 of that regulation provides:

‘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 which enforcement is sought cannot at that stage of the proceedings make any submissions on the application.’
- 5 Article 43(1) to (3) of Regulation No 469/2009 reads:
  - ‘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 reads as follows:

‘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.’

### *Finnish law*

7 By virtue of Chapter 25a, Paragraph 5(1), of the oikeudenkäymiskaari (Code of legal procedure), an appeal against a decision of a court of first instance before the Court of Appeal requires leave for further consideration of the appeal to be granted.

8 Chapter 25a, Paragraph 11(1) of the Code of legal procedure provides that leave for further consideration of the appeal must be granted if there are doubts as to the correctness of the decision at issue, if it is not possible to assess the correctness of that decision without granting to leave appeal, if it is important due to the application of the law in other similar cases or if there is another important reason for granting leave for further consideration of the appeal.

9 Chapter 25a, Paragraph 13, of that code states that, if the Court of Appeal considers it necessary, it must request the defendant to respond in writing to the appeal before granting leave for further consideration of the appeal.

10 Under Chapter 25a, Paragraph 14(1), of that code, the procedure concerning the leave for further consideration of the appeal is to be written and the Court of Appeal is to rule on the basis of the decision delivered at first instance, the appeal before it, any observations made by the defendant and, if necessary, on the basis of other elements of the file.

11 In accordance with Chapter 25a, Paragraph 18, of the code, leave for further consideration of the appeal is to be granted if at least one of the three members of the court favours the grant of that leave.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

12 By a decision of 7 December 2009, the Harju Maakohus (Court of First Instance, Harju, Estonia) ordered ML, residing in Helsinki, Finland, to pay the sum of 14 838.50 Estonian kroons (EEK) (approximately EUR 948) to an Estonian company, namely Aktiva Finants.

13 Following Aktiva Finants’ application, the Helsingin käräjäoikeus (District Court, Helsinki, Finland) declared the decision against ML of 7 December 2009 under Regulation No 44/2001 enforceable in Finland.

14 After being notified thereof, ML brought an action for annulment of this decision before the Helsingin hovioikeus (Court of Appeal, Helsinki, Finland).

15 In his application to the Helsingin hovioikeus (Court of Appeal, Helsinki), ML argued, first, that the decision of the Harju Maakohus (Court of First Instance, Harju) of 7 December 2009 was given when he was not present. Next, ML contends that the document instituting the proceedings was not served on him in sufficient time or in such a way as to enable him to arrange for his defence. Moreover, he was not aware of the procedure as a whole until the Helsingin käräjäoioikeus (District Court, Helsinki) notified him of the decision on the declaration of enforceability of the decision of the Harju

Maakohus (Court of First Instance, Harju). In addition, according to ML, the latter court did not have jurisdiction to hear the case before it, since he has been domiciled in Finland since 26 November 2007. To that end, ML relied on Articles 34 and 35 of Regulation No 44/2001 in support of his arguments.

- 16 The Helsingin hovioikeus (Court of Appeal, Helsinki) did not grant ML leave for further consideration of the appeal, provided for in Chapter 25a, Paragraph 5(1) of the Code of judicial procedure, which brought an end to the appeal lodged by ML. The decision of the Helsingin käräjäoikeus (District Court, Helsinki) was therefore confirmed.
- 17 ML applied to the referring court, the Korkein oikeus (Supreme Court, Finland), for leave to appeal against the decision of the Helsingin hovioikeus (Court of Appeal, Helsinki), which he was granted on 24 January 2017. In his appeal to the Korkein oikeus (Supreme Court), he requested that that decision be set aside, that leave be granted to continue the proceedings and that the matter be remitted to the Helsingin hovioikeus (Court of Appeal, Helsinki) for the appeal to be examined.
- 18 In that context, the referring court is doubtful as to the compatibility with Regulation No 44/2001, in particular with Article 43(1) and (3) thereof, of a procedure authorising the proceedings to continue, such as that provided for by the national legislation at issue in the main proceedings, in the case of an appeal against a decision of a court of first instance which concerns the recognition and enforcement of a decision in civil and commercial matters.
- 19 On the one hand, the referring court notes that, for all cases, the appeal procedure is conducted in two stages. In the first phase, the conditions for granting authorisation to continue the proceedings under national law are examined. In the second phase, if such authorisation is granted, the appeal is examined in full. However, where such authorisation is not granted, the decision of the court of first instance becomes final, unless that refusal is annulled on appeal.
- 20 On the other hand, the referring court is not certain that the requirement of an adversarial procedure, referred to in Article 43(3) of Regulation No 44/2001, is satisfied, since the decision granting the authorisation to continue the proceedings, in accordance with national law, may also be taken without the party against whom enforcement is sought, in this case ML, being given the opportunity to make observations in advance.
- 21 In those circumstances, the Korkein oikeus (Supreme Court) decided to stay the proceedings and to refer 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?

