

5497/98
LIMITE

JUSTCIV 3

NOTE

from : the United Kingdom delegation and the General Secretariat of the Council

to : Ad hoc Working Party on "Revision of the Brussels and Lugano Conventions"

No. prev. doc.: 13322/97 JUSTCIV 92

Subject: Revision of the Brussels and Lugano Conventions

- **Main issues and case law of the Court of Justice
(Articles 24 onwards)**
-

Delegations will find herewith a document submitted by the United Kingdom delegation and the General Secretariat of the Council with a view to preparing the second meeting of the ad hoc Working Party on the revision of the Brussels and Lugano Convention. This document covers Article 24 onwards. It completes doc. 13322/97 JUSTCIV 92.

It includes, for each Article to be discussed during this meeting :

- the issues to be examined, on the basis of comments submitted by delegations (see document 13301/97 JUSTCIV 91) ;
- the reference in the corresponding explanatory report ⁽¹⁾ ;
- the case law of the European Court of Justice ⁽²⁾

-
- (1)
- **Report Jenard:** Report on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (O.J. 59 of 5.3.79, p. 1).
 - **Report Schlosser:** Report on the Convention of 9 October 1978 on the accession of Denmark, Ireland and the United Kingdom (O.J. C 59, of 5.3.79, p. 71)
 - **Report Almeida Cruz, Desantes Real and Jenard:** Report on the Convention of 26 May 1989 on the accession of Portugal and Spain (O.J. C 189, of 28.7.90, p. 35)
 - **Report Jenard and Möller:** Report on the Lugano Convention of 16 September 1988, O.J. C 189 of 28.7.90, p.35.

- (2) The case law included in this document was drawn up in full cooperation with the competent departments of the European Court of Justice.

TABLE OF CONTENTS

	<u>Page</u>
Article 24.....	3
Articles 25(a)	6
Article 27.....	8
Article 28	17
Article 31	18
Article 32	20
Article 34	21
Article 36	22
Article 37.....	24
Article 38	27
Article 39	30
Article 40	32
Article 42	34
Article 43.....	36
Article 44	37
Article 45	38
Article 46	39
Article 47 and 48.....	40
Article 50	42
Article 54(a)	43
Article 54(b).....	44
Article 57	45
Article 58	47



ARTICLE 24

A. Issues

- (1) Would it be desirable to adopt a Community definition of provisional, including protective measures? (Commission)
- (2) Should Article 24 include the condition of urgency? (Commission, Switzerland) Should it include additional limiting criteria in cases of performance measures? (Switzerland)
- (3) Should Article 24 be interpreted as a substantive rule rather than a rule referring to lex fori and as a rule with a scope limited to measures which can be enforced in the State in which they were adopted without going through a further enforcement procedure (urgency)? (Commission)
- (4) Would it be advisable to include in Article 24 a provision stipulating that only the court in the State in which the provisional or protective measure is to be implemented has jurisdiction? (see case 125/79, Denilauler/Couchet).(Netherlands, Belgium)
- (5) Should Article 24 be amended in order to make clear that orders for interim payment fall outside the scope of Article 24 and can only be made by the court exercising substantive jurisdiction? (United Kingdom)
- (6) Should it be made clear that application may also be made to the courts seised as to the substance under international contracts irrespective of national law on the taking of protective measures? (Switzerland)
- (7) Should exorbitant fora of national law be excluded by the Conventions regarding the application of Article 24 in the sense that jurisdiction can only be conferred in a State in which enforcement probably can and also should occur? (Switzerland)
- (8) At least, should Article 24 specify in which cases courts have jurisdiction to take provisional mandatory, restraining or prohibitive measures, with extraterritorial effect? (Netherlands)
- (9) Should it be clarified whether the measures can be requested before the main proceedings are instituted? If so, should it be specified at which point they cease to be valid if the main proceedings are not brought? (Portugal)
- (10) Should Article 24 define a period for which protective measures may apply? (Portugal)
- (11) Should Article 24 be restricted to avoid misuse of the other jurisdiction rules under the Convention? (France)
- (12) Should the explanatory report make clear that the lodging of a request for enforcement is no barrier to a subsequent application for provisional measures on the basis of Article 24 ? (Commission)
- (13) In order to take physical possession of the monetary claim to be enforced, should protective measures be adopted to preempt the electronic transfer of the debtor's funds? (Portugal)

B. Reports

- Jenard, page 42
- Schlösser, page 126 (paragraph 183)
- Möller, page 72

C. Case law

a) Provisional and definitive measures

1. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments – Sphere of application – Distinction between provisional and definitive measures – None

In relation to the matters covered by the Convention, no legal basis is to be found therein for drawing a distinction between provisional and definitive measures.

