JUDGMENT OF THE COURT (Fourth Chamber)

13 October 2011 *

In Case C-139/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands), made by decision of 12 March 2010, received at the Court on 17 March 2010, in the proceedings

Prism Investments BV

v

Jaap Anne van der Meer, in his capacity as receiver in the liquidation of Arilco Holland BV,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann, L. Bay Larsen, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

* Language of the case: Dutch.

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 February 2011,

after considering the observations submitted on behalf of:

— Mr van der Meer, in his capacity as receiver in the liquidation of Arilco Holland BV, by J.A.M.A. Sluysmans, advocaat,

— the Netherlands Government, by C.M. Wissels, B. Koopman and M. Noort, acting as Agents,

— the Belgian Government, by J.-C. Halleux, acting as Agent,

— the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the Swedish Government, by A. Falk and K. Petkovska, acting as Agents,

— the United Kingdom Government, by L. Seeboruth, acting as Agent,

— the European Commission, by M. Wilderspin and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 June 2011,

gives the following

Judgment

1 The present reference for a preliminary ruling concerns the interpretation of Article 45 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

2 The reference has been made in the context of proceedings between Prism Investments BV ('Prism Investments'), a company governed by Netherlands law, and Mr van der Meer, in his capacity as receiver in the liquidation of Arilco Holland BV ('Arilco Holland'), the Netherlands subsidiary of Arilco Opportune NV ('Arilco Opportune'), a company governed by Belgian law, concerning enforcement in the Netherlands of a judicial decision ordering payment of a sum of money delivered by a Belgian court.

Legal context

3 Recitals 16 and 17 in the preamble to Regulation No 44/2001 are worded as follows:

'(16) Mutual trust in the administration of justice in the Community justifies judgments given in a Member State being recognised automatically without the need for any procedure except in cases of dispute.

(17) By virtue of the same principle of mutual trust, the procedure for making enforceable in one Member State a judgment given in another must be efficient and rapid. To that end, the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation.'

4 Chapter III of Regulation No 44/2001, which comprises Articles 32 to 56, sets out rules in respect of recognition and enforcement, in the other Member States, of judgments given in a Member State.

5 Article 34 of that regulation provides:

'A judgment shall not be recognised:

(1) if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;

(2) where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

(3) if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;

(4) if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.'

6 Article 35 of Regulation No 44/2001 provides:

'(1) Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.

(2) In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.

(3) Subject to paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.'

7 The enforcement procedure is governed by Section 2 of Chapter III of Regulation No 44/2001, which consists of Articles 38 to 52.

8 Article 38(1) of Regulation No 44/2001 provides:

'A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.'

9 The wording of Article 40(3) of the Regulation is as follows:

'The documents referred to in Article 53 shall be attached to the application.'

10 Article 41 of Regulation No 44/2001 provides:

'The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.'

11 Article 43 of Regulation No 44/2001 states:

'(1) The decision on the application for a declaration of enforceability may be appealed against by either party.

(2) The appeal is to be lodged with the court indicated in the list in Annex III.

(3) The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.

(4) If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 26(2) to (4) shall apply even where the party against whom enforcement is sought is not domiciled in any of the Member States.

(5) An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.'

12 Article 44 of Regulation No 44/2001 provides as follows:

'The judgment given on the appeal may be contested only by the appeal referred to in Annex IV.'

13 Article 45 of the Regulation provides:

'(1) The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.

(2) Under no circumstances may the foreign judgment be reviewed as to its substance.'

14 Section 3 of Chapter III of Regulation No 44/2001, which consists of Articles 53 to 56, lays down common provisions in respect of recognition and enforcement.

15 Article 53 of Regulation No 44/2001 states:

'(1) A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.

(2) A party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54, without prejudice to Article 55.'

16 Article 54 of Regulation No 44/2001 provides:

'The court or competent authority of a Member State where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Regulation.'

