



## Reports of Cases

ORDER OF THE COURT (Eighth Chamber)

5 June 2014\*

(Request for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Recognition and enforcement of provisional and protective measures — Annulment of the initial decision — Maintenance of the request for a preliminary ruling — No need to adjudicate)

In Case C-350/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākās tiesas Senāts (Latvia), made by decision of 12 June 2013, received at the Court on 25 June 2013, in the proceedings

**Antonio Gramsci Shipping Corp.,**

**Apollo Holdings Corp.,**

**Arctic Seal Shipping Co. Ltd,**

**Atlantic Leader Shipping Co. Ltd,**

**Cape Wind Trading Co. Ltd,**

**Clipstone Navigation SA,**

**Dawnlight Shipping Co. Ltd,**

**Dzons Rids Shipping Co.,**

**Faroship Navigation Co. Ltd,**

**Gaida Shipping Co.,**

**Gevostar Shipping Co. Ltd,**

**Hose Marti Shipping Co.,**

**Imanta Shipping Co. Ltd,**

**Kemeri Navigation Co.,**

**Klements Gotvalds Shipping Co.,**

**Latgale Shipping Co. Ltd,**

\* Language of the case: Latvian.

**Limetree Shipping Co. Ltd,**  
**Majori Shipping Co. Ltd,**  
**Noella Maritime Co. Ltd,**  
**Razna Shipping Co.,**  
**Sagewood Trading Inc.,**  
**Samburga Shipping Co. Ltd,**  
**Saturn Trading Co.,**  
**Taganroga Shipping Co.,**  
**Talava Shipping Co. Ltd,**  
**Tangent Shipping Co. Ltd,**  
**Viktorio Shipping Co.,**  
**Wilcox Holding Ltd,**  
**Zemgale Shipping Co. Ltd,**  
**Zoja Shipping Co. Ltd**

v

**Aivars Lembergs,**

THE COURT (Eighth Chamber),

composed of C.G. Fernlund, President of the Chamber, A. Ó Caoimh and C. Toader (Rapporteur),  
Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- the United Kingdom Government, by J. Beeko, acting as Agent, and by B. Kennelly, Barrister,
- the European Commission, by A. Sauka and A.-M. Rouchaud-Joët, acting as Agents,

makes the following

## Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 34(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 (OJ 2001 L 12, p. 1).
- 2 The request has been made in proceedings between Antonio Gramsci Shipping Corp. and 29 other appellants, on the one hand, and Mr Lembergs, on the other hand, concerning the recognition and enforcement of a decision taken by the High Court of Justice (England & Wales), Queen’s Bench Division (Commercial Court) (United Kingdom) which ordered a freezing injunction in respect of assets belonging to or controlled by the respondent in the main proceedings (‘the freezing injunction’).
- 3 The referring court states that a freezing injunction, known in common law as a ‘Mareva injunction’, operates *in personam* as an order preventing a specific person from transferring specific assets to others. It does not, therefore, affect the assets themselves but is directed at an individual.
- 4 According to the referring court, it is essential to determine whether, in the context of proceedings for the recognition and enforcement of a decision made by a court of another Member State, the damage caused to individuals who are not parties to the initial proceedings may constitute a ground for applying the public-policy clause in Article 34(1) of Regulation No 44/2001. In those circumstances, the Augstākās tiesas Senāts decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Must Article 34(1) of Regulation No 44/2001 be interpreted as meaning that, in the context of proceedings for the recognition of a judgment delivered by a court of another Member State, infringement of the rights of persons who are not parties to the main proceedings may constitute a ground for applying the public-policy clause contained in Article 34(1) of that regulation and for refusing to recognise that judgment in so far as it affects persons who are not parties to the main proceedings?

(2) If the first question is answered in the affirmative, must Article 47 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that the principle of the right to a fair trial set out therein allows proceedings for the adoption of provisional protective measures to limit the economic rights of a person who has not been a party to the proceedings, if provision is made to the effect that any person who is affected by the decision on the provisional protective measures is to have the right at any time to request the court to vary or discharge the judgment, in a situation in which it is left to the applicants to notify the decision to the persons concerned?’
- 5 At the stage of the written procedure, the United Kingdom Government pointed out that the freezing injunction had been annulled. More specifically, it is apparent from all of the information available to the Court that that injunction was set aside by the court which had issued it, sitting in a different composition and ruling on the merits, by a decision of 12 July 2012. On appeal, that decision was upheld by a decision of 19 June 2013 of the Court of Appeal (England & Wales) (Civil Division). On 26 July 2013, the appeal against that decision was dismissed by the Supreme Court of the United Kingdom, with the result that the annulment of the freezing injunction became final.
- 6 Following that notification, the Court Registry, by letter of 8 November 2013, requested the referring court to inform it whether it was maintaining its request for a preliminary ruling. By letter of 3 February 2014, that court stated that, at the hearing held on 22 January 2014, the representative of the respondent, Mr Lembergs, had expressed the view that, although the Court’s answers to the referring court’s questions were no longer relevant to the present case, since the freezing injunction

had been annulled, it would nevertheless be useful to have those answers in view of the fact that a similar case was pending before that court. The referring court therefore decided to maintain its questions for a preliminary ruling.

- 7 It is necessary first of all to point out that, according to point 30 of the Court's recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2012 C 338, p. 1), '[i]n the interests of the proper conduct of the preliminary ruling proceedings before the Court and in order to maintain their effectiveness, it is incumbent on the referring court or tribunal to inform the Court of Justice of any procedural step that may affect the referral'.
- 8 Next, according to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see Case C-492/11 *Di Donna* EU:C:2013:428, paragraph 24 and case-law cited).
- 9 However, the Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court in order to establish whether it has jurisdiction. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see *Di Donna* EU:C:2013:428, paragraph 25 and case-law cited).
- 10 Thus, on the basis of settled case-law, it is clear from both the wording and the scheme of Article 267 TFEU that a national court or tribunal is not empowered to bring a matter before the Court by way of a request for a preliminary ruling unless a case is pending before it, in which it is called upon to give a decision which is capable of taking account of the preliminary ruling (see *Di Donna* EU:C:2013:428, paragraph 26 and case-law cited, and Case C-470/12 *Pohotovost* EU:C:2014:101, paragraph 28 and case-law cited).
- 11 In the present case, the referring court itself notes that the freezing injunction, the recognition and enforcement of which were applied for, has been annulled. Consequently, that court is no longer dealing with a case which is pending before it and the questions referred in the context of the present case have for that reason become hypothetical. The fact that similar cases are pending before the referring court is irrelevant in this regard.
- 12 In any event, if an interpretation of EU law should be necessary in order to resolve a separate dispute, the referring court also has, should the need arise, the possibility of referring, on its own initiative, a question to the Court under Article 267 TFEU.
- 13 It follows from the foregoing that there is no need to give a ruling on the request for a preliminary ruling.
- 14 Costs incurred in submitting observations to the Court, other than the costs of the parties to the main proceedings, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby orders:

**There is no need to give a ruling on the request for a preliminary ruling made by the Augstākās tiesas Senāts (Latvia) by decision of 12 June 2013.**

[Signatures]