Judgment of the Court of 27 March 1979 – ECR p. 1055

Case 143/78, De Cavel

The interim or final nature of a judgment is not relevant to whether the judgment comes within the scope of the Convention.

Judgment of the Court (Third Chamber) of 6 March 1980 – ECR p. 731

Case 120/79, De Cavel

2. Convention on Jurisdiction and the Enforcement of Judgments – Scope – Provisional or protective measures relating to excluded matters – Inclusion – None

Article 24 of the Convention of 27 September 1968 may not be relied on to bring within the scope of the Convention provisional or protective measures relating to matters which are excluded from it.

Judgment of the Court of 31 March 1982 – ECR p. 1189

Case 25/81, C.H.W. v. G.J.H. (see para. 2 of the operative part of the judgment)

3. Convention on Jurisdiction and the Enforcement of Judgments – Jurisdiction to adopt provisional or protective measures – Concept of provisional or protective measures – Measures seeking to maintain a factual or legal situation pending a decision on the substance of the matter – "Action paulienne" – Not included

Provisional or protective measures within the meaning of Article 24 must be understood as being measures which, in matters within the scope of the Convention, are intended to preserve a factual or legal situation so as to safeguard rights the recognition of which is sought elsewhere from the court having jurisdiction as to the substance of the matter.

Whilst an action such as the action paulienne enables the creditor's security to be protected by preventing the dissipation of his debtor's assets, its purpose is that the court may vary the legal situation of the assets of the debtor and that of the beneficiary of the disposition effected by the debtor, and it cannot be described as a provisional or protective measure.

Judgment of the Court (Fifth Chamber) of 26 March 1992 – ECR p. I-2149

Case C-261/90, Reichert and Kockler v. Dresdner Bank (see paras. 34 and 35 of the grounds of the judgment)

ARTICLE 25a

A. Issues

- (1) Should judgments given during simplified procedures (such as demands for payment or for interim measures) be regarded as "European enforcement orders"? (Portugal)(see extended comments on this issue on pages 40 and 41 of document 13301/97 JUSTCIV 91).

C. Case law

a) General aspects

1. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Decisions authorizing provisional or protective measures – Exclusion from the procedure provided for by Title III – Conditions

The conditions imposed by Title III of the Convention on the recognition and the enforcement of judicial decisions are not fulfilled in the case of provisional or protective measures which are ordered or authorized by a court without the party against whom they are directed having been summoned to appear and which are intended to be enforced without prior service on that party. It follows that this type of judicial decision is not covered by the system of recognition and enforcement provided for by Title III of the Convention.

Judgment of the Court of 21 May 1980 – ECR p. 1553
Case 125/79, Denilauler v. Couchet

ARTICLE 27

A. Issues

- (1) Should the grounds for refusal not be examined until the hearing of an appeal is lodged, with the exception of public order? (Germany, Austria). Should this principle only be applied in the case of pecuniary claims? (Germany)

Paragraph 1

- (2) Should the ground for refusal of recognition which is based on the incompatibility of the original judgment with public policy in the State in which recognition is sought be removed? (Commission)
- (3) Given the importance of guaranteeing a fair trial within the meaning of Article 6 of the ECHR, would it be advisable to extend the monitoring of procedural public policy? (France). (This question is linked with the one examined on Article 27(2)).

Paragraph 2

- (4) Should consideration be given to whether provision can be made for the possibility of remedying defective service in the case of Article 27(2)? (Germany)
- (5) In this sense, should this ground for refusal be amended by substituting the wording in Article 20(2) for the present wording subject to extending the new wording to cover a case where the defendant is not a resident in a Contracting State? (Commission)
- (6) Should the court not be able to refuse recognition on grounds of irregular service where the defendant was aware of the procedure in sufficient time to enable him to arrange for his defence? (Commission, Austria, Belgium)
- (7) Or should the ground of irregular service be limited to cases where the defendant's interests have actually been jeopardized? (France)
- (8) Should the party sentenced no longer rely in the State in which recognition is sought on the conditions in which he was sentenced in default of appearance in the State of origin if he did not bring an appeal in that State against the judgment despite being aware of it? (Commission)

(P.S) The Norwegian text of the Lugano Convention needs to be completed in Article 27(2) to be in conformity with the other languages versions.