The dispute in the main proceedings and the question referred for a preliminary ruling

17 In 1990, the Finnish bank LSP made a loan of EUR 11 500 000 to Arilco Opportune. Arilco Opportune lent that sum to its Netherlands subsidiary, Arilco Holland. The latter then transferred those funds to several companies governed by Netherlands law, including Prism Investments, which received the sum of EUR 1 048 232,30.

18 By judgment of the Rechtbank van Koophandel te Brussel (Commercial Court, Brussels) (Belgium) of 14 January 2002, Arilco Opportune was ordered to pay to LSP the sum lent in 1990. Arilco Opportune challenged that judgment before the Hof van Beroep te Brussel (Court of Appeal, Brussels). During those appeal proceedings, Arilco Holland brought a cross appeal seeking, inter alia, an order that Prism Investments should reimburse to it the sum of EUR 1 048 232,30. By judgment of 5 December 2006, the Hof van Beroep te Brussel granted, inter alia, that request.

19 By decision of the Rechtbank 's-Hertogenbosch (District Court, 's-Hertogenbosch) (Netherlands) of 1 August 2007, Arilco Holland was declared insolvent and Mr van der Meer was appointed as receiver.

20 By application of 3 September 2007 to the Rechtbank 's-Hertogenbosch, the receiver applied to the judge responsible for granting interim measures, pursuant to Article 38 of Regulation No 44/2001, for the judgment delivered on 5 December 2006 by the Hof van Beroep te Brussel, so far as concerned the order that Prism Investments pay Arilco Holland the sum of EUR 1 048 232,30, to be declared enforceable. That application was granted by order of 20 September 2007.

21 Prism Investments then brought, pursuant to Article 43 of Regulation No 44/2001, an action for annulment of that order for enforcement before the Rechtbank 's-Hertogenbosch. It maintained, inter alia, that the judgment of the Belgian court had already been complied with in Belgium by means of a financial settlement.

22 By order of 22 July 2008, the Rechtbank 's-Hertogenbosch dismissed the application made by Prism Investments, expressing the view, inter alia, that, under Article 45 of Regulation No 44/2001, a declaration of enforceability can be revoked only on one of the grounds specified in Articles 34 and 35 of that regulation. It noted that compliance with the obligations in question did not come within any of those grounds and could not therefore be taken into account for the purposes of an appeal against the declaration of enforceability, but only at the later stage of actual enforcement.

23 Prism Investments brought an appeal in cassation against that order before the Hoge Raad der Nederlanden (Supreme Court of the Netherlands). In support of its appeal, it submitted that the granting of the declaration of enforceability was manifestly contrary to public policy within the terms of Article 45, in conjunction with Article 34(1), of Regulation No 44/2001, in that the judgment at issue had lost its force through compliance in Belgium and that enforcement in the Netherlands could have no legal basis.

24 In its order for reference, the Hoge Raad der Nederlanden finds those arguments to be unfounded. It takes the view that the defence that there has already been compliance with the judgment delivered in a Member State is not covered by the grounds of refusal set out in Articles 34 and 35 of Regulation No 44/2001, in particular the ground of refusal relating to infringement of public policy.

25 However, the Hoge Raad is unsure whether Article 45 of Regulation No 44/2001 must be interpreted as meaning that the court dealing with an appeal under Article 43 or Article 44 of that regulation can refuse or revoke a declaration of enforceability on grounds other than those set out in Articles 34 and 35. In particular, it is unsure whether the ground that there has already been compliance with the judgment in the Member State of origin of that judgment can be advanced not only in a dispute relating to enforcement, but also in actual enforcement proceedings.

26 In the light of those considerations, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 45 of Council Regulation (EC) No 44/2001 preclude the court with which an appeal is lodged under Article 43 or Article 44 of that regulation from refusing or revoking the declaration of enforceability on a ground, other than one of those specified in Articles 34 and 35 of that regulation, which has been advanced against enforcement of the judgment declared enforceable and which arose after that judgment had been delivered, such as the ground that there has been compliance with that judgment?'

