**Trinity Term**

**[2019] UKSC 40**

On appeal from: [2017] EWCA Civ 1609

**JUDGMENT**

**Akçil and others ( Appellants ) v Koza Ltd and another ( Respondents )**

**before**

**Lord Reed, Deputy President**

**Lord Hodge**

**Lady Black**

**Lord Briggs**

**Lord Sales**

**JUDGMENT GIVEN ON**

**29 July 2019**

**Heard on 19 March 2019**

| Appellants | Respondents |
| --- | --- |
| Jonathan Crow QC | Lord Falconer of Thoroton |
| Adrian Briggs QC | Siward Atkins |
| David Caplan | Andrew Scott |
| (Instructed by Mishcon de Reya LLP) | (Instructed by Gibson Dunn & Crutcher UK LLP) |

**LORD SALES: (with whom Lord Reed, Lord Hodge, Lady Black and Lord Briggs agree)**

1.

This appeal is concerned with the interpretation of article 24(2) of the Brussels I Recast Regulation (Parliament and Council Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("the Recast Regulation")), which sets out a special regime to determine jurisdiction in relation to certain matters regarding the governance of corporations. Although the issue in the present case relates to where a Turkish company and certain Turkish-domiciled individuals may be sued, and Turkey is of course not an EU member state, it is common ground that article 24(2) of the Recast Regulation applies to determine the question of jurisdiction which arises in this case.

2.
Article 24 is in Section 6 of the Recast Regulation, entitled “Exclusive jurisdiction”. Article 24(2) provides as follows:

“The following courts of a member state shall have exclusive jurisdiction, regardless of the domicile of the parties:

…

(2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the member state in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law; …”

3.
The sixth appellant (“Koza Altin”) is a publicly listed company incorporated in Turkey. It carries on a business specialising in gold mining. It is part of a group of Turkish companies known as the Koza Ipek Group (“the Group”) which were formerly controlled by the second respondent (“Mr Ipek”) and members of his family. Amongst other things, the Group has media interests in Turkey. The first respondent (“Koza Ltd”) is a private company incorporated in England in March 2014. It is a wholly owned subsidiary of Koza Altin.

4.
Mr Ipek says that he and the Group have been targeted unfairly by a hostile government in Turkey, including by making them the subject of an investigation into alleged criminal activity and taking steps against them in conjunction with that investigation. In order to defend himself as regards control of Koza Ltd, in September 2015 Mr Ipek caused a number of changes to be made to Koza Ltd’s constitution and share structure. A new class of “A” shares was created and Koza Ltd’s articles of association were amended to introduce a new article 26 (“article 26”), which purported to preclude any further changes to the articles of association or any change of directors save with the prior written consent of the holders of the “A” shares. Two “A” shares were issued, one to Mr Ipek and one to his brother.

5.
The validity and effect of these changes is in issue in these proceedings. The respondents contend that they are valid and lawful. The appellants contend that they are invalid and unlawful attempts to entrench Mr Ipek and his associates in control of Koza Ltd.

6.
In proceedings in Turkey relating to the criminal investigation in respect of Mr Ipek and the Group, on 26 October 2015 pursuant to article 133 of the Turkish Criminal Procedure Code the Fifth Ankara Criminal Peace Judge appointed certain individuals as trustees of Koza Altin and other companies in the Group, with power to control the affairs of those companies in place of the existing management. Pursuant to further decisions of the judge dated 13 January and 3 March 2016, the first to fifth appellants were appointed as the trustees in relation to Koza Altin. I refer to them together as “the trustees”, although in further proceedings in Turkey in September 2016 they were replaced by the Tasarruf Mevduati Sigorta Fonu (the Savings Deposit Insurance Fund of Turkey) as trustee of Koza Altin. The trustees, with Koza Altin itself, are the relevant parties in the present proceedings in England and for this appeal.

7.

On 19 July 2016, the trustees caused Koza Altin to serve a notice on the directors of Koza Ltd under section 303 of the Companies Act 2006, requiring them to call a general meeting to consider resolutions for their removal and replacement with three of the trustees.

8.

The directors of Koza Ltd did not call such a meeting, so on 10 August 2016 Koza Altin served a notice pursuant to section 305 of the 2006 Act to convene a meeting on 17 August 2016 to consider those resolutions. The service of this notice prompted Mr Ipek and Koza Ltd to make an urgent without notice application on 16 August seeking an injunction to prevent the meeting taking place and, so far as required, orders for service out of the jurisdiction and for alternative service.

9.

Injunctive relief as set out in the application was sought on two bases. It was contended that (i) the notices of 19 July and 10 August 2016 ("the notices") were void under section 303(5)(a) of the 2006 Act because at least one of the holders of the "A" shares (Mr Ipek) did not consent to the proposed resolutions and so, if passed, they would be ineffective as being passed in breach of article 26 (I refer to this claim as "the English company law claim"); and (ii) the notices were void on the basis that the English courts should not recognise the authority of the trustees to cause Koza Altin to do anything as a shareholder of Koza Ltd, because they were appointed on an interim basis only and in breach of Turkish law, the European Convention on Human Rights and natural justice, so that it would be contrary to public policy for the English courts to recognise the appointment (I refer to this claim as "the authority claim").

