European Court of Justice, 27 April 2004, Turner v Grovit

LITIGATION

Brussels Convention

- **Brussels Convention is to be interpreted as precluding the grant of an injunction before a court of another Contracting State.**

That the Convention is to be interpreted as precluding the grant of an injunction whereby a court of a Contracting State prohibits a party to proceedings pending before it from commencing or continuing legal proceedings before a court of another Contracting State, even where that party is acting in bad faith with a view to frustrating the existing proceedings.

However, a prohibition imposed by a court, backed by a penalty, restraining a party from commencing or continuing proceedings before a foreign court under-mines the latter court's jurisdiction to determine the dispute. Any injunction prohibiting a claimant from bringing such an action must be seen as constituting interference with the jurisdiction of the foreign court which, as such, is incompatible with the system of the Convention.

Such interference cannot be justified by the fact that it is only indirect and is intended to prevent an abuse of process by the defendant in the proceedings in the forum State. In so far as the conduct for which the defendant is criticised consists in recourse to the jurisdiction of the court of another Member State, the judgment made as to the abusive nature of that conduct implies an assessment of the appropriateness of bringing proceedings before a court of another Member State.

- **Convention based on mutual trust**.

The Convention is necessarily based on the trust which the Contracting States accord to one another's legal systems and judicial institutions. It is that mutual trust which has enabled a compulsory system of jurisdiction to be established, which all the courts within the purview of the Convention are required to respect, and as a corollary the waiver by those States of the right to apply their internal rules on recognition and enforcement of foreign judgments in favour of a simplified mechanism for the recognition and enforcement of judgments.

Jurisdiction

- **The Convention does not permit the jurisdiction of a court to be reviewed by a court in another Contracting State.**

Otherwise than in a small number of exceptional cases listed in the first paragraph of Article 28 of the Convention, which are limited to the stage of recognition or enforcement and relate only to certain rules of special or exclusive jurisdiction that are not relevant here, the Convention does not permit the jurisdiction of a court to be reviewed by a court in another Contracting State.

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European Court of Justice, 27 April 2004

(V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues, A. Rosas, A. La Pergola, J.-P. Puissochet, R. Schintgen, N. Colneric and S. von Bahr)

JUDGMENT OF THE COURT (FULL COURT)

27 April 2004 (1)

(Brussels Convention – Proceedings brought in a Contracting State – Proceedings brought in another Contracting State by the defendant in the existing proceedings – Defendant acting in bad faith in order to frustrate the existing proceedings – Compatibility with the Brussels Convention of the grant of an injunction preventing the defendant from continuing the action in another Member State)

In Case C-159/02,

REFERENCE to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, by the House of Lords (United Kingdom), for a preliminary ruling in the proceedings pending before that court between

Gregory Paul Turner

and

Felix Fareed Ismail Grovit,

Harada Ltd,

Changepoint SA,

on the interpretation of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and – amended version – p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1),

THE COURT (FULL COURT),

composed of: V. Skouris, President, P. Jann (Rapporteur), C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues and A. Rosas, Presidents of Chambers, A. La Pergola, J.-P. Puissochet, R. Schintgen, N. Colneric and S. von Bahr, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

– Mr Grovit, Harada Ltd and Changepoint SA, by R. Beynon, Solicitor, and T. de La Mare, Barrister,

– the United Kingdom Government, by K. Manji, acting as Agent, assisted by S. Morris QC,

– the German Government, by R. Wagner, acting as Agent,

– the Italian Government, by I.M. Braguglia, acting as Agent, assisted by O. Fiumara, vice avvocato generale dello Stato,

– the Commission of the European Communities, by C. O'Reilly and A.-M. Rouchaud-Joët, acting as Agents,
having regard to the Report for the Hearing,
after hearing the oral observations of Mr Turner and of the United Kingdom Government, of Mr Grovit, of Harada Ltd and of Changepoint SA, and of the Commission, at the hearing on 9 September 2003,
after hearing the **Advocate General** at the sitting on 20 November 2003,
gives the following

Judgment

1 13 December 2001, received at the Court on 29 April 2002, the House of Lords referred to the Court of Justice for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters a question on the interpretation of that convention (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and – amended text – p. 77), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1, 'the Convention').

