Judgment of the Court (Grand Chamber) 4 October 2024, C-633/22, *Real Madrid Club de Fútbol, AE c. EE*, *Société Éditrice du Monde SA*, ECLI:EU:C:2024:843

Recognition and enforcement of judicial decisions – "public policy" – "freedom of press"

1. The judgment of the Luxembourg Court in the "*Real Madrid Club de Fútbol*" case marks — for now — the culmination of a process that began more than twenty years ago with the *Krombach* ruling (ECJ, 28 March 2000, C-7/98, *Dieter Krombach v. André Bamberski*, ECLI:EU:C:2000:164). This process has led to the public policy exception in the recognition and enforcement of judgments, while preserving its role as a safeguard of the fundamental principles and values of each Member State's legal order, also becoming a means of aligning the EU's civil procedural cooperation mechanisms with the requirements stemming from the European Convention on Human Rights.

2. In 2007, *Real Madrid* and several members of its medical team filed a lawsuit against the publishing company of the French newspaper *Le Monde* and one of its journalists, in relation to an article published by the newspaper linking the plaintiffs to doping cases. Madrid's Court of First Instance No. 19 issued a judgment on 27 February 2009, ordering the defendants to pay €300,000 in damages to Real Madrid and €30,000 to one of the members of its medical team. Furthermore, *Le Monde* was required to publish the judgment at its own expense, both in its own newspaper and in the Spanish sports daily *Marca*. The judgment was appealed, and the appeal was resolved by the Eighth Section of the Madrid Provincial Court in a decision dated 18 October 2010 (ECLI:ES:APM:2010:14759). The appellate court upheld the lower court's ruling, except with regard to the publication of the judgment, which, it held, should not be published in full, but only the introductory and operative parts. The defendants announced their intention to file a cassation appeal, which was admitted by the Supreme Court in an order dated 7 June 2011. The appeal was decided by judgment on 24 February 2014 (ECLI:ES:TS:2014:488), which upheld the appellate decision.
Following the judgment of the Spanish Supreme Court, an application was filed in France for a declaration of enforceability. This was granted by the *tribunal de grande instance* of Paris on 15 February 2018. The decision was appealed, and on 15 September 2020 the *Cour d'appel* of Paris annulled it on the grounds that the Spanish judgment was manifestly contrary to French international public policy. To justify this incompatibility with public policy, the *Cour d'appel* offered several considerations (which can be found in paragraph 21 of the CJEU judgment of 4 October 2024), including the absence of pecuniary damage suffered by *Real Madrid*, the actual seriousness of the harm incurred by the club, the relationship between the awarded damages and *Le Monde*'s turnover, and the fact that, under French law, defamation against individuals is punishable only by a maximum fine of €12,000. Based on these arguments, the court concluded that the damages imposed had a chilling effect on the press's participation in public debate on a matter of general interest, thereby infringing freedom of expression. *Real Madrid* lodged a *pourvoi en cassation* (cassation appeal) against the decision of the *Cour d'appel*, and the French *Cour de cassation* referred several preliminary questions to the Court of Justice of the European Union (decision of the *Cour de cassation* of 28 September 2022, ECLI:FR:CCASS:2022:C100674). These preliminary questions seek clarification from the Luxembourg Court as to whether a judgment imposing liability for the publication of a news article can manifestly infringe freedom of expression and thus justify, under the Brussels I Regulation, the refusal of recognition and enforcement. Specifically, the questions ask whether the requested court may assess the potential disproportionality of

the judgment, and whether, for that purpose, it should consider only the defendant's financial means or also other factors in order to determine whether the judgment has a chilling or deterrent effect.

As we shall see, the decision of the Luxembourg Court does not specifically address the questions referred; however, it will undoubtedly be of use to the *Cour de cassation* when ruling on the appeal lodged by Real Madrid—a decision which, at the time of writing (February 2025), has yet to be issued.

Before addressing this matter, however, it is worth noting that the applicable instrument is Regulation 44/2001, and not Regulation 1215/2012. The reason for this is that the proceedings in Spain were initiated before the latter Regulation began to apply. There is no doubt about this point at any stage, but it is nevertheless useful to clarify it, albeit briefly.

3. Turning now to the response given by the CJEU to the *Cour de cassation*, the Court — following the Opinion of Advocate General Mr Maciej Szpunar, delivered on 8 February 2024 (ECLI:EU:C:2024:127, para. 37) — addresses the various questions referred by the French Supreme Court jointly, interpreting how the public policy exception should be applied in the specific case.

