Mandatory Mediation Procedures v Effective Access to Courts: CJEU Sets Down Criteria

Authored by Alexandre Biard

To what extent can mandatory mediation procedures be compatible with consumers' right to access to the judicial system? The preliminary ruling of the First Chamber of the CJEU delivered on 14 June 2017 (case C-75/16, *Menini & Rampanelli v Banco Popolare – Società Cooperativa,* and the associated Opinion of the Advocate General) brings interesting clarifications on this issue at a time where several Member States have – or are about to – introduce mandatory alternative dispute resolution procedures into their national legislations.

In 2015, two Italian individuals brought an appeal before the District Court of Verona (*Tribunale Ordinario di Verona*, hereafter "the referring court") against an order for payment obtained against them by the credit institution Banco Popolare. The order required them to pay the amount of 991,848 EUR corresponding to the balance that remained outstanding under a contract signed between the parties in 2009. However, as the referring court noted, under Italian law (Legislative Decree 28/2010), an application to have an order set aside is admissible only if the parties have first initiated a mediation procedure. The referring court therefore requested clarifications on the interpretation of Directive 2013/11 ("ADR Directive") and Directive 2008/52 ("Mediation Directive"), and on the compatibility of Italian legislation with EU law.

The Court used this opportunity to set down the criteria that mandatory mediation procedures should fulfil in order to be compatible with consumers' right to judicial access in the EU (I). Furthermore, although the case does not bring a definitive answer on the articulation between the ADR Directive and the Mediation Directive, it nonetheless provides some clarifications on the hierarchy and relationship between those two directives (II).

(I) Admissibility Criteria for Mandatory Mediation Procedures in the EU

The referring court sought to clarify whether the mandatory mediation procedure

imposed by Italian law is compatible with the provisions of the ADR Directive, whose Article 1 ambiguously provides that consumers can, on a "voluntary basis", submit complaints against traders by using ADR procedures, but also indicates that this is "without prejudice to national legislation making participation in such procedures mandatory (…)".

As the Court points out, "the voluntary" nature of ADR schemes does not lie in consumers' freedom of access, but in the freedom of process. In other words, what is important is not that the parties can choose whether or not to use ADR, but the fact that they should be "themselves in charge of the process, and may organise it as they wish and terminate it at any time". Put simply, "what is important is not whether the mediation system is mandatory or optional, but the fact that the parties' right of access to the judicial system is maintained". Therefore, the mere fact that a national legislation imposes a mandatory mediation procedure should not, as such, be regarded as being contrary to the provisions of the ADR Directive.

That said, the Court also acknowledges that mandatory mediation procedures introduce an additional layer of complexity for consumers. They may therefore ultimately prevent them from exercising their right to access to judicial bodies. While referring to and transposing the conditions set down by the Fourth Chamber of the CJEU in *Alassini and Others* (Case 317/08 to C-320/08 of 18 March 2010), which concerned a settlement procedure, the Court identifies six conditions for a mandatory mediation procedure to be compatible with the principle of effective judicial protection:

1. The mediation procedure should not result in a binding decision for the parties;
2. It should not cause substantial delays;
3. It should suspend the period for the time-barring of claims;
4. It should entail no (or very limited) costs;
5. Electronic means should not be the only means by which the procedure can be accessed; and
6. Interim measures should remain possible in exceptional circumstances.

It is up to the referring court to assess whether the mandatory procedure under consideration indeed complies with the criteria set above.

In parallel, national legislations should not include obligations deemed too burdensome for consumers. In particular:

- National legislation may not include an obligation for consumers to be assisted by a lawyer when they take part in a mediation procedure. This is in accordance with Article 8(b) and 9 of the ADR Directive; and
- Legislation should not authorize consumers to withdraw from a mediation procedure only under the condition that they can demonstrate valid reasons to do so. In accordance with Article 9(2) of the ADR Directive, such a withdrawal should remain possible at any time.

(II) Preliminary Clarifications on the Relationship Between the ADR Directive and the Mediation Directive

The referring court also sought to clarify the respective scopes of the Mediation Directive and the ADR Directive, as well as their articulation. In particular, the Italian court requested clarifications on whether the provisions of those two directives overlap, or if, on the contrary, the Mediation Directive only governs cases to which the ADR Directive does not apply.

