

**European Court of Justice, 11 May 2000, Renault v Maxicar**



**Private International Law**

**Public policy**

- [The court of the State in which enforcement is sought cannot, without undermining the aim of the Convention, refuse recognition of a decision emanating from another Contracting State solely on the ground that it considers that national or Community law was misapplied in that decision.](#)

On the contrary, it must be considered whether, in such cases, the system of legal remedies in each Contracting State, together with the preliminary ruling procedure provided for in Article 177 of the Treaty, affords a sufficient guarantee to individuals.

Since an error of law such as that alleged in the main proceedings does not constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought, the reply to the third question must be that Article 27, point 1, of the Convention must be interpreted as meaning that a judgment of a court or tribunal of a Contracting State recognising the existence of an intellectual property right in body parts for cars, and conferring on the holder of that right protection by enabling him to prevent third parties trading in another Contracting State from manufacturing, selling, transporting, importing or exporting in that Contracting State such body parts, cannot be considered to be contrary to public policy.

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**European Court of Justice, 11 May 2000**

(D.A.O. Edward, L. Sevón, J.-P. Puissechet, P. Jann and M. Wathelet)

JUDGMENT OF THE COURT (Fifth Chamber)

11 May 2000 (1)

*(Brussels Convention - Enforcement of judgments - Intellectual property rights relating to vehicle body parts - Public policy)*

In Case C-38/98,

REFERENCE to the Court pursuant to the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 22 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Corte d'Appello di Torino, Italy, for a preliminary ruling in the proceedings pending before that court between Régie Nationale des Usines Renault SA and

Maxicar SpA,  
Orazio Formento

on the interpretation of Article 27, point 1, 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) and by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), and of Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) and Article 86 of the EC Treaty (now Article 82 EC),

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward, President of the Chamber, L. Sevón, J.-P. Puissechet, P. Jann (Rapporteur) and M. Wathelet, Judges,

Advocate General: S. Alber,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Régie National des Usines Renault SA, by M. Argan, of the Turin Bar, A. Braun, E. Cornu, both of the Brussels Bar, M.-P. Escande and S. Havard-Duclos, both of the Paris Bar,

- Maxicar SpA and Mr Formento, by G. Florida and M. Lamandini, of the Milan Bar,

- the Belgian Government, by J. Devadder, Director of Administration in the Legal Department of the Ministry of Foreign Affairs, acting as Agent,

- the French Government, by K. Rispal-Bellanger, Head of Subdirector in the Legal Directorate of the Ministry of Foreign Affairs, and R. Loosli-Surrans, chargée de mission in that Directorate, acting as Agents,

- the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

- the Commission of the European Communities, by J.L. Iglesias Buhigues, Legal Adviser, P. Stancanelli, of its Legal Service, and M. Desantes Real, a national civil servant seconded to its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Régie Nationale des Usines Renault SA, Maxicar SpA and Mr Formento, the French Government and the Commission at the hearing on 28 April 1999,

after hearing the Opinion of the Advocate General at the sitting on 22 June 1999,

gives the following

**Judgment**

1. By order of 19 November 1997, received at the Court on 16 February 1998, the Corte d'Appello di Torino (Court of Appeal, Turin) referred to the Court for a preliminary ruling pursuant to 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

Article 27, point 1, 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) and by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) (hereinafter 'the Convention'), and, pursuant to Article 177 of the EC Treaty (now Article 234 EC), two questions on the interpretation of Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) and Article 86 of the EC Treaty (now Article 82 EC).

2. The questions were raised in proceedings between Régie Nationale des Usines Renault SA ('Renault'), whose registered office is in France, and Maxicar SpA ('Maxicar'), whose registered office is in Italy, and Mr Formento, who resides in Italy, concerning the enforcement in that Contracting State of a judgment delivered on 12 January 1990 by the Cour d'Appel (Court of Appeal), Dijon, France, ordering Maxicar and Mr Formento to pay Renault damages of FRF 100 000 for loss incurred as a result of activities found to constitute forgery.

