

СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ  
TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
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TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
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EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

### **PRESS RELEASE No 13/09**

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Judgment of the Court of Justice in Case C-185/07

*Allianz SpA (formerly Riunione Adriatica di Sicurtà SpA) and Generali Assicurazioni Generali SpA v West Tankers Inc.*

### **A COURT OF A MEMBER STATE MAY NOT MAKE AN ORDER TO RESTRAIN A PERSON FROM COMMENCING CIVIL PROCEEDINGS BEFORE A COURT OF ANOTHER MEMBER STATE, EVEN IF SUCH PROCEEDINGS MAY BE CONTRARY TO AN ARBITRATION AGREEMENT**

The New York Convention on arbitration<sup>1</sup> provides that a court, when seised of an action in a matter in respect of which the parties have made provision for arbitration, will, at the request of one of the parties, refer the parties to arbitration, unless it finds that the arbitration clause is null and void, inoperative or incapable of being performed.

The Community regulation on jurisdiction<sup>2</sup> excludes arbitration from its scope of application. It also provides that proceedings relating to tort, delict or quasi-delict may be brought before the courts for the place where the harmful event occurred or may occur.

In August 2000 the *Front Comor*, a vessel owned by West Tankers and chartered by Erg Petroli SpA, collided in Syracuse (Italy) with a jetty owned by Erg and caused damage. The charterparty was governed by English law and contained a clause providing for arbitration in London.

Erg claimed compensation from its insurers Allianz and Generali up to the limit of its insurance cover and commenced arbitration proceedings in London against West Tankers for the excess. West Tankers denied liability for the damage caused by the collision.

Having paid Erg compensation under the insurance policies for the loss it had suffered, Allianz and Generali brought proceedings against West Tankers before an Italian court in Syracuse in order to recover the sums they had paid to Erg. West Tankers raised an objection as to that court's lack of jurisdiction on the basis of the existence of the arbitration agreement.

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<sup>1</sup> The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958 (*United Nations Treaty Series*, Vol. 330, p. 3).

<sup>2</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

In parallel, West Tankers brought proceedings before the courts in the United Kingdom, seeking to have the dispute settled by arbitration as stipulated in the charterparty. West Tankers also sought to have the two insurers restrained from pursuing any proceedings other than arbitration and from continuing the proceedings commenced before the Italian court.

The House of Lords, before which the appeal was brought in the United Kingdom, asks the Court of Justice whether the regulation prohibits the courts of a Member State from making an order to restrain a person from commencing or continuing legal proceedings in another Member State on the ground that such proceedings are in breach of an arbitration agreement, even though arbitration is excluded from the scope of that regulation.

In its judgment today, the Court finds that the proceedings before the House of Lords, the purpose of which is to prohibit a person from continuing proceedings before a court in another Member State, do not come within the scope of the regulation. However, such proceedings may have consequences which undermine the effectiveness of the regulation, in particular, where they prevent a court of another Member State from exercising the jurisdiction conferred on it by the regulation.

Civil proceedings brought before the Italian court concerning a claim for damages do come within the scope of the regulation. Likewise, the preliminary issue of whether the arbitration agreement is valid and applicable, which is necessary for determining whether the Italian court has jurisdiction as to the substance, also comes within the scope of the regulation.

The Court recalls in that regard that the regulation does not authorise the jurisdiction of a court of a Member State to be reviewed by a court in another Member State. It is thus **exclusively for the Italian court** before which Allianz and Generali brought proceedings **to rule on its own jurisdiction** in order to resolve as to the substance the dispute brought before it.

Consequently, the Court finds that the **order** sought by West Tankers in the United Kingdom, for legal proceedings in Syracuse to be discontinued, **would obstruct a court of another Member State in the exercise of the powers conferred on it by the regulation**. Moreover, such an injunction could undermine the trust which the Member States accord to one another's legal systems and judicial institutions and on which the system of jurisdiction under the regulation is based.

Further, the Court observes that if the Italian court were prevented from examining the validity or the applicability of the arbitration agreement, the insurers would be deprived of a form of judicial protection to which they are entitled. Applicants which consider that the arbitration clause is void, inoperative or incapable of being performed would thus be barred from access to the court before which they brought proceedings under the regulation.

In the light of those considerations, the Court finds that **it is incompatible with the regulation for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings before the courts of another Member State on the ground that such proceedings would be contrary to an arbitration agreement**. This finding is also supported by the New York Convention, according to which it is the court, when seised of an action in a matter in respect of which the parties have made provision for arbitration, that will, at the request of one of the parties, refer the parties to arbitration, unless it finds that the arbitration clause is null and void, inoperative or incapable of being performed.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS DE EN EL FR IT HU SK*

*The full text of the judgment may be found on the Court's internet site  
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-185/07>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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