



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

7 September 2023 *

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in civil matters – Regulation (EC) No 44/2001 – Recognition and enforcement in one Member State of judgments from another Member State – Article 34 – Grounds for refusal – Infringement of public policy in the European Union and of national public policy – Definition of ‘public policy’ – Mutual trust – “‘Quasi’ anti-suit injunction’ – Judgments preventing the exercise of the right to effective judicial protection or the continuation of proceedings brought before the courts of another Member State)

In Case C-590/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Areios Pagos (Court of Cassation, Greece), made by decision of 25 June 2021, received at the Court on 23 September 2021, in the proceedings

Charles Taylor Adjusting Ltd,

FD

v

Starlight Shipping Co.,

Overseas Marine Enterprises Inc.,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan, N. Piçarra, N. Jääskinen (Rapporteur) and M. Gavalec, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Greek.

after considering the observations submitted on behalf of:

- Charles Taylor Adjusting Ltd and FD, by S. Cogley, advocate, and A. Nasikas, G. Orfanidis and K. Sotiriadis, dikigoroi,
- Overseas Marine Enterprises Inc. and Starlight Shipping Co., by K. Georgopoulos, dikigoros,
- the Greek Government, by Z. Chatzipavlou, K. Georgiadis and L. Kotroni, acting as Agents,
- the Spanish Government, by M. J. Ruiz Sánchez, acting as Agent,
- the European Commission, by T. Adamopoulos and S. Noë, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 March 2023,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 34(1) and Article 45(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, on the one hand, Charles Taylor Adjusting Ltd ('Charles Taylor') and FD, the representatives of the insurers of a maritime vessel named *Alexandros T*, and, on the other hand, Starlight Shipping Co. ('Starlight'), the proprietor of that vessel, and Overseas Marine Enterprises Inc. ('OME'), the operator of that vessel, concerning the recognition and enforcement, in Greece, of a judgment and two orders handed down by the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court) (United Kingdom) ('the judgment and orders of the High Court').

Legal context

Regulation No 44/2001

- 3 Article 34(1) of Regulation No 44/2001, which is applicable *ratione temporis* to the dispute in the main proceedings, provided:

'A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought.'

- 4 Under Article 45(1) of Regulation No 44/2001:

'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.'

The Withdrawal Agreement

- 5 The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7; ‘the Withdrawal Agreement’) was adopted on 17 October 2019 and entered into force on 1 February 2020.
- 6 Article 67 of that agreement, headed ‘Jurisdiction, recognition and enforcement of judicial decisions, and related cooperation between central authorities’, states, in paragraph 2(a) thereof:
- ‘In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts or provisions shall apply as follows in respect of the recognition and enforcement of judgments, decisions, authentic instruments, court settlements and agreements:
- (a) 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)] shall apply to the recognition and enforcement of judgments given in legal proceedings instituted before the end of the transition period ...’
- 7 Article 126 of that agreement provides for a transition period beginning on the date of entry into force thereof and ending on 31 December 2020, during which, in accordance with the first subparagraph of Article 127(1) of that agreement, EU law is to be applicable to and in the United Kingdom, unless otherwise provided in the Withdrawal Agreement.

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

- 8 On 3 May 2006, the vessel *Alexandros T* sank and was lost, along with its cargo, off the bay of Port Elizabeth (South Africa). Starlight and OME, the owner and operator, respectively, of that vessel, requested that the insurers of that vessel pay an indemnity, on the basis of their contractual liability arising from the occurrence of the insured incident.
- 9 On account of the refusal on the part of those insurers to pay that indemnity, Starlight, during the same year, brought legal action against them in the United Kingdom, and filed a request for arbitration against one of those insurers. While the legal action and arbitration were pending, Starlight, OME and the insurers of the vessel concluded settlement agreements (‘the settlement agreements’) by way of which the proceedings between the parties were brought to an end. Those insurers thus paid, on the basis of the occurrence of the insured incident and within an agreed period, the indemnity provided for by the insurance contracts, in full and final settlement of all claims in connection with the loss of that vessel.
- 10 On 14 December 2007 and 7 January 2008, the settlement agreements were ratified in the United Kingdom by the court before which the legal action was pending. That court ordered the suspension of any and all subsequent proceedings relating to the case concerned and arising from the same action.
- 11 Following the conclusion of those agreements, Starlight and OME, along with the other owners of the vessel *Alexandros T* and the natural persons legally representing them, brought several fresh legal actions before the Polymeles Protodikeio Peiraios (Court of First Instance, Piraeus, Greece), including those of 21 April 2011 and 13 January 2012, in particular against Charles Taylor, a legal

and technical consultancy, which had defended the insurers of that vessel against the claims made by Starlight before the court referred to in the preceding paragraph, and against FD, the director of that consultancy.