2 That question was raised in proceedings between Mr Turner, on the one hand and, on the other, Mr Grovit, Harada Limited ('Harada') and Changepoint SA ('Changepoint') concerning breach of Mr Turner's employment contract with Harada.

The dispute in the main proceedings

3 Mr Turner, a British citizen domiciled in the United Kingdom, was recruited in 1990 as solicitor to a group of undertakings by one of the companies belonging to that group.

4 The group, known as Chequepoint Group, is directed by Mr Grovit and its main business is running bureaux de change. It comprises several companies established in different countries, one being China Security Ltd, which initially recruited Mr Turner, Chequepoint UK Ltd, which took over Mr Turner's contract at the end of 1990, Harada, established in the United Kingdom, and Changepoint, established in Spain.

5 Mr Turner carried out his work in London (United Kingdom). However, in May 1997, at his request, his employer allowed him to transfer his office to Madrid (Spain).

6 Mr Turner started working in Madrid in November 1997. On 16 November 1998, he submitted his resignation to Harada, the company to which he had been transferred on 31 December 1997.

7 On 2 March 1998 Mr Turner brought an action in London against Harada before the Employment Tribunal. He claimed that he had been the victim of efforts to implicate him in illegal conduct, which, in his opinion, were tantamount to unfair dismissal.

8 The Employment Tribunal dismissed the objection of lack of jurisdiction raised by Harada. Its decision was confirmed on appeal. Giving judgment on the substance, it awarded damages to Mr Turner.

9 On 29 July 1998, Changepoint brought an action against Mr Turner before a court of first instance in Madrid. The summons was served on Mr Turner around 15 December 1998. Mr Turner did not accept service and protested the jurisdiction of the Spanish court.

10 In the course of the proceedings in Spain, Changepoint claimed damages of ESP 85 million from Mr Turner as compensation for losses allegedly resulting from Mr Turner's professional conduct.

11 On 18 December 1998 Mr Turner asked the High Court of Justice of England and Wales to issue an injunction under section 37(1) of the Supreme Court Act 1981, backed by a penalty, restraining Mr Grovit, Harada and Changepoint from pursuing the proceedings commenced in Spain. An interlocutory injunction was issued in those terms on 22 December 1998. On 24 February 1999, the High Court refused to extend the injunction.

12 On appeal by Mr Turner, the Court of Appeal (England and Wales) on 28 May 1999 issued an injunction ordering the defendants not to continue the proceedings commenced in Spain and to refrain from commencing further proceedings in Spain or elsewhere against Mr Turner in respect of his contract of employment. In the grounds of its judgment, the Court of Appeal stated, in particular, that the proceedings in Spain had been brought in bad faith in order to vex Mr Turner in the pursuit of his application before the Employment Tribunal.

13 On 28 June 1999, in compliance with that injunction, Changepoint discontinued the proceedings pending before the Spanish court.

14 Mr Grovit, Harada and Changepoint then appealed to the House of Lords, claiming in essence that the English courts did not have the power to make restraining orders preventing the continuation of proceedings in foreign jurisdictions covered by the Convention.

The order for reference and the questions submitted to the Court

15 According to the order for reference, the power exercised by the Court of Appeal in this case is based not on any presumed entitlement to delimit the jurisdiction of a foreign court but on the fact that the party to whom the injunction is addressed is personally amenable to the jurisdiction of the English courts.

16 According to the analysis made in the order for reference, an injunction of the kind issued by the Court of Appeal does not involve a decision upon the jurisdiction of the foreign court but rather an assessment of the conduct of the person seeking to avail himself of that jurisdiction. However, in so far as such an injunction interferes indirectly with the proceedings before the foreign court, it can be granted only where the claimant shows that there is a clear need to protect proceedings pending in England.