#### **The Convention**

3. The first sentence of the first paragraph of Article 1 provides that the Convention 'shall apply in civil and commercial matters whatever the nature of the court or tribunal.'

4. In matters relating to the recognition and enforcement of judgments, the general rule, set out in the first paragraph of Article 31 of the Convention, is that a judgment given in a Contracting State and enforceable in that State is to be enforced in another Contracting State when, on the application of any interested party, the order for its enforcement has been issued there.

5. Under the second paragraph of Article 34, '[t]he application may be refused only for one of the reasons specified in Articles 27 and 28.'

6. Article 27, point 1, of the Convention states: 'A judgment shall not be recognised:

1. if such recognition is contrary to public policy in the State in which recognition is sought'.

7. Article 32, first paragraph, of the Convention states that in Italy the application shall be submitted to the 'Corte d'Appello'.

8. If enforcement is authorised, Article 36 of the Convention allows the party against whom enforcement is sought to appeal against the decision. Article 37 provides that in Italy such an appeal shall be lodged, in accordance with the rules governing procedure in contentious matters, with the 'Corte d'Appello'.

9. Article 40 provides that if the application for enforcement is refused the applicant may appeal, in the case of Italy to the 'Corte d'Appello'.

10. Article 2 of the Protocol on the interpretation by the Court of Justice of the Convention ('the Protocol') provides:

'The following courts may request the Court of Justice to give preliminary rulings on questions of interpretation:

1. ...

- in Italy: la Corte Suprema di Cassazione,

...

2. the courts of the Contracting States when they are sitting in an appellate capacity;

3. in the cases provided for in Article 37 of the Convention, the courts referred to in that Article.'

#### **The main proceedings**

11. By judgment of 12 January 1990 the Cour d'Appel, Dijon, found Mr Formento guilty of forgery for having manufactured and marketed body parts for Renault vehicles. It also declared him jointly and severally liable with Maxicar, the company of which he was director, to pay FRF 100 000 by way of damages to Renault, which had applied to join the proceedings as a civil party. The judgment became final after an appeal lodged before the French Cour de Cassation (Court of Cassation) was dismissed on 6 June 1991.

12. On 24 December 1996 Renault applied to the Corte d'Appello di Torino for a declaration of enforceability of that judgment in Italy under Articles 31 and 32 of the Convention.

13. By decision of 25 February 1997, the Corte d'Appello di Torino dismissed the application on the ground that since the decision was given in criminal proceedings, the application ought to have been made within the time-limit laid down in Article 741 of the Italian Code of Criminal Procedure.

14. On 28 March 1997 Renault appealed against that decision to the Corte d'Appello di Torino, in accordance with Article 40 of the Convention, arguing that the Convention applied in civil and commercial matters whatever the nature of the court or tribunal involved. Mr Formento and Maxicar contended that the judgment of the Cour d'Appel, Dijon, could not be declared enforceable in Italy because it was irreconcilable with a decision given in a dispute between the same parties in Italy and was contrary to public policy in economic matters.

15. In those circumstances, the Corte d'Appello di Torino decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are Articles 30 to 36 of the EC Treaty to be interpreted as precluding the holder of industrial or intellectual property rights in a Member State from asserting the corresponding exclusive right so as to prevent third parties from manufacturing, selling and exporting to another Member State component parts which together make up the bodywork of a car already on the market, that is to say, components intended to be sold as spare parts for that car?

(2) Is Article 86 of the EC Treaty to be applied so as to prohibit the abuse of the dominant position held by each car manufacturer in the market for spare parts for cars of its manufacture, which consists in seeking to eliminate any competition from independent manufacturers of spare parts through the exercise of its

industrial and intellectual property rights and the attendant judicial penalties?

