Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

13 May 2015*

(Reference for a preliminary ruling — Area of freedom, security and justice — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Scope — Arbitration — Not included — Recognition and enforcement of foreign arbitral awards — Order issued by an arbitral tribunal having its seat in a Member State — Order that proceedings not be brought or continued before a court of another Member State — Power of the courts of a Member State to refuse to recognise the arbitral award — New York Convention)

In Case C-536/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Lithuania), made by decision of 10 October 2013, received at the Court on 14 October 2013, in the proceedings

'Gazprom' OAO

interested party:

Lietuvos Respublika,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, A. Ó Caoimh and J.-C. Bonichot, Presidents of Chambers, E. Levits, M. Safjan (Rapporteur), M. Berger, A. Prechal, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: M. Wathelet,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 30 September 2014,

after considering the observations submitted on behalf of:

— 'Gazprom' OAO, by R. Audzevičius, advokatas,

— the Lithuanian Government, by A.A. Petravičienė, A. Svinkūnaitė and D. Kriaučiūnas, acting as Agents, and V. Bernatonis and A. Šekštelo, advokatai,

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

— the Spanish Government, by A. Rubio González, acting as Agent,

* Language of the case: Lithuanian.

— the French Government, by F.-X. Bréchot, G. de Bergues and D. Colas, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the United Kingdom Government, by M. Holt, acting as Agent, and B. Kennelly, Barrister,

— the Swiss Confederation, by M. Jametti, M. Schöll and D. Klingele, acting as Agents,

— the European Commission, by A.-M. Rouchaud-Joët and A. Steiblytė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 December 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation 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 an appeal brought by 'Gazprom' OAO ('Gazprom'), a company established in Moscow (Russia), against the refusal to recognise and enforce in Lithuania an arbitral award made on 31 July 2012.

Legal context

EU law

3 Regulation No 44/2001 has been repealed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), which is applicable from 10 January 2015. However, Regulation No 44/2001 remains applicable in circumstances such as those at issue in the main proceedings.

4 According to recital 2 in its preamble, Regulation No 44/2001 sought, in the interests of the sound operation of the internal market, to lay down '[p]rovisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation'.

5 Recitals 7 and 11 in its preamble stated:

'(7) The scope of this Regulation must cover all the main civil and commercial matters apart from certain well-defined matters.

...

(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. ...'

6 Article 1(1) and (2)(d) of Regulation No 44/2001, included in Chapter I entitled 'Scope', were worded as follows:

'1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

...

(d) arbitration.'

7 Article 71(1) of Regulation No 44/2001 provided:

'This Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.'

Lithuanian law

8 Chapter X of Part II of Book Two of the Civil Code is entitled 'Investigation of the activities of a legal person' and comprises Articles 2.124 to 2.131.

9 Article 2.124 of the Civil Code, entitled 'Content of the investigation of the activities of a legal person', provides:

'Persons listed in Article 2.125 … shall have the right to request the court to appoint experts who shall investigate whether a legal person or a legal person's management organs or their members acted in a proper way and, if improper actions are established, to apply measures specified in Article 2.131 ...'

10 Under Article 2.125(1)(1) of the Civil Code, one or more shareholders holding at least 1/10th of the shares of the legal person may bring such an action.

11 The measures provided for in Article 2.131 of the Civil Code include annulment of decisions taken by the management organs of the legal person, exclusion, or temporary suspension of the powers, of the members of its organs, and the possibility of requiring the legal person to take or not to take certain actions.

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

12 It is apparent from the order for reference and the documents before the Court that at the material time the main shareholders of 'Lietuvos dujos' AB ('Lietuvos dujos') were E.ON Ruhrgas International GmbH, a company incorporated under German law which held 38.91% of the share capital, Gazprom, which held 37.1% thereof, and the Lithuanian State, which held 17.7%.

13 On 24 March 2004, Gazprom concluded a shareholders' agreement ('the shareholders' agreement') with E.ON Ruhrgas International GmbH and the State Property Fund acting on behalf of Lietuvos Respublika (the Republic of Lithuania), the fund subsequently being replaced by the Lietuvos Respublikos energetikos ministerija (the Ministry of Energy of the Republic of Lithuania; 'the Ministry'). That agreement contained, in Section 7.14, an arbitration clause according to which '[a]ny claim, dispute or contravention in connection with this Agreement or its breach, validity, effect or termination, shall be finally settled by arbitration'.