10.

As regards jurisdiction, the primary submission for Mr Ipek and Koza Ltd was that permission to serve out of the jurisdiction was not required because the English courts had exclusive jurisdiction to deal with the whole claim pursuant to article 24(2) of the Recast Regulation. At the without notice hearing before Snowden J on 16 August 2016, the judge accepted this submission. He granted interim injunctive relief as sought by Mr Ipek and Koza Ltd and gave permission for alternative service at the offices of Mishcon de Reya LLP, the solicitors acting for Koza Altin and the trustees.

11.

Mr Ipek and Koza Ltd issued their claim form on 18 August 2016 seeking a declaration that the notices were ineffective, an injunction to restrain Koza Altin and the trustees from holding any meeting pursuant to the notices and from taking any steps to remove the current board of Koza Ltd, a declaration that the English courts do not recognise any authority of the trustees to cause Koza Altin to call any general meetings of Koza Ltd or to do or permit the doing of anything else as a shareholder of Koza Ltd and an injunction to restrain the trustees from holding themselves out as having any authority to act for or bind Koza Altin as a shareholder of Koza Ltd and from causing Koza Altin to do anything or permit the doing of anything as a shareholder of Koza Ltd.

12.

Koza Altin and the trustees filed an acknowledgement of service indicating their intention to contest jurisdiction and then issued an application to do that. At the same time, Koza Altin filed a Defence and Counterclaim to the English company law claim, impugning the validity and enforceability of article 26 and also impugning the validity and effectiveness of the board resolution of Koza Ltd pursuant to which the two "A" shares were issued.

13.

In turn, Mr Ipek and Koza Ltd issued an application to strike out the acknowledgment of service, Koza Altin's Defence and Counterclaim and all other steps taken by Mishcon de Reya LLP purportedly on behalf of Koza Altin in the proceedings, on the basis that the authority of those who had caused Koza Altin to take these steps should not be recognised in this jurisdiction.

14.
The application of Koza Altin and the trustees to challenge jurisdiction was heard by Asplin J in December 2016. Their position was that (i) the English courts have no jurisdiction under article 24(2) of the Recast Regulation over the trustees in relation to any part of the claims; (ii) the English courts do have jurisdiction under that provision over Koza Altin in respect of the English company law claim, which relates to the affairs of Koza Ltd; and (iii) the English courts have no jurisdiction under that provision over Koza Altin in respect of the authority claim, which relates to the conduct of the business of Koza Altin.

15.
Asplin J dismissed the application by order made on 17 January 2017. It was common ground that the English company law claim fell within article 24(2) of the Recast Regulation so that the English courts had jurisdiction in relation to it and in the judge's assessment the authority claim was inextricably linked with that claim, which she considered was the principal subject matter of the proceedings viewed as a whole.

16.
Koza Altin and the trustees appealed on the grounds that Asplin J had erred in holding that article 24(2) conferred jurisdiction on the English courts to determine the authority claim and had erred in holding that article 24(2) conferred jurisdiction on the English courts to determine any of the claims against the trustees. The Court of Appeal dismissed the appeal. Like Asplin J, it held that the authority claim is inextricably linked with the English company law claim and it held that article 24(2) required the court to form an overall evaluative judgment as to what the proceedings are principally concerned with, which in this case is a challenge to the ability of Koza Altin to act as a shareholder of Koza Ltd in relation to Koza Ltd's internal affairs (see, in particular, paras 45-46 and 49-51). That was so even if certain parts of the relief sought, if viewed in isolation, appeared to go further than that, in that they related to the validity of decisions taken by the organs of Koza Altin. In the view of the Court of Appeal, therefore, by virtue of article 24(2) the English courts have jurisdiction in relation to the authority claim as well as in relation to the English company law claim. In addition, the Court of Appeal dismissed a distinct submission for the trustees that the English courts have no jurisdiction in relation to them under article 24(2), based on the fact that they are not necessary parties in the proceedings. Despite the court accepting that they are not necessary parties, it held that jurisdiction was established under article 24(2) in relation to the trustees because the subject matter of the proceedings involving them remained the same and the rationale of avoiding conflicting decisions in relation to the same subject matter applied, as did the rationale of ensuring that the proceedings are tried in the courts best placed to do so (paras 52-54).

17.
The trustees and Koza Altin now appeal with permission granted by this court. They submit that in holding that the English courts have jurisdiction under article 24(2) in relation to the authority claim, which is concerned with the validity of decisions of the organs of Koza Altin, a Turkish company, the Court of Appeal has given that provision an impermissibly wide interpretation. On proper construction of article 24(2), it is the courts of Turkey which have the relevant close connection with the authority

claim and the English courts could not be regarded as having relevant (putatively exclusive) jurisdiction under that provision in relation to that claim.

18.
The issues on the appeal are (i) whether article 24(2) confers jurisdiction on the English courts to determine the authority claim as against Koza Altin and (ii) whether article 24(2) confers exclusive jurisdiction on the English courts to determine either the authority claim or the English company law claim as against the trustees. Each side maintains that the proper interpretation of article 24(2) is acte clair in their favour, but if it is not then a reference to the Court of Justice of the European Union is sought.