Paragraph 3

- (9) Should Article 27 cover cases where there is a conflict between two judgments delivered in two Contracting States and the recognition of which is requested in a third State? If so, should priority be given to the earlier judgment, always provided the parties are the same? (Commission)

Paragraph 4

- (10) Should the grounds for refusal of recognition provided for in Article 27(4) be deleted? (Germany, Switzerland)

Other possible amendments to Article 27

- (11) Should recognition be refused where a judgment from a Contracting State has overlooked the existence of a valid arbitration agreement? If so, should an appropriate amendment be decided either to Articles 27, 28 or 1? (United Kingdom)
- (12) Should Article 27 be completed with an additional ground of non-recognition in cases where a judgment has been given in breach of an exclusive jurisdiction agreement that is entitled to recognition under Article 17? (United Kingdom)
- (13) Should judgments against parties not domiciled in the European Union which are based on exorbitant grounds of jurisdiction not be recognised throughout the EU under Article 27? (United Kingdom)

Connected amendment to Article 27

- (14) Should Article 19 be completed to cover proceedings brought in breach of jurisdiction clauses or arbitration clauses ? (This would mean that those decisions would not be recognised in the State where recognition is sought) (United Kingdom)

B. Reports

- Jenard, pages 44 to 46
- Schlosser, pages 128 to 131 (paragraphes 192 to 205)
- Möller, page 78

C. Case law

a) **General aspects**

Convention on Jurisdiction and the Enforcement of Judgments – Recognition of judgments – Scope – Effects of a judgment in the State in which it was given – Same effects in the State in which enforcement is sought

A foreign judgment which has been recognized by virtue of Article 26 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must in principle have the same effects in the State in which enforcement is sought as it does in the State in which judgment was given.

Judgment of the Court of 4 February 1988 – ECR p. 645

Case 145/86, Hoffmann v. Krieg (see para. 11 of the grounds and para. 1 of the operative part of the judgment)

b) **Protection of defendant in default**

1. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds for refusal – Document which instituted the proceedings not served in due form and in sufficient time on defendant who fails to take appropriate action – Document which instituted the proceedings – Concept

The words "the document which instituted the proceedings" contained in Article 27, point 2, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters cover any document, such as the order for payment (Zahlungsbefehl) in German law, service of which enables the plaintiff, under the law of the State of the court in which the judgment was given, to obtain in default of appropriate action taken by the defendant, a decision capable of being recognized and enforced under the provisions of the Convention.

A decision such as the enforcement order (Vollstreckungsbefehl) in German law, which is issued after service of the order for payment has been effected and which is enforceable under the Convention, is not covered by the words "the document which instituted the proceedings".

Judgment of the Court of 16 June 1981 – ECR p. 1593

Case 166/80, Klomps v. Michel (see para. 11 of the grounds of the judgment)

2. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds for refusal – Document which instituted the proceedings not served in due form and in sufficient time on defendant who fails to take appropriate action – Service in sufficient time – Appraisal of the court in which enforcement is sought – Period to be taken into consideration

In order to determine whether the defendant has been enabled to arrange for his defence as required by Article 27, point 2, the court in which enforcement is sought must take account only of the time, such as that allowed under German law for submitting an objection (Widerspruch) to the order for payment, available to the defendant for the purposes of preventing the issue of a judgment in default which is enforceable under the Convention.

Judgment of the Court of 16 June 1981 – ECR p. 1593

Case 166/80, Klomps v. Michel (see para. 11 of the grounds of the judgment)

3. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds for refusal – Document which instituted the proceedings not served in due form and in sufficient time on defendant who fails to take appropriate action – Effect where there is an objection against the judgment in default which is declared inadmissible by a court of the State in which the judgment was given

Article 27, point 2, of the Convention, which is addressed exclusively to the court before which proceedings are brought for recognition or enforcement in another Contracting State, remains applicable where the defendant has lodged an objection against the decision given in default and a court in the State in which the judgment was given has declared the objection inadmissible on the ground that the time for making such objection has expired.