14 On 25 March 2011, Lietuvos Respublika, represented by the Ministry, made an application to the Vilniaus apygardos teismas (Regional Court, Vilnius) seeking initiation of an investigation in respect of the activities of a legal person.

15 The application related to Lietuvos dujos and also to Mr Valentukevičius, that company's general manager, and Mr Golubev and Mr Seleznev, Russian nationals appointed to its board of directors by Gazprom. By the application, the Ministry also claimed that certain corrective measures provided for in Article 2.131 of the Lithuanian Civil Code should be imposed if it were to be established by the investigation that the actions of that company or those persons were improper.

16 Gazprom took the view that that application breached the arbitration clause laid down in Section 7.14 of the shareholders' agreement, and on 29 August 2011 it filed a request for arbitration against the Ministry at the Arbitration Institute of the Stockholm Chamber of Commerce.

17 Gazprom claimed that the arbitral tribunal, constituted by the Arbitration Institute of the Stockholm Chamber of Commerce, should, in particular, order the Ministry to discontinue the proceedings pending before the Vilniaus apygardos teismas.

18 By an award of 31 July 2012, the arbitral tribunal declared that the arbitration clause contained in the shareholders' agreement had been partially breached and ordered the Ministry, in particular, to withdraw or limit some of the claims which it had brought before that court ('the arbitral award of 31 July 2012').

19 By an order of 3 September 2012, the Vilniaus apygardos teismas ordered that an investigation of the activities of Lietuvos dujos be initiated. It also held that an application for investigation of the activities of a legal person fell within its jurisdiction and was not arbitrable under Lithuanian law.

20 Lietuvos dujos, Mr Valentukevičius, Mr Golubev and Mr Seleznev brought an appeal against that decision before the Lietuvos apeliacinis teismas (Court of Appeal, Lithuania). In separate proceedings, Gazprom applied to that court for recognition and enforcement in Lithuania of the arbitral award of 31 July 2012.

21 By a first order of 17 December 2012, the Lietuvos apeliacinis teismas refused Gazprom's application. It held (i) that the arbitral tribunal which made the arbitral award could not rule on an issue already raised before and examined by the Vilniaus apygardos teismas and (ii) that, in ruling on that issue, the arbitral tribunal had not observed Article V(2)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958 (*United Nations Treaty Series*, Vol. 330, p. 3; 'the New York Convention').

22 Furthermore, the Lietuvos apeliacinis teismas stated that, by the arbitral award of 31 July 2012 recognition and enforcement of which were sought, the arbitral tribunal not only limited the Ministry's capacity to bring proceedings before a Lithuanian court with a view to initiation of an investigation in respect of the activities of a legal person, but also denied that national court the power which it possesses to determine whether it has jurisdiction. In that way, the arbitral tribunal infringed the national sovereignty of the Republic of Lithuania, which is contrary to Lithuanian and international public policy. According to the Lietuvos apeliacinis teismas, the refusal to recognise the award was also justified by Article V(2)(b) of the New York Convention.

23 By a second order of 21 February 2013, the Lietuvos apeliacinis teismas dismissed the appeal brought by Lietuvos dujos, Mr Valentukevičius, Mr Golubev and Mr Seleznev against the decision of the Vilniaus apygardos teismas of 3 September 2012 to initiate an investigation of the activities of Lietuvos dujos. It also confirmed that the Lithuanian courts had jurisdiction to hear that case.

24 Both orders of the Lietuvos apeliacinis teismas, of 17 December 2012 and 21 February 2013, were the subject of an appeal on a point of law before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania). That court decided, by order of 20 November 2013, to stay the appeal brought against the second of those orders until it had given judgment on the appeal concerning recognition and enforcement of the arbitral award of 31 July 2012.

25 The Lietuvos Aukščiausiasis Teismas is uncertain, in the light of the relevant case-law of the Court of Justice and of Article 71 of Regulation No 44/2001, whether recognition and enforcement of that arbitral award, which it classifies as an anti-suit injunction, may be refused on the ground that the exercise by a Lithuanian court of the power to rule on whether it has jurisdiction over an application to initiate an investigation of the activities of a legal person would be restricted after such recognition and enforcement.

