

Has "Brexit" had an impact on the applicability of the Lugano Convention in the UK? (Ruling n° 550 – 22-16.884)

13/09/2023



Ruling No. 550

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE COMMERCIAL, FINANCIAL AND ECONOMIC CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 13 SEPTEMBER 2023

1. Trans Service Line, a public limited company with registered office at [Address 4], [Town/City 6],
2. Bolloré Logistics Switzerland, a company incorporated under the laws of a foreign country, with registered office at [Address 3], [Town/City 7] (Switzerland),

lodged appeal No. H 22-16.884 against the ruling delivered on 5 April 2022 by the *cour d'appel* (Court of Appeal) of Paris, International Commercial Chamber (Division 5, Chamber 16), in the dispute between them and MSC - Mediterranean Shipping Company, a company incorporated under the laws of a foreign country, with registered office at [Address 1], [Town/City 2] (Switzerland) and at the premises of its agent, MSC France, with registered office at [Address 8], [Town/City 5], respondent at the quashings.

In support of their appeal, the appellants rely on three grounds of quashing.

The case file has been sent to the Prosecutor-General.

On the report of Ms Fontaine, judge, the observations of SARL Delvolvé and Trichet, lawyer of Trans Service Line and Bolloré Logistics Switzerland, of SCP Waquet, Farge and Hazan, lawyer of MSC - Mediterranean Shipping Company, and the advisory opinion of Ms Guinamant, Advocate General referee, after debate in the public hearing of 13 June 2023, attended by Mr Vigneau, President, Ms Fontaine, reporting judge, Ms Vissette, Elder Judge, Ms Vallansan, Ms Bélaval, Mr Riffaud, Ms Boisselet, Ms Guillou, Mr Bedouet, judges, Ms Barbot, Ms Kass-Danno, Mr Boutié, judge referees, Ms Guinamant, Advocate General referee, and Ms Mamou, Chamber Registrar,

the Commercial, Financial and Economic Chamber of the *Cour de cassation* (Court of Cassation), composed, pursuant to Article R. 431-5 of the Judicial Code, of the above-mentioned president and judges, after having deliberated in accordance with the Law, has issued this ruling.

Account of the dispute

Facts and Procedure 1. According to the ruling under appeal (Paris, 5 April 2022) and the exhibits, fifty-seven chemical drums were to be transported by the Swiss company Mediterranean Shipping Company (the company MSC) from the port of [Town/City 5] to [Address 10] (South Africa), via the port of [Town/City 9] (South Africa), under cover of two bills of lading issued by the French company Trans Service Line (the company TSL).

2. The company Bolloré Logistics Switzerland (the company Bolloré Logistics) reserved the carriage with the company MSC (the sea carrier) according to a booking reservation of 9 February 2018.

3. The drums were carried in a container which was loaded at [Town/City 5] on the vessel MSC Giselle in performance of sea waybill No. MSCUKL646698 (the waybill) of 20 February 2018.

4. After its carriage by sea to the port of [Town/City 9] and the transshipment of the container, the goods were to be transported by land to their final destination, [Address 10].

5. On 19 March 2018, during the land transport by PCM Solutions (the carrier), the vehicle carrying the container overturned on a bend, resulting in the loss of the goods.

6. On 18 December 2018, TSL received an out-of-court claim for 287,738 Swiss francs from Givaudan Suisse as assignee of the rights of the shippers and consignees of the goods, and from Chubb Versicherungen (Chubb), acting as insurer of the goods.

7. On 18 March 2019, Givaudan Suisse and Chubb sued TSL before the Commercial Court of Paris for compensation for damages resulting from the loss of the goods.

8. On 18 April 2019, TSL and Bolloré Logistics brought an action against MSC before the same court for damages that could be ordered against them for the benefit of Chubb and Givaudan Suisse in the first instance, for which the joinder was refused.

9. In this second instance, MSC raised the lack of jurisdiction of the French courts relying on a jurisdiction clause designating the High Court of Justice of London (United Kingdom).

Pleas

[...]

Pleas

On the first part of the second plea

Statement of plea

13. TSL and Bolloré Logistics object to the ruling that the judgment should be set aside insofar as it rejects the plea of lack of jurisdiction raised by MSC and declares that the Commercial Court of Paris has jurisdiction and, ruling again, refers them for further appeal, whereas "Article 23 of the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007 applies only if the jurisdiction clause designates a court or courts of a State bound by that Convention; where the clause conferring jurisdiction designates the court of a third State, the court must assess the validity of the clause in the light of the law applicable to the place where it has its seat; moreover, the United Kingdom must be regarded as a third State to the Lugano Convention, including for actions brought before its withdrawal from the European Union, since that text is not one of those whose application to the United Kingdom is maintained by Articles 67 et seq. of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01) for actions brought during the transitional period running until 31 December 2020; it follows that, even where a jurisdiction clause designating a UK court is referred to a French court before the United Kingdom's withdrawal from the European Union, the French court must assess its validity in the light of its rules of domestic law ; in holding that the withdrawal of the United Kingdom had no effect on the application of Article 23 of the Lugano Convention in respect of a contract signed and an action brought before the United Kingdom's withdrawal from the European Union and before the end of the transitional period on 31 December 2020, the *cour d'appel* (Court of Appeal) violated the aforementioned texts, together with Article 48 of the Code of Civil Procedure."