**Judgment of the Court of 16 June 1981 - ECR p. 1593
Case 166/80, Klomps v. Michel (see para. 13 of the grounds of the judgment)**

4. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds for refusal – Document which instituted the proceedings not served in due form and in sufficient time on defendant who fails to take appropriate action – Decision of a court of the State in which the judgment was given finding that service was duly effected – Duty of the court in which enforcement is sought to consider whether service was effected in sufficient time

Even if the court in which the judgment was given has held, in separate adversary proceedings, that service was duly effected, Article 27, point 2, of the Convention still requires the court in which enforcement is sought to examine whether service was effected in sufficient time to enable the defendant to arrange for his defence.

**Judgment of the Court of 16 June 1981 – ECR p. 1593
Case 166/80, Klomps v. Michel (see para. 16 of the grounds of the Judgment)**

5. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds for refusal – Document which instituted the proceedings not served in due form and in sufficient time on defendant who fails to take appropriate action – Service in sufficient time – Appraisal of the court in which enforcement is sought – Beginning of time to be allowed the defendant

Article 27, point 2, of the Convention does not require proof that the document which instituted the proceedings was actually brought to the knowledge of the defendant. As a general rule the court in which enforcement is sought may accordingly confine its examination to ascertaining whether the period reckoned from the date on which service was duly effected allowed the defendant sufficient time to arrange for his defence. Nevertheless the court must consider whether, in a particular case, there are exceptional circumstances which warrant the conclusion that, although service was duly effected, it was, however, inadequate for the purpose of causing time to begin to run.

**Judgment of the Court of 16 June 1981 – ECR p. 1593
Case 166/80, Klomps v. Michel (see para. 19 of the grounds of the judgment)**

6. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds for refusal – Defendant in default of appearance not duly served with the document instituting the proceedings in sufficient time – Review by the court in which enforcement is sought – Scope – Judgment of the court of the original state establishing that service was effected properly and in sufficient time – No effect

The court of the State in which enforcement is sought may, if it considers that the conditions laid down by Article 27(2) of the Convention of 27 September 1968 are fulfilled, refuse to grant recognition and enforcement of a judgment even though the court of the State in which the judgment was given regarded it as proven, in accordance with the third paragraph of Article 20 of that Convention in conjunction with Article 15 of the Hague Convention of 15 November 1965, that the defendant, who failed to enter an appearance, had an opportunity to receive service of the document instituting the proceedings in sufficient time to enable him to make arrangements for his defence.

**Judgment of the Court (Second Chamber) of 15 July 1982 – ECR p. 2723
Case 228/81, Pandy Plastic Products BV v. Pluspunkt Handelsgesellschaft (see operative part of the judgment)**

7. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds for refusal – The document which instituted the proceedings not served in sufficient time on a defendant in default of appearance – Service in sufficient time – Review by the court in which enforcement is sought – Scope – Exceptional circumstances – Taken into account – Conditions

The requirement, laid down in Article 27(2) of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, that service of the document which instituted the proceedings should have been effected in sufficient time is applicable where service was effected within a period prescribed by the court of the State in which the judgment was given or where the defendant resided, exclusively or otherwise, within the jurisdiction of that court or in the same country as that court.

In examining whether service was effected in sufficient time, the court in which enforcement is sought may take account of exceptional circumstances which arose after service was duly effected.

The fact that the plaintiff was apprised of the defendant's new address, after service was effected, and the fact that the defendant was responsible for the failure of the duly served document to reach him are matters which the court in which enforcement is sought may take into account in assessing whether service was effected in sufficient time.

**Judgment of the Court (Fourth Chamber) of 11 June 1985 – ECR p. 1779
Case 49/84, Debaecker v. Bouwman (see operative part of the judgment)**

8. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds for refusal – Document instituting the proceedings not served in due form and in sufficient time on a defendant who fails to appear – Concurrent nature of conditions of due form and sufficient time – Document served in sufficient time but not in due form – Refusal of recognition

The conditions laid down in Article 27(2) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, that a defendant who fails to appear must have been served with the document instituting the proceedings in due form and in sufficient time, must both be met in order for a foreign judgment given against that defendant to be recognized. That provision is therefore to be interpreted as meaning that a judgment given in default of appearance may not be recognized where the document instituting the proceedings was not served on the defendant in due form, even though it was served in sufficient time to enable him to arrange for his defence.