26 In those circumstances, the Lietuvos Aukščiausiasis Teismas decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

‘1. Where an arbitral tribunal issues an anti-suit injunction and thereby prohibits a party from bringing certain claims before a court of a Member State, which under the rules on jurisdiction in [Regulation No 44/2001] has jurisdiction to hear the civil case as to the substance, does the court of a Member State have the right to refuse to recognise such an award of the arbitral tribunal because it restricts the court’s right to determine itself whether it has jurisdiction to hear the case under the rules on jurisdiction in [Regulation No 44/2001]?

2. Should the first question be answered in the affirmative, does the same also apply where the anti-suit injunction issued by the arbitral tribunal orders a party to the proceedings to limit his claims in a case which is being heard in another Member State and the court of that Member State has jurisdiction to hear that case under the rules on jurisdiction in [Regulation No 44/2001]?

3. Can a national court, seeking to safeguard the primacy of EU law and the full effectiveness of [Regulation No 44/2001], refuse to recognise an award of an arbitral tribunal if such an award restricts the right of the national court to decide on its own jurisdiction and powers in a case which falls within the jurisdiction of [Regulation No 44/2001]?’

Consideration of the questions referred

27 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Regulation No 44/2001 must be interpreted as precluding a court of a Member State from recognising and enforcing, or from refusing to recognise and enforce, an arbitral award prohibiting a party from bringing certain claims before a court of that Member State.

28 It should be pointed out first of all that arbitration is excluded from the scope of Regulation No 44/2001 by Article 1(2)(d).

29 In order to determine whether a dispute falls within the scope of Regulation No 44/2001, reference must be made solely to the subject-matter of the dispute (judgment in *Rich*, C-190/89, EU:C:1991:319, paragraph 26).

30 As regards the subject-matter of the dispute in the main proceedings, it is clear from the order for reference that the Lietuvos Aukščiausiasis Teismas is seised of an appeal against the order of the Lietuvos apeliacinis teismas refusing recognition and enforcement of the arbitral award, classified by the referring court as an anti-suit injunction, by which an arbitral tribunal ordered the Ministry to withdraw or limit some of the claims brought by it before the Lithuanian courts. In parallel, the

referring court is also seised of an appeal against an order of the Lietuvos apeliacinis teismas confirming the decision of the Vilniaus apygardos teismas to initiate an investigation of the activities of Lietuvos dujos, which, according to the referring court, is a civil matter within the meaning of Article 1(1) of Regulation No 44/2001.

31 According to the referring court, an arbitral award prohibiting a party from bringing certain claims before a national court could undermine the practical effect of Regulation No 44/2001, in the sense that it could restrict the exercise by such a court of its power to determine itself whether it has jurisdiction to hear a case falling within the scope of that regulation.

32 It should be recalled that the Court held in its judgment in *Allianz and Generali Assicurazioni Generali* (C-185/07, EU:C:2009:69) that an injunction issued by a court of a Member State restraining a party from having recourse to proceedings other than arbitration and from continuing proceedings brought before a court of another Member State, which has jurisdiction under Regulation No 44/2001, is not compatible with that regulation.

33 An injunction issued by a court of a Member State requiring a party to arbitration proceedings not to continue proceedings before a court of another Member State is contrary to the general principle which emerges from the case-law of the Court that every court seised itself determines, under the applicable rules, whether it has jurisdiction to resolve the dispute before it. It should be borne in mind in that regard that Regulation No 44/2001, apart from a few limited exceptions, does not authorise the jurisdiction of a court of a Member State to be reviewed by a court in another Member State. That jurisdiction is determined directly by the rules laid down by that regulation, including those relating to its scope. Thus in no case is a court of one Member State in a better position to determine whether the court of another Member State has jurisdiction (see judgment in *Allianz and Generali Assicurazioni Generali*, C-185/07, EU:C:2009:69, paragraph 29).

34 The Court has held in particular that obstructing, by means of such an injunction, the exercise by a court of a Member State of the powers conferred on it by Regulation No 44/2001 runs counter to the trust which the Member States accord to one another's legal systems and judicial institutions and is liable to bar an applicant who considers that an arbitration agreement is void, inoperative or incapable of being performed from access to the court before which he nevertheless brought proceedings (see, to this effect, judgment in *Allianz and Generali Assicurazioni Generali*, C-185/07, EU:C:2009:69, paragraphs 30 and 31).