It is important to note that the judgment does not predetermine the outcome that the *Cour de cassation* should ultimately reach. Contrary to what has been stated in some media commentary following the judgment (see, for instance, *"*El TJUE falla a favor de Le Monde en litigio contra Real Madrid: prevalece la libertad de información*"*, *Confilegal*, 4 October 2024, https://confilegal.com/20241004-el-tjue-falla-a-favor-de-le-monde-en-litigio-contra-real-madrid-prevalece-la-libertad-de-informacion/), the Luxembourg Court does not rule on whether the enforcement of the Spanish judgment in France should be allowed or denied.

Moreover, the judgment does not endorse certain proposals of the Advocate General that could have significantly influenced the decision of the *Cour de cassation*; on the contrary, it underscores that the courts of the requested State may not review the substantive assessments made by the courts of the State of origin (see para. 71 of the judgment). From there, it outlines the parameters the French court must consider in order to reach its decision.

The key issue is the compatibility between the enforcement of the Spanish judgment and the right to freedom of expression and information enshrined in Article 11 of the Charter of Fundamental Rights of the European Union (OJ C 202, 7 June 2016). The question arises as to whether the order requiring *Le Monde* and the journalist who authored the article to pay compensation constitutes an inadmissible restriction on that freedom. In this context, the interpretation of Article 10 of the European Convention on Human Rights by the Strasbourg Court is also taken into account (see paras. 52 et seq. of the judgment).

The examination of that case law confirms that reporting on professional sports falls within the concept of public interest that justifies the right to information (see para. 54). From this point, it must be possible for persons harmed by defamatory statements or other unlawful content to obtain compensation as an effective remedy for the harm done to their reputation (para. 57); however, such compensation must be proportionate to the damage suffered (also para. 57), and the sanction — which arguably includes the awarded damages — must not jeopardise future reporting on similar matters (para. 60). In principle, any sanction that goes beyond compensating for the material or moral harm suffered may be considered to have a chilling effect (paras. 62 and 63).

As a result, any compensation that is disproportionate to the damage to reputation suffered, and that could have a chilling effect, would be incompatible with Article 10 of

the European Convention on Human Rights and Article 11 of the Charter of Fundamental Rights.
Following this reasoning, as previously noted, the Court of Justice of the European Union leaves the final decision to the French court — which aligns with the purpose of the preliminary ruling procedure. Accordingly, it will be for the *Cour de cassation* to determine whether the recognition of the Spanish judgment — which is the issue before it — has a chilling effect in the requested State, France (para. 69), although it must abide by the substantive findings made by the court of the State of origin (para. 71 of the judgment).

4. As noted earlier, this judgment is clearly connected to the *Krombach* ruling of 2000, albeit with a fundamental difference. While in *Krombach* the Court of Justice held that, in cases involving a breach of the rights of defence in the State of origin, the authorities of the requested State **may** refuse recognition and enforcement (see para. 45 of the *Krombach* judgment), in the *Real Madrid* judgment, the Luxembourg Court maintains that where compensation is disproportionate or has a chilling effect, the authorities of the requested State **must** refuse recognition or enforcement (para. 66 of the judgment). The shift from a "may" to a "must" is highly significant and touches the core of judicial cooperation within the EU.
This development has two interrelated explanations. The first is that, at the time the *Krombach* judgment was issued, the Charter of Fundamental Rights had not yet entered into force. Today, the Charter must be taken into account in all cases involving the application of EU law. Therefore, the French courts are bound to apply the Charter when interpreting Regulation 44/2001, as is the case here. As a result, they may not adopt a decision that contradicts the Charter. Accordingly, if the enforcement of the Spanish judgment is not in line with the Charter, the courts are not merely empowered to invoke the public policy exception — they are required to do so.
The second explanation is that, as is well known, the courts of the State of origin and the courts of the requested State are not in the same position, from the perspective of the European Convention on Human Rights, when it comes to guaranteeing the rights recognised therein. Specifically, the latter — the court of the requested State — is not required to carry out a comprehensive review of compliance with those rights in the State of origin, especially in cases where both courts operate within a shared area of cooperation that includes mechanisms for the protection of fundamental rights (see, on this point, R. Arenas García, *"*Orden público y gobernanza multinivel*"*, in M.ª P. García Rubio and J. Moreso (eds.), *Conceptos multidimensionales del Derecho*, Madrid, Reus/De Conflictu Legum, 2020, pp. 85–112, esp. pp. 100–105).
However, this attenuation of the obligation to guarantee fundamental rights does not imply its complete disappearance. The authorities of the requested State must use the means at their disposal to monitor compliance with such rights. Consequently, when a mechanism such as the public policy exception is available, its application is no longer optional — from the standpoint of international instruments on human rights protection — in cases where those rights have been violated in the State of origin (*ibid.*, p. 90). From this perspective, activation of that mechanism by the requested State becomes mandatory. In this regard, the obligation is consistent with the one previously discussed, which derives from the binding nature of the Charter of Fundamental Rights.
That said, as we will see below, this approach still raises some challenges from the standpoint of judicial cooperation within the European Union.