The Court ultimately took the view that reference to the Mediation Directive was here not relevant as the Directive only applies to cross-border situations, which is not the case in the present situation (the litigants being all located in Italy). Although the Court did not address this issue, the conclusions of the Advocate General nonetheless provided some interesting food for thought. The latter indeed considered that, if a conflict between those two directives should arise, the Mediation Directive should, in his view, ultimately prevail. This is because Article 3(2) and Recital 19 of the ADR Directive clearly provide that the Directive "shall be without prejudice to Directive 2008/52/EC".

This decision is an important step towards combining consumers' effective access to judicial bodies on the one hand, and the use of mandatory alternative dispute resolution schemes on the other hand. The key issue is now to see how those criteria will be applied by national courts, and if they are likely to constitute sufficient safeguards to preserve consumers' rights in the EU.

Now on Video: Paris, 12 May 2017 –Symposium on the Recast of the Brussels IIbis Regulation

On Friday, 12 May 2017, Professor *Sabine Corneloup* and *Alexandre Boiché* organized a symposium on the recast of the Brussels II*bis* Regulation in Paris (see our previous post here). The symposium brought together experts from the academic and institutional worlds as well as from the bar, who shared their experience in order to work together to reach solutions to the problems and shortcomings observed. The conference has been recorded on video; the clips are now available here.

New Website on European Civil Procedure

Prof. Albert Henke (scientific coordinator) has set up a new website on European Civil Procedure. Its goal is to keep academics, professionals, students and all those involved in cross-border litigation in Europe updated about current trends and recent developments in legislation, case law and literature in this area, as well as to create an open educational resource and possibly promote scientific partnerships among Universities, Centres of Research and Institutions active in the field.

The website has been set up within the Jean Monnet Module on European Civil Procedure in a Comparative and Transnational Perspective, a teaching and research project funded by the EU and hosted by Università degli Studi in Milan.

The website is still under construction.

Solar Award Against Spain Confirmed in NY, Spain Moves for Annulment

The ICSID award in case *Eiser Infrastructure Limited and Energía Solar Luxembourg SARL v. Kingdom of Spain*, case number ARB/13/36, concluding that Spain had violated the Energy Charter Treaty, has been recognized on an ex parte petition by a New York court on June 27. Further information can be found here, edited by K. Duncan.

The award was issued on May 4 by an International Centre for Settlement of Investment Disputes tribunal after it unanimously determined that Spain had violated its international obligations to the companies by upending a series of subsidies aimed at encouraging investment in the renewable energy sector, several years after the companies sunk more than €126 million into three solar plants. The award also includes additional interest.

The case is *EISER Infrastructure Limited et al v. Kingdom of Spain*, case number 1:17-cv-03808, in the U.S. District Court for the Southern District of New York. Spain is seeking annulment of the decision for violation of the FSIA (1976).

Job vacancy: Ph.D. Candidate and

Fellow in Private International Law at the University of Cologne

The Institute for Private International and Comparative Law, University of Cologne, Germany invites applications for a Ph.D. Candidate and Fellow with excellent English language skills, starting at the earliest possible date with 19,92 weekly working hours (50% position). The contract will first be limited to one year with an option to be extended. Payment is based on the German TV-L E13 scale if terms and conditions under collective bargaining law are fulfilled. You may find further details here: job-vacancy-institute-for-private-international-and-comparative-law.

The law applicable to agency: German legislature adopts choice of law rule

On June 11 the German legislature has adopted a new choice of law rule for the law of agency. It is largely based on a proposal of the 2nd Commission of the German Council for Private International Law headed by our co-editor Jan von Hein.

The new Article 8 of the German Introductory Law to the German Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch – EGBGB) reads as follows (private translation):

> *(1) A contract between principal and agent shall be governed by the law chosen by the principal before the agency is exercised, if the choice of law is known to both agent and third party. Principal, agent and third party are free to choose the applicable law at any time. The choice of law according to Sentence 2 of this paragraph takes precedence over Sentence 1.*

(2) In the absence of a choice under Paragraph 1 and if the agent acts in exercise of his commercial activity, a contract between principal and agent, shall be governed by the law of the country in which the agent has his habitual residence at the time he acted, unless this country is not identifiable by the third party.

