



Reports of Cases

Case C-700/20

London Steam-Ship Owners' Mutual Insurance Association

v

Kingdom of Spain

(Request for a preliminary ruling from the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court))

Judgment of the Court (Grand Chamber), 20 June 2022

(Reference for a preliminary ruling – Judicial cooperation in civil and commercial matters – Regulation (EC) No 44/2001 – Recognition of a judgment given in another Member State – Grounds for non-recognition – Article 34(3) – Judgment irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought – Conditions – Whether the prior judgment entered in the terms of an arbitral award complies with the provisions and fundamental objectives of Regulation (EC) No 44/2001 – Article 34(1) – Recognition manifestly contrary to public policy in the Member State in which recognition is sought – Conditions)

1. *Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Scope – Matters excluded – Arbitration – Recognition and enforcement of an arbitral award by a national judgment – Judgment in the terms of an arbitral award – Question covered by the applicable national and international law – Excluded from scope*
(Convention of 27 September 1968, Art. 1(4); Council Regulation No 44/2001, Art. 1(2)(d))

(see paragraphs 43-45, 47)

2. *Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Recognition and enforcement of judgments – Concept of 'judgment' – Judgment in the terms of an arbitral award – Included – Conditions – No verification of compliance with the provisions and fundamental objectives of Regulation No 44/2001 – Judgment which cannot prevent the recognition of a judgment from another Member State*
(Council Regulation No 44/2001, recital 16 and Arts 27, 32 and 34(3))

(see paragraphs 48-50, 53-57, 71-73, operative part 1)

3. *Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Jurisdiction in insurance matters – Objectives – Protection of the weaker party*
(Council Regulation No 44/2001, Arts 34(3))

(see paragraphs 59-62)

4. *Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Lis pendens – Proceedings between the same parties, having the same cause of action – Obligation for any court other than the court first seised to decline jurisdiction – Conditions*
(Council Regulation No 44/2001, Art. 27)

(see paragraphs 64, 68, 69)

5. *Judicial cooperation in civil matters – Jurisdiction and the enforcement of judgments in civil and commercial matters – Regulation No 44/2001 – Recognition and enforcement of judgments – Grounds for refusing enforcement – Infringement of the public policy of the Member State in which recognition is sought – Concept – Force of res judicata acquired by a judgment given previously – Judgment entered in the terms of an arbitral award – Inapplicability of Article 34(3) of Regulation No 44/2001 to that judgment – Excluded*
(Council Regulation No 44/2001, Arts 34(1) and (3))

(see paragraphs 77-80, and operative part 2)

Résumé

In 2002, following a storm, the oil tanker *Prestige* sank off the coast of Spain, causing significant environmental damage. A criminal investigation was subsequently initiated in Spain against, amongst others, the master of that vessel.

In the course of those proceedings, civil claims were brought by several legal persons, including the Spanish State, against the master and owners of the *Prestige* and the London P&I Club, the insurer of the ship and its owners. All of those defendants were declared civilly liable by the Spanish courts. By order of 1 March 2019, the Audiencia Provincial de A Coruña (Provincial Court, Corunna, Spain) set out the amounts that each of the claimants, including the Spanish State, was entitled to obtain from the respective defendants.

After the introduction of those civil claims before the Spanish courts, the London P&I Club commenced arbitration proceedings in the United Kingdom seeking a declaration that, pursuant to the arbitration clause in the insurance contract concluded with the owners of the *Prestige*, the Kingdom of Spain was required to pursue its claims in those arbitration proceedings, rather than in Spain, and that, in any event, it could not be liable, as the insurer, to the Kingdom of Spain in respect of those claims. The insurance contract stipulated that, in accordance with the ‘pay to be paid’ clause, the insured party must first pay the injured party the compensation due before recovery from the insurer is permissible. The arbitral tribunal upheld that claim, taking the view that the law to be applied to the contract was English law. On 22 October 2013, the High Court of

Justice¹, to which the London P&I Club applied pursuant to the national law on arbitration,² authorised the enforcement of the arbitral award in the United Kingdom and, on the same day, handed down a judgment in the terms of that award. The Kingdom of Spain's appeal against that decision was dismissed.

The Kingdom of Spain then applied for and obtained recognition in the United Kingdom, on the basis of Article 33 of Regulation No 44/2001,³ of the enforcement order of 1 March 2019 of the Audiencia Provincial de A Coruña (Provincial Court, Corunna). The London P&I Club nevertheless appealed against that recognition to the High Court of Justice.

Having received a request for a preliminary ruling from the latter court, the Court of Justice specifies, inter alia, the circumstances in which a judgment delivered by a court of a Member State in the terms of an arbitral award may constitute a judgment, within the meaning of Article 34(3) of Regulation No 44/2001,⁴ capable of preventing, in that Member State, the recognition of a judgment given by a court in another Member State.

Findings of the Court

The Court holds that a judgment in the terms of an arbitration award falls within the scope of the arbitration exclusion laid down in Regulation No 44/2001⁵ and cannot enjoy mutual recognition between the Member States and circulate within the EU judicial area in accordance with the provisions of that regulation.