The Recast Regulation

19.
The Recast Regulation is intended to lay down common rules governing jurisdiction assumed by member states. Insofar as relevant for present purposes, the basic scheme is encapsulated as relevant for present purposes in recitals (13)-(16) and (19):

"(13) There must be a connection between proceedings to which this Regulation applies and the territory of the member states. Accordingly, common rules of jurisdiction should, in principle, apply when the defendant is domiciled in a member state.

(14) A defendant not domiciled in a member state should in general be subject to the national rules of jurisdiction applicable in the territory of the member state of the court seised. However, in order to ensure the protection of consumers and employees, to safeguard the jurisdiction of the courts of the member states in situations where they have exclusive jurisdiction and to respect the autonomy of the parties, certain rules of jurisdiction in this Regulation should apply regardless of the defendant's domicile.

(15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a member state which he could not reasonably have foreseen …

…

(19) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, should be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation."

20.
The scheme for allocation of jurisdiction under the Recast Regulation, therefore, is that persons domiciled in a member state should generally be sued in that member state (article 4), but pursuant to

article 5 may also be sued in the courts of another member state in certain cases specified in sections 2 to 7 of Chapter II of the Recast Regulation. Section 2 is entitled “Special jurisdiction”. Within it, article 7 sets out rules applicable in particular kinds of case, including contract, tort, unjust enrichment and certain other cases; and article 8 provides, among other things, that a person domiciled in a member state who is one of a number of related defendants may be sued in the courts of the place where any one of them is domiciled, provided the claims are closely connected. Section 3 deals with jurisdiction in matters relating to insurance; section 4 with jurisdiction over consumer contracts; and section 5 with jurisdiction over individual contracts of employment. Section 6 comprises article 24, dealing with cases of exclusive jurisdiction. Section 7, comprising articles 25 and 26, deals with prorogation of jurisdiction.

21.
I set out here the full text of article 24:

“The following courts of a member state shall have exclusive jurisdiction, regardless of the domicile of the parties:

(1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the member state in which the property is situated. However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the member state in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same member state;

(2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the member state in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;

(3) in proceedings which have as their object the validity of entries in public registers, the courts of the member state in which the register is kept;

(4) in proceedings concerned with the registration or validity of patents, trademarks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the member state in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place. Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each member state shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that member state;

(5) in proceedings concerned with the enforcement of judgments, the courts of the member state in which the judgment has been or is to be enforced.”

22.
Article 25 provides in material part as follows:

“1. If the parties, regardless of their domicile, have agreed that a court or the courts of a member state 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,

unless the agreement is null and void as to its substantive validity under the law of that member state. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. …

…

3. The court or courts of a member state on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between those persons or their rights or obligations under the trust are involved.

4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of article 24.

…"

23.
Article 26(1) provides:

"1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a member state before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of article 24."

24.
These provisions indicate the priority given under the scheme of the Recast Regulation to the jurisdiction of the courts of a member state which have exclusive jurisdiction under article 24. The cases of exclusive jurisdiction within article 24 comprise situations where reasons exist to recognise an especially strong and fixed connection between the subject matter of a dispute and the courts of a particular member state.

25.
For the cases falling within article 24, the principle of exclusive jurisdiction cuts across and takes priority over the other principles underlying the Recast Regulation, including the principle of jurisdiction for the courts of the member state where the defendant is domiciled and the principle of respect for party autonomy referred to in recital (19) and reflected in various provisions of the Regulation. The priority given to the jurisdiction of a member state within article 24 is underlined by departures from other general rules set out in the Recast Regulation. In particular, in section 8 of Chapter II, entitled "Examination as to jurisdiction and admissibility", article 27 provides for an exception to the usual rule in section 9 of Chapter II that it is the courts in a member state which are first seised with a matter which shall have jurisdiction in relation to it, so that the courts of other member states should decline jurisdiction accordingly. Article 27 provides:

"Where a court of a member state is seised of a claim which is principally concerned with a matter over which the courts of another member state have exclusive jurisdiction by virtue of article 24, it shall declare of its own motion that it has no jurisdiction."

26.
Also, in Chapter III, in section 3 (entitled "Refusal of recognition and enforcement"), article 45(1)(e) provides that the recognition of a judgment shall be refused if the judgment conflicts with Section 6 of Chapter II (ie with the provision for exclusive jurisdiction contained in article 24) and article 46 states that enforcement of a judgment shall be refused in cases falling within article 45.

Discussion

Issue (i): The application of article 24(2) in relation to the authority claim

27.
Since article 24(2) of the Recast Regulation is a provision which creates exclusive jurisdiction for the courts of a member state in the circumstances specified, its proper interpretation can be tested on the hypothesis that Turkey stands in the position of a member state. If Koza Altin were a company which had its seat in a member state, say Greece, article 24(2) would apply to allocate exclusive jurisdiction in relation to the authority claim either to Greece or to England. They could not both have exclusive jurisdiction under the Recast Regulation, since that would be contrary to the very idea of the jurisdiction being exclusive. The interpretation of article 24(2) does not change in the present case just because the other state in question (Turkey) happens not to be a member state.