17 The order for reference indicates that the essential elements which justify the exercise by the Court of Ap-

peal of its power to issue an injunction in this case were that:
– the applicant was a party to existing legal proceedings in England;
– the defendants had in bad faith commenced and proposed to prosecute proceedings against the applicant in another jurisdiction for the purpose of frustrating or obstructing the proceedings in England;
– the Court of Appeal considered that in order to protect the legitimate interest of the applicant in the English proceedings it was necessary to grant the applicant an injunction against the defendants.
18 Taking the view, however, that the case raised a problem of interpretation of the Convention, the House of Lords stayed its proceedings pending a preliminary ruling from the Court of Justice on the following question:
'Is it inconsistent with the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters signed at Brussels on 27 September 1968 (subsequently acceded to by the United Kingdom) to grant restraining orders against defendants who are threatening to commence or continue legal proceedings in another Convention country when those defendants are acting in bad faith with the intent and purpose of frustrating or obstructing proceedings properly before the English courts?'
The question referred to the Court
19 By its question, the national court seeks in essence to ascertain whether the Convention precludes the grant of an injunction by which a court of a Contracting State prohibits a party to proceedings pending before it from commencing or continuing legal proceedings before a court in another Contracting State even where that party is acting in bad faith in order to frustrate the existing proceedings.
Observations submitted to the Court
20 The defendants in the main proceedings, the German and Italian Governments and the Commission submit that an injunction of the kind at issue in the main proceedings is not compatible with the Convention. They consider, in essence, that the Convention provides a complete set of rules on jurisdiction. Each court is entitled to rule only as to its own jurisdiction under those rules but not as to the jurisdiction of a court in another Contracting State. The effect of an injunction is that the court issuing it assumes exclusive jurisdiction and the court of another Contracting State is deprived of any opportunity of examining its own jurisdiction, thereby negating the principle of mutual cooperation underlying the Convention.
21 Mr Turner and the United Kingdom Government observe, first, that the question on which a ruling is sought concerns only injunctions prompted by an abuse of procedure, addressed to defendants who are acting in bad faith and with the intention of frustrating proceedings before an English court. In pursuit of the aim of protecting the integrity of the proceedings before the English court, only an English court is in a position to decide whether the defendant's conduct undermines or threatens that integrity.
22 In common with the House of Lords, Mr Turner and the United Kingdom Government also submit that the injunctions at issue do not involve any assessment of the jurisdiction of the foreign court. They should be regarded as procedural measures. In that regard, referring to the judgment in **Case C-391/95 Van Uden [1998] ECR I-7091**, they contend that the Convention imposes no limitation on measures of a procedural nature which may be adopted by a court of a contracting State, provided that that court has jurisdiction under the Convention over the substance of a case.
23 Finally, Mr Turner and the United Kingdom Government maintain that the grant of an injunction may contribute to attainment of the objective of the Convention, which is to minimise the risk of conflicting decisions and to avoid a multiplicity of proceedings.
Findings of the Court
24 At the outset, it must be borne in mind that the Convention is necessarily based on the trust which the Contracting States accord to one another's legal systems and judicial institutions. It is that mutual trust which has enabled a compulsory system of jurisdiction to be established, which all the courts within the purview of the Convention are required to respect, and as a corollary the waiver by those States of the right to apply their internal rules on recognition and enforcement of foreign judgments in favour of a simplified mechanism for the recognition and enforcement of judgments (**Case C-116/02 Gasser [2003] ECR I-0000**, paragraph 72).
25 It is inherent in that principle of mutual trust that, within the scope of the Convention, the rules on jurisdiction that it lays down, which are common to all the courts of the Contracting States, may be interpreted and applied with the same authority by each of them (see, to that effect, **Case C-351/89 Overseas Union Insurance and Others [1991] ECR I-3317**, paragraph 23, and **Gasser**, paragraph 48).
26 Similarly, otherwise than in a small number of exceptional cases listed in the first paragraph of Article 28 of the Convention, which are limited to the stage of recognition or enforcement and relate only to certain rules of special or exclusive jurisdiction that are not relevant here, the Convention does not permit the jurisdiction of a court to be reviewed by a court in another Contracting State (see, to that effect, Overseas Union Insurance and Others, paragraph 24).
27 However, a prohibition imposed by a court, backed by a penalty, restraining a party from commencing or continuing proceedings before a foreign court undermines the latter court's jurisdiction to determine the dispute. Any injunction prohibiting a claimant from bringing such an action must be seen as constituting interference with the jurisdiction of the foreign court which, as such, is incompatible with the system of the Convention.
28 Notwithstanding the explanations given by the referring court and contrary to the view put forward by Mr Turner and the United Kingdom Government, such interference cannot be justified by the fact that it is only indirect and is intended to prevent an abuse of process

by the defendant in the proceedings in the forum State. In so far as the conduct for which the defendant is criticised consists in recourse to the jurisdiction of the court of another Member State, the judgment made as to the abusive nature of that conduct implies an assessment of the appropriateness of bringing proceedings before a court of another Member State. Such an assessment runs counter to the principle of mutual trust which, as pointed out in paragraphs 24 to 26 of this judgment, underpins the Convention and prohibits a court, except in special circumstances which are not applicable in this case, from reviewing the jurisdiction of the court of another Member State.

