Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

25 May 2016*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Recognition and enforcement of provisional and protective measures — Concept of 'public policy')

In Case C-559/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākās tiesas Civillietu departaments (Supreme Court, Civil Division, Latvia), made by decision of 15 October 2014, received at the Court on 5 December 2014, in the proceedings

Rūdolfs Meroni

v

Recoletos Limited

third parties:

Aivars Lembergs,

Olafs Berķis,

Igors Skoks,

Genādijs Ševcovs,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, A. Arabadjiev, J.-C. Bonichot, S. Rodin and E. Regan, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Rūdolfs Meroni, by D. Škutāns, advokāts,

* Language of the case: Latvian.

— the Portuguese Government, by L. Inez Fernandes and E. Pedrosa, acting as Agents,

— the United Kingdom Government, by V. Kaye, acting as Agent, and B. Kennelly, Barrister,

— the European Commission, by A. Sauka and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 February 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 34(1) 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 request has been made in proceedings between Mr Rūdolfs Meroni and Recoletos Limited concerning a request for recognition and enforcement in Latvia of a judgment concerning provisional and protective measures delivered by the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court) (United Kingdom).

Legal context

EU law

The Charter

3 Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), entitled 'Right to an effective remedy and to a fair trial', is worded as follows:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

…'

4 Title VII of the Charter, entitled 'General provisions governing the interpretation and application of the Charter', states at Article 51(1):

'The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.'

Regulation No 44/2001

5 Recitals 16 to 18 of Regulation No 44/2001 state:

‘(16) Mutual trust in the administration of justice in the [Union] 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.

(18) However, respect for the rights of the defence means that the defendant should be able to appeal in an adversarial procedure, against the declaration of enforceability, if he considers one of the grounds for non-enforcement to be present. Redress procedures should also be available to the claimant where his application for a declaration of enforceability has been rejected.’

6 Article 32 of Regulation No 44/2001 defines ‘judgment’ as ‘any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court’.

7 Article 33 of Regulation No 44/2001 provides:

‘1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Chapter, apply for a decision that the judgment be recognised.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.’

8 Article 34(1) and (2) of that regulation states:

‘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.’

9 Under Article 35(2) and (3) of Regulation No 44/2001 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. The jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Article 34(1) of that regulation may not be applied to the rules relating to jurisdiction.

10 Article 36 of that regulation states that under no circumstances may a foreign judgment be reviewed as to its substance.

11 Article 38(1) of Regulation No 44/2001 is worded as follows:

‘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.’

12 Article 41 provides:

‘The judgment shall be declared enforceable immediately on completion of the formalities … The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.’

13 Under Article 42(2) of Regulation No 44/2001:

‘The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.’

14 Article 43 of the regulation 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.

…

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.’

15 Pursuant to Article 45 of Regulation No 44/2001:

‘1. The court with which an appeal is lodged … shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. …

2. Under no circumstances may a foreign judgment be reviewed as to its substance.’

Latvian law

16 Paragraph 138 of the Code of Civil Procedure (Civilprocesa likums) lists the ways in which claims may be secured:

‘(1) seizure of movable property and cash belonging to the defendant;

(2) entry of a prohibition in the appropriate register of movable property or another public register;

(3) entry of the securing of a claim in the land registry or register of ships;

(4) seizure of a ship;

(5) order that the defendant refrain from certain actions;

(6) attachment of payments due from third persons, including money held by credit institutions and other financial institutions;

(7) suspension of enforcement (and also a prohibition of a bailiff's surrendering money or property to a debt collector or a debtor, or an order suspending the sale of property).'

17 Paragraph 427(1), point 4, of the Code of Civil Procedure provides:

'The court hearing an appeal, irrespective of the grounds for the appeal, shall deliver a decision annulling the judgment of the court of first instance and referring the matter back to the court of first instance to be heard again if the court hearing the appeal finds that … the judgment of the court confers rights, or imposes obligations, on a person who is not a party to the proceedings.'

18 Paragraph 452(3)(4) of the Code of Civil Procedure provides:

'The following shall, in any event, be regarded as an infringement of a provision of procedural law which may result in a wrongful resolution of the dispute:

…

the fact that a judgment confers rights or imposes obligations on a person who is not a party to the proceedings.'