28.
The position in relation to article 24(2) is to be contrasted with that in relation to the general rule of jurisdiction in article 4 and the provisions contained in section 2 of Chapter II of the Recast Regulation. Under article 4 and those provisions, it is quite possible that the courts of two or more member states might have jurisdiction in relation to the same claim. This causes no difficulty under the scheme of the Recast Regulation. In all such cases it is the priority rules in section 9 of Chapter II which determine the jurisdiction where the claim should proceed, which generally depends on which court is first seised. But as noted above, those rules are disapplied where a claim falls within the exclusive jurisdiction provision in article 24. Accordingly, it is clear from the scheme of the Regulation that the interpretation and application of that provision cannot depend on the type of evaluative judgment in relation to which different courts could reasonably take different views. In principle, there should be only one correct application of article 24 in relation to a given claim. This tells strongly against the broad evaluative approach to the interpretation and application of article 24(2) adopted by the courts below.

29.
As stated in recital (15) of the Recast Regulation, the objective of the Regulation is to set out rules governing the allocation of jurisdiction which are highly predictable. The desirability of having clear rules for allocation of jurisdiction is obvious, since parties who wish to bring claims and to defend them need to have a clear idea of which courts have jurisdiction so that they can decide how to proceed effectively and so as to minimise costs. Also, rules which are highly predictable in their effects serve the purpose of enabling different courts to determine with a minimum of effort whether they have jurisdiction in respect of any given claim. As is clear from the recitals and scheme of the Recast Regulation, a further objective of the regime is to avoid inconsistent judgments on the same issue being produced by the courts of different member states.

30.
The case law of the Court of Justice of the European Union (“the Court of Justice”, formerly called the European Court of Justice) regarding the interpretation of article 24 has reached an advanced stage. In my view it shows clearly that the interpretation of article 24(2) adopted by the courts below in these proceedings cannot be sustained.

31.
An important early judgment was given in Hassett v South Eastern Health Board (Case C-372/07) [2008] ECR I-7403 regarding article 22(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial

matters, the predecessor of article 24(2) in the Recast Regulation. In proceedings in Ireland relating to a medical negligence claim against the Health Board, two doctors who had been involved in the incident in question were joined in a claim for contribution brought by the Health Board. The doctors in turn sought an indemnity or contribution from the Medical Defence Union in England ("the MDU"), of which they were members, to which they claimed they had an entitlement under the MDU's articles of association. The MDU's board decided to reject their claim, so the doctors sought to join the MDU in the Irish proceedings to claim in those proceedings the indemnity or contribution to which they maintained they were entitled. The MDU resisted this on the basis that the doctors' claim concerned the validity of the board's decision and so fell within article 22(2), with the result that the English courts had exclusive jurisdiction in relation to that claim. This issue was referred to the Court of Justice, which disagreed with the MDU. The court held that article 22(2) had to be interpreted "strictly" (that is to say, narrowly), since it was an exception to the general rule of jurisdiction under the Regulation based on domicile, and that it should "not be given an interpretation broader than is required by [its] objective" (paras 18-19); accordingly, the provision "must be interpreted as covering only disputes in which a party is challenging the validity of a decision of an organ of a company under the company law applicable or under the provisions governing the functioning of its organs, as laid down in its Articles of Association" (para 26). Since the doctors were not challenging the fact that the MDU's board was "empowered" under the articles to take the decision it did, but were challenging "the manner in which that power was exercised", the dispute between the doctors and the MDU did not fall within article 22(2) (paras 27-30). The court did not approach the application of article 22(2) by making an evaluative judgment about how the doctors' claim related to the proceedings in Ireland, but instead focused its analysis on the specific nature of the claim against the particular defendant, the MDU. In view of its strict approach to the interpretation of article 22(2), it held that it could not be said that, in order for that provision to apply, it is sufficient that a legal action involve merely some link with a decision adopted by an organ of a company (paras 22-25).

32.
The Court of Justice adopted the same approach to the interpretation and application of article 22(2) of Regulation No 44/2001 in Berliner Verkehrsbetriebe (BVG), Anstalt des öffentlichen Rechts v JP Morgan Chase Bank NA (Case C-144/10) EU:C:2011:300; [2011] 1 WLR 2087 ("the BVG case"). JP Morgan and BVG, a local authority in Germany, entered into an interest rate swap contract which contained an English exclusive jurisdiction clause. JP Morgan brought proceedings in England claiming payments which it maintained were due under the contract. BVG argued that the swap contract was not valid because it had acted ultra vires in entering into it so that the decisions of its organs approving the making of the contract were null and void, with the result that the German courts had exclusive jurisdiction by virtue of article 22(2) of the Regulation. BVG also commenced proceedings in Germany for a declaration that the contract was void because the decision to enter into it had been ultra vires. The German court referred the question of jurisdiction to the Court of Justice. The Court of Justice held that the German courts did not have exclusive jurisdiction under article 22(2). The court followed its judgment in the Hassett case to the effect that article 22(2) had to be given a strict interpretation (paras 30-32). It emphasised that a strict interpretation of article 22(2) which did not go beyond what was required by the objectives pursued by it was "particularly necessary" precisely because article 22(2) is a rule of exclusive jurisdiction which cuts across the usual expectation that parties to a contract have autonomy to choose their forum (para 32). It further observed that one of the aims of article 22(2) was to confer exclusive jurisdiction on the courts of a member state "in specific circumstances where, having regard to the matter at issue, those courts are best placed to adjudicate upon the disputes falling to them, because there is a particularly close link between those disputes and the member state" (para 36). Having identified a divergence between