29 Even if it were assumed, as has been contended, that an injunction could be regarded as a measure of a procedural nature intended to safeguard the integrity of the proceedings pending before the court which issues it, and therefore as being a matter of national law alone, it need merely be borne in mind that the application of national procedural rules may not impair the effectiveness of the Convention (**Case C-365/88 Hagen [1990] ECR I-1845**, paragraph 20). However, that result would follow from the grant of an injunction of the kind at issue which, as has been established in paragraph 27 of this judgment, has the effect of limiting the application of the rules on jurisdiction laid down by the Convention.

30 The argument that the grant of injunctions may contribute to attainment of the objective of the Convention, which is to minimise the risk of conflicting decisions and to avoid a multiplicity of proceedings, cannot be accepted. First, recourse to such measures renders ineffective the specific mechanisms provided for by the Convention for cases of lis alibi pendens and of related actions. Second, it is liable to give rise to situations involving conflicts for which the Convention contains no rules. The possibility cannot be excluded that, even if an injunction had been issued in one Contracting State, a decision might nevertheless be given by a court of another Contracting state. Similarly, the possibility cannot be excluded that the courts of two Contracting States that allowed such measures might issue contradictory injunctions.

31 Consequently, the answer to be given to the national court must be that the Convention is to be interpreted as precluding the grant of an injunction whereby a court of a Contracting State prohibits a party to proceedings pending before it from commencing or continuing legal proceedings before a court of another Contracting State, even where that party is acting in bad faith with a view to frustrating the existing proceedings.

Costs

32 The costs incurred by the United Kingdom, German and Italian Governments, and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the House of Lords by order of 13 December 2001, hereby rules:

The Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic, is to be interpreted as precluding the grant of an injunction whereby a court of a Contracting State prohibits a party to proceedings pending before it from commencing or continuing legal proceedings before a court of another Contracting State, even where that party is acting in bad faith with a view to frustrating the existing proceedings.

OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 20 November 2003 (1)

Case C-159/02

Turner

(Reference for a preliminary ruling from the House of Lords)

(Brussels Convention – Anti-suit injunction – Compatibility)

Introduction

1. This request for a preliminary ruling from the House of Lords ought to serve to dispel all doubt as to the validity in the light of the Brussels Convention (2) of what are commonly known as ‘anti-suit injunctions’. These are injunctions whereby a party is prohibited – and non-compliance constitutes contempt of court – from commencing or continuing proceedings before another judicial authority, even one abroad. In the present case, the purpose of the injunction is to prevent abuse of process by such a party in the form of vexatious litigation.

The facts of the case before the national court

2. As explained by Lord Hobhouse of Woodborough in the order for reference, the facts giving rise to this request for a preliminary ruling can be summarised as follows.

3. Gregory Paul Turner, who is of British nationality and is a solicitor entitled to practise under English law, was employed as legal adviser to a group of companies by one of the companies in the group.

The group, known as the Chequepoint Group, is managed by Mr Grovit and comprises several companies, incorporated in a number of countries, including, apart from China Security Ltd, incorporated in Hong Kong, which had employed Mr Turner under contract, Harada Ltd, whose registered office is in the United Kingdom, and Changepoint SA, whose registered office is in Spain.

His role as an adviser included dealing with and advising on real property and commercial matters,

representation in proceedings in the United Kingdom and other tasks of a legal nature relating to the group.

4. Mr Turner worked in London. However, in May 1997 he asked for a transfer to the group office in Madrid, a request to which his employer acceded. In November of that year he was put on Harada Ltd's payroll, under the same conditions of employment. Mr Turner was thus to continue to perform the same tasks as those previously carried out by him.

5. After working in Madrid for 35 days, Mr Turner asked to terminate his contact with Harada and instituted proceedings against that company before the Employment Tribunal, London, which has jurisdiction in such matters. He claimed that efforts had been made to implicate him in illegal conduct involving irregularities relating to deductions in respect of social security. Such machinations were, in the claimant's view, tantamount to unfair dismissal.