35 In the present case, however, the referring court is asking the Court not whether such an injunction issued by a court of a Member State is compatible with Regulation No 44/2001, but whether it would be compatible with that regulation for a court of a Member State to recognise and enforce an arbitral award ordering a party to arbitration proceedings to reduce the scope of the claims formulated in proceedings pending before a court of that Member State.

36 In that regard, it should be remembered first of all that, as has been stated in paragraph 28 of the present judgment, arbitration does not fall within the scope of Regulation No 44/2001, since the latter governs only conflicts of jurisdiction between courts of the Member States. As arbitral tribunals are not courts of a State, there is, in the main proceedings, no such conflict under that regulation.

37 Next, so far as concerns the principle of mutual trust — accorded by the Member States to their respective legal systems and judicial institutions — which finds expression in harmonisation of the rules on jurisdiction of the courts, on the basis of the system established by Regulation No 44/2001, it must be pointed out that, in the circumstances of the main proceedings, as the order has been made by an arbitral tribunal there can be no question of an infringement of that principle by interference of a court of one Member State in the jurisdiction of the court of another Member State.

38 Likewise, in those circumstances, an arbitral tribunal's prohibition of a party from bringing certain claims before a court of a Member State cannot deny that party the judicial protection referred to in paragraph 34 of the present judgment, since, in proceedings for recognition and enforcement of such an arbitral award, first, that party could contest the recognition and enforcement and, second, the court seised would have to determine, on the basis of the applicable national procedural law and international law, whether or not the award should be recognised and enforced.

39 Thus, in those circumstances, neither that arbitral award nor the decision by which, as the case may be, the court of a Member State recognises it are capable of affecting the mutual trust between the courts of the various Member States upon which Regulation No 44/2001 is based.

40 Finally, unlike the injunction at issue in the case which gave rise to the judgment in *Allianz and Generali Assicurazioni Generali* (C-185/07, EU:C:2009:69, paragraph 20), failure on the part of the Ministry to comply with the arbitral award of 31 July 2012 in the context of the proceedings relating to initiation of an investigation in respect of the activities of a legal person is not capable of resulting in penalties being imposed upon it by a court of another Member State. It follows that the legal effects of an arbitral award such as that at issue in the main proceedings can be distinguished from those of the injunction at issue in the case which gave rise to that judgment.

41 Therefore, proceedings for the recognition and enforcement of an arbitral award such as that at issue in the main proceedings are covered by the national and international law applicable in the Member State in which recognition and enforcement are sought, and not by Regulation No 44/2001.

42 Thus, in the circumstances of the main proceedings, any potential limitation of the power conferred upon a court of a Member State — before which a parallel action has been brought — to determine whether it has jurisdiction would result solely from the recognition and enforcement of an arbitral award, such as that at issue in the main proceedings, by a court of the same Member State, pursuant to the procedural law of that Member State and, as the case may be, the New York Convention, which govern this matter excluded from the scope of Regulation No 44/2001.

43 Since the New York Convention governs a field excluded from the scope of Regulation No 44/2001, it does not relate to a 'particular matter' within the meaning of Article 71(1) of that regulation. Article 71 governs only the relations between that regulation and conventions falling under the particular matters that come within the scope of Regulation No 44/2001 (see, to this effect, judgment in *TNT Express Nederland*, C-533/08, EU:C:2010:243, paragraphs 48 and 51).

44 It follows from all the foregoing considerations that the answer to the questions referred is that Regulation No 44/2001 must be interpreted as not precluding a court of a Member State from recognising and enforcing, or from refusing to recognise and enforce, an arbitral award prohibiting a party from bringing certain claims before a court of that Member State, since that regulation does not govern the recognition and enforcement, in a Member State, of an arbitral award issued by an arbitral tribunal in another Member State.

Costs

45 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 (Grand Chamber) hereby rules:

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 not precluding a court of a Member State from recognising and enforcing, or from refusing to recognise and enforce, an arbitral award prohibiting a party from bringing certain claims before a court of that Member State, since that regulation does not govern the recognition and enforcement, in a Member State, of an arbitral award issued by an arbitral tribunal in another Member State.

[Signatures]