## Consideration of the questions referred

### *The first question*

- 22 By its first question, the referring court asks, in essence, whether Article 43(1) of Regulation No 44/2001 must be interpreted as precluding a procedure granting leave for further consideration in which, first, a court of appeal rules on the grant of that leave on the basis of the decision delivered at first instance, the appeal brought before it, any observations of the respondent and, if necessary, on the basis of other information in the file and, second, leave for further consideration of the appeal must be granted, in particular, if there are doubts as to the accuracy of the decision in question, if it is not possible to assess the accuracy of that decision without granting leave for further consideration of the appeal or if there is another significant reason to grant leave for further consideration of the appeal.
- 23 It should be noted at the outset that, as is apparent from recitals 16 and 17 of Regulation No 44/2001, applicable *ratione temporis* to the main proceedings, the system of recognition and enforcement provided for therein is based on mutual trust in justice in the European Union. Such trust requires that judicial decisions given in one Member State must not only be recognised *ipso jure* in another Member State, but also that the procedure for making a decision given in another Member State enforceable in one Member State must be efficient and expeditious. That procedure must include only a simple formal check of the documents required for the granting of enforceability in the requested Member State, the declaration of enforceability of a judgment being issued almost automatically (see, to that effect, judgment of 13 October 2011, *Prism Investments*, C-139/10, EU:C:2011:653, paragraphs 28).
- 24 For that reason, in accordance with Article 41 of Regulation No 44/2001, a judgment is to be declared enforceable on completion of the formalities in Article 53 of that regulation, without any review of the grounds for refusing enforcement provided for in Articles 34 and 35 of that regulation.
- 25 Indeed, as is clear from the case-law of the Court, that regulation seeks to ensure the free movement of judgments from Member States in civil and commercial matters by simplifying the formalities for their swift and simple recognition and enforcement.
- 26 However, that objective cannot be attained by undermining in any way the rights of the defence (judgment of 14 December 2006, *ASML*, C-283/05, EU:C:2006:787, paragraph 24). In that regard, the Court has recalled that all the provisions of Regulation No 44/2001 express the intention to ensure that, within the scope of the objectives of that regulation, proceedings leading to the delivery of judicial decisions take place in such a way that the rights of the defence are observed (judgment of 15 March 2012, *G*, C-292/10, EU:C:2012:142, paragraph 47).
- 27 However, in order to ensure that the rights of the defence are observed, Article 43(1) of Regulation No 44/2001, read in the light of recital 18 of that regulation, recognises the right of either party to appeal against the decision on the application for a declaration of enforceability, whether, in the case of the defendant, if it considers that one of the grounds for non-execution is established or, in the case of the applicant, if, however, the declaration of enforceability has been refused.
- 28 Nonetheless, it must be noted that Regulation No 44/2001 does not lay down either the nature or the practical details of the means of appeal against that decision.
- 29 In that regard, in accordance with settled case-law, in the absence of EU legislation in the field, it is for each Member State, in accordance with the principle of the procedural autonomy of the Member States, to lay down the detailed rules of the procedure designed to ensure the protection of the rights which individuals derive from EU law. Those detailed procedural rules must, however, be no less favourable than those governing similar domestic actions (principle of equivalence) and must not

render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgment of 13 December 2017, *El Hassani*, C-403/16, EU:C:2017:960, paragraph 26).