different language versions of article 22(2), the court held that this was “to be resolved by interpreting that provision as covering only proceedings whose principal subject matter comprises the validity of the constitution, the nullity or the dissolution of the company, legal person or association or the validity of the decisions of its organs” (para 44). It also held that “in a dispute of a contractual nature, questions relating to the contract’s validity, interpretation or enforceability are at the heart of the dispute and form its subject matter”, with the result that “[a]ny question concerning the validity of the decision to conclude the contract, taken previously by the organs of one of the companies party to it, must be considered ancillary” (para 38 and also paras 39-42). In other words, in relation to a claim based on a contract and brought in England pursuant to an exclusive jurisdiction clause in which an ultra vires defence was advanced, which was inextricably bound up with and hence ancillary to the underlying claim, a narrow interpretation of article 22(2) meant that the ultra vires defence did not have the effect of pulling the whole proceedings or any part thereof into the exclusive jurisdiction of the German courts. In that context it could not be said that the “principal subject matter” of the proceedings comprised “the validity of the decisions of [BVG’s] organs” as would be required if article 22(2) was to have any application (para 44 of the judgment).

33.
This point deserves emphasis, in light of the very different way in which the Court of Appeal in the present proceedings sought to draw guidance from the BVG case. Relying on the judgment in that case, the Court of Appeal held that article 24(2) of the Recast Regulation required the court to “form an overall evaluative judgment as to what the proceedings are principally concerned with” (para 46). But this approach had the effect of expanding the application of article 24(2) (ex article 22(2) of Regulation No 44/2001), contrary to the guidance in the Hassett case and the BVG case, rather than narrowing its application, as the Court of Justice had been at pains to do in its judgments in those cases. According to the Court of Appeal, article 24(2) of the Recast Regulation is to be read as having the effect of allowing a party which is able to bring one claim within that article (the English company law claim) to add on another claim (the authority claim) which is conceptually distinct and is not inextricably bound up with the former claim, so that the latter claim is to be taken to fall within the scope of article 24(2) as regards the jurisdiction of the English courts as well. In my view, Mr Crow QC for Koza Altin and the trustees was right to criticise this step in the Court of Appeal’s analysis as an illegitimate reversal of the approach indicated in the judgment of the Court of Justice in the BVG case.

34.
Putting it another way, an evaluative assessment of proceedings relating to a specific claim, taken as a whole, may show that a particular aspect of the claim which involves an assessment of the validity of the decisions of a company’s organs is so bound up with other features of the claim that it cannot be said that this is the “principal subject matter” of those proceedings, as would be required to bring the proceedings within the scope of article 24(2). This was the effect of the ruling of the Court of Justice in the BVG case. It does not follow from this that one can say the reverse, namely that where there are two distinct claims - one, taken by itself, falling within article 24(2) as regards the exclusive jurisdiction of the English courts and the other, taken by itself, not falling within article 24(2) as regards such jurisdiction - it is legitimate to maintain that by virtue of an overall evaluative judgment in relation to both claims taken together the second claim should be found also to fall within article 24(2) so that the English courts have exclusive jurisdiction in relation to it. In this sort of situation, it is the guidance in paras 22-25 of the Hassett judgment which is relevant, to the effect that a mere link between a claim which engages article 24(2) and one which does not is not sufficient to bring the latter within the scope of that provision.

35.
In the present case the English company law claim and the authority claim can be said to be connected in a certain sense, but they are distinct claims which are not inextricably bound up together. Koza Altin is a shareholder in Koza Ltd and may act as such. The issue, so far as the authority claim is concerned, is whether it has done so validly, acting by relevant organs authorised according to the law of its seat. The English company law claim can be brought and made good on its own terms without any need to get into the merits of the authority claim. The authority claim likewise can be brought and made good on its own terms without any need to get into the merits of the English company law claim. Assessing the authority claim as a distinct set of proceedings, clearly their principal subject matter does not comprise the validity of the decisions of the organs of a company which has its seat in England. In fact, it is clear that their principal subject matter comprises the validity of the decisions of the organs of a company which has its seat in another country, so that if Koza Altin had had its seat in Greece (as a hypothesis to test the validity of the respondents' submissions) then, far from allocating exclusive jurisdiction to the English courts, article 24(2) of the Recast Regulation would have allocated exclusive jurisdiction to the Greek courts. It would not be tenable to suggest that the English courts had exclusive jurisdiction under article 24(2) in such a case.