6. The Employment Tribunal dismissed an objection of lack of jurisdiction raised by Harada and that decision was upheld on appeal.

On conclusion of the proceedings, the Employment Tribunal awarded Mr Turner damages.

7. In the meantime, in July 1998, Changepoint and Harada commenced proceedings against Mr Turner before a court of first instance in the Spanish capital, claiming compensation for damage caused to them as a result of unsatisfactory professional conduct.

Mr Turner received the writ of summons around 15 December but refused to accept service.

In the statement of claim, formulated at a later stage, he was called on to pay a very considerable sum (more than ESP 85 million) for failing properly to provide to Changepoint SA the services required by his contract. Seven examples were given of allegedly inadequate fulfilment by Mr Turner of his obligations, it also being contended that he had improperly disappeared from the Madrid office without giving notice and had then made a claim in the United Kingdom on the basis of unfounded allegations which concealed the truth from the English tribunal.

8. Mr Turner never entered an appearance in the Spanish proceedings. On 18 December 1998 he asked the High Court in London (3) to restrain Mr Grovit, Harada and Changepoint from continuing the proceedings commenced in Spain. On 22 December the High Court granted his application by issuing an interlocutory injunction.

In February 1999 the High Court declined to renew the injunction, whereupon Mr Turner applied to the Court of Appeal which, on 28 May, made an order requiring the defendant together or separately to:

'(1) take all necessary steps forthwith to discontinue or to procure the discontinuance of the claims made against the Claimant in proceedings commenced by one or more of the Defendants in the Court of First Instance, Madrid, Court 67, under Proceedings number 70/98;

(2) be restrained until further Order from taking, or procuring any other person or persons to take, any step in the action commenced by one or more of the Defendants in the Court of First Instance Madrid, Court 67, under Proceedings number 70/98, except to carry out paragraph 3(1) of this Order hereinabove;

(3) be restrained until further Order from commencing or continuing or procuring any other person or persons (including any company directly or indirectly controlled by the Respondents or any of them, or any company within or associated with the Chequepoint Group of companies, and further, in respect of the 1st Defendant, any company of which [he] is a Director) to commence or continue any further or other proceedings against the Claimant (arising out of his contract of employment) in Spain or elsewhere, except that this paragraph shall not apply to proceedings commenced or continued in England and Wales.'

9. The Court of Appeal took the view that the sole purpose of the proceedings commenced in Madrid was to intimidate and exert pressure on a party and it therefore considered that it was entitled to require Changepoint and Harada, by injunction, not to continue the foreign proceedings. It can be inferred from the judgment of the Court of Appeal that it considered that, in the absence of an injunction, the defendants would continue to behave improperly.

10. The defendants appealed to the House of Lords.

The applicable domestic law

11. Restraining orders, like the injunction issued in the main proceedings, now have as their legal basis section 37(1) of the Supreme Court Act, which in broad terms states:

'The High Court may by order (whether interlocutory or final) grant an injunction ... in all cases in which it appears to the court to be just and convenient to do so.'

The Court of Appeal has similar powers on an appeal from the High Court.

12. United Kingdom judicial decisions limit the cases in which it is appropriate to grant an injunction. It is necessary to establish that the addressee of the injunction has engaged in wrongful conduct and that the applicant has a legitimate interest in seeking to prevent it.

13. Such protection is available to victims of abuse of process, that is to say those who are the butt of unscrupulous behaviour in the form of vexatious or oppressive proceedings, regardless of whether they are brought in England and Wales or abroad.

The question on which a preliminary ruling is sought

14. By order of 13 December 2001 the House of Lords referred the following question to the Court of Justice for a preliminary ruling under Article 3(1) of the Protocol of 3 June 1971 on the interpretation of the 1968 Brussels Convention:

'Is it inconsistent with the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters signed at Brussels on 27 September 1968 (subsequently acceded to by the United Kingdom) to grant restraining orders against defendants who are threatening to commence or continue legal proceedings in another Convention country when those defendants are acting in bad faith with the intent and purpose of

frustrating or obstructing proceedings properly before the English courts?'

The views of the House of Lords

15. According to the order for reference, the Court of Appeal, in exercising its power in this case, does not purport to determine the jurisdiction of a foreign court but its action is justified because the addressee of the injunction is subject in personam to the jurisdiction of the English court. Accordingly, the restraining order is directed solely against the party appearing before the court from which it emanates, not against the foreign court.