19 By virtue of Paragraph 633 of that code:

'(1) A person who considers that he has a right in movable or immovable property which has been seized and is subject to recovery, or a right in part of that property, shall bring judicial proceedings in accordance with the general rules on jurisdiction.

(2) An action seeking to exclude property from an attachment measure or to remove an entry for recovery from the land register, or other actions, shall be brought against the debtor and the person enforcing the claim. Where the property has been seized on the basis of part of a criminal judgment concerning the confiscation of property, the person convicted and the financial institution shall be invited to appear as defendants.

(3) Where the property has already been sold, the action shall be brought against the person to whom the property has been transferred. Where the court upholds an action relating to immovable property, the registration of the transfer of ownership to the buyer in the land register shall be declared invalid.

…'

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

20 Following legal proceedings brought by Recoletos and other parties against Aivars Lembergs, Olafs Berķis, Igors Skoks and Genādijs Ševcovs, an order for provisional and protective measures was issued on 9 April 2013 by the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court). That order was not notified to those persons.

21 By order of 29 April 2013 ('the contested order'), the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court) confirmed those measures against those same persons. In particular, the freezing of assets belonging to Mr Lembergs was upheld. Mr Lembergs and the other defendants were prohibited from disposing of, dealing with or diminishing the value of their shares (whether held directly or indirectly) in AS Ventbunkers, established in Latvia, or the net proceeds of sale of such shares, or any company or entity by which they hold or are beneficially entitled to such shares. Mr Lembergs owns one single share in that company. Approximately 29% of Ventbunkers' shareholding is held by Yelverton Investments BV ('Yelverton') in which Mr Lembergs has 'beneficial ownership' rights.

22 The contested order is accompanied by a number of annexes, including a structure chart of the companies and other entities that it applies to. Those companies and other entities were not parties to the proceedings before the court which issued that order.

23 In the contested order, Recoletos is made responsible for service or notification of the order. It is apparent from the contested order that the right to apply to the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court) and to appeal against the measures ordered by that court is granted to anyone notified of the order. That order was issued at a hearing which the defendants were notified of, with it being made clear that the defendants have the right to apply to that court to vary or discharge the contested order.

24 The contested order also states:

'The Respondents must, within 7 days after being provided with a copy of this order … take all steps reasonably within their power to prevent the directors of the companies referred to [in the present order] from in any way disposing of, dealing with or diminishing the [Ventbunkers] interests held by the said companies. Such steps, if reasonably within their power, shall include, but not be limited to, immediately formally instructing the said companies through their directors … and, to the extent that they are able, prohibit any disposition of, dealing with or diminution in value of any [Ventbunkers] interests held by the said companies.

…

This order does not prohibit the Respondents from disposing of, dealing with or diminishing the value of any of the Respondents' assets other than the [Ventbunkers] interests.

This order does not prohibit the Respondents from dealing with or disposing of the [Ventbunkers] interests in the ordinary and proper course of business, but before doing so the Respondents must tell the Applicants' legal representatives.

…

A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

…

The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court:

(a) The Respondents;

(b) any person who:

— is subject to the jurisdiction of this court;

— has been given written notice of this order at his residence

or place of business within the jurisdiction of this court; and

— is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and

(c) any other person, only to the extent that this order is declared

enforceable by or is enforced by a court in that country or state.'

25 Subsequently, the certificate referred to in Articles 54 and 58 of Regulation No 44/2001 was issued on 3 May 2013. That certificate states that the contested order must be applied to Mr Lembergs, Mr Berķis, Mr Skoks and Mr Ševcovs.

26 On 28 June 2013, Recoletos lodged an application with the Ventspils tiesa (Ventspils Court, Latvia) for a declaration that the contested order was enforceable and for enforcement of the order to be ensured by means of interim measures.

27 That application was partly allowed by the Ventspils tiesa (Ventspils Court) that same day but was dismissed as regards ensuring the enforcement of the contested order.

28 Mr Berķis, Mr Skoks and Mr Ševcovs, and Mr Meroni, a lawyer established in Zurich (Switzerland), who is both the representative and the manager of Mr Lembergs' frozen property, and as such exercises the shareholder rights in Ventbunkers, as well as being the director of Yelverton, subsequently lodged cross-appeals against the decision of the Ventspils tiesa (Ventspils Court) before the Kurzemes apgabaltiesa (Regional Court of Kurzeme, Latvia). No appeal has been brought against the part of the decision dismissing the application for enforcement of the contested order to be ensured.