(3) In the absence of a choice under Paragraph 1 and if the agent acts as employee of the principal, a contract between principal and agent shall be governed by the law of the country in which the principal has his habitual residence, unless this country is not identifiable by the third party.

(4) If the agent does not act in a way described by Paragraph 2 or 3 and in the absence of a choice under Paragraph 1, a permanent contract between principal and agent shall be governed by the law of the country, in which the agent usually exercises his powers, unless this country is not identifiable by the third party.

(5) If the applicable law does not result from Paragraph 1 through 4, a contract between principal and agent shall be governed by the law of the country in which the agent acts in exercise of his powers. If the third party and the agent must have been aware that the agency should only have been exercised in a particular country, the law of this country is applicable. If the country in which the agent acts in exercise of his powers is not identifiable by the third party, the law of the country in which the principal has his habitual residence at the time the agent exercises his powers, is applicable.

(6) The law applicable for agencies on the disposition of property or the rights on property is to be determined according to Article 43 Paragraph 1 and Article 46.

(7) This Article does not apply to agencies for exchange or auction.

(8) The habitual residence in accordance with this Article is to be determined in line with Article 19, Paragraph 1 and 2, first alternative of Regulation (EG) No. 593/2008, provided that the exercise of the agency replaces contract formation. Article 19, Paragraph 1 and 2, first alternative of Regulation (EG) No. 593/2008 does not apply, if the country according to that Article is not identifiable by the third party.

The original German version is available here.

CJEU rules that child's physical presence is a necessary condition for habitual residence

On 8 June 2017 the CJEU has rendered another opinion regarding the interpretation of the concept of 'habitual residence' of the child under the Brussels II bis Regulation.

The facts of the case, C-111/17 PPU, indicate that OL, an Italian national, and PQ, a Greek national, married in Italy in 2013 and that they resided together in Italy. When PQ was eight months pregnant, the couple travelled together to Greece so that PQ could give birth there. On 3 February 2016 PQ gave birth, in Greece, to a daughter, who has remained since her birth in that Member State with her mother. After the birth of the child, OL returned to Italy. According to OL, he had agreed that PQ should stay in Greece with their child until May 2016, when he expected his wife and child to return to Italy. However, in June 2016 PQ decided to remain in Greece, with the child. OL brought an application before the *Monomeles Protodikeio Athinon* (Court of First Instance of Athens, Greece), for the return of that child to Italy, the Member State where the child's parents resided together before the birth of the child.

Having emphasised the importance of the primary caretaker's situation for determining the child's habitual residence, the CJEU stresses that it is nevertheless important to bear in mind that linking the child's habitual residence

to that of his primary caretakers should not result ‘in making a general and abstract rule according to which the habitual residence of an infant is necessarily that of his parents’. To adopt the position suggested by the father in OL v PQ, that the intention originally expressed by the parents as to the return of the mother accompanied by the child from Greece to Italy, which was the MS of their habitual residence before the birth of the child, constitutes an preponderant element in determining the child’s habitual residence would go beyond the limits of that concept. Allowing the initial intention of the parents that the child resides in Italy prevails over the fact that she or he has been continuously resident in Greece since her or his birth would render the concept of ‘habitual residence’ essentially legal rather than fact-based.

The CJEU rules that Article 11(1) of the Brussels II bis Regulation, must be interpreted as meaning that, in a situation in which a child was born and has been continuously residing with his or her mother for several months in accordance with the joint agreement of the parents in a Greece, while in Italy they had their habitual residence before birth, the initial intention of the parents as to the return of the mother accompanied by the child in Italy cannot allow the child to be regarded as having his or her habitual residence in Italy. The CJEU concludes that in such a situation the refusal of the mother to return to Italy accompanied by the child cannot be regarded as an ‘unlawful displacement or non-return’ within the meaning of Article 11(1).

This case seems to resolve the dilemma, dividing national courts, as to whether the physical presence of the child in the territory of a state is a necessary precondition for establishing the child’s habitual residence.

Issue 2017.2 Nederlands Internationaal Privaatrecht

The second issue of 2017 of the Dutch Journal on Private international Law, Nederlands Internationaal Privaatrecht, includes papers on the Commission’s

proposal to amend the Posting of Workers Directive, the establishment of the Netherlands Commercial Court and the enforcement of foreign judgments in Nigeria.