Judgment of the Court (Sixth Chamber) of 3 July 1990 – ECR p. I-2725

Case C-305/88, Lancray v. Peters und Sickert (see paras. 15, 18 and 23 of the grounds and para. 1 of the operative part of the judgment)

9. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds for refusal – Document instituting the proceedings not served in due form and in sufficient time on a defendant who fails to appear – Review of service by the courts of the State in which recognition is sought – Curing of defective service – To be determined in accordance with the law of the State in which judgment was given

Article 27(2) of the Convention is to be interpreted as meaning that questions concerning the curing of defective service are governed by the law of the State in which judgment was given, including any relevant international agreements.

Judgment of the Court (Sixth Chamber) of 3 July 1990 – ECR p. I-2725

Case C-305/88, Lancray v. Peters und Sickert (see para. 31 of the grounds and para. 2 of the operative part of the judgment)

10. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement of judgments – Grounds of refusal – Defendant who failed to appear not served, or not duly served, with the document instituting the proceedings – Failure by defendant to have recourse to the remedies provided for in the State where judgment was delivered after becoming aware of the judgment delivered in default of appearance – Refusal of recognition

Article 27(2) of the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters must be interpreted as precluding a judgment given in default of appearance in one Contracting State from being recognized in another Contracting State where the defendant was not duly served with the document which instituted the proceedings, even if he subsequently became aware of the judgment which was given and did not avail himself of the remedies provided for under the code of procedure of the State where the judgment was delivered.

Judgment of the Court (Fourth Chamber) of 12 November 1992 – ECR p. I-5661

Case C-123/91, Minalmet v. Brandeis (see para. 22 of the grounds and the operative part of the judgment)

11. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement – Grounds for refusal – Document which instituted the proceedings not served in due form and in sufficient time on defendant in default – Concept of "default" – Defendant to a civil claim made in the context of criminal proceedings – Reply solely to the criminal charges made at the trial relating also to the civil proceedings – Appearance to the civil claim precluding default

Since non-recognition of a judgment given in another Contracting State for the reasons set out in Article 27(2) of the Convention is possible only where the defendant was in default of appearance in the original proceedings, that provision may not be relied upon where the defendant appeared. A defendant is deemed to have appeared for the purposes of Article 27(2) of the Convention where, in connection with a claim for damages made in the context of the criminal proceedings pending before the criminal court, the defendant, through defence counsel of his own choice, answered the criminal charges at the trial but did not express a view on the civil claim, on which oral argument was also submitted in the presence of his counsel.

Judgment of the Court of 21 April 1993 – ECR p. I-1963
Case C-172/91, Sonntag v. Waidmann (see para. 44 of the grounds and para. 3 of the operative part of the judgment)

12. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement – Grounds for refusal – Failure duly and timeously to serve the document instituting the proceedings on the absent defendant – Concept of document instituting the proceedings or equivalent document – Document enabling the defendant to assert his rights before an enforceable judgment is given – Order for payment under Italian law served jointly with the plaintiff's application – Included

The term "document instituting the proceedings or equivalent document" within the meaning of Article 27(2) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, means the document or documents which must be duly and timeously served on the defendant in order to enable him to assert his rights before an enforceable judgment is given in the State of origin. The *decreto ingiuntivo* within the meaning of Book IV of the Italian Code of Civil Procedure (Articles 633 to 656), together with the application instituting the proceedings, must therefore be regarded as "the document which instituted proceedings or ... an equivalent document" within the meaning of that provision, since their joint service starts time running for the defendant to oppose the order and since the plaintiff cannot obtain an enforceable order before the expiry of that time-limit.