36.
This analysis fits with and is supported by the scheme and underlying objectives of the Recast Regulation. First, in such a hypothetical case, Koza Altin might have had subsidiaries in several EU member states all of which might potentially have been affected by actions taken by the trustees on its behalf as occurred with the decision to send the notices concerning Koza Ltd in the present case. The relevant issues regarding the validity of the decisions of the trustees acting on behalf, and as an organ, of Koza Altin would fall to be assessed in the light of circumstances in the place of its seat and would be governed by the law of that place (in the hypothetical example, Greece), which would indicate clearly that it should be sued there.

37.
Secondly, requiring that Koza Altin and the trustees should be sued in the jurisdiction where it had its seat would ensure that one single authoritative judgment from the courts there would resolve the relevant disputes affecting subsidiary companies in all the other member states without any risk of inconsistent judgments based on evidence of Greek law (in the hypothetical example) being produced by the courts of each of those other member states.

38.
These two points reflect the primary reasons for the introduction of what is now article 24(2) of the Recast Regulation in the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as set out in the report dated 27 September 1968 on that Convention by Mr P Jenard. Mr Jenard explained the reasons for providing for exclusive jurisdiction in the form of what is now article 24(2) as follows:

"It is important, in the interests of legal certainty, to avoid conflicting judgments being given as regards the existence of a company or association or as regards the validity of the decisions of its organs. For this reason, it is obviously preferable that all proceedings should take place in the courts of the state in which the company or association has its seat. It is in that state that information about the company or association will have been notified and made public …"

39.

These reasons underlying what is now article 24(2) of the Recast Regulation have been treated by the Court of Justice as significant factors relevant to the interpretation of that provision. The Court of Justice emphasised the importance of arriving at an interpretation of the provision so as to avoid the risk of inconsistent decisions in its judgment in the Hassett case at para 20 and again in its judgment in the BVG case at para 40. In the Hassett judgment at para 21 the court drew on Mr Jenard's report to explain that it is the courts of the member state in which the company has its seat which are regarded as best placed to deal with disputes regarding the validity of decisions of its organs, "inter alia because it is in that state that information about the company will have been notified and made public", hence "[e]xclusive jurisdiction is … attributed to those courts in the interests of the sound administration of justice".

40.
The interpretation of article 24(2) above is further supported by the judgment of the Court of Justice in Schmidt v Schmidt (Case C-417/15) EU:C:2016:881; [2017] I L Pr 6. That case concerned the ground of exclusive jurisdiction set out in article 24(1) of the Recast Regulation, as regards rights in rem in immovable property. In reliance on article 24(1) the claimant brought proceedings in Austria seeking rescission of a gift of land located there and, in consequence, an order for rectification of the Austrian land register. The Court of Justice held that whilst the latter aspect of the proceedings fell within article 24(1), the rescission claim did not. The court rejected the claimant's contention that since there was plainly a link between the two claims, the whole proceedings should be regarded as falling within article 24(1) (paras 33 to 43). Contrary to that contention, article 24(1) had to be read narrowly and with a precise focus on each distinct claim in the proceedings to which it was said to apply. This was in line with the opinion of the Advocate General, in particular at paras 47 to 49. At para 48 of her opinion, Advocate General Kokott said that as article 24 is an exception to the general principles underlying the Recast Regulation, "the provision is to be interpreted narrowly, and the concept of 'proceedings' restricted to the claim that specifically has as its object a right in rem". The approach of the Advocate General and of the court is not compatible with the overall classification approach to the application of article 24(2) adopted by the Court of Appeal in the present case, according to which it concluded that the provision was applicable to the authority claim by reason of its being linked with the English company law claim.

41.
The Court of Justice has recently reviewed the position regarding the interpretation and application of article 22(2) of Regulation No 44/2001, the predecessor of article 24(2) of the Recast Regulation, in EON Czech Holding AG v Dědouch (Case C-560/16) EU:C:2018:167; [2018] 4 WLR 94. The case concerned a resolution by the general meeting of a Czech company to transfer all the securities in the company, including minority shareholdings, to its principal shareholder, the defendant, a German company. The minority shareholders brought proceedings in the Czech courts seeking to review the reasonableness of the consideration for their shares set by that resolution. Under Czech law, a ruling that the consideration was unreasonable would not result in the resolution being declared invalid (but presumably could result in an order that additional consideration should be paid). The defendant raised a jurisdictional objection in those proceedings, maintaining that by reason of its seat the German courts alone had jurisdiction. The Czech Supreme Court referred to the Court of Justice the question whether the Czech courts had exclusive jurisdiction in relation to the dispute by virtue of article 22(2) of Regulation No 44/2001. The Court of Justice answered that question in the affirmative. It reiterated and emphasised the key points which had emerged from its previous jurisprudence. The relevant passage merits being set out in full:

“26. As regards the general scheme and context of Regulation No 44/2001, it should be recalled that the jurisdiction provided for in article 2 of that Regulation, namely that the courts of the member state in which the defendant is domiciled are to have jurisdiction, constitutes the general rule. It is only by way of derogation from that general rule that the Regulation provides for special and exclusive rules of jurisdiction for cases, which are exhaustively listed, in which the defendant may or must, depending on the case, be sued in the courts of another member state: the Reisch Montage case, para 22 and Berliner Verkehrsbetriebe (BVG), Anstalt des öffentlichen Rechts v JP Morgan Chase Bank NA (Case C-144/10) EU:C:2011:300; [2011] 1 WLR 2087; [2011] ECR I-3961, para 30.