Aukje van Hoek, 'Editorial: Online shopping en detachering van werknemers – twee hoofdpijndossier op de grens van IPR en interne markt', p. 175-177.

Fieke van Overbeeke, 'The Commission's proposal to amend the Posting of Workers Directive and private international law implications', p. 178-194.

This article discusses the Commission's proposal to amend the Posting of Workers Directive (PWD), launched on 8 March 2016. One amendment in particular will be highlighted: the insertion of a type of conflict-of-laws rule, determining from when the law of the host Member State would be fully applicable to the posted worker, namely after the posting lasted for two years. This would lead to a pre-determined qualification of Article 8 section 2 Rome I Regulation in posting of workers cases that are covered by the PWD. This has clear private international law implications, which will be discussed thoroughly. Yet, before entering into these aspects the interaction between the PWD and Rome I will be discussed. Uncertainty still exists on this matter, which makes it important to map this first. This results in an article divided into two parts: 1. Elaborating on the general conflict-of-law rules of the PWD and Rome I and their interaction; 2. Analysing the Commission's proposal from a private international law point of view by giving three private international law comments, some final remarks and assessing whether this proposal has implications for the formerly discussed interaction between the two conflict-of-law instruments.

Serge Vlaar, 'IPR-aspecten van het NCC-wetsvoorstel', p. 195-204. (in Dutch, the English abstract reads:)

For the last twenty years, London has already had an international commercial court and this court has been very successful in attracting cases from the European continent. In order to reduce this outflow various European countries have created international commercial courts of their own and the Netherlands is on the verge of doing so. This new court will be a court for large international cases, conducting proceedings in English. The draft law necessary for the

functioning of this court has been published for consultation and includes a few interesting topics regarding private international law. This contribution intends to describe these topics and the new court in general.

Abubakri Yekini, 'Foreign judgments in Nigerian courts in the last decade: a dawn of liberalization', p. 205-403

Nigeria has largely been governed by military dictators since it gained independence from Great Britain in 1960. Sustained democratic transition is a recent phenomenon and that, possibly, account for the recent increase in foreign direct investment, international trade and trade in services between Nigeria and its trading partners such as the European Union, China and the US. The surge in international trade has caused an increase in transnational litigation and requests for the enforcement of foreign judgments in Nigeria. An assessment of reported cases reveals that the majority of these cases were decided roughly between 2005 and 2015. There is a need to evaluate the Nigerian regime for enforcement of foreign judgments, with a particular focus on judicial opinions and legislative policy in this area. The article seeks to achieve this by analyzing the two relevant statutes on judgment enforcement and judicial precedents over the last decade. The article finds that while reciprocity appears to be the policy behind the relevant statutes, the courts have adopted a liberal and pragmatic approach towards recognition and enforcement of foreign judgments. The article therefore concludes that while the liberal approach of the Nigerian Supreme Court is a welcome development, it needs to be supported by clear, consistent, and robust judicial reasoning. This will set a clear agenda for lawmakers tasked with aligning the relevant statutes with already established judicial approach and, above all, will make it easier to offer legal advice to foreign investors.

Worldwide Removal Order Upheld Against Google

The Supreme Court of Canada has upheld, by a 7-2 decision, an injunction issued by lower courts in British Columbia requiring Google, a non-party to the litigation, to globally remove or "de-index" the websites of the defendant so that they do not appear in any search results. This is the first such decision by Canada's highest court.

In *Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34 (available here) Equustek sued Datalink for various intellectual property violations relating to the manufacture and sale of a networking device. Interlocutory orders were made against Datalink but it did not comply and it cut any connections it had to British Columbia (para 7). It continued its conduct, operating from an unknown location and selling its device over the internet. After some cooperative efforts with Google (de-indexing specific web pages but not Datalink's entire websites) were unsuccessful to stop potential customers from finding Datalink's device, Equustek sought an interlocutory injunction stopping Google from including any parts of Datalink websites in its search results worldwide. Google acknowledged that it could do this relatively easily (paras 43 and 50) but it resisted the injunction.