Statement of reasons

Court's response

14. The arrangements for the exit of the United Kingdom from the European Union were laid down in the Agreement of 24 January 2020 on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the Agreement). 15. Pursuant to this Agreement, which entered into force on the 1st of February 2020, the United Kingdom's withdrawal from the Union became effective on the 1st of January 2021. 16. Articles 126 and 127 of the Agreement provide for a transition period until the 31st of December 2020, during which, unless otherwise provided, European Union law continued to apply in the United Kingdom and on its territory, so that the United Kingdom remains bound during that period by the obligations arising from the international agreements concluded by the Union.

17. The Lugano Agreement concerning jurisdiction and the recognition and enforcement of decisions in civil and commercial matters of 30 October 2007 (the Lugano Agreement), by which the United Kingdom was bound as a Member State of the European Union, is neither cited nor referred to, even implicitly, in Article 127 of the Agreement relating to treaties and acts adopted by the institutions, bodies, offices and agencies of the Union which, by exception, have been

declared not applicable to the United Kingdom and its territory during the transition period. 18. It follows, the United Kingdom remained bound by the Lugano Agreement until 31 December 2020, the date of expiry of the transition period. 19. After stating that the application of the Lugano Convention is subject to the fact that at least one of the parties is domiciled in a State bound by that Convention, to the designation of a court within the jurisdiction of a State bound by that Convention and to the recognition of the international nature of the dispute, and that the United Kingdom, on whose territory the court designated by the clause is located, was still a member of the European Union at the time the proceedings were brought on the 18th of April 2019 i.e. before its withdrawal from the European Union and before the end of the transitional period set at 31 December 2020, the *cour d'appel* (Court of Appeal) exactly deduced that the United Kingdom's withdrawal from the European Union had no effect on the application of the Lugano Convention to the dispute and that the validity of the jurisdiction clause should be subject to the formal requirements set out in Article 23 of that Convention and not to the rules arising from the provisions of national law.

20. The plea is therefore unfounded.

[...]

Pleas

On the fifth part of the second plea

Statement of plea

24. TSL and Bolloré Logistics make the same objection against the ruling, on the grounds that "a jurisdiction clause signed in a way that is consistent with the practices the parties have established between them is valid; that by merely noting, in order to declare the jurisdiction clause invoked by MSC valid, the existence of business relations between the parties and the submission of these business relations to MSC's general conditions of carriage, without finding that the contract at issue had been signed in accordance with the practices the parties had established between themselves, the *cour d'appel* (Court of Appeal) did not provide a legal basis for its decision in the light of article 23. 1 of the Lugano Convention of 30 October 2007."

Statement of reasons

Court's response

In view of article section 23.1 of the Lugano Agreement: 25. This text provides:

« If the parties, one or more of whom is domiciled in a State bound by this Convention, have agreed that a court or the courts of a State bound by this Convention are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing; or

(b) in a form which accords with practices which the parties have established between themselves; or

(c)

in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned. »

26. In order to declare the Commercial Court of Paris incompetent, the ruling maintains that by producing the transport listings of Bollore Logistics 2015-2018, MSC justifies a regular stream of business with TSL / BL Suisse, including a recurring flow on this transport line under the same conditions, which makes it possible to consider that they were accustomed to the inclusion of this clause. 27. In so determining, on grounds that failed to characterise the existence of habits established between the parties during that period with regard to the signing of such a jurisdiction clause, the *cour d'appel* (Court of Appeal) did not provide a legal basis for its decision.

[...]

Operative part of the ruling

ON THESE GROUNDS, and without having to rule on the other pleas, the Court:

QUASHES AND SETS ASIDE all provisions of the ruling delivered for the parties by the *cour d'appel* (Court of Appeal) of Paris on 5 April 2022;

Returns the case and the parties to the status existing prior to the said ruling and refers them to the *cour d'appel* (Court of Appeal) of Paris otherwise composed;

Orders MSC - Mediterranean Shipping Company to pay the costs;

Pursuant to Article 700 of the Civil Procedure Code, dismisses the claims ;

Finds that, at the behest of the Prosecutor-General at the *Cour de cassation* (Court of cassation), the present judgment will be forwarded for transcription in the margin or at the bottom of the quashed judgment

Thus decided by the Commercial, financial and economic chamber of the *Cour de cassation* (Court of Cassation), and pronounced by the president in public hearing on the thirteenth day of the month of September of the year two thousand and twenty-three and signed by the president and Ms Vissette, Elder Judge involved in the deliberations, in replacement of the reporting judge who was prevented from attending, in accordance with the provisions of Articles 452 and 456 of the Civil Procedure Code.

President : Mr Vigneau

Advocate-general referee : Ms Guinamant

Judge : Ms Fontaine

Lawyer(s) : SARL Delvolvé and Trichet, lawyer – SCP Waquet, Farge and Hazan

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