

European Court of Justice: Lithuanian Court must recognize judgment of Dutch Court in a CMR road transport case

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European Union, Netherlands | April 4 2024

On 21 March 2024, the European Court of Justice (CJEU) handed down its judgment in a 7- year case (C-90/22 Gjensidige vs Rhenus) concerning the limitation of damages in a road transportation theft, and whether a contractual choice-of-court agreement could be disregarded.

Jurisdiction was not clearly defined due to interpretation of the governing EU Brussels I Regulation Recast No 1215/2012 (Brussels I Recast), and the interplay between contractual jurisdiction clauses and the Contract for the International Carriage of Goods by Road Convention (the CMR).

The CJEU held that while Brussels I Recast lays down the presumption of exclusivity of jurisdictional clauses, the Dutch Court's decision must be recognized, even though the parties had agreed on exclusive competence of a Court in Lithuania in the (framework) contract of carriage.

Background

In 2016, a contract was concluded by Lithuanian industrial group ACC with road transport specialist Rhenus to carry computer equipment from the Netherlands to Lithuania. During the carriage, part of the cargo was stolen.

In February 2017, Rhenus brought declaratory proceedings in the Netherlands, seeking to limit its liability for the theft under provisions in the Contract for the International Carriage of Goods by Road Convention (the CMR). The Dutch Court affirmed its jurisdiction by applying the jurisdictional rules contained in Article 31 of CMR, and held that an exclusive choice-of-court agreement in the transport contract is null and void pursuant to Article 41 of CMR.

Later in 2017, ACC's insurer Gjensidige, acting on subrogation rights, sued Rhenus in Lithuania for full damages without limitation, claiming the Lithuanian Court should disregard the proceedings in the Netherlands because ACC and Rhenus had an exclusive jurisdiction clause in their transport contract referring to the exclusive competence of the Lithuanian Court.

In 2019, the Dutch Court ruled in Rhenus' favour on the merits, limiting the carrier's liability to the compensation amount under Article 23(3) of CMR. Meanwhile, both the Kaunas Regional Court and the Court of Appeal in Lithuania rejected ACC's claim, recognising the Dutch Court's judgment.

Gjensidige subsequently appealed to the Lithuanian Supreme Court in 2021, arguing that Article 25 of Brussels I Recast establishes in principle the *exclusivity* of jurisdiction resulting from the choice-of-court agreement and should be applied.

Rhenus argued that the CMR, a special convention, did not provide for exclusive jurisdiction agreements, and therefore the court of origin's jurisdiction should not be reviewed when recognising the judgment as long as the CMR's jurisdictional rules were correctly followed.

Decision

Following a reference for a preliminary ruling from the Supreme Court of Lithuania, the CJEU agreed that Article 45(1)(a) and (e)(ii) of Brussels I Recast upheld Rhenus' argument.

The CJEU held that while the transport contract contained a choice-of-court agreement, the defendant had complied with jurisdictional rules under the CMR. Once the Dutch Court declared itself to have jurisdiction under the CMR – even if this was in disregard of an exclusive jurisdiction clause within the meaning of Article 25 of Brussels I Recast – the Lithuanian Court was not allowed to refuse to recognise the Dutch Court's judgment.

Pursuant to Article 45 of Brussel I Recast, the Lithuanian Court should thus recognise the Dutch judgment.

Comment

Cross border disputes frequently commence with the need for the court seised to establish whether it has international jurisdiction to rule on the matter. In the European Union, this is governed in principle by Brussels I Recast.

Brussels I Recast also gives priority to specific rules laid down in specialised international conventions to which Member States are signatory.

This case refers to two separate legal proceedings concerning the same theft committed during a road transportation. The first proceedings were commenced in the Netherlands, where the Court was competent pursuant to Article 31(1) of CMR. Subsequently, proceedings were started in Lithuania. In these proceedings the claimants invoked the jurisdiction clause in the transport contract, which allegedly was an exclusive jurisdiction clause within the meaning of Article 25 of Brussels I Recast. The question arose if the Lithuanian Court had to recognise the judgment of the Dutch Court.

The 2010 CJEU case, *TNT Express Nederland (C-533/08, EU:C:2010:243)*, established that the rules on jurisdiction, recognition and enforcement in CMR take precedence over Brussels I, provided that they are at least as favorable as those provided by Brussels I. However, following the judgment in the TNT Express case, Article 25 Brussels I Recast on exclusive jurisdiction clauses became applicable. Later cases such as the *Nipponkoa* (CJEU 2013, C-452/12) and *Nickel & Goeldner* (CJEU 2014, C-157/13) did not answer questions about Article 25 Brussels I Recast. However, from the CJEU's latest judgment of 21 March 2024, we learn that the rule set in the TNT Express case still applies.

The Court found that Brussels I Recast lays down the presumption of exclusivity of choice-of-court agreements, but pursuant to Brussels I Recast this is not a reason to prevent recognition of a judgment from another Member state.

The Court also referred to the TNT Express case which states that the application of specific rules must not undermine the fundamental principles underlying the system of judicial cooperation in the European Union, such as the predictability of jurisdiction or the sound administration of justice.

This was found not to be the case as the definition of jurisdictional rules in the CMR could be clearly seen by the parties to the contract.

Conclusion

For CMR carriers confronted with a loss of goods, for example due to theft, it remains an attractive prospect to start declaratory proceedings in the Netherlands in order to limit liability for cargo damage, and prevent liability for customs duties.

In cases where the applicable contract contains an exclusive jurisdiction clause referring to a certain Court, this jurisdiction clause is void under Article 31(1) in conjunction with Article 41 of CMR. Therefore, it is still possible to seek jurisdiction in the Netherlands if the Dutch Courts are competent pursuant to Article 31(1) of CMR. The

recent CJEU case confirms that a judgment following such proceedings shall be recognised, even by the court mentioned in the (exclusive) jurisdiction clause.

By contrast, if parties wish to agree on an exclusive jurisdiction, the contract should contain an exclusive arbitration clause, explicitly stating that the arbitration institute shall apply the CMR (see Article 33 of CMR).

Only in this instance will no other court or institute be competent under Article 31 of CMR.

AKD - Annemieke Spijker and Jorian Gunst

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