The issue of the British Columbia court's *in personam* or territorial jurisdiction over Google featured prominently in the lower court decisions, especially that of Justice Fenlon for the British Columbia Supreme Court (available here). This is an interesting issue in its own right, considering the extent to which a corporation can be present or carry on business in a province in a solely virtual (through the internet) manner (rather than having any physical presence). There is considerable American law on this issue, including the much-discussed decision in *Zippo Manufacturing v Zippo Dot Com Inc.,* 952 F Supp 119 (WD Pa 1997). In the Supreme Court of Canada, Google barely raised the question of jurisdiction, leading the court to state that it had not challenged the lower courts' findings of *in personam* and territorial jurisdiction (para 37). So more on that issue will have to wait for another case.

The majority decision (written by Abella J) applies the standard three-part test for an interlocutory injunction (para 25). In doing so it confirms two important

points. First, it holds that a non-party can be made subject to an interlocutory injunction. It relies on considerable jurisprudence about *Norwich* orders and *Mareva* injunctions, both of which frequently bind non-parties. The common theme the court draws from these cases and applies to this case is the necessity of the non-party being bound for the order to be effective. In the majority's view, the injunction against Google is a necessity if the ongoing irreparable harm to Equustek is to be stopped (para 35). Second, it holds that an interlocutory injunction can be made with extraterritorial effect in cases in which the court has *in personam* jurisdiction over the entity being enjoined (para 38). Again, it made such an extraterritorial order in this case because that was, in its view, necessary for the injunction to be effective. An order limited to searches or websites in Canada would not have addressed the harm.

The dissenting judges (Cote J and Rowe J) accept both of these important points of law. They acknowledge that the court has the ability, in law, to issue such an injunction (para 55). But on the facts of this case they determine that the injunction should not have been granted, for several reasons. First, the injunction is not interlocutory but rather permanent, so that more restraint is warranted. In their view, Equustek will not continue the action against Datalink, content to have obtained the order against Google (paras 62-63). In response, the majority notes it is open to Google to apply in future to have the order varied or vacated if the proceedings have not progressed toward trial (para 51). Because they consider the injunction to be permanent, the dissenting judges object that no violation of Equustek's rights has as of yet been established on a balance of probabilities (para 66) such that there is no foundation for such a remedy. Since the majority considers the injunction to be interlocutory this issue does not arise for it.

Second, the dissent rejects the reliance on *Norwich* orders and *Mareva* injunctions, noting that in those cases the order does not enforce a plaintiff's substantive rights (para 72). In essence, this order is a step farther than the courts have gone in previous cases and not one the dissent is willing to take. The dissent also denies the injunction because (i) it is mandatory in nature rather than prohibitive, (ii) it is unconvinced that the order would be effective in reducing harm to Equustek and (iii) it thinks there is sufficient evidence that Datalink could be sued in France so that an alternative to enjoining Google is available. Aspects of this supplementary reasoning are open to debate. First, the distinction between mandatory and prohibitive orders is not overly rigid and in any event

mandatory orders are possible, especially in cases in which the target of the order can easily comply. Second, common sense suggests the injunction would have at least some impact on the ongoing alleged violations, even though of course there are other internet search engines. Moreover, the majority points out that it is "common ground that Datalink was unable to carry on business in a commercially viable way unless its websites were in Google's search results" (para 34). On the issue of effectiveness, the dissenting judges do not seem to be on this common ground. Third, proceedings against Datalink in France might or might not be viable. Even if it could be found in France, it could subsequently leave the jurisdiction and continue its operations elsewhere. So this seems a hard basis on which to deny Equustek the injunction.

It is fair for the dissent to point out that this injunction is not perfectly analogous to *Norwich* orders and *Mareva* injunctions. It does move beyond those cases. The debate is whether this is a reasonable incremental move in the jurisprudence relating to the internet or goes too far. The majority's overarching rationale for the move is the necessity of the injunction on these facts. Coupled with the ease with which Google can comply, this is a sufficient basis to evolve the law in the way the court does.

The U.S. Supreme Court Further Narrows Specific Jurisdiction over Nonresident Defendants

Many thanks to Dr. Cristina M. Mariottini for sharing the news of this very recent decision by the U.S. Supreme Court on specific jurisdiction.