The question referred for a preliminary ruling

27 In order to answer the question referred for preliminary ruling, it should be noted, as a preliminary point, that, as stated in recitals 16 and 17 in the preamble to Regulation No 44/2001, the rules on recognition and enforcement laid down by that regulation are based on mutual trust in the administration of justice in the European Union. Such trust requires that judicial decisions delivered in one Member State are not only recognised automatically in another Member State, but also that the procedure for making those decisions enforceable in that Member State is efficient and rapid.

28 Such a procedure, according to the terms of recital 17 in the preamble to Regulation No 44/2001, may involve only a purely formal check of the documents required for enforceability in the Member State in which enforcement is sought.

29 To that end, in accordance with Article 53 of Regulation No 44/2001, a party applying for a declaration of enforceability is required to produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity, as well as a certificate issued by the authorities of the Member State of origin. Under Article 40(3) of that regulation, those documents must be attached to the application by that party.

30 Furthermore, as stated in Article 41 of that regulation, the authorities of the Member State in which enforcement is sought must, at the beginning of the procedure, not do any more than ensure completion of those formalities with a view to issuing a declaration of enforceability for that judgment. Consequently, in that procedure, those authorities may not carry out any assessment of the elements of fact and law of the case decided by the judgment enforcement of which is sought.

31 The limited nature of that review is justified by the purpose of that procedure, which is not to initiate new proceedings, but rather to agree, on the basis of mutual trust in the administration of justice in the Member States, to the judgment delivered by a court or tribunal of a Member State other than the Member State in which enforcement is sought being enforced by means of incorporation into the latter Member State's legal order. That procedure thereby enables a judgment delivered in a Member State other than the Member State in which enforcement is sought to have the effect in the latter Member State of a national enforceable judicial decision.

32 In accordance with Article 43 of Regulation No 44/2001, the declaration of enforceability of a judgment delivered in a Member State other than the Member State in which enforcement is sought may be the subject of dispute. The grounds for dispute that may be relied upon are expressly set out in Articles 34 and 35 of Regulation No 44/2001, to which Article 45 thereof refers.

33 That list, the items of which must, in accordance with settled case-law, be interpreted restrictively (see Case C-420/07 *Apostolides* [2009] ECR I-3571, paragraph 55), is exhaustive in nature.

34 In the present case, it is apparent from the order for reference that the ground for revocation of the declaration of enforceability relied upon by the appellant in the main proceedings and relating to compliance with the judgment in the Member State of origin – that is to say, Belgium – is not one of those grounds which the court or tribunal of the Member State in which enforcement is sought – in the present case, the Kingdom of the Netherlands – has jurisdiction to review. The fact that that ground was not raised before the Belgian court is irrelevant in that regard.

35 Furthermore, as the Advocate General has noted in point 47 of her Opinion, the argument of the appellant in the main proceedings against the declaration of enforceability is derived from the alleged satisfaction of the claim at issue by means of a financial settlement. However, in his written observations, Mr van der Meer, acting in his capacity as receiver in the liquidation of Arilco Holland, challenges that financial settlement in detail. The answer to the question whether or not the requirements of that financial settlement were fulfilled will therefore be neither straightforward nor swift and could require an extensive examination of the facts regarding the claim in relation to which that financial settlement may have been reached and would thus be difficult to reconcile with the objectives pursued by Regulation No 44/2001.

36 The United Kingdom Government observes that, in any event, in order to meet the objectives of the enforcement procedure, the judgment at issue would have to be enforceable not only at the time at which the original judgment was delivered, but also at the time at which the decision declaring that judgment to be enforceable was issued in the Member State in which enforcement is sought. It would be contrary to the objectives pursued by Regulation No 44/2001 and to the letter of Article 38 thereof for the court of that State to be required to uphold a declaration of enforceability even

though the judgment in question had been complied with in the Member State of origin and could no longer be enforced there.

