Mutual Trust v Public Policy : 1-0

In a case concerning the declaration of enforceability of a UK costs order, the Supreme Court of the Hellenic Republic decided that the 'excessive' nature of the sum (compared to the subject matter of the dispute) does not run contrary to public policy. This judgment signals a clear-cut shift from the previous course followed both by the Supreme and instance courts. The decisive factor was the principle of mutual trust within the EU. The calibre of the judgment raises the question, whether courts will follow suit in cases falling outside the ambit of EU law.

[Areios Pagos, Nr. 579/2019, unreported]

THE FACTS

The claimant is a Greek entrepreneur in the field of mutual funds and investment portfolio management. His company is registered at the London Stock Exchange. The defendant is a well known Greek journalist. On December 9, 2012, a report bearing her name was published in the digital version of an Athens newspaper, containing defamatory statements against the claimant. The claimant sued for damages before the High Court of Justice, Queens Bench Division. Although properly served, the respondent did not appear in the proceedings. The court allowed the claim and assigned a judge with the issuance of an order, specifying the sum of the damages and costs. The judge ordered the default party to pay the amount of 40.000 ? for damages, and 76.290,86 ? for costs awarded on indemnity basis. The defendant did not appeal.

The UK order was declared enforceable in Greece [Athens CFI 1204/2015, unreported]. The judgment debtor appealed successfully: The Athens CoA ruled that the amount to be paid falls under the category of ‚excessive' costs orders, which are disproportionate to the subject matter value in accordance with domestic perceptions and legal provisions. Therefore, the enforcement of the UK order would be unbearable for public policy reasons [Athens CoA 1228/2017, unreported]. The judgment creditor lodged an appeal on points of law before the Supreme Court.

THE RULING

The Supreme Court was called to examine whether the Athens CoA interpreted properly the pertinent provisions of the Brussels I Regulation (which was the applicable regime in the case at hand), i.e. Article 45 in conjunction with Art. 34 point 1. The SC began its analysis by an extensive reference to judgments of the CJEU, combined with recital 16 of the Brussels I Regulation, which encapsulates the Mutual Trust principle. In particular, it mentioned the judgments in the following cases: C-7/98, Krombach, Recital 36; C-38/98, Renault, Recital 29; C-302/13, flyLAL-Lithuanian Airs, Recital 45-49; C-420/07, Orams, Recital 55), and C-681/13, Diageo, Recital 44. It then embarked on a scrutiny of the public policy clause, in which the following aspects were highlighted:

- The spirit of public policy should not be guided by domestic views; the values of European Civil Procedure, i.e. predominantly the European integration, have to be taken into consideration, even if this would mean downsizing domestic interests and values. Hence, the court of the second state may not deny recognition and enforcement on the grounds of perceptions which run contrary to the European perspective.
- The gravity of the impact in the domestic legal order should be of such a degree, which would lead to a retreat from the basic principle of mutual recognition.
- Serious financial repercussions invoked by the defendant may not give rise to sustain the public policy defense.
- In principle, a foreign costs order is recognized as long as it does not function as a camouflaged award of punitive damages. In this context, the second court may not examine whether the foreign costs order is ‘excessive’ or not. The latter is leading to a review to its substance.
- The proportionality principle should be interpreted in a twofold fashion: It is true that high costs may hinder effective access to Justice according to Article 6.1 ECHR and Article 20 of the Greek Constitution. However, on an equal footing, the non-compensation of the costs paid by the claimant in the foreign proceedings leads to exactly the same consequence.
- In conclusion, the proper interpretation of Article 34 point 1 of the Brussels I Regulation should lead to a disengagement of domestic perceptions on costs from the public policy clause. Put differently, the Greek provisions on costs do not form part of the core values of the

domestic legislator.

In light of the above remarks, the SC reversed the appellate ruling. The fact that the proportionate costs under the Greek Statutes of Lawyer's fees would lead to a totally different and significantly lower amount (2.400 in stead of 76.290,86 ?) is not relevant or decisive in the case at hand. The proper issue to be examined is whether the costs ordered were necessary for the proper conduct and participation in the proceedings, and also whether the calculation of costs had taken place in accordance with the law and the evidence produced. Applying the proportionality principle in the way exercised by the Athens CoA amounts to a re-examination on the merits, which is totally unacceptable in the field of application of the Brussels I Regulation.

COMMENTS

As mentioned in the introduction, the ruling of the SC departs from the line followed so far, which led to a series of judgments denying recognition and enforcement of foreign (mostly UK) orders and arbitral awards [in detail see my commentary published earlier in our blog, and my article: Recognition and Enforcement of Foreign Judgments in Greece under the Brussels I-*bis* Regulation, in Yearbook of Private International Law, Volume 16 (2014/2015), pp. 349 et seq]. The decision will be surely hailed by UK academics and practitioners, because it grants green light to the enforcement of judgments and orders issued in this jurisdiction.

The ruling applies however exclusively within the ambit of the Brussels I Regulation. It remains to be seen whether Greek courts will follow the same course in cases not falling under the Regulation's scope, e.g. arbitral awards, third country judgments, or even UK judgments and orders, whenever Brexit becomes reality.