27. Those rules of special and exclusive jurisdiction must accordingly be interpreted strictly. As the provisions of article 22 of Regulation No 44/2001 introduce an exception to the general rule governing the attribution of jurisdiction, they must not be given an interpretation broader than that which is required by their objective: Hassett’s case, paras 18 and 19 and the BVG case, para 30.

28. As regards the objectives and the purpose of Regulation No 44/2001, it should be recalled that, as is apparent from recitals (2) and (11) thereof [which correspond with recitals (4) and (15) of the Recast Regulation], that Regulation seeks to unify the rules on conflict of jurisdiction in civil and commercial matters by way of rules of jurisdiction which are highly predictable. That Regulation thus pursues an objective of legal certainty which consists in strengthening the legal protection of persons established in the European Union, by enabling the applicant easily to identify the court in which he may sue and the defendant reasonably to foresee before which court he may be sued: Falco Privatstiftung v Weller-Lindhorst (Case C-533/07) EU:C:2009:257; [2010] Bus LR 210; [2009] ECR I-3327, paras 21-22, Taser International Inc v SC Gate 4 Business SRL (Case C-175/15) EU:C:2016:176; [2016] QB 887, para 32 and Granarolo SpA v Ambrosi Emmi France SA (Case C-196/15) EU:C:2016:559; [2017] CEC 473, para 16.

29. Furthermore, as is apparent from recital (12) of that Regulation [which corresponds with recital (16) of the Recast Regulation], the rules of jurisdiction derogating from the general rule of jurisdiction of the courts of the member state in which the defendant is domiciled supplement the general rule where there is a close link between the court designated by those rules and the action or in order to facilitate the sound administration of justice.

30. In particular, the rules of exclusive jurisdiction laid down in article 22 of Regulation No 44/2001 seek to ensure that jurisdiction rests with courts closely linked to the proceedings in fact and law (see, with regard to article 16 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1972 L299, p 32), the provisions of which are essentially identical to those of article 22 of Regulation No 44/2001, Gesellschaft fur Antriebstechnik mbH & Co KG (GAT) v Lamellen und Kupplungsbau Beteiligungs KG (Case C-4/03) EU:C:2006:457; [2006] ECR I-6509; [2007] ILPr 34, para 21), in other words, to confer exclusive jurisdiction on the courts of a member state in specific circumstances where, having regard to the matter at issue, those courts are best placed to adjudicate upon the disputes falling to them by reason of a particularly close link between those disputes and that member state: the BVG case, para 36.

31. Thus, the essential objective pursued by article 22(2) of Regulation No 44/2001 is that of centralising jurisdiction in order to avoid conflicting judgments being given as regards the existence of a company or as regards the validity of the decisions of its organs: Hassett’s case [2008] ECR I-7403, para 20.

32. The courts of the member state in which the company has its seat appear to be those best placed to deal with such disputes, inter alia because it is in that state that information about the company

will have been notified and made public. Exclusive jurisdiction is thus attributed to those courts in the interests of the sound administration of justice: Hassett's case, para 21.

33. However, the court has held that it cannot be inferred from this that, in order for article 22(2) of Regulation No 44/2001 to apply, it is sufficient that a legal action involve some link with a decision adopted by an organ of a company (Hassett's case, para 22), and that the scope of that provision covers only disputes in which a party is challenging the validity of a decision of an organ of a company under the company law applicable or the provisions of its article of association governing the functioning of its organs: Hassett's case, para 26 and flyLAL-Lithuanian Airlines AS (in liquidation) v Starptautiskā lidosta Rīga VAS (Case C-302/13) EU:C:2014:2319; [2014] 5 CMLR 1277, para 40.

34. In the present case, while it is true that, under Czech law, proceedings such as those at issue in the main proceedings may not lead formally to a decision which has the effect of invalidating a resolution of the general assembly of a company concerning the compulsory transfer of the minority shareholders' shares in that company to the majority shareholder, the fact none the less remains that, in accordance with the requirements of the autonomous interpretation and uniform application of the provisions of Regulation No 44/2001, the scope of article 22(2) thereof cannot depend on the choices made in national law by member states or vary depending on them.

35. On the one hand, the origin of those proceedings lies in a challenge to the amount of the consideration relating to such a transfer and, on the other, their purpose is to secure a review of the reasonableness of that amount.

36. It follows that, having regard to article 22(2) of Regulation No 44/2001, legal proceedings such as those at issue in the main proceedings concern the review of the partial validity of a decision of an organ of a company and that such proceedings are, as a result, capable of coming within the scope of that provision, as envisaged by its wording.

37. Thus, in those circumstances, a court hearing such an application for review must examine the validity of a decision of an organ of a company in so far as that decision concerns the determination of the amount of the consideration, decide whether that amount is reasonable and, where necessary, annul that decision in that respect and determine a different amount of consideration.