That being said, such a judgment is capable of being regarded as a judgment, within the meaning of Article 34(3) of that regulation, which may preclude, in the Member State in which it was given, the recognition of a judgment given by a court in another Member State if those two judgments are irreconcilable. The concept of 'judgment' is given a broad definition in Regulation No 44/2001. Moreover, Article 34(3) of that regulation pursues a specific objective, namely to protect the integrity of a Member State's internal legal order and ensure that its rule of law is not disturbed by the obligation to recognise a judgment from another Member State which is inconsistent with a decision given, in a dispute between the same parties, by its own courts.

The position is different however where the award in the terms of which that judgment was entered was made in circumstances which would not have permitted the adoption, in compliance with the provisions and fundamental objectives of Regulation No 44/2001, of a judicial decision falling within the scope of that regulation.

All of the objectives pursued by that regulation are reflected in the principles which underlie judicial cooperation in civil matters within the European Union, including, in particular, legal certainty for litigants, sound administration of justice, minimisation of the risk of concurrent proceedings, and mutual trust in the administration of justice. Furthermore, mutual trust in the

¹ High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court) ('the High Court of Justice').

² The Arbitration Act 1996

³ 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).

⁴ Under Article 34(3) of Regulation No 44/2001, a judgment is not to be recognised if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought.

⁵ Article 1(2)(d) of Regulation No 44/2001.

administration of justice in the European Union, on which the rules on the recognition of judicial decisions laid down by that regulation are based, does not extend to decisions made by arbitral tribunals or to judicial decisions entered in their terms.

The Court finds that the content of the arbitral award at issue in the main proceedings could not have been the subject of a judicial decision falling within the scope of Regulation No 44/2001 without infringing two fundamental rules of that regulation concerning the relative effect of an arbitration clause included in an insurance contract and *lis pendens*.

As regards the relative effect of an arbitration clause included in an insurance contract, a jurisdiction clause agreed between an insurer and an insured party cannot be invoked against a victim of insured damage who, where permitted by national law, wishes to bring an action directly against the insurer, in tort, delict or quasi-delict, before the courts for the place where the harmful event occurred or before the courts for the place where the victim is domiciled. Consequently, a court other than that already seised of that direct action should not declare itself to have jurisdiction on the basis of such an arbitration clause, the aim being to guarantee the objective pursued by Regulation No 44/2001, namely the protection of injured parties vis-à-vis the insurer concerned. That objective would be compromised if a judgment entered in the terms of an arbitral award by which an arbitral tribunal declared itself to have jurisdiction on the basis of such an arbitration clause, included in the insurance contract concerned, could be regarded as a 'judgment given in a dispute between the same parties in the Member State in which recognition is sought', within the meaning of Article 34(3) of that regulation.

As regards *lis pendens*, the circumstances characterising the two sets of proceedings at issue, in Spain and in the United Kingdom, precisely amount to a situation in which any court other than the court first seised must of its own motion stay its proceedings until such time as the jurisdiction of the court first seised has been established and then, where the jurisdiction of the court first seised is established, decline jurisdiction in favour of that court.⁶ On the date on which the arbitration proceedings were commenced, proceedings were already pending before the Spanish courts. Those proceedings involved the same parties, in particular the Spanish State and the London P&I Club, and the civil claims brought before the Spanish courts had already been notified to the London P&I Club. Furthermore, those proceedings had the same cause of action, namely the London P&I Club's potential liability in respect of the Spanish State. The Court therefore concludes that it is for the court seised with a view to entering a judgment in the terms of an arbitral award to verify that the provisions and fundamental objectives of Regulation No 44/2001 have been complied with, in order to prevent a circumvention of those provisions and objectives. The completion of arbitration proceedings in disregard of both the relative effect of an arbitration clause included in an insurance contract and the rules on *lis pendens* constitutes such a circumvention. Since no such verification took place before the United Kingdom courts concerned, the judgment entered in the terms of the arbitral award cannot, in the dispute at issue in the main proceedings, prevent the recognition of a judgment from another Member State.

The Court was also questioned as to whether, alternatively, in circumstances such as those at issue in the main proceedings, an obstacle to the recognition in the United Kingdom of the enforcement order of 1 March 2019 could arise from Article 34(1) of Regulation No 44/2001.⁷ The Court hold that that provision does not permit the recognition or enforcement of a judgment from another Member State to be refused as being contrary to public policy on the ground that it would

⁶ In accordance with Article 27 of Regulation No 44/2001.

⁷ In accordance with that provision, a judgment is not to be recognised if that recognition is manifestly contrary to public policy in the Member State in which recognition is sought.

disregard the force of *res judicata* acquired by the judgment entered in the terms of an arbitral award. The EU legislature has exhaustively regulated the issue of the force of *res judicata* acquired by a judgment given previously by means of Article 34(3) and (4) of that regulation.