- 12 By those fresh actions, Starlight and OME sought compensation in respect of the harm, both material and non-material, allegedly suffered as a result of the false and defamatory allegations concerning them made by the insurers of that vessel and their representatives. Starlight and OME claimed that, when the initial action for payment of the indemnity due by those insurers was still pending and the refusal to pay that indemnity persisted, the underwriters and representatives of those insurers had spread, to the Ethniki Trapeza tis Ellados (National Bank of Greece), the mortgage creditor of one of the owners of that vessel, and on the insurance market, in particular, the false rumour that the loss of the vessel *Alexandros T* was caused by serious defects in that vessel, of which the owners thereof were aware.
- 13 While those fresh actions were pending, the insurers of the vessel and their representatives – including, in particular, Charles Taylor and FD – who were the defendants in those actions, brought legal action against Starlight and OME before the English courts seeking a declaration that those fresh legal actions, instituted in Greece, had been brought in breach of the settlement agreements, and requesting that their applications for ‘declarative relief and compensation’ be granted.
- 14 Following the exhaustion of all legal remedies, those actions against Starlight and OME in the United Kingdom gave rise, on 26 September 2014, to the judgment and orders of the High Court. Under that judgment and those orders, which were based on the content of the settlement agreements and on the choice of jurisdiction clause, the applicants in the main proceedings obtained compensation in respect of the proceedings instituted in Greece and payment of their costs incurred in England.
- 15 The Monomeles Protodikeio Peiraios, Naftiko Tmima (Court of First Instance (single judge), Piraeus, Maritime Division, Greece) granted the application made by Charles Taylor and FD on 7 January 2015 seeking recognition of the judgment and orders of the High Court and a declaration of partial enforceability in Greece, in accordance with Regulation No 44/2001.
- 16 On 11 September 2015, Starlight and OME brought an appeal against the judgment of the Monomeles Protodikeio Peiraios, Naftiko Tmima (Court of First Instance (single judge), Piraeus, Maritime Division) before the Monomeles Efeteio Peiraios, Naftiko Tmima (Court of Appeal (single judge), Piraeus, Maritime Division, Greece).
- 17 By judgment of 1 July 2019, the latter court allowed the appeal on the ground that the judgments in respect of which recognition and enforcement were sought contained “‘quasi’ anti-suit injunctions’ which preclude the persons concerned bringing an action before the Greek courts, in breach of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and Article 8(1) and Article 20 of the Syntagma (Greek Constitution), articles which ‘go to the very heart’ of the concept of ‘public policy’ in Greece.
- 18 Charles Taylor and FD brought an appeal on a point of law against that judgment before the Areios Pagos (Court of Cassation, Greece), which is the referring court. They submit that the judgment and orders of the High Court are not manifestly contrary to the public policy of either the forum State or the European Union, and do not infringe fundamental principles thereof. They

submit that the fact that they were awarded provisional damages on the basis of proceedings commenced in Greece before the actions at issue were brought before the English courts did not prohibit the persons concerned from having continued access to the Greek courts and to judicial protection by them. Consequently, the judgment and orders of the High Court were wrongly treated as though they were ‘anti-suit injunctions’.