Proof that restraining orders do not involve an appraisal of the jurisdiction of a court of another State is the fact that they are usually issued when the foreign authority has, or is willing to assume, jurisdiction to hear a case.

Nevertheless, since such orders indirectly affect the foreign court, the jurisdiction must be exercised with caution and only if the ends of justice so require.

16. Similarly, if there are proceedings before an English court which it is unconscionable for a party to pursue, such proceedings will be stayed.

Although it can be inferred from the foregoing that the issue of an injunction is not based on the consideration that the claim has been brought in an inappropriate court (doctrine of forum non conveniens), the view is expressed in the order for reference that the question whether or not the foreign forum was an appropriate forum is of importance in evaluating the abusive conduct complained of and affects the decision whether or not to grant the remedy of a restraining order.

17. The House of Lords states that when an application for a restraining order is considered it is necessary to verify that the applicant has a legitimate interest, such as a contractual right not be sued in a particular jurisdiction (for example, owing to the existence of an exclusive jurisdiction clause or an arbitration clause).

18. Consequently, the essential features which prompted the Court of Appeal, under English law, to make the order in the present case are:

(a) The applicant is a party to existing legal proceedings in England;

(b) The defendants have in bad faith commenced and propose to prosecute proceedings against the applicant in another jurisdiction for the purpose of frustrating or obstructing the proceedings pending in England;

(c) The court considers that it is necessary in order to protect the legitimate interest of the applicant in the English proceedings to grant the applicant a restraining order against the defendants.

19. For the rest, no provision of the Brussels Convention precludes the adoption of decisions of this kind. On the contrary, they are conducive to effective attainment of one of its objectives, namely to limit the risk of irreconcilable judgments.

20. The order also states that it is a matter for the English – and not the Spanish – court to decide, after analysing the information available to it, whether the proceedings being conducted abroad might adversely affect the normal conduct of the action before it.

21. Finally, it rejects the view that the principle of equality as between the courts of the Convention countries might be undermined as a result of the fact that not all of them are empowered to issue restraining orders. According to the House of Lords, it is not the purpose of the Convention to require uniformity but to have clear rules governing international jurisdiction.

22. By way of corollary, it adds that if the question of interpretation fell to be decided by the House of Lords alone, it would take the view that there was no incompatibility with the Convention.

Proceedings before the Court of Justice

23. The request for a preliminary ruling was received at the Registry of the Court of Justice on 30 April 2002. At the appropriate stage in the procedure, a public hearing was held on 9 September 2003.

24. Oral argument was presented by the defendants in the main proceedings, by the United Kingdom, German and Italian Governments and by the Commission.

Analysis of the question referred to the Court

25. The defendants in the national proceedings, and likewise the German and Italian Governments and the Commission, maintain that injunctions of the kind at issue in these proceedings are not reconcilable with the Brussels Convention.

Of those who presented oral argument, only the United Kingdom Government aligns itself with the view of the referring court, which considers them to be compatible.

26. Such restraining orders date back to the 15th century, although their significance has evolved, always being linked to the concept of equity and inspired by the views of common-law judges. According to the United Kingdom Government, anti-suit injunctions (namely, orders to discontinue or preclude proceedings) are not addressed to a judicial authority of another State, but to a person amenable to the jurisdiction of the court which issues them. For that reason, like the House of Lords, it considers that the term 'anti-suit injunction' is a misnomer and prefers the term 'restraining orders'. In its view, therefore, they do not represent a pronouncement by an English court as to the jurisdiction of its foreign counterpart, but rather a procedural measure of an organisational nature similar to that approved by the Court of Justice in the Van Uden case. (4) The Brussels Convention does not limit the measures which a court may issue in order to protect the subject-matter of proceedings before it.

27. In the present case, the aim was to ensure that consideration of the action brought by Mr Turner

would not be undermined by a multiplicity of obstructive procedural measures issued at the request of the defendants.

28. The United Kingdom Government adds that only an English court can give a decision on the need to preserve the integrity of proceedings conducted in England.

29. Finally, it states that orders of this kind help to attain a Brussels Convention objective, namely that of reducing the number of courts with jurisdiction to consider the same dispute.