5. We have seen that the French courts are required to apply Article 11 of the EU Charter of Fundamental Rights, insofar as they are applying a rule of EU law — namely, Regulation 44/2001. It is important to note that this obligation did not apply to the Spanish courts that issued the judgment whose recognition is sought, since they were not applying EU law in doing so (see para. 68 of the Advocate General's Opinion in the *Real Madrid* case).

However, the Spanish courts were indeed required to take into account the case law of the ECtHR regarding freedom of expression and information, and it can therefore be presumed that their judgment considered that doctrine. In this respect, it is true that there are no explicit references to the ECtHR's case law either in the Spanish Supreme Court's judgment of 24 February 2014 or in the Madrid Court of Appeal's decision of 18 October 2010. Nonetheless, both refer to the case law of the Spanish Constitutional Court on the matter, which has been developed in light of the Strasbourg Court's decisions (see, for example, para. 11 of STC 139/2007, of 4 June, and para. 5 of STC 53/2006, of 27 February).

Thus, although the French courts are formally required to incorporate into their analysis a normative element — Article 11 of the Charter — that the Spanish courts were not bound to consider, that element substantially corresponds to another provision: Article 10 of the ECHR, which was binding on the Spanish courts.

This point is emphasised because it is one thing for the court of the requested State to carry out checks at the recognition stage that differ from those performed by the court of origin, and quite another for recognition to amount to a review of what has already been adjudicated in the State of origin (on this distinction, see R. Arenas García, "Abolition of exequatur: problems and solutions", *Yearbook of Private International Law*, 2010, vol. 12, pp. 351–375, esp. pp. 362–364). It is true that the public policy exception allows for this redundancy in checks; however, according to the principle of mutual trust, it would be more appropriate for the exception to apply only to matters that were not already decided by the court of origin (ibid., pp. 370–371).

This outcome should not be considered unattainable, since mutual trust is one of the core principles underpinning judicial cooperation in the EU. However, the judgment under discussion does not seem to follow this path. Rather, it seems to suggest that the courts of the requested State may review the application of international human rights instruments by the courts of the State of origin where a breach has occurred (see, in this regard, para. 70 of the Advocate General's Opinion).

It is true that such review appears to be limited to cases where there is a manifest deficiency in the protection of guaranteed rights (see para. 128 of the Opinion); yet in such cases, a review of what was decided by the court of origin does indeed occur. In other words, if the court of the requested State finds that there was a manifest failure to comply with human rights protection instruments, a review becomes possible.

The judgment adopts this approach from the Advocate General's Opinion (see para. 44 of the judgment); however, it should also be noted that the judgment emphasises that the manifest breach of a fundamental right must result from the **enforcement** of the decision, not from the decision itself. In this regard, it is significant that the Court specifies that it must be verified whether the enforcement could have a chilling effect **in the requested Member State** (para. 69 of the judgment, emphasis added). Based on this indication, one could interpret that it is accepted that the same judgment might, depending on the circumstances, have a chilling effect in one State (the requested one) and not in another (the State of origin). Only through such an interpretation could the integrity of the principle of mutual trust be preserved.

However, to reach this outcome, the Court would have had to engage with this interpretation more directly; in the absence of such engagement, the more plausible interpretation is that the principle is limited to what is set out in para. 71 of the judgment: that the courts of the requested State must abide by the substantive findings of the court of origin, but **must** (no longer merely *may*) verify whether there has been a manifest breach of fundamental rights in the State of origin. Since the Court of Justice of the European Union can guide how the requested State interprets and applies such standards, it ultimately becomes a decisive actor in shaping substantive law within the Member States.

The present judgment is a clear example of this. Will damages awarded for the publication of misleading information now have to be moderated? Will failure to do so be understood as a misapplication of the ECHR and, where relevant, the Charter of Fundamental Rights of the European Union? I will not go into the consequences of this approach here (see A. Abat i Ninet / R. Canals Vaquer, *"*Imperativo de veracidad de la información c. orden público. Comentario a la Sentencia del Tribunal de Justicia de la UE (Gran Sala) de 4 de octubre de 2024*"*, *La Ley Unión Europea*, 2025, no. 134); what I wish to underline is that the judgment of 4 October 2024 does not, to put it mildly, foster the principle of mutual trust within the EU.

Rafael Arenas García
Professor of Privat International Law
Universitat Autònoma de Barcelona