38. Furthermore, an interpretation of article 22(2) of Regulation No 44/2001 according to which that provision applies to proceedings such as those at issue in the main proceedings is consistent with the essential objective pursued by that provision and does not have the effect of extending its scope beyond what is required by that objective.

39. In that regard, the existence of a close link between the courts of the member state in which [the Czech company] is established, in the present case the Czech courts, and the dispute in the main proceedings is clear.

40. In addition to the fact that [the Czech company] is a company incorporated under Czech law, it is apparent from the file submitted to the court that the resolution of the general meeting that determined the amount of the consideration forming the subject of the main proceedings and the acts and formalities relating to it were carried out in accordance with Czech law and in the Czech language.

41. Likewise, it is not disputed that the court with jurisdiction must apply Czech substantive law to the dispute in the main proceedings.

42. Consequently, bearing in mind the close link between the dispute in the main proceedings and the Czech courts, the latter are best placed to hear that dispute relating to the review of the partial validity of that resolution and the attribution, pursuant to article 22(2) of Regulation No 44/2001, of exclusive jurisdiction to those courts is such as to facilitate the sound administration of justice.

43. The attribution of that jurisdiction to the Czech courts is also consistent with the objectives of predictability of the rules of jurisdiction and legal certainty pursued by Regulation No 44/2001, since, as Advocate General Wathelet observed in point 35 of his opinion, the shareholders in a company, especially the principal shareholder, must expect that the courts of the member state in which that company is established will be the courts having jurisdiction to decide any internal dispute within that company relating to the review of the partial validity of a decision taken by an organ of a company."

42.
This reasoning again is not compatible with the decisions of the courts below in the present case. If one tests the application of article 24(2) of the Recast Regulation by reference to the hypothetical Greek case referred to above, it is clear by reference to the factors identified by the Court of Justice that it would be the courts in Greece which had exclusive jurisdiction under that provision in relation to the authority claim, not the courts in England. The non-applicability of article 24(2) according to its proper interpretation does not alter when one asks whether the English courts have jurisdiction under that provision in the present case. Article 24(2) does not apply in the present case by reason of the strict (ie narrow) interpretation to be given to that provision (para 27 of the EON judgment, above). It is not sufficient that there is a link between the authority claim and the English company law claim (para 33 of the EON judgment, above). There is an absence of any "particularly close link" between the authority claim and the English courts as would be required to bring the case within article 24(2) (para 30 of the EON judgment, above); on the contrary, the relevant "particularly close link" as regards the authority claim is with the courts in Turkey.

43.
In my view, the EU law regarding the interpretation and application of article 24(2) of the Recast Regulation, as reiterated in the EON judgment, is clear. It is acte clair that this provision does not cover the authority claim in the present proceedings. This means that the English courts cannot assert jurisdiction over Koza Altin and the trustees in relation to that claim in the present proceedings on the basis of that provision, and their appeal in that regard should be allowed.

44.
Before leaving this part of the case, however, it should be pointed out that there is an important consequence which flows from the fact that Turkey is not a member state of the EU. It means that the courts in Turkey do not enjoy exclusive jurisdiction in respect of the authority claim by virtue of the Recast Regulation. Therefore, even though the authority claim does not fall within the exclusive jurisdiction provision in article 24(2) as regards the courts in England, that does not prevent those courts from assuming jurisdiction in relation to the authority claim on some other basis, if one exists under the general English regime in the Civil Procedure Rules governing service of proceedings on persons outside the jurisdiction. It is not necessary to examine this possibility further, because in the present case it is solely on the basis of article 24(2) that the English courts have assumed jurisdiction over Koza Altin and the trustees in these proceedings in relation to the authority claim.

Issue (ii): The application of article 24(2) in relation to the trustees

45.

Since on its proper interpretation article 24(2) of the Recast Regulation does not cover the authority claim, the English courts have no jurisdiction in relation to the trustees under that provision with respect to that claim. The proceedings against the trustees are principally concerned with the authority claim. It cannot be said that the fact that the English courts have jurisdiction under article 24(2) in relation to the English company law claim, as it concerns Koza Ltd, means that such jurisdiction extends to cover the trustees, who are not necessary parties to that claim and are more removed from it than they are in relation to the authority claim. Once it is appreciated that the application of article 24(2) to the authority claim and its application to the English company law claim are to be considered separately, a strict interpretation of article 24(2) as explained by the Court of Justice leads to the conclusion that it does not cover the trustees in relation to the latter claim. Further, the rationale underlying article 24(2) of avoiding conflicting decisions in relation to the relevant subject matter of each respective claim and the rationale that each respective claim should be tried in the courts best placed to do so both support that view.

Conclusion

46.
I would allow the appeals by Koza Altin and the trustees and would accept their case that (i) the English courts have no jurisdiction under article 24(2) of the Recast Regulation over the trustees in relation to any part of the claims; (ii) the English courts have jurisdiction under that provision over Koza Altin in respect of the English company law claim, which is principally concerned with the affairs of Koza Ltd; and (iii) the English courts have no jurisdiction under that provision over Koza Altin in respect of the authority claim, which is principally concerned with the conduct of the business of Koza Altin.