37 In that regard, it must be noted that no provision of Regulation No 44/2001 permits the refusal or revocation of a declaration of enforceability of a judgment that has already been complied with because such a situation does not deprive that judgment of its enforceable nature, which is a characteristic specific to that judicial act.

38 By contrast, the fact that the judgment is unenforceable in the Member State of origin prevents enforcement in the Member State in which enforcement is sought. According to the Court's case-law, the enforceability of the judgment in question in the Member State of origin is a precondition for its enforcement in the Member State in which enforcement is sought (see Case C-267/97 *Coursier* [1999] ECR I-2543, paragraph 23). In that regard, although recognition must have the effect, in principle, of conferring on judgments the authority and effectiveness accorded to them in the Member State in which they were delivered (see Case 145/86 *Hoffmann* [1988] ECR 645, paragraphs 10 and 11), there is, however, no reason for granting to a judgment, when it is enforced, rights which it does not have in the Member State of origin or effects that a similar judgment given directly in the Member State in which enforcement is sought would not have (see *Apostolides*, paragraph 66).

39 However, as the Advocate General has noted in point 18 of her Opinion, compliance with a judicial decision does not in any way deprive that decision of its enforceable nature, or lead to its being given, at the time of its enforcement in another Member State, legal effects that it would not have in the Member State of origin. Recognition of the effects of such a judgment in the Member State in which enforcement is sought, which is precisely the subject of the enforcement procedure, concerns the specific characteristics of the judgment in question, without reference to the elements of fact and law in respect of compliance with the obligations arising from it.

40 Such a ground may, by contrast, be brought before the court or tribunal responsible for enforcement in the Member State in which enforcement is sought. In accordance with settled case-law, once that judgment is incorporated into the legal order of the Member State in which enforcement is sought, national legislation of that Member State relating to enforcement applies in the same way as to judgments delivered by national courts (see Case 148/84 *Deutsche Genossenschaftsbank* [1985] ECR 1981, paragraph 18; Case 119/84 *Capelloni and Aquilini* [1985] ECR 3147, paragraph 16; and *Hoffmann*, paragraph 27).

41 The German Government submits that grounds of procedural economy ought to lead to the conclusion that the concentration of defence pleas based on compliance with the judgment in question during appeal proceedings against the order for enforcement makes it possible to avoid the supplementary phase of the enforcement procedure in the Member State in which enforcement is sought. Were the position otherwise, that judgment would, admittedly, be declared to be enforceable after a formal review, but enforcement of that judgment would thereafter have to be interrupted. Such a concentration of defence pleas solely during the appeal proceedings against the order for enforcement would increase the efficiency of those proceedings and would prevent a situation in which a judgment ordering a debtor to settle his debt is declared to be enforceable although it is not likely to be enforced.

42 However, as has been pointed out in paragraphs 27 to 30 of this judgment, in so far as the enforcement procedure consists of a formal review of the documents submitted by the appellant, a plea raised in support of an appeal brought in accordance with Articles 43 or 44 of Regulation No 44/2001, such as the appeal based on compliance with the judgment in question in the Member State of origin, would affect the characteristics of that procedure and would lengthen its duration, contrary to the objectives of efficiency and rapidity laid down in recital 17 in the preamble to that regulation.

43 It follows from the foregoing that the answer to the question referred is that Article 45 of Regulation No 44/2001 must be interpreted as precluding the court with which an appeal is lodged under Article 43 or Article 44 of that regulation from refusing or

revoking a declaration of enforceability of a judgment on a ground other than those set out in Articles 34 and 35 thereof, such as compliance with that judgment in the Member State of origin.

Costs

44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 45 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as precluding the court with which an appeal is lodged under Article 43 or Article 44 of that regulation from refusing or revoking a declaration of enforceability of a judgment on a ground other than those set out in Articles 34 and 35 thereof, such as compliance with that judgment in the Member State of origin.

[Signatures]