- 19 In these circumstances, the Areios Pagos (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Is the expression “manifestly contrary to public policy” in the EU and, by extension, to domestic public policy, which constitutes a ground for non-recognition and non-enforcement pursuant to point 1 of Article 34 and Article 45(1) of Regulation No 44/2001, to be understood as meaning that it extends beyond explicit anti-suit injunctions prohibiting the commencement and continuation of proceedings before a court of another Member State to judgments or orders delivered by courts of Member States where: (i) they impede or prevent the claimant in obtaining judicial protection by the court of another Member State or from continuing proceedings already commenced before it; and (ii) is that form of interference in the jurisdiction of a court of another Member State to adjudicate a dispute of which it has already been seised, and which it has admitted, compatible with public policy in the EU? In particular, is it contrary to public policy in the EU within the meaning of point 1 of Article 34 and Article 45(1) of Regulation No 44/2001, to recognise and/or declare enforceable a judgment or order of a court of a Member State awarding provisional damages to claimants seeking recognition and a declaration of enforceability in respect of the costs and expenses incurred by them in bringing an action or continuing proceedings before the court of another Member State, where the reasons given are that: (a) it follows from an examination of that action that the case is covered by a settlement duly established and ratified by the court of the Member State delivering the judgment (or order); and (b) the court of the other Member State seised in a fresh action by the party against which the judgment or order was delivered lacks jurisdiction by virtue of a clause conferring exclusive jurisdiction?
- (2) If the first question is answered in the negative, is point 1 of Article 34 of Regulation No 44/2001, as interpreted by the Court of Justice of the European Union, to be understood as constituting a ground for non-recognition and non-enforcement in Greece of the judgment and orders delivered by a court of another Member State (the United Kingdom), as described under [(1)] above, where they are directly and manifestly contrary to national public policy in accordance with fundamental social and legal perceptions which prevail in Greece and the fundamental provisions of Greek law that lie at the very heart of the right to judicial protection (Articles 8 and 20 of the Greek Constitution, Article 33 of the [Astikos Kodikas (Greek Civil Code)] and the principle of protection of that right that underpins the entire system of Greek procedural law, as laid down in [Article 176, Article 173(1) to (3) and Articles 185, 205 and 191] of the [Kodikas Politikis Dikonomias (Greek Code of Civil Procedure)] [...] and Article 6(1) of the [European Convention on Human Rights and Fundamental Freedoms], such that, in that case, it is permissible to disapply the principle of EU law on the free movement of judgments, and is the non-recognition resulting therefrom compatible with the views that assimilate and promote the European perspective?’

Consideration of the questions referred

Preliminary observations

- 20 As regards the applicability *ratione loci* of Regulation No 44/2001, notwithstanding the United Kingdom's withdrawal from the European Union, it should be noted, as a preliminary point, that in accordance with Article 67(2)(a) of the Withdrawal Agreement, read in conjunction with Articles 126 and 127 thereof, Regulation No 1215/2012 applies, to the United Kingdom and in the Member States in a situation involving the United Kingdom, to the recognition and enforcement of judgments given in legal proceedings instituted before the end of the transition period, namely 31 December 2020.
- 21 It follows that the provisions relating to recognition and enforcement contained in Regulation No 44/2001, which had already been repealed and replaced by Regulation No 1215/2012 when the Withdrawal Agreement was adopted, also remain applicable under the same conditions.
- 22 In the present case, given that the judgment and orders of the High Court were delivered on 26 September 2014, Regulation No 44/2001 is applicable *ratione loci* to the dispute in the main proceedings.

The first question

- 23 By its first question, the referring court is asking, in essence, whether Article 34(1) of Regulation No 44/2001, read in conjunction with Article 45(1) thereof, must be interpreted as meaning that a court or tribunal of a Member State may refuse to recognise and enforce a judgment of a court or tribunal of another Member State on the ground that it is contrary to public policy, where that judgment impedes the continuation of proceedings pending before another court or tribunal of the former Member State, in that it grants one of the parties provisional damages in respect of the costs borne by that party on account of its bringing those proceedings on the grounds that, first, the subject matter of those proceedings is covered by a settlement agreement, lawfully concluded and ratified by the court or tribunal of the Member State which gave that judgment and, second, the court of the former Member State, before which the proceedings at issue were brought, does not have jurisdiction on account of a clause conferring exclusive jurisdiction.
- 24 Regulation No 44/2001 is based on the trust which the Member States accord to each other's legal systems and judicial institutions (judgment of 9 December 2003, *Gasser*, C-116/02, EU:C:2003:657, paragraph 72). Accordingly, apart from a few limited exceptions, including inconsistency with public policy in the Member State in which recognition and enforcement are sought, referred to in Article 34(1) of Regulation No 44/2001, that regulation does not authorise the jurisdiction of a court of a Member State to be reviewed by a court in another Member State (see, to that effect, judgments of 27 April 2004, *Turner*, C-159/02, EU:C:2004:228, paragraph 26, and of 10 February 2009, *Allianz and Generali Assicurazioni Generali*, C-185/07, EU:C:2009:69, paragraph 29).
- 25 A prohibition imposed by a court, backed by a penalty, restraining a party from commencing or continuing proceedings before a foreign court, in the context of an 'anti-suit injunction', undermines the latter court's jurisdiction to determine the dispute. Any injunction prohibiting a claimant from bringing such an action must be seen as constituting interference with the jurisdiction of the foreign court which, as such, is incompatible with that regulation (see, to that

effect, judgments of 27 April 2004, *Turner*, C-159/02, EU:C:2004:228, paragraph 27; of 10 February 2009, *Allianz and Generali Assicurazioni Generali*, C-185/07, EU:C:2009:69, paragraph 34; and of 13 May 2015, *Gazprom*, C-536/13, EU:C:2015:316, paragraph 32).

