

Owusu and National Lis Pendens Doctrines

In *Owusu*, the Grand Chamber of the Court of Justice of the European Communities held that English courts may not decline jurisdiction on the ground that a third state court is *Forum Conveniens* when the Brussels Convention applies. English courts have no discretion when Article 2 of the Convention grants them jurisdiction.

What is the impact of this decision in continental Europe? Civil law jurisdictions do not have *forum non conveniens* doctrines, but they apply instead national doctrines of *lis pendens* and related actions. Are these doctrines impacted at all by *Owusu*?

Let's take an example. Here is a contractual dispute between a Gabonese company and a French company. The French company initiates proceedings in Gabon. Shortly after, the Gabonese company initiates proceedings in France. The French company is domiciled in France, so the jurisdiction of the French court is governed by Article 2 of the Brussels I Regulation. May the French court apply its national doctrine to decline jurisdiction?

The relevant doctrine is not FNC, but it has interesting features. It is a special form of *lis pendens*. On the one hand, a number of conditions must be met: proceedings must have been initiated first before the foreign court, the dispute must be the same (triple identity), the foreign judgment would be recognised in the forum. On the other hand, the French court only has discretion to decline jurisdiction.

In a judgment of February 19th, 2013, the French supreme court for private and criminal matters (*Cour de cassation*) affirmed a decision whereby the Paris court had declined jurisdiction in that very same circumstances. It seems that the *Owusu* decision was neither mentioned nor discussed before the *Cour de cassation*.

H/T: Severine Menetrey