Lithuanian Court Asks ECJ whether Brussels Regime Forbids Recognition of Arbitral Antisuit Injunctions

The Lithuanian Supreme Court has made a preliminary reference to the Court of Justice of the European Union asking whether the Brussels Regime forbids the recognition of arbitral anti-suit injunctions. In this case, after one party initiated court proceedings in Lithuania, the other party commenced arbitral proceedings in Sweden. The arbitral tribunal found that the Lithuanian court proceedings were in breach of the arbitral agreement and issued an antisuit injunction. The beneficiary of the injunction then sought recognition in Lithuania.

The Lithuanian Supreme Court is therefore asking the CJEU whether the Brussels Regime forbids arbitral antisuit injunction as well, and whether this might mean that the Brussels Regime would have impact on the recognition of arbitral awards issuing such injunctions.

See this report of John Gaffney @ OGEMID:

> *In proceedings before the Lithuanian Supreme Court (LSC) concerning the recognition and enforcement of an arbitral award in SCC arbitral proceedings between Gazprom and the Lithuanian Ministry of Energy, the LSC has decided to make a preliminary reference to the Court of Justice of the EU (CJEU).*
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> ***Background***
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> *In 2004, Gazprom and the Ministry of Energy of Lithuania and other shareholders in the Lithuanian natural gas company, Lietuvos Dujos, entered into a shareholders' agreement ("SHA"), which required all disputes arising out of or in connection with it to be resolved by arbitration under the Rules of the Stockholm Chamber of Commerce (SCC).*
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> *In 2011, the Ministry of Energy commenced proceedings before the Lithuanian courts in respect of the actions of Lietuvos Dujos in relation to the terms of a*

gas supply and gas transit concluded with Gazprom.

Gazprom commenced the SCC arbitration proceedings, arguing that Lithuania's attempt to litigate certain matters relating to the management of Lietuvos Dujos before the Lithuanian courts was a breach of SHA.

In a 2012 award, the arbitral tribunal (Derains, Nappert, Lamb) declared that the Ministry's initiation and prosecution of the Lithuanian court proceedings was partially in breach of the arbitration agreement contained in the SHA and ordered the Ministry to withdraw certain requests in the court proceedings and to limit its request in the same proceedings to measures that would not jeopardize the rights and obligations established in the SHA and that the Ministry could not request before an arbitral tribunal constituted pursuant to the arbitration clause of the SHA.

West Tankers

In the West Tankers case, which also involved a preliminary reference concerning the relationship of arbitration and the Brussels I Regulation, but which involved a court-ordered anti-suit injunction, the CJEU held that it is incompatible with the Brussels I Regulation for a court of an EU Member State to make an order to restrain a person from commencing or continuing proceedings before the courts of another Member State on the ground that such proceedings would be contrary to an arbitration agreement, where such proceedings come within the scope of the Regulation.

Preliminary reference

In the Lithuanian proceedings brought by Gazprom to recognize and enforce the SCC award, the question arose, whether, by analogy with West Tankers – if an EU Member State court should not recognize a court-ordered anti-suit injunction, and if an arbitral tribunal were treated as an equivalent to a court – an EU Member State court should not enforce an arbitral award that constitutes an anti-suit injunction or limits claims in court proceedings.

In this regard, the LSC decided to refer three questions to the CJEU:

1. Does an EU Member State court have a right to refuse to recognize an arbitration award, which constitutes a form of anti-suit injunction, on the

grounds that such an award limits the jurisdiction of the national court to rule on its own competence in examining the case in accordance to the rules of jurisdiction of the Brussels I Regulation?

2. If the answer to 1. is yes, does the same apply in the case where the arbitral tribunal orders a party to limit its claims in proceedings before an EU Member State court?

3. Can a national court, for the purpose of ensuring the supremacy of the EU law and full effectiveness of the Brussels I Regulation, refuse to recognise the arbitral award if such an award limits the right of the national court to rule on its own jurisdiction and authority in a case that falls under the jurisdiction of Brussels I Regulation?

The premise of the questions, i.e., that arbitral tribunals should be considered as equivalent to courts, has a special resonance in EU law, considering that they are not considered as such under the Article 234 EC procedure itself.