30. The arguments against compatibility with the Convention put forward in the course of these preliminary proceedings stem from the idea that one of the pillars of that international instrument is the reciprocal trust established between the various national legal systems, upon which the English restraining orders would seem to cast doubt.

31. That view seems to me to be decisive. (5) European judicial cooperation, in which the Convention represents an important landmark, is imbued with the concept of mutual trust, which presupposes that each State recognises the capacity of the other legal systems to contribute independently, but harmoniously, to attainment of the stated objectives of integration. (6) No superior authorities have been created to exercise control, beyond the interpretative role accorded to the Court of Justice; still less has authority been given to the authorities of a particular State to arrogate to themselves the power to resolve the difficulties which the European initiative itself seeks to deal with.

32. It would be contrary to that spirit for a judicial authority in Member States to be able, even if only indirectly, to have an impact on the jurisdiction of the court of another Contracting State to hear a given case. (7)

33. A further inherent feature of the principle of mutual trust is the fact that issues determining the jurisdiction of the judges of a State are dealt with in accordance with uniform rules or, which comes to the same thing, that each judicial body is, for such purposes, on an equal footing with the others.

For that reason, I am not persuaded by the submission that nothing in the Brussels Convention expressly prohibits the adoption of judicial measures such as those at issue here. The Convention seeks to provide a comprehensive system, for which reason it is appropriate to ask ourselves whether a measure which has an impact on its field of application is compatible with the common rules which it establishes. The question must be answered in the negative.

A comparative review shows that only legal systems within the common-law tradition allow such orders. An imbalance of this kind goes against the scheme of the Convention, which does not incorporate any mechanism capable of resolving a conflict between a restraining order from an English court, prompted by the abusive nature of the foreign proceedings, and a possibly conflicting assessment which the Spanish court might arrive at. It is difficult to accept that a State which issues an injunction of this kind could unilaterally attribute to the jurisdiction which it is protecting an exclusive character. If all European courts arrogated such a power to themselves, chaos would ensue. If that power were exercised only by English courts, they would be taking it upon themselves to exercise a distributive function which the Brussels Convention entrusts to less flexible, but more objective, criteria, which it imposes on everyone in the same way. (8)

Nor does the Convention contain any rule to resolve a situation in which two judicial authorities of States which allow such orders issue contradictory injunctions, (9) even though the situation has in fact arisen between different States belonging to the common-law system. The classic example is the Laker Airways case, in which there was a clash between various English and North American judicial authorities. (10)

34. The United Kingdom Government, following the House of Lords, insists, of course, that the orders at issue are not concerned with the jurisdiction of the Spanish court; they are addressed only to the party which commenced proceedings with the sole object of frustrating the conduct of another action pending in another court.

That analysis is formally correct. Nevertheless, it is undeniable that, as a result of a litigant being prohibited, under threat of a penalty, from pursuing an action before a given judicial authority, the latter is being deprived of jurisdiction to deal with the case, and the result is direct interference with its unfettered jurisdictional authority. Although English legal writers followed that view for some time, more recently authors have recognised that that argument is no longer valid since, for a court to hear a case, it is necessary for the plaintiff to exercise his right of action. (11) If he is deprived of the opportunity to do so, the result is interference with the jurisdiction of the foreign judge by reason of the fact that he is not permitted to hear or decide the case. It has been recognised in American legal literature (12) and case-law (13) that the distinction between an order in personam addressed to a litigant and an order addressed to a foreign court is indeed a very fine one.

35. The effects of restraining orders are similar to those produced by application of the doctrine of forum non conveniens, whereby a decision may be made not to hear actions which have been brought in an inappropriate forum. Likewise, restraining injunctions, however much they are addressed to the parties and not to a judicial authority, presuppose some assessment of the appropriateness of bringing an action before a specific judicial authority. However, save in certain exceptional cases which are not relevant here, the Convention does not allow review of the jurisdiction of a

court by a judicial authority of another contracting state. (14)

36. Moreover, the system of mutual recognition of decisions given in the Contracting States without the need for recourse to any procedure whatsoever, provided for in Article 26 of the Convention, although subject to the exception relating to public policy (Article 27(1)), expressly excludes the question of jurisdiction from the scope of the latter (Article 28), so that the paradoxical situation could arise whereby a judge who had issued an anti-suit injunction might be obliged to grant an order for enforcement of a judgment delivered in spite of his having expressly imposed a prohibition. The English court, at some time or another, must verify the jurisdiction of the foreign court before issuing the restraining order, and that clearly goes against the letter, spirit and purpose of the Brussels Convention.