(3) Is, therefore, a judgment handed down by a court of a Member State to be considered contrary to public policy within the meaning of Article 27 of the Brussels Convention if it recognises industrial or intellectual property rights over such component parts which together make up the bodywork of a car, and affords protection to the holder of such purported exclusive rights by preventing third parties trading in another Member State from manufacturing, selling, transporting, importing or exporting in that Member State such component parts which together make up the bodywork of a car already on the market, or, in any event, by sanctioning such conduct?'

16. The third question, which should be examined first because consideration of the first two questions will depend on the reply to that question, seeks an interpretation from the Court of Justice of a provision of the Convention and, more particularly, a ruling on the concept of 'public policy in the State in which recognition is sought' in Article 27, point 1, of the Convention.

#### **Admissibility**

17. Renault contends that the Corte d'Appello di Torino has no power to ask the Court to give a preliminary ruling concerning the interpretation of the Convention. The Italian court delivered judgment at first instance and the case was brought before it on the basis of Article 40 of the Convention, not Article 37, a situation not covered by any of the cases provided for in Article 2 of the Protocol.

18. Maxicar and Mr Formento, together with the French Government and the Commission, submit that the Corte d'Appello di Torino was seised under Article 40 of the Convention, that is to say in what must be regarded as appellate proceedings. The situation is thus covered by Article 2(2) of the Protocol.

19. In the alternative, the Commission submits that the balance struck by the Convention in procedural matters and the requirement of equal treatment of the parties support a broad interpretation of Article 2(3) of the Protocol, extending it to the courts mentioned in Article 40 of the Convention.

20. It should be remembered the purpose of the Convention is to facilitate, to the greatest possible extent, the free movement of judgments by providing for a simple and rapid enforcement procedure (see, inter alia, judgment of 28 March 2000 in Case C-7/98 Krombach [2000] ECR I-0000, paragraph 19).

21. In order to obtain enforcement of a judgment, Article 31 et seq. of the Convention provide for a procedure in two stages in order to reflect the general spirit of the Convention, which seeks to reconcile the necessary surprise effect in proceedings of this nature with respect for the defendant's right to a fair hearing. That is why the defendant is not entitled to be heard in the lower court, whereas on appeal he must be given a hearing (Case 178/83 Firma P v Firma K [1984] ECR 3033, paragraph 11).

22. It is true that in Italy the two stages of the procedure take place before the Corte d'Appello. That

coincidence, which is the result of the choice made by the Italian Republic, cannot be permitted to obscure the fact that the procedure under the first paragraph of Article 32 differs from that provided for in the first paragraph of Article 40. In the first case, the Corte d'Appello rules, in accordance with the first paragraph of Article 34, without the party against whom enforcement is sought being able at this stage of the procedure to submit observations. In the second case, by contrast, the party against whom enforcement is sought must be summoned to appear before the Corte d'Appello as required by the second paragraph of Article 40.

23. Accordingly, in this case the appeal court seised under the first paragraph of Article 40 of the Convention must be regarded as sitting in an appellate capacity and thus having power under Article 2(2) of the Protocol to request the Court of Justice to give a preliminary ruling on a question of interpretation of the Convention.

#### **Substance**

24. Maxicar and Mr Formento wish the Court to define the concept of public policy in economic matters. In particular, they wish it to confirm that Community law, and in particular the principle of free movement of goods and freedom of competition, supports the approach taken by Italian law, which, unlike French law, does not recognise the existence of industrial property rights in spare parts for cars, and to declare that that approach is a principle of public policy in economic matters.

25. The French and Netherlands Governments, and the Commission, after noting that the preliminary issue is whether and to what extent the Court of Justice has jurisdiction to rule on the concept of 'public policy in the State in which recognition is sought' used in Article 27, point 1, of the Convention, argue in favour of a narrow interpretation of the concept, which should only be applied in exceptional instances. An alleged error in interpreting the rules of Community law is not sufficient, they maintain, to justify recourse to the clause on public policy.

