

CJEU fitting an order issued in a Member State on the basis of a third State judgment within the Brussels I bis Regime, case H Limited, C-568/20

In the judgment in *Owens Bank*, C-129/92, the Court of Justice held that the Brussels Convention does not apply to proceedings in a Contracting State concerning the enforcement of judgment given in civil and commercial matters in non-contracting State.

However, that judgment does not clarify whether the Convention applies to a judgment issued in a Contracting State on the basis of a judgment from a non-contracting State and, maybe more accurately, to proceedings concerning its enforcement in a different Contracting State. Unsurprisingly, as some national procedural laws provide for a possibility to ‘introduce’ a third State judgment within their system through a simplified and/or summary procedure, this question has been debated in the literature.

Context of the request for a preliminary ruling and the preliminary question itself

Nearly three decades later, the request for a preliminary ruling made in proceedings concerning the enforcement in Austria of an order for payment issued by the High Court of Justice (UK) on the basis of two judgments delivered in Jordan gives the Court an opportunity to address that issue, yet this time under the Brussels I bis Regime.

Last December AG Pikamäe presented his Opinion in the preliminary reference procedure concerning that request, i.e. in the case *H Limited*, C-568/20 (for remarks on the Opinion and the case itself, see also contribution of Geert van

Calster on his blog).

In essence, in this case the Court considered itself to be called upon to clarify whether Article 2(a) [definition of the notion of 'judgment'] and Article 39 of the Brussels I bis Regulation ['A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required'] must be interpreted as meaning that an order for payment made by a court of a Member State on the basis of final judgments delivered in a third State constitutes a judgment and is enforceable in the other Member States.

Court's answer and its findings

In its judgment of 7 April 2022, the Court answered in a following manner:

Article 2(a) and Article 39 of [the Brussels I bis Regulation] must be interpreted as meaning that an order for payment made by a court of a Member State on the basis of final judgments delivered in a third State constitutes a judgment and is enforceable in the other Member States if it was made at the end of adversarial proceedings in the Member State of origin and was declared to be enforceable in that Member State. The fact that it is recognised as a judgment does not, however, deprive the party against whom enforcement is sought of the right to apply, pursuant to Article 46 of that regulation, for a refusal of enforcement on one of the grounds referred to in Article 45.

It seems that two elements of major importance paved the way for this affirmative answer. In its reasoning, the Court stresses that 'it is apparent from the order for reference that the High Court order at issue in the main proceedings was, at the very least, the subject of a summary hearing in the Member State of origin, with the result that it constitutes a judgment within the meaning of Article 2(a) of [the Brussels I bis Regulation]' and that 'consequently, since it has been declared to be enforceable in that Member State, it is enforceable in the other Member States pursuant to Article 39 of that Regulation' (point 32). As seen above, both elements are reflected in the answer.

Moreover, the judgment heavily relies on the mutual trust and highlights its

importance in at least two contexts: first, as to the interpretation of the notion of 'judgment' (points 29 to 31), second, where the Court seems to acknowledge that this solution may at first glance tantamount to by-passing of the exequatur requirement imposed by the Member State where enforcement is sought (points 33 to 35).

It should be noted that the Court has been asked three preliminary question, with the second (concerning, in essence, the grounds for refusal of enforcement) and third being referred to it only for the hypothesis that the first one is answered in the negative. As the Court ultimately came to the conclusion that the first question has to be answered by an affirmative (points 21 to 39), it did not address two other questions. As seen in the Court's response, it did nonetheless tackle the issue of the grounds for refusal of enforcement (points 40 to 46).

The judgments is available [here](#).