- 26 In the present case, it is essentially apparent from the order for reference, as has been mentioned in paragraph 14 above, that the judgment and orders of the High Court, the exclusive jurisdiction of which was elected by the parties in the context of the settlement agreements, are not addressed directly to the Greek courts and also do not formally prohibit the proceedings before the referring court. That judgment and those orders nonetheless contain grounds relating to, first, the breach, by Starlight and OME together with the natural persons representing them, of those settlement agreements; second, the penalties for which they will be liable if they fail to comply with that judgment and those orders; and, third, the jurisdiction of the Greek courts in the light of those settlement agreements. Moreover, that judgment and those orders also contain grounds relating to the financial penalties for which Starlight and OME, together with the natural persons representing them, will be liable, in particular a decision on the provisional award of damages, the amount of which is not final and is predicated on the continuation of the proceedings before the Greek courts.
- 27 It follows from the foregoing that, as the Advocate General states in point 38 of his Opinion, the judgment and orders of the High Court could be classified as “quasi” anti-suit injunctions’. While the purpose of that judgment and those orders is not to prohibit a party from bringing or continuing legal action before a foreign court, they may be regarded as having, at the very least, the effect of deterring Starlight and OME, together with their representatives, from bringing proceedings before the Greek courts or continuing before those courts an action the purpose of which is the same as those actions brought before the courts of the United Kingdom, which matter is, in any event, for the referring court to determine.
- 28 An injunction having such effects would not, having regard to the principles recalled in paragraphs 24 and 25 of the present judgment, be compatible with Regulation No 44/2001.
- 29 However, the court of the Member State in which enforcement is sought cannot, without undermining the aim of Regulation No 44/2001, refuse recognition of a judgment emanating from another Member State solely on the ground that it considers that national or EU law was misapplied in that judgment (judgments of 28 April 2009, *Apostolides*, C-420/07, EU:C:2009:271, paragraph 60, and of 16 January 2019, *Liberato*, C-386/17, EU:C:2019:24, paragraph 54).
- 30 It follows that it is necessary to examine whether a court of a Member State can, in the context of the examination of an action against a declaration finding that a judgment of a court of another Member State is enforceable, revoke such a declaration on the ground that that judgment is akin to a “quasi” anti-suit injunction’ which is, in principle, incompatible with Regulation No 44/2001.
- 31 In that connection, it should be recalled, in the first place, that Article 45(1) of that regulation circumscribes the possibility of refusing or revoking a declaration of enforceability to one of the grounds specified in Articles 34 and 35 of that regulation. In the second place, Article 34(1) of that regulation provides, in essence, that a judgment is not to be recognised if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought.
- 32 The Court has held, in so far as concerns the concept of ‘public policy’ set out in that provision, that Article 34 of Regulation No 44/2001 must be interpreted strictly inasmuch as it constitutes an obstacle to the attainment of one of the fundamental objectives of that regulation. The

public-policy clause contained in Article 34(1) of that regulation may be relied on only in exceptional cases (judgments of 28 March 2000, *Krombach*, C-7/98, EU:C:2000:164, paragraph 21, and of 25 May 2016, *Meroni*, C-559/14, EU:C:2016:349, paragraph 38 and the case-law cited).

