

First contact of Greek courts with the 2005 Hague Choice of Court Convention

The Choice of Court Convention is already close to its 5th year of application. Case law is still scarce. A Greek court tackled with the question, whether to apply the Convention or not. It decided that it should apply, but at the end it considered that the agreement was asymmetric, therefore outside the scope of the Convention.

THE FACTS

The claimant is a ship owner company registered in Monrovia, Liberia. While the claimant's ship was on its way to Novorossiysk, Russia, the claimant agreed with a company registered in Hong Kong [defendant], having however a branch in Piraeus, to buy a quantity of petrol, to be delivered at the port of the Russian city. A few days later, both the ship and the fuel were in Novorossiysk. During bunkering, the 1st engineer of the ship requested the interruption of the supply. He was suspicious that petrol was not of the agreed quality. A technical inspection a couple days later proved that the engineer was right. As a result, litigation ensued before the Piraeus courts. The defendant did not challenge the court's international jurisdiction. At the same time, he filed an interpleader action against the petrol supplier. The latter, a company registered in Monaco, challenged the jurisdiction of the Greek court, by invoking a choice of forum agreement between the parties, stipulated on the invoice issued as a standard term of the deal.

THE RULING

The court engaged in a thorough analysis of the issue: It confirmed that the agreement was falling under the scope of the convention both *ratione temporis* and *ratione materiae*. The agreement was signed after the entry into force of the

Convention (1/10/2015) and concerned a genuinely commercial dispute. It then examined the content of the choice of forum clause, and considered that the agreement was asymmetric, i.e. unilaterally in favor of the seller, and to the detriment of the buyer. As a second step, the court found that the Brussels Ia Regulation was also not applicable, because the conditions provided by Article 25, lit. a - c were not met. Following the above, the court resumed to domestic provisions of the Greek Code of Civil Procedure, in order to establish its international jurisdiction (Article 31, similar actions).

COMMENT

The wording of the choice of court clause reads as follows: *The contract is governed by English law; the contracting parties accept the exclusive jurisdiction of English courts for the resolution of any dispute related to the present contract* [translated by the author]. I don't think I need to say anything here; there's nothing asymmetric in this clause. I will just reproduce a passage from the Explanatory Report prepared by Professors Hartley and Dogauchi:

105 Asymmetric agreements. *Sometimes a choice of court agreement is drafted to be exclusive as regards proceedings brought by one party but not as regards proceedings brought by the other party. International loan agreements are often drafted in this way. A choice of court clause in such an agreement may provide, "Proceedings by the borrower against the lender may be brought exclusively in the courts of State X; proceedings by the lender against the borrower may be brought in the courts of State X or in the courts of any other State having jurisdiction under its law."*

The final point I want to make is that the court shouldn't go that far with the examination of the matter. As mentioned above, the parties in question were registered in Hong Kong and Monaco. Both countries are not signatory members to the Hague Convention. Hence, the analysis was unnecessary.

Conclusion: Bad publicity is still publicity. There are of course drawbacks in the

court's analysis; still, on the other side, it is very fortunate that the court examined the facts from the Hague Convention's point of view too. The worst case scenario would have been to ignore completely the Convention's existence, which regrettably occurs occasionally, both for Hague Conventions and sometimes for EU Regulations as well.

[Piraeus Court of First Instance nr. 3106/2019, available (in Greek) [here](#)]