- 30 With regard, first, to the principle of equivalence, that principle requires that all the rules applicable to actions apply without distinction to actions alleging infringement of EU law and to similar actions alleging infringement of national law (judgment of 4 October 2018, *Kantarev*, C-571/16, EU:C:2018:807, paragraph 124 and the case-law cited).
- 31 In the present case, it must be noted that the Court has no information which would cause it to doubt the conformity of the procedural rules at issue in the main proceedings with that principle. On the contrary, it appears from the evidence in the file before the Court that the national rule that an appeal against a decision of a court of first instance before the court of appeal requires leave for further consideration of the appeal is of general application and does not concern only appeals against the decision on the application for a declaration of enforceability, pursuant to Regulation No 44/2001.
- 32 With regard, second, to the principle of effectiveness, it is apparent from the case-law of the Court that cases which raise the question whether a national procedural provision renders the exercise of an individual's rights under the EU legal order practically impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its conduct and its special features, viewed as a whole, before the various national instances. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment of 11 September 2019, *Călin*, C-676/17, EU:C:2019:700, paragraph 42).
- 33 In the present case, it is clear from the request for a preliminary ruling that, under Chapter 25a, Paragraph 11(1), of the Code of judicial procedure, authorisation to continue the proceedings must be granted if there are doubts as to the accuracy of the decision in question, if it is not possible to assess the accuracy of that decision without allowing the proceedings to continue, if that is important because of the application of the law in other similar cases or if there is another significant reason to grant authorisation to continue the proceedings.
- 34 However, as the Advocate General pointed out in paragraph 51 of his Opinion, the grounds provided for in Finnish legislation for granting that authorisation are such as to enable account to be taken of the grounds laid down in Articles 34 and 35 of Regulation No 44/2001 for refusing to enforce the judgment concerned, in respect of which Article 45 of that regulation authorises the court hearing the appeal provided for in Article 43 to refuse or revoke a declaration of enforceability.
- 35 Consequently, it does not appear that the national rules at issue in the main proceedings are such as to render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order.
- 36 Nonetheless, it must be noted that, the right of access to a tribunal includes not only the possibility of bringing legal proceedings but also the guarantee that that court or tribunal has power to consider all the questions of fact and law that are relevant to the case before it (see, to that effect, judgment of 6 November 2012, *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 49).
- 37 In that regard, it is apparent from the evidence in the file before the Court that, under Finnish law, the examination of an appeal by the court of appeal has two stages. In the first stage, the court of appeal rules on the leave for further consideration of the appeal in a written procedure, on the basis of the judgment delivered at first instance, the action before it, any observations of the respondent and, if necessary, on the basis of other information in the file. That leave for further consideration of the appeal is to be granted if at least one of the three members of the formation of the court concerned is

in favour of granting such leave. In any event, leave for further consideration of the appeal must be granted if one of the grounds provided for in Chapter 25a, Paragraph 11(1), of the Code of judicial procedure is established. In the second stage, if that leave is granted, the court of appeal conducts a full examination of the appeal.

- 38 Consequently, the court of appeal is in a position, from the stage of the grant of leave for further consideration of the appeal, to ascertain whether, in an appeal based on Article 43 of Regulation No 44/2001, the grounds for non-execution referred to in Articles 34 and 35 of that regulation require a thorough examination of the judgment at first instance on the application for a declaration of enforceability.
- 39 Having regard to all the foregoing considerations, the answer to the first question is that Article 43(1) of Regulation No 44/2001 must be interpreted as not precluding a procedure granting leave for further consideration in which, first, a court of appeal rules on the grant of that leave on the basis of the judgment delivered at first instance, the appeal brought before it, any observations of the respondent and, if necessary, on the basis of other information in the file and, second, leave for further consideration of the appeal must be granted, in particular, if there are doubts as to the accuracy of the judgment in question, if it is not possible to assess the accuracy of that judgment without granting leave for further consideration of the appeal or if there is another significant reason to grant leave for further consideration of the appeal.

