

Lis pendens in Spain (autonomous PIL)

Spanish autonomous PIL regulation is scattered and incomplete. In particular, we still lack of a rule on international lis pendens. The case law position on the matter seems quite clear, however: in the absence of any international agreement, the international lis pendens defense is not allowed: as the foreign ruling does not produce res judicata effect until it is recognized in Spain, there is no real risk of conflicting decisions. That's why the Supreme Court's (Tribunal Supremo, TS) decision of February 23, 2007 has attracted our attention. In that case a lawsuit between the same parties was simultaneously pending in the U.S. and Madrid. The appellant claimed that the Courts of first and second instance had not observed "the jurisprudence reflected in the Judgments of January 31 1921, June 19 1990 and other consistent case law ..."; and that by doing so they had infringed Art. 533.5 ° LEC 1881 (old lis pendens rule for purely domestic litigation).

Instead of displaying the customary arguments used for rejecting lis pendens, what the TS said was: "the lis pendens defence can be raised, and the Spanish court would have jurisdiction to decide on it. Whether or not it would be effective remains a different issue, to be solved considering the events taking place throughout the process". Therefore, the Supreme Court seems to recognize that it is possible to plead and discuss the international lis pendens defence in the light of the peculiarities of each case. In the specific case before the Supreme Court, the exception was rejected: but not because there is no international treaty between Spain and the United States, or because the foreign ruling would not be recognized in Spain as long as the issue is still pending before our courts. Instead, the Supreme Court directly assumes that a lawsuit filed abroad requesting for revocation of a contract, and a national claim based on breach of the same contract, may affect each other: if the former is accepted, "there would be res iudicata" in the latter.

Since the Supreme Court's line of arguments is not totally consistent (citations of case law supporting the court opinion are purely internal), we do not dare to say that our TS was really aware of the differences between domestic and international lis pendens. However, we would like to think that his decision adds

interesting data to the Spanish debate on the admissibility, conditions and limits of international *lis pendens* defence.

Add: Professor Santiago Álvarez González comments the TS decision in *Revista Española de Derecho Internacional*, 2008, vol. I.