

Case C-159/02

Gregory Paul Turner

v

Felix Fareed Ismail Grovit and Others

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

(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)

Summary of the Judgment

*Convention on Jurisdiction and the Enforcement of Judgments – Injunction granted by a court of a Contracting State prohibiting a party from commencing or continuing legal proceedings before a court in another Contracting State – Not permissible – Incompatible with the principle of mutual cooperation underlying the Convention
(Brussels Convention of 27 September 1968)*

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.

Such an injunction constitutes interference with the jurisdiction of the foreign court which, as such, is incompatible with the system of the Convention. That interference cannot be justified by the fact that it is only indirect and is intended to prevent an abuse of process by the party concerned, because 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, which runs counter to the principle of mutual trust which underpins the Convention and prohibits a court, except in special cases occurring only at the stage of the recognition and enforcement of foreign judgments, from reviewing the jurisdiction of the court of another Member State.

(see paras 26-28, 31, operative part)

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. Puissechet, 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:

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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,

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

By order of 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).

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

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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.^{4 of 8}

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 Appeal 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

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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

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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

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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.

Skouris	Jann	Timmermans
Gulmann	Cunha Rodrigues	Rosas
La Pergola	Puissochet	Schintgen
Colneric		von Bahr

Delivered in open court in Luxembourg on 27 April 2004.

R. Grass	V. Skouris
Registrar	President

1 – Language of the case: English.