

“Quasi” Anti-Suit Injunctions and Public Policy under Brussels Regime

THE CJEU: “QUASI” ANTI-SUIT INJUNCTION JUDGMENTS ARE AGAINST PUBLIC POLICY UNDER BRUSSELS REGIME

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The Court of Justice of European Union (CJEU) on 7 of September 2023 in its newest case *Charles Taylor Adjusting Limited, FD v Starlight Shipping Company, Overseas Marine Enterprises Inc.* (case No. C-590/21) 2023 rendered a new preliminary ruling related to a non-recognition of “Quasi” anti-suit injunctions’ judgment under public policy ground of Brussels regime. This case is important because of two aspects. Firstly, CJEU clarified the main elements of “Quasi” anti-suit injunctions’ judgments. Secondly, Court stated what impact such judgments have for mutual trust in EU and if it can be safeguarded by public policy ground.

Facts of the case and preliminary question

The case concerns the maritime accident and dispute deriving from it. In connection with the sinking of a ship owners of the ship (Starlight and OME) demanded the insurers of that ship to pay an insurance claim based on their insurance contracts. After the insurers refused to pay a compensation, Starlight filed a claim against of the insurers to the UK courts and commenced another proceedings against another insurer in arbitration. While the legal action and arbitration were pending, Starlight, OME and the insurers concluded the settlement agreements in the UK court. According to the settlement agreement, it shall end parties’ dispute and insurers had to pay the insurance benefit. The settlement agreements have been approved by the UK court.

Following the conclusion of the settlement agreements, the owners of the vessel (Starlight and OME with the other owners) brought several legal actions before

the court in Greece for compensation of material and non-material damage. Legal actions were based insurers and their representatives liability on the publication of false and defamatory statements about the owners at a time when the initial proceedings for the payment of the insurance claim. These actions were based on the fact that the insurers' agents and representatives had informed the National Bank of Greece (the mortgage creditor of one of the shipowners) and had spread false rumours in the insurance market that the ship had sunk due to serious defects of which the shipowners were aware.

While those new legal actions before the Greece court were pending, the insurers of the vessel and their representatives brought another legal actions against Starlight and OME before the UK courts seeking a declaration that those new actions, instituted in Greece, had been brought in breach of the settlement agreements, and requesting that their applications for 'declarative relief and compensation' be granted. The High Court of Justice (England & Wales) on 26 September 2014 (while legal actions before the Greece court were pending) rendered judgment and orders by which the insurers and their representative's obtained compensation in respect of the proceedings instituted in Greece and payment of their costs incurred in England.

After that the issue of non-recognition of these UK court judgment and orders has come before the Greece courts. The Supreme Court of Greece deciding on the question of non-recognition of UK courts judgment and order refered to the CJEU for a preliminary ruling. The main question, which was referred to the CJEU was whether recognition and enforcement of a judgment of a court of another Member State may be refused on grounds of public policy on the ground that it obstructs the continuation of proceedings pending before a court of another Member State by awarding one of the parties interim damages in respect of the costs incurred by that party in bringing those proceedings.

Elements of "Quasi" anti-suit injunctions' judgment

First, in its preliminary judgment the CJEU clarified the elements of the "Quasi" anti-suit injunctions' judgment. Court noted, that in the context of an 'anti-suit injunction', a prohibition imposed by a court, backed by a penalty, restraining a party from commencing or continuing proceedings before a foreign court undermines the latter court's jurisdiction to determine the dispute. When a court order prohibits a plaintiff from bringing an action before a court in another

country, the order constitutes a restriction on the jurisdiction of the court in the other country, which is not compatible with the Brussels regime.

However, it is clear from this CJEU judgment that it is not essential that a prohibition to bring an action before a court of another State would be expressed directly in the such judgment to qualify it “Quasi” anti-suit injunctions’ judgment. In this case, the judgment and orders of the UK court did not prohibited to bring an action before the courts of another State (Greece) *expressis verbis*. Although, that judgment and those orders contained grounds relating to the breach settlement agreements, the penalties for which they will be liable if they fail to comply with that judgment and those orders and the jurisdiction of the Greece courts in the light of those settlement agreements. Moreover, that judgment and those orders also contained grounds relating to the financial penalties for which Starlight and OME, together with the natural persons representing them, will be liable, in particular a decision on the provisional award of damages, the amount of which is not final and is predicated on the continuation of the proceedings before the Greece courts.

It is clear from paragraph 27 of the preliminary judgment of CJEU that, in order for a particular judgments of a another Member State to qualify them as a “quasi” anti-suit injunctions’ judgments it is enough that they may be regarded as having, at the very least, the effect of deterring party from bringing proceedings before the another Member State courts or continuing before those courts an action the purpose of which is the same as those actions brought before the courts of the United Kingdom. A court judgment with such consequences is contrary to the objectives of the Brussels regime. This leads to the conclusion that such judgment cannot be enforced in another Member states, because it contradicts to mutual trust on which Brussels regime is based.

“Quasi” anti-suit injunctions’, Mutual Trust and Public Policy

Secondly, the CJEU considered whether such judgment can be not recognised on the ground of public policy. This means that court had to answer whether mutual trust and the right to access a court fall within the scope of the public policy clause. Court noted that such “quasi” anti-suit injunctions’ run counter to the trust which the Member States accord to one another’s legal systems and judicial institutions and on which the system of jurisdiction under Brussels I Regulation (as well as under Brussels Ibis Regulation) is based.

As well as, the CJEU ruled that the recognition and enforcement of the judgment and orders of the High Court of Justice (England & Wales) may breach public policy in the legal order of the Member State in which recognition and enforcement are sought, inasmuch as that judgment and those orders are such as to infringe the fundamental principle, in the European judicial area based on mutual trust, that every court is to rule on its own jurisdiction. Furthermore, that type of “quasi” anti-suit injunction’ is also such as to undermine access to justice for persons on whom such injunctions are imposed.

The CJEU decided that Article 34(1) of Regulation No 44/2001, read in conjunction with Article 45(1) thereof, must be interpreted as meaning that a court or tribunal of a Member State may refuse to recognise and enforce a judgment of a court or tribunal of another Member State on the ground that it is contrary to public policy, where that judgment impedes the continuation of proceedings pending before another court or tribunal of the former Member State, in that it grants one of the parties provisional damages in respect of the costs borne by that party on account of its bringing those proceedings on the grounds that, first, the subject matter of those proceedings is covered by a settlement agreement, lawfully concluded and ratified by the court or tribunal of the Member State which gave that judgment and, second, the court of the former Member State, before which the proceedings at issue were brought, does not have jurisdiction on account of a clause conferring exclusive jurisdiction.

Conclusion

The above mentioned CJEU preliminary ruling leads to two findings. First, public policy ground includes both the principle of a EU judicial area which is based on mutual trust and the right to access a court, which is an important and fundamental principle of EU law. And second, that “Quasi” anti-suit injunctions’ are against the purpose of Brussels regime, therefore such judgments can be non-recognized in another Member States on the basis of public policy clause.