26. The first point to note is that Article 27 of the Convention must be interpreted strictly inasmuch as it constitutes an obstacle to the attainment of one of the fundamental objectives of the Convention (Case C-414/92 Solo Kleinmotoren [1994] ECR I-2237, paragraph 20, and Krombach, paragraph 21). With regard more specifically to the clause on public policy in Article 27, point 1, of the Convention, the Court has made it clear that it may be relied on only in exceptional cases (Case 145/86 Hoffmann v Krieg [1988] ECR 645, paragraph 21, and Case C-78/95 Hendrikman and Feyen v Magenta Druck & Verlag [1996] ECR I-4943, paragraph 23).

27. The Court has held that it follows that, while the Contracting States remain free in principle, by virtue of the proviso in Article 27, point 1, of the Convention, to determine according to their own conception what public policy requires, the limits of that concept are a matter of interpretation of the Convention (Krombach, paragraph 22).

28. Consequently, while it is not for the Court to define the content of the public policy of a Contracting State, it is none the less required to review the limits within which the courts of a Contracting State may have recourse to that concept for the purpose of refusing recognition of a judgment emanating from another Contracting State (Krombach, paragraph 23).

29. It should be noted that by disallowing any review of a foreign judgment as to its substance, Article 29 and the third paragraph of Article 34 of the Convention prohibit the courts of the 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 State in which enforcement is sought cannot review the accuracy of the findings of law or fact made by the court of the State of origin (Krombach, paragraph 36).

30. Recourse to the clause on public policy in Article 27, point 1, of the Convention can be envisaged only where recognition or enforcement of the judgment delivered in another Contracting State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it infringes a fundamental principle. In order for the prohibition of any review of the foreign judgment as to its substance 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 State in which enforcement is sought or of a right recognised as being fundamental within that legal order (Krombach, paragraph 37).

31. In this case, what has led the court of the State in which enforcement was sought to question the compatibility of the foreign judgment with public policy in its own State is the possibility that the court of the State of origin erred in applying certain rules of Community law. The court of the State in which enforcement was sought is in doubt as to the compatibility with the principles of free movement of goods and freedom of competition of recognition by the court of the State of origin of the existence of an intellectual property right in body parts for cars enabling the holder to prohibit traders in another Contracting State from manufacturing, selling, transporting, importing or exporting such body parts in that Contracting State.

32. The fact that the alleged error concerns rules of Community law does not alter the conditions for being able to rely on the clause on public policy. It is for the national court to ensure with equal diligence the protection of rights established in national law and rights conferred by Community law.

33. The court of the State in which enforcement is sought cannot, without undermining the aim of the Convention, refuse recognition of a decision emanating from another Contracting State solely on the ground that it considers that national or Community law was misapplied in that decision. On the contrary, it must be considered whether, in such cases, the system of legal

remedies in each Contracting State, together with the preliminary ruling procedure provided for in Article 177 of the Treaty, affords a sufficient guarantee to individuals.

34. Since an error of law such as that alleged in the main proceedings does not constitute a manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought, the reply to the third question must be that Article 27, point 1, of the Convention must be interpreted as meaning that a judgment of a court or tribunal of a Contracting State recognising the existence of an intellectual property right in body parts for cars, and conferring on the holder of that right protection by enabling him to prevent third parties trading in another Contracting State from manufacturing, selling, transporting, importing or exporting in that Contracting State such body parts, cannot be considered to be contrary to public policy.

35. Having regard to the reply given to the third question, it is not necessary to reply to the first and second questions.

#### Costs

36. The costs incurred by the Belgian, French, and Netherlands Government 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 (Fifth Chamber),

in answer to the questions referred to it by the Corte d'Appello di Torino by order of 19 November 1997, hereby rules:

Article 27, point 1, of 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 and by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, must be interpreted as meaning that a judgment of a court or tribunal of a Contracting State recognising the existence of an intellectual property right in body parts for cars, and conferring on the holder of that right protection by enabling him to prevent third parties trading in another Contracting State from manufacturing, selling, transporting, importing or exporting in that Contracting State such body parts, cannot be considered to be contrary to public policy.