29 By decision of 8 October 2013, the Kurzemes apgabaltiesa (Regional Court of Kurzeme) annulled the decision of the Ventspils tiesa (Ventspils Court) and ruled on the substance of the case brought by Recoletos. It declared that the order freezing the assets was partly enforceable in Latvia in so far as it prohibited Mr Lembergs from disposing of, dealing with or diminishing the value of his shares (whether held directly or indirectly) in Ventbunkers and prohibiting him from instructing any other person to perform those actions. The Kurzemes apgabaltiesa (Regional Court of Kurzeme) held to be unfounded the objections by Mr Meroni that the contested order affected the interests of third persons who were not parties to the proceedings before the court in the United Kingdom. In that regard, the appeal court stressed that the contested order applied only to Mr Lembergs and the freezing of his property.

30 Mr Meroni subsequently lodged a cross-appeal before the Augstākās tiesas Civillietu departaments (Supreme Court, Civil Division, Latvia) seeking to have the decision of the Kurzemes apgabaltiesa (Regional Court of Kurzeme) set aside in so far as it orders the enforcement in Latvia of the contested order against Mr Lembergs.

31 In his appeal, Mr Meroni states that he is the director of Yelverton, which is a shareholder of Ventbunkers, and that he exercises Mr Lembergs' shareholder rights in that company. According to Mr Meroni, the contested order prevents him from exercising the voting rights derived from Yelverton's shares in Ventbunkers. He further claims that the recognition and enforcement of the

contested order is contrary to the public policy exception provided for by Article 34(1) of Regulation No 44/2001, inasmuch as the prohibitions contained in the contested order infringe property rights of third persons not party to the proceedings before the court which issued the contested order.

32 The Augstākās tiesas Civillietu departaments (Supreme Court, Civil Division) notes that the order applies not only to Mr Lembergs, but also to third persons such as Yelverton and other persons who were not party to the proceedings before the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court). However, it also noted that it would be difficult to clarify the facts with respect to whether the contested order, and the documents relating to the application made, were communicated to persons not parties to the proceedings, if such documents have not been produced either by the applicants or by the defendant. It should therefore be ascertained whether it is permissible under EU law, when provisional protective measures in the course of proceedings are adopted, to limit the economic rights of a person who is not a party to the proceedings, even if provision is nevertheless made to the effect that any person who is affected by a decision on provisional protective measures is to have the right at any time to request the original court to vary or discharge the judgment, and to leave it to the applicants to serve the decision on the persons concerned, the national court of the requested [Member] State having hardly any power to examine the facts relating to that service.

33 The Augstākās tiesas Civillietu departaments (Supreme Court, Civil Division) is of the opinion that, if a person is not a party to proceedings, he cannot make known to the court his views on the circumstances of fact and law, which is the very essence of the right to a fair trial. This is to say that both the application and relevant supporting documents should be served on a party to proceedings. For it is only if he is aware of the essential elements of the application that such a party will be able to defend himself against the opposing party. The referring court submits that it is necessary to ensure that the proceedings observe the principle of a fair and adversarial trial, not only at the stage when the substance of the case is examined but also when provisional and protective measures are adopted.

34 In those circumstances, the Augstākās tiesas Civillietu departaments (Supreme Court, Civil Division) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 34(1) of Regulation No 44/2001 be interpreted as meaning that, in the context of proceedings for the recognition of a foreign judgment, infringement of the rights of persons who are not parties to the main proceedings may constitute grounds for applying the public policy clause contained in Article 34(1) of Regulation No 44/2001 and for refusing to recognise the foreign judgment in so far as it affects persons who are not parties to the main proceedings?

(2) If the first question is answered in the affirmative, must Article 47 of the Charter be interpreted as meaning that the principle of the right to a fair trial set out therein allows proceedings for the adoption of provisional protective measures to limit the economic rights of a person who has not been a party to the proceedings, if provision is made to the effect that any person who is affected by the decision on the provisional protective measures is to have the right at any time to request the court to vary or discharge the judgment, in a situation in which it is left to the applicants to notify the decision to the persons concerned?'

