

Awaken the Guardian: UK damages for breach of a choice of court agreement violate Greek public policy

The Piraeus Court of Appeal refused recognition and enforcement of two English orders awarding damages for breaching a choice of court and a settlement agreement due to violation of the Greek procedural public policy.

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INTRODUCTION

The ruling forms part of the famous *The Alexandros T* saga. It comes as the expected step forward, after the judgment rendered by the English CoA in the case *Starlight Shipping Company v Allianz Marine & Aviation Versicherungs AG* (*The Alexandros T* [2014] EWCA Civ 1010. The latter decision has been already reported and criticized in our blog by *Martin Ilmer*. An extensive presentation and critical analysis of the judgment is also included in the doctoral thesis of my blog colleague, Mukarrum Ahmed, pp. 142-151. For a concise, however complete presentation of the case in its previous stages, see here. For a view in favor of the outcome in the UK courts, see here.

THE FACTS

The application for the declaration of enforceability concerned two orders issued by a judge of the High Court of England in 2014, awarding damages (amounting to 300.000 £) for breach of a choice of court and a settlement agreement between the parties. The orders were issued on the basis of a judgment of the High Court [*Starlight Shipping Co v Allianz Marine & Aviation Versicherungs AG* [2014] EWHC 3068 (Comm) (26 September 2014), see also [2015] 2 All E.R. (Comm) 747; [2014] 2 Lloyd's Rep. 579], which granted declaratory relief in favor of the

insurers, and specific performance and damages for the solicitors' and adjuster's, on the basis that the proceedings in Greece were in breach of the settlement agreements and the exclusive jurisdiction clauses of both the settlement agreements and the underlying policies.

The Piraeus 1st Instance Court granted exequatur [Nr. 3461/2015, unreported]. The Greek shipping company appealed pursuant to the Brussels I Regulation, seeking revocation in accordance with Article 45, in conjunction with Art. 34.1 Brussels I Regulation.

THE RULING

Initially, the Piraeus CoA engaged in an analysis of the Brussels regime, starting from the Brussels Convention. It then focused on the public policy defense under Article 34.1 Brussels I Regulation. In this context, the court underlined the significance of Article 8 of the Greek Constitution, which reads as follows: *No person shall be deprived of the judge assigned to him by law against his will.* Finally, the court made reference to the institution of anti-suit injunction, concluding what is already common ground for continental legal orders, namely that recognition of such measures may not be tolerated.

With respect to the issue at stake, the reasoning of the Piraeus CoA is brief and to the point. The court stated verbatim the following:

It is true that both the English court and the Judge issuing the orders did not issue anti-suit injunctions. However, judgments hindering the progress of litigation initiated in Greece by ordering damages, and warnings for further damages against the claimants in the Greek proceedings, are included both in the ruling and the orders aforementioned. Consequently, the above contain ,quasi' anti-suit injunctions, which pose barriers towards free access to Greek courts, in violation of Article 6.1 ECHR and Articles 8.1 & 20 of the Greek Constitution, the provisions aforementioned belonging to the core of public policy in Greece.

Piraeus Court of Appeal, Nr. 371/1.7.2019

COMMENTS

The ruling of the Piraeus court does not come as a surprise. The reasoning might be laconic, nevertheless it is crystal clear, and in line with the comments made by

Martin Ilmer & Mukarrum Ahmed.

For the time being, no information is available on a possible final appeal lodged by the English side. I would however tend to believe that a final appeal is to be expected for the following reasons:

- In the course of proceedings initiated by the Greek side, at least three judgments issued by the Piraeus First Instance Court have incidentally recognized the same English judgments and orders, following the analysis embedded in the judgments of the High Court, the Court of Appeal and the Supreme Court of England respectively. It is therefore obvious that the Greek side will grab the chance given by the new ruling, and seek reversal in second instance.
- There is no precedent regarding the case at hand. Therefore, all cards are on the table: The Greek Supreme Court may allow or dismiss the appeal, whereas a preliminary reference to the CJEU is not to be excluded. The days of reluctance to submit preliminary questions seem to be gone for the Supreme Court [see C-436/16]. Actually, a preliminary reference would be the most prudent solution, given that the matter needs to be clarified on EU level.[contact-form][contact-field label="Name" type="name" required="true" /][contact-field label="Email" type="email" required="true" /][contact-field label="Website" type="url" /][contact-field label="Message" type="textarea" /][[/contact-form]