37. Finally, it is argued that restraining orders are remedies of a procedural nature, an area not covered by the Brussels Convention. Such measures are precautionary or protective and their compatibility with the European system is beyond all doubt.

It is true that the Convention contains hardly any provisions governing procedure. As a result, the Contracting States are free to organise proceedings brought before their judicial authorities. Nevertheless, they must make certain that the provisions thus adopted do not run counter to the philosophy of the Convention. In other words, the legislative autonomy available to States in procedural matters is subject to limits deriving from respect for the general scheme of the Convention. (15)

Conclusion

38. In view of the foregoing considerations, I suggest that the Court of Justice give the following answer to the question referred to it by the House of Lords:

The Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters must be interpreted as precluding the judicial authorities of a Contracting State from issuing orders to litigants restraining them from commencing or continuing proceedings before judicial authorities of other Contracting States.

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1 – Original language: Spanish.

2 – Convention on the enforcement of judgments in civil and commercial matters (hereinafter 'the Brussels Convention' or simply 'the Convention'). Consolidated version relevant to this case published in OJ 1990 C 189, p. 2.

3 – A superior court with authority to issue injunctions (see point 11 below).

4 – Case C-391/95 Van Uden Maritime [1998] ECR I-7091.

5 – This view is shared by leading authors. See: Dohm, Ch.: 'Die Einrede ausländischer Rechtshängigkeit im deutschen internationalen Zivilprozeßrecht', Berlin, 1996, p. 207; Jasper, D.: Forum Shopping in England und Deutschland, Berlin, 1990, p. 90; Jayme, E. and Kohler, Ch.: 'Europäisches Kollisionsrecht 1994: Quellenpluralismus und offene Kontraste', Praxis des internationalen Privat- und Verfahrensrechts (IPRAX), 1994, p. 405, in particular at p. 412.

6 – By way of illustration, the second recital in the preamble to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters states: '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'. The 17th recital adds: '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'.

7 – A situation which would also infringe upon the subjective right, which a litigant may infer from the Covention, to determine which court to seise. See, to that effect, Kropholler, J.: Europäisches Zivilprozeßrecht, 7th ed., Heidelberg, 2002, pp. 345 and 396 ff.

8 – Muir-Watt, H., Des conceptions divergentes du droit fondamental d'accéder à la justice dans l'espace conventionnel européen, Revue général des procédures, No 4, October-December 1999, p. 761.

9 – To the same effect, see: Hau, W.: Zum Verhältnis von Art. 21 zu Art. 22 EuGVÜ, IPrax, 1996, p. 44, in particular at p. 48. Hartley, T. C.: 'Anti-suit injunctions and the Brussels Jurisdiction and Judgments Convention', International and Comparative Law Quarterly, January 2000, volume 49, part I, p. 171. Although he vigorously defends such orders, he explicitly concedes that the application of the Convention rules has its own mechanism, of which such measures do not form part.

10 – See Hartley, T.C., 'Comity and the Use of Anti-suit Injunctions in International Litigation', American Journal of Comparative Law, Volume 35, Summer 1987, p. 496 et seq.

11 – Jackson, D. C. acknowledges in Enforcement of Maritime Claims, LLP, 3rd edition, 2000, that 'It is, however, now recognised that it does reflect indirect interference in the power of the relevant foreign court'.

12 – Bermann, G.A., 'The use of anti-suit injunction in international litigation', Columbia Journal of Transnational Law, vol. 28, 1990, pp. 630 and 631.

13 – In the case of Peck v Jennes 48 U.S. (7 How.) pp. 612, 624-625, cited by Collins, L., Essays in International Litigation on the conflict of Laws, Clarendon Press, 1994, p. 112, the following is stated: '... as the Supreme Court held over a century ago, there is no difference between addressing an injunction to the parties and addressing it to the foreign court itself'.

14 – Case 351/98 Overseas Union Insurance and Others [1991] ECR I-3317, paragraph 24.

15 – See Case C-365/88 Hagen [1990] ECR I-1845, paragraph 20.