

ECJ Judgment in Gambazzi

The European Court of Justice (ECJ) has delivered today its judgment in *Gambazzi v. Daimler Chrysler Canada, Inc. and CIBC Mellon Trust Company*.

The case, previously known as *Stolzenberg*, had been already litigated in numerous jurisdictions (see our previous posts [here](#) and [here](#)). The defendants had sued Gambazzi in London and obtained there a *Mareva* injunction. As Gambazzi failed to comply with it, he was sanctioned by the English court and debarred from defending in the main proceedings. As a consequence, the defendants entered into a default judgment against him. They then sought enforcement of the said default judgment throughout Europe, including in Italy. The Court of Appeal of Milan referred the case to the ECJ, and asked:

On the basis of the public policy clause in Article 27(1) of the Brussels Convention, may the court of the State requested to enforce a judgment take account of the fact that the court of the State which handed down that judgment denied the unsuccessful party which had entered an appearance the opportunity to present any form of defence following the issue of a debarring order as described [in the grounds of the present Order]? Or does the interpretation of that provision in conjunction with the principles to be inferred from Article 26 et seq. of the Convention, concerning the mutual recognition and enforcement of judgments within the Community, preclude the national court from finding that civil proceedings in which a party has been prevented from exercising the rights of the defence, on grounds of a debarring order made by the court because of that party's failure to comply with a court injunction, are contrary to public policy within the meaning of Article 27(1)?

Following closely the conclusions of Advocate General Kokott, the ECJ ruled this morning that it could only give guidelines to national courts so that they would make a decision themselves. It held:

the court of the State in which enforcement is sought may take into account, with regard to the public policy clause referred to in [Article 27(1)], the fact that the court of the State of origin ruled on the applicant's claims without hearing the defendant, who entered appearance before it but who was excluded from the proceedings by

order on the ground that he had not complied with the obligations imposed by an order made earlier in the same proceedings, if, following a comprehensive assessment of the proceedings and in the light of all the circumstances, it appears to it that that exclusion measure constituted a manifest and disproportionate infringement of the defendant's right to be heard.

Clearly, this is a bit disappointing. We will have to wait longer before getting a chance to know whether nuclear weapons of English civil procedure are compatible with human rights in general, and Article 6 of the European Convention on Human Rights (ECHR) in particular.

The ECJ addressed two issues in its judgment.

First, it made it clear that English default judgments are judgments within the meaning of Article 25 of the Brussels Convention. It held that they meet the *Denilauler* test of being adversarial. This is good to know, but I am not sure this was the most interesting issue. Advocate General Kokott had also focused on whether English default judgments meet the *Solokleinmotoren* test, and this was much more questionable. AG Kokott had concluded that they did meet that test, but the Court is silent in this respect.

Second, the Court discussed whether the English default judgment was contrary to public policy. It only addressed the issue referred to it by the Milan Court, i.e. whether rendering a 'default' judgment as a consequence of debarment from defending was a violation of the right to a fair trial. Along the lines of AG Kokott's conclusions, the ECJ only gave guidelines to national courts which will have to appreciate whether, in the light of all circumstances, there was such violation. In particular, the Court insisted that they should assess whether debarment was a proportionate sanction.

33 *With regard to the sanction adopted in the main proceedings, the exclusion of Mr Gambazzi from any participation in the proceedings, that is, as the Advocate General stated in point 67 of her Opinion, the most serious restriction possible on the rights of the defence. Consequently, such a restriction must satisfy very exacting requirements if it is not to be regarded as a manifest and disproportionate infringement of those rights.*

34 *It is for the national court to assess, in the light of the specific circumstances of these proceedings, if that is the case.*

The ECJ does not discuss whether the lack of reasons of English default judgments is contrary to Article 6 ECHR. It does not discuss either whether being prevented from accessing to one's evidence because it is withheld by one's lawyer is contrary to the right to a fair trial. As we had previously reported, other courts in Europe had found that these were violations of their public policy.