Consideration of the questions referred

35 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 34(1) of Regulation No 44/2001, considered in the light of Article 47 of the Charter, must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the recognition and enforcement of an order issued by a court of a Member State without a prior

hearing of a third person whose rights may be affected by that order must be regarded as manifestly contrary to public policy in the Member State in which enforcement is sought and manifestly contrary to the right to a fair trial within the meaning of those provisions.

36 In order to answer those questions, it is necessary to establish whether the fact that Mr Meroni was not heard by the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court) before that court adopted the contested order may constitute a breach of public policy in the State whose courts have been asked to recognise and enforce that order.

37 It should be noted that the contested order, which is the subject of an application for recognition and enforcement, relates to the freezing of a certain number of assets, as a precautionary measure, in order to prevent one of the parties depriving the other party of subsequent access to those assets. Accordingly, the order is also directed at a certain number of third persons, including the applicant in the main proceedings, who hold rights over those assets.

38 As regards the concept of 'public policy' referred to in Article 34(1) of Regulation No 44/2001, the Court has held, in paragraph 55 of its judgment of 28 April 2009 in *Apostolides* (C-420/07, EU:C:2009:271), that that provision must be interpreted strictly, inasmuch as it constitutes an obstacle to the attainment of one of the fundamental objectives of that regulation, and may be relied upon only in exceptional cases.

39 While the Member States remain in principle free, by virtue of the proviso in Article 34(1) of Regulation No 44/2001, to determine, according to their own ideas, what public policy requires, the limits of that concept are a matter of interpretation of that regulation (see judgment of 28 April 2009 in *Apostolides*, C-420/07, EU:C:2009:271, paragraph 56 and the case-law cited).

40 Consequently, while it is not for the Court to define the content of the public policy of a Member State, it is nonetheless required to review the limits within which the courts of a Member State may have recourse to that concept for the purpose of refusing recognition of a judgment emanating from a court in another Member State (see judgment of 28 April 2009 in *Apostolides*, C-420/07, EU:C:2009:271, paragraph 57 and the case-law cited).

41 In that connection, it must be observed that, by not allowing any review of a foreign judgment as to its substance, Articles 36 and 45(2) of Regulation No 44/2001 prohibit the court of the Member State in which enforcement is sought from refusing to recognise or enforce that judgment solely on the ground that there is a discrepancy between the legal rule applied by the court of the State of origin and that which would have been applied by the court of the State in which enforcement is sought had it been seised of the dispute. Similarly, the court of the Member State in which recognition is sought may not review the accuracy of the findings of law or fact made by the court of the Member State of origin (see judgment of 28 April 2009 in *Apostolides*, C-420/07, EU:C:2009:271, paragraph 58 and the case-law cited).

42 Accordingly, recourse to the public policy exception provided for by Article 34(1) of Regulation No 44/2001 can be envisaged only where recognition or enforcement of the judgment given in another Member State would be at variance to an unacceptable degree with the legal order of the Member State in which enforcement is sought inasmuch as it would infringe a fundamental principle. In order for the prohibition of any review of the substance of a foreign judgment of another Member State to be observed, the infringement would have to constitute a manifest breach of a rule of law regarded as essential in the legal order of the Member State in which recognition is sought or of a right recognised as being fundamental within that legal order (see judgment of 28 April 2009 in *Apostolides*, C-420/07, EU:C:2009:271, paragraph 59 and the case-law cited).

43 The referring court being uncertain as to the effect of Article 47 of the Charter on the interpretation of Article 34(1) of Regulation No 44/2001 as regards the application for recognition and enforcement of the contested order, it should be recalled that the Charter's field of application so far as concerns action of the Member States is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law (see judgment of 26 February 2013 in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 17).

44 A national court implementing EU law in applying Regulation No 44/2001 must therefore comply with the requirements flowing from Article 47 of the Charter which provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to effective judicial protection.

45 Furthermore, the Court has stressed that the provisions of EU law, such as those of Regulation No 44/2001, must be interpreted in the light of fundamental rights which, according to settled case-law, form an integral part of the general principles of law whose observance the Court ensures and which are now set out in the Charter. In that respect, all the provisions of Regulation No 44/2001 express the intention of ensuring that, within the scope of the objectives of that regulation, proceedings leading to the delivery of judicial decisions are conducted in such a way that the rights of the defence laid down in Article 47 of the Charter are observed (see judgment of 11 September 2014 in *A*, C-112/13, EU:C:2014:2195, paragraph 51 and the case-law cited).