On June 19th, 2017 the U.S. Supreme Court rendered a new opinion on the issue of specific jurisdiction over nonresident defendants in *Bristol-Myers Squibb v. Superior Court of California*. In an 8-to-1 opinion penned by Justice Alito (Sotomayor, J., dissenting), the majority ruled that, as a result of the limitations

imposed on jurisdiction by the due process clause, California courts lack specific jurisdiction to entertain the product liability claims brought (along with resident plaintiffs) by plaintiffs who are not California residents, regardless of the fact that all the claims are the same, because of an insufficient connection between the forum and the specific claims at issue.

A group of plaintiffs – consisting of 86 California residents and 592 residents from 33 other States – sought compensation before Californian State courts for injuries associated with the consumption of the Bristol-Myers Squibb drug Plavix. Bristol-Myers Squibb, incorporated in Delaware and headquartered in New York, contracted with a State distributor in California, but it also engaged in business activities nationwide, extensively promoting and marketing the drug.

On the grounds that it "resembles a loose and spurious form of general jurisdiction", the U.S. Supreme Court refuted the "sliding scale approach to specific jurisdiction" on which the California Supreme Court relied when it asserted (by majority) specific jurisdiction over the nonresidents claims. Applying this test, the California Supreme Court concluded that Bristol-Myers Squibb's "extensive contacts with California" permitted the exercise of specific jurisdiction "based on a less direct connection between [Bristol-Myers Squibb's] forum activities and plaintiffs' claims than might otherwise be required". This attenuated requirement was satisfied, the California Supreme Court found, because the claims of the nonresidents were similar in several ways to the claims of the California residents (as to which specific jurisdiction was uncontested).

Reversing the decision of the California Supreme Court and assertively relying on its precedents, the majority of the U.S. Supreme Court ruled that "for specific jurisdiction, a defendant's general connections with the forum are not enough". Among the variety of interests that a court must take into consideration in determining whether the assertion of personal jurisdiction is constitutionally proper are "the interests of the forum State and of the plaintiff in proceeding with the cause in the plaintiff's forum of choice". Restrictions on personal jurisdiction "are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States". Relying, in particular, on *Walden v. Fiore et al.* ("a defendant's relationship with a… third party, standing alone, is an insufficient basis for jurisdiction"), the majority of the Court held that, to assert jurisdiction, "a connection between the forum and the specific claims at issue" is needed and that

"this remains true even when third parties (here, the plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents". The mere fact, as in the case at hand, that other (resident) plaintiffs were prescribed, obtained, and ingested a medication in a State – and allegedly sustained the same injuries as did the nonresidents – does not allow that State to assert specific jurisdiction over the nonresidents' claims.

In her dissent, however, Justice Sotomayor challenged the majority's core conclusion that the exercise of specific jurisdiction in the case at hand would conflict with the Court's decision in *Walden v. Fiore,* stating that "*Walden* concerned the requirement that a defendant 'purposefully avail' himself of a forum State or 'purposefully direc[t]' his conduct toward that State […], not the separate requirement that a plaintiff's claim 'arise out of or relate to' a defendant's forum contacts". Looking at the overall picture of personal jurisdiction in the U.S. and advocating for a balanced approach to general and specific jurisdiction, respectively, Justice Sotomayor underscored the "substantial curbs on the exercise of general jurisdiction" that the Court imposed with its decision in *Daimler AG v. Bauman* (in which Justice Sotomayor filed a concurring opinion and whose principles were reaffirmed as recently as last month in *BNSF Railway Co. v. Tyrrell*). In her dissent Justice Sotomayor further observed that, with its decision in *Bristol-Myers Squibb* (and – one may add – even more so with its plurality opinion in *J. McIntyre Machinery, Ltd. v. Nicastro*), the Court has introduced a similar contraction of specific jurisdiction. This contraction "will result in piecemeal litigation and the bifurcation of claims" curtailing, to a certain extent, plaintiffs' ability to "hold corporations fully accountable for their nationwide conduct". The majority's response to this objection that "The Court's decision… does not prevent the California and out-of-State plaintiffs from joining together in a consolidated action in the States that have general jurisdiction over [Bristol-Myers Squibb]. Alternatively, the nonresident plaintiffs could probably sue together in their respective home States" is of limited avail to those national plaintiffs who wish to bring a consolidated action in case the corporation's "home" is abroad and, overall, it seems to confirm the Court's trend towards progressively relinquishing jurisdiction in favor of foreign courts.