### *The second question*

- 40 By its second question, the referring court asks, in essence, whether Article 43(3) of Regulation No 44/2001 must be interpreted as precluding a procedure examining an appeal against a judgment on the application for a declaration of enforceability which does not require the respondent to be heard in advance when a decision in the respondent's favour is made.
- 41 Pursuant to Article 43(3) of Regulation No 44/2001, read in the light of recital 18 thereof, and with due observance of the rights of the defence, the appeal against the judgment on the application for a declaration of enforceability is to be examined in accordance with the rules of the procedure in contradictory matters.
- 42 In this case, as is apparent from the request for a preliminary ruling, in accordance with Chapter 25a, Paragraph 13, of the Code of judicial procedure, if the Helsingin hovioikeus (Court of Appeal, Helsinki) considers it necessary, it must invite the respondent to respond in writing to the appeal before ruling on the leave for further consideration of the appeal. It follows therefrom that the decision on such leave may be made without the respondent being given the opportunity to submit observations.
- 43 However, it appears from the information in the file before the Court that, in the first stage of the procedure provided for in Chapter 25a, Paragraph 5(1), of the Code of judicial procedure, which concerns the leave for further consideration of the appeal, the court of appeal cannot adopt a decision against the respondent without hearing that party. On the one hand, if the appeal is brought against a judgment concerning the declaration of enforceability, the fact that the court of appeal refuses to grant leave for further consideration cannot adversely affect the beneficiary of that decision, namely the party in whose favour enforcement has been granted. On the other, if the appeal is brought against a judgment refusing enforceability, the refusal by the court of appeal to grant leave for further consideration of the appeal could not further adversely affect the party benefiting from that decision, namely the party against whom enforcement is sought.
- 44 Consequently, as the Advocate General noted in points 76 and 82 of his Opinion, the court of appeal cannot, at the stage of granting leave for further consideration, adopt a decision unfavourable to or adversely affecting the respondent, so that the fact that that party was not requested to submit

observations does not harm his or her right to an adversarial procedure. Moreover, that party must be requested to submit its observations during the stage of the examination in full of the appeal, which ensures compliance with the principle of adversarial proceedings at the stage when the decision of the court of appeal is likely adversely to affect that party.

- 45 Having regard to all the foregoing considerations, the answer to the second question is that Article 43(3) of Regulation No 44/2001 must be interpreted as not precluding a procedure examining an appeal against a judgment on the application for a declaration of enforceability which does not require the respondent to be heard in advance when a decision in the respondent's favour is made.

### *The third question*

- 46 By its third question, the referring court is doubtful as to the potential consequences of the fact that the appeal may be brought not only by the party who requested enforcement, but also by the party against whom enforcement has been granted.
- 47 In that regard, while it is true that questions referred for a preliminary ruling relating to EU law are presumed to be relevant, it must be pointed out that, in accordance with settled case-law, the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 28).
- 48 However, in the present case, the referring court does not specify the reasons which led it to refer that question. Nor does it specify the relevance of that question to the case at issue in the main proceedings, or the reasons that the Court's answer is necessary for the resolution of the dispute pending before it.
- 49 Consequently, the third question must be declared inadmissible.

### **Costs**

- 50 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:

- 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 must be interpreted as not precluding a procedure granting leave for further consideration of an appeal in which, first, a court of appeal rules on the grant of that leave on the basis of the judgment delivered at first instance, the appeal brought before it, any observations of the respondent and, if necessary, other information in the file and, second, leave for further consideration must be granted, in particular, if there are doubts as to the correctness of the judgment in question, if it is not possible to assess the correctness of that judgment without granting leave for further consideration or if there is another significant reason to grant leave for further consideration of the appeal.**



2. **Article 43(3) of Regulation No 44/2001 must be interpreted as not precluding a procedure examining an appeal against a judgment on the application for a declaration of enforceability which does not require the respondent to be heard in advance when a decision in the respondent's favour is made.**

[Signatures]