46 In particular, as regards the circumstances in which the fact that a judgment of a court of a Member State was delivered in breach of procedural safeguards may constitute a ground for refusal of recognition under Article 34(1) of Regulation No 44/2001, the Court has held that the public policy clause in that article would apply only where such a breach means that the recognition of the judgment concerned in the Member State in which recognition is sought would result in the manifest breach of an essential rule of law in the EU legal order and therefore in the legal order of that Member State (see judgment of 16 July 2015 in *Diageo Brands*, C-681/13, EU:C:2015:471, paragraph 50).

47 It should also be pointed out that the rules of recognition and enforcement laid down by Regulation No 44/2001 are based on mutual trust in the administration of justice in the European Union. It is that trust which the Member States accord to one another's legal systems and judicial institutions which permits the inference that, in the event of the misapplication of national law or EU law, the system of legal remedies in each Member State, together with the preliminary ruling procedure provided for in Article 267 TFEU, affords a sufficient guarantee to individuals (see judgment of 16 July 2015 in *Diageo Brands*, C-681/13, EU:C:2015:471, paragraph 63).

48 Regulation No 44/2001 is based on the fundamental idea that individuals are required, in principle, to use all the legal remedies made available by the law of the Member State of origin. Save where specific circumstances make it too difficult or impossible to make use of the legal remedies in the Member State of origin, the individuals concerned must avail themselves of all the legal remedies available in that Member State with a view to preventing a breach of public policy before it occurs (see judgment of 16 July 2015 in *Diageo Brands*, C-681/13, EU:C:2015:471, paragraph 64).

49 In the main proceedings, it is clear from the order for reference that the contested order has no legal effect on a third person until he has received notice of it and that it is for the applicants seeking to enforce the order to ensure that the third persons concerned are duly notified of the order and to prove that that notification has indeed taken place. Furthermore, once a third person not party to the proceedings before the court of the State of origin has been notified of the order, he is entitled to challenge that order before that court and request that it be varied or set aside.

50 That system of judicial protection reflects the requirements laid down by the Court in its judgment of 2 April 2009 in *Gambazzi* (C-394/07, EU:C:2009:219, paragraphs 42 and 44), with regard to procedural guarantees giving any third persons concerned a genuine opportunity of challenging a measure adopted by a court of the State of origin. It follows that that system cannot be regarded as a breach of Article 47 of the Charter.

51 It should also be recalled that the Court held in its judgment of 23 April 2009 in *Draka NK Cables and Others* (C-167/08, EU:C:2009:263, paragraph 31), that a creditor of a debtor may not lodge an appeal against a decision on a request for a declaration of enforceability if he has not formally appeared as a party in the proceedings in which another creditor of that debtor applied for that declaration of enforceability.

52 If the court of the Member State in which recognition is sought could assess the existence of rights which a third person, who is not involved in the proceedings brought before the court of the State of origin, attempts to rely upon to challenge the recognition and enforcement of the foreign judgment, that court might find it necessary to assess the merits of the judgment.

53 It follows that the line of argument presented by Mr Meroni before the referring court would be liable to require that court to make an assessment that would be manifestly contrary to Articles 36 and 45(2) of Regulation No 44/2001, which provide that under no circumstances may a foreign judgment be reviewed as to its substance.

54 In the light of all the foregoing considerations, the answer to the question referred is that Article 34(1) of Regulation No 44/2001, considered in the light of Article 47 of the Charter, must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the recognition and enforcement of an order issued by a court of a Member State, without a prior hearing of a third person whose rights may be affected by that order, cannot be regarded as manifestly contrary to public policy in the Member State in which enforcement is sought or manifestly contrary to the right to a fair trial within the meaning of those provisions, in so far as that third person is entitled to assert his rights before that court.

Costs

55 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 (First Chamber) hereby rules:

Article 34(1) 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, considered in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the recognition and enforcement of an order issued by a court of a Member State, without a prior hearing of a third person whose rights may be affected by that order, cannot be regarded as manifestly contrary to public policy in the Member State in which enforcement is sought or manifestly contrary to the right to a fair trial within the meaning of those provisions, in so far as that third person is entitled to assert his rights before that court.

[Signatures]