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Judgment of the Court in Case C-700/20 | London Steam-Ship Owners' Mutual Insurance Association

The *Prestige* sinking: The arbitration proceedings initiated in the United Kingdom cannot block the recognition of the Spanish judgment ordering the insurer to pay compensation for the damage caused by the oil spill

A judgment confirming an arbitral award can prevent the recognition of judicial decisions from other Member States only if the content of that award could also have been the subject of a judicial decision adopted in compliance with the provisions and fundamental objectives of Regulation No 44/2001

In November 2002, the *M/T Prestige*, an oil tanker flying the flag of the Bahamas, split in two following a violent storm and sank off the coast of Galicia (Spain). It was transporting 70 000 tons of fuel oil, which spilled, causing significant damage to beaches, towns and villages along the north coast of Spain and the west coast of France. Thus began a lengthy legal dispute between the insurer of the vessel (The London Steam-Ship Owners' Mutual Insurance Association Limited ('the London P&I Club')) and Spain in two different sets of proceedings initiated in two Member States.

First, the Spanish State, amongst other victims of the damage, brought a civil action before the Spanish courts. That action resulted in the London P&I Club being ordered to pay compensation for the damage caused, subject to the limit of 1 billion United States dollars (USD) (approximately € 900 000 000) stipulated in the insurance contract.

Secondly, after the introduction of that action, the *Prestige's* insurer initiated arbitration proceedings in London on the basis of a clause in the insurance contract. Those proceedings resulted in an arbitral award according to which the claims for damages brought by Spain before the Spanish courts should have been made in those arbitration proceedings. In addition, the arbitral award concluded that, in accordance with another clause in the insurance contract – the 'pay to be paid' clause – the London P&I Club could not be liable to Spain in the absence of the prior payment of the damages, by the owners of the vessel, to Spain.

As provided for by the Arbitration Act 1996, the London P&I Club applied for and obtained a judgment of the High Court of Justice (England & Wales), Queens Bench Division (Commercial Court) in the terms of the arbitration award. That judgment was confirmed in appeal proceedings brought by Spain.

Spain, on the other hand, applied to the courts in the United Kingdom for the recognition of the Spanish order enforcing the judicial ruling finding the London P&I Club liable to pay compensation for the damage caused. The High Court granted that application in May 2019. The London P&I Club brought an appeal against that recognition, and the High Court decided to refer questions to the Court of Justice concerning the interpretation of Regulation No 44/2001.¹ It asked the Court, in essence, whether that recognition could be refused on the basis of the existence, in the United Kingdom, of a judgment entered in the terms of an arbitral award and the effects of which are irreconcilable with those of the abovementioned judicial ruling.

By its judgment delivered today, the Court holds that Regulation No 44/2001 must be interpreted as

¹ 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). Regulation No 44/2001 is applicable to the dispute before the High Court. It has since been repealed and replaced by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 (OJ 2012, L 351, p. 1).

meaning that a judgment entered by a court of a Member State in the terms of an arbitral award cannot prevent, in that Member State, the recognition of a judgment given in another Member State where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of the first Member State without infringing the provisions and the fundamental objectives of that regulation, in particular as regards the relative effect of an arbitration clause included in the insurance contract in question and the rules on *lis pendens*. In doing so, the Court ensures, in essence, that those provisions and fundamental objectives cannot be circumvented by means of arbitration proceedings followed by judicial proceedings seeking to have the terms of the arbitral award entered in a judicial decision.

As a preliminary point, the Court notes that the regulation excludes arbitration from its scope. A judgment entered in the terms of an arbitral award is therefore caught by that arbitration exclusion and cannot enjoy mutual recognition between the Member States.

That being said, such a judgment may be regarded as a judgment within the meaning of Article 34(3) of the regulation alone, capable of preventing the recognition of judgments from other Member States if those judgments are irreconcilable.

However, the position is different where the arbitral award in the terms of which that judgment was entered was, as in the present case, made in circumstances which would not have permitted the adoption, in compliance with the provisions and fundamental objectives of that regulation, of a judicial decision falling within the scope of that regulation.

As regards the relative effect of an arbitration clause included in an insurance contract, the Court notes that 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.² To accept that a judgment entered in the terms of an arbitration award by which an arbitral tribunal declared itself to have jurisdiction on the basis of such an arbitration clause may prevent the recognition of a judgment given in another Member State following a direct action for damages brought by the injured party **would be liable to deprive that party of effective compensation for the damage suffered**.

As regards *lis pendens*, the Court notes that the two sets of proceedings in question, namely the civil action in Spain and the arbitration proceedings in London, were not only between the same parties but, moreover, had the same cause of action, namely the potential liability of the London P&I Club in respect of the Spanish State, under the insurance contract concluded between the London P&I Club and the owners of the *Prestige*, for the damage caused by the sinking of that vessel.

The Court emphasises that it is for the court seised with a view to entering a judgment in the terms of an arbitration 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, such as a circumvention consisting in 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* laid down in that regulation.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² Judgment of 13 July 2017, *Assens Havn*, [C-386/16](#).

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