- 33 While the Member States remain in principle free, by virtue of the proviso in that article, to determine, according to their own conceptions, what public policy requires, the limits of that concept are a matter of interpretation of that regulation (judgments of 28 March 2000, *Krombach*, C-7/98, EU:C:2000:164, paragraph 22, and of 7 April 2022, *H Limited*, C-568/20, EU:C:2022:264, paragraph 42).
- 34 Consequently, while it is not for the Court to define the content of the public policy of a Member State, it is nonetheless required to review the limits within which the courts of a Member State may have recourse to that concept for the purpose of refusing recognition of a judgment emanating from a court in another Member State (judgments of 28 March 2000, *Krombach*, C-7/98, EU:C:2000:164, paragraph 23, and of 7 April 2022, *H Limited*, C-568/20, EU:C:2022:264, paragraph 42).
- 35 Recourse to the public-policy clause in Article 34(1) of Regulation No 44/2001 can be envisaged only where recognition of the judgment delivered in another Member State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle. In order for the prohibition of any review of the substance of a judgment of another Member State to be observed, the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the Member State in which enforcement is sought or of a right recognised as being fundamental within that legal order (judgments of 28 March 2000, *Krombach*, C-7/98, EU:C:2000:164, paragraph 37, and of 16 July 2015, *Diageo Brands*, C-681/13, EU:C:2015:471, paragraph 44).
- 36 The fact that the manifest error committed by the court of the Member State of origin concerns a rule of EU law does not alter the conditions for reliance upon the public-policy clause for the purpose of Article 34(1) of Regulation No 44/2001. It is for the national court to ensure with equal diligence the protection of rights established in national law and rights conferred by EU law. That clause would apply only where that error of law means that the recognition of the judgment concerned in the State in which recognition is sought would result in the manifest breach of an essential rule of law in the EU legal order and therefore in the legal order of that Member State (judgments of 11 May 2000, *Renault*, C-38/98, EU:C:2000:225, paragraph 32, and of 16 July 2015, *Diageo Brands*, C-681/13, EU:C:2015:471, paragraphs 48 and 50).
- 37 In the present case, the judgment and orders of the High Court – which, in accordance with paragraph 27 of the present judgment, could be classified as “quasi” anti-suit injunctions’, in that they indirectly influence the continuation of proceedings brought before the courts of another Member State – are contrary to the general principle which emerges from the case-law of the Court that every court seised itself determines, under the applicable rules, whether it has jurisdiction to resolve the dispute before it (see, by analogy, judgments of 10 February 2009, *Allianz and Generali Assicurazioni Generali*, C-185/07, EU:C:2009:69, paragraph 29, and of 13 May 2015, *Gazprom*, C-536/13, EU:C:2015:316, paragraph 33).

- 38 Such “quasi” anti-suit injunctions’ run counter to the trust which the Member States accord to one another’s legal systems and judicial institutions and on which the system of jurisdiction under Regulation No 44/2001 is based (see, by analogy, judgment of 10 February 2009, *Allianz and Generali Assicurazioni Generali*, C-185/07, EU:C:2009:69, paragraph 30).
- 39 Under those circumstances, as the Advocate General observes in point 53 of his Opinion, subject to the examination to be conducted by the referring court, the recognition and enforcement of the judgment and orders of the High Court are liable to be incompatible with public policy in the legal order of the Member State in which recognition and enforcement are sought, inasmuch as that judgment and those orders are such as to infringe the fundamental principle, in the European judicial area based on mutual trust, that every court is to rule on its own jurisdiction.
- 40 Furthermore, that type of “quasi” anti-suit injunction’ is also such as to undermine access to justice for persons on whom such injunctions are imposed. As the European Commission has pointed out, by granting, in the form of provisional damages, the costs borne by the defendant as a result of having brought proceedings which are pending before a court of the Member State in which recognition and enforcement are sought, such compensation makes it more difficult for the applicant to continue those proceedings, or even prevents that applicant from doing so.
- 41 In the light of all the foregoing considerations, the answer to the first question is that Article 34(1) of Regulation No 44/2001, read in conjunction with Article 45(1) thereof, must be interpreted as meaning that a court or tribunal of a Member State may refuse to recognise and enforce a judgment of a court or tribunal of another Member State on the ground that it is contrary to public policy, where that judgment impedes the continuation of proceedings pending before another court or tribunal of the former Member State, in that it grants one of the parties provisional damages in respect of the costs borne by that party on account of its bringing those proceedings on the grounds that, first, the subject matter of those proceedings is covered by a settlement agreement, lawfully concluded and ratified by the court or tribunal of the Member State which gave that judgment and, second, the court of the former Member State, before which the proceedings at issue were brought, does not have jurisdiction on account of a clause conferring exclusive jurisdiction.

The second question

- 42 The second question is asked in the event that the first question is answered in the negative. Having regard to the answer to the first question, there is no need to answer the second question.

Costs

- 43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Third Chamber) hereby rules:

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, read in conjunction with Article 45(1) thereof,

must be interpreted as meaning that a court or tribunal of a Member State may refuse to recognise and enforce a judgment of a court or tribunal of another Member State on the ground that it is contrary to public policy, where that judgment impedes the continuation of proceedings pending before another court or tribunal of the former Member State, in that it grants one of the parties provisional damages in respect of the costs borne by that party on account of its bringing those proceedings on the grounds that, first, the subject matter of those proceedings is covered by a settlement agreement, lawfully concluded and ratified by the court or tribunal of the Member State which gave that judgment and, second, the court of the former Member State, before which the proceedings at issue were brought, does not have jurisdiction on account of a clause conferring exclusive jurisdiction.

[Signatures]