Judgment of the Court (Third Chamber) of 13 July 1995 – ECR p. I-2113
Case C-474/93, Hengst Import v. Campese (see paras. 19-20 of the grounds and the operative part of the judgment)

13. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement – Grounds for refusal – Defendant who is not properly served with or notified of the document instituting proceedings in sufficient time and who fails to appear – Definition of "in default of appearance" – Defendant unaware of proceedings initiated against him and represented by a lawyer without his authority – Included – Remedy available in the State in which judgment was given, allowing it to be contested on the ground of lack of representation – Not material

Where proceedings are initiated against a person without his knowledge and a lawyer appears before the court first seised on his behalf but without his authority, such a person is quite powerless to defend himself and must be regarded as a defendant in default of appearance, within the meaning of Article 27(2) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, even if the proceedings before the court first seised became, in point of form, proceedings *inter partes*. That conclusion is not affected by the fact that the defendant may apply to have the judgment in question annulled on the ground of lack of representation, since the proper time for a defendant to have an opportunity to defend himself is the time at which proceedings are commenced.

Article 27(2) of the Convention therefore applies to judgments given against a defendant who was not duly served with, or notified of, the document instituting proceedings in sufficient time and who was not validly represented during those proceedings, albeit the judgments given were not given in default of appearance because someone purporting to represent the defendant appeared before the court first seised.

**Judgment of the Court (Fifth Chamber) of 10 October 1996 – ECR p. I-4943
Case C-78/95, Hendrikman and Feyen v. Magenta Druck & Verlag (see paras. 18-21 of the grounds and the operative part of the judgment)**

c) Judgments irreconcilable with a judgment given in the state in which enforcement is sought

1. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement – Grounds for refusing enforcement – Irreconcilable judgments – Foreign judgment making a matrimonial maintenance order – Decree of divorce granted in the State in which enforcement is sought

A foreign judgment ordering a person to make maintenance payments to his spouse by virtue of his conjugal obligations to support her is irreconcilable within the meaning of Article 27(3) of the Convention with a national judgment pronouncing the divorce of the spouses.

**Judgment of the Court of 4 February 1988 – ECR p. 645
Case 145/86, Hoffmann v. Krieg (see para. 25 of the grounds and para. 3 of the operative part of the judgment)**

2. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement – Grounds for refusal – Strict interpretation – Judgment irreconcilable with a judgment given in the State in which recognition is sought – Treatment of a court settlement reached in the State in which recognition is sought as a judgment given by a court of that State – Excluded

Article 27 of the Convention must be interpreted strictly, inasmuch as it constitutes an obstacle to the achievement of one of its fundamental objectives, which is to facilitate, to the greatest extent possible, the free movement of judgments by providing for a simple and rapid enforcement procedure. Hence Article 27(3) of the Convention is to be interpreted as meaning that an enforceable settlement reached before a court of the State in which recognition is sought in order to settle legal proceedings which are in progress does not constitute a "judgment" within the meaning of that provision, "given in a dispute between the same parties in the State in which recognition is sought" which, under the Convention, may preclude recognition and enforcement of a judgment given in another Contracting State.

**Judgment of the Court (Sixth Chamber) of 2 June 1994 – ECR p. I-2237
Case C-414/92, Solo Kleinmotoren v. Boch (see paras. 20 and 25 of the grounds and operative part of the judgment)**

ARTICLE 28

A. Issues

- (1) Should Paragraphs 1 and 2 of Article 28 be deleted in the sense that violation of the rules of jurisdiction should never constitute grounds for the refusal of recognition? (Netherlands). Or should it be maintained as it stands? (Belgian)
- (2) Should paragraph 1 include a reference to individual employment contracts? (Netherlands, Portugal)
- (3) Should Article 28 of the Lugano Convention be aligned with the same provision in the Brussels Convention? (Germany)

B. Reports

- Jenard, page 46
- Möller, page 79

ARTICLE 31

A. Issues

(P.S.: see question (1) on Article 27)

B. Reports

- Jenard, pages 47 to 49
- Schlosser, pages 131 and 132
- Möller, pages 79 and 80
- Almeida Cruz, Desantes real and Jenard, page 48

C. Case law

Authorization of enforcement

1. Convention of 27 September 1968 – Judgment obtained in a Member State – Enforcement in another Contracting State possible by virtue of Article 31 of the Convention – Application concerning the same subject-matter and between the same parties brought before a court of that State – Prohibition – Costs of procedure

The provisions of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 prevent a party who has obtained a judgment in his favour in a Contracting State, being a judgment for which an order for enforcement under Article 31 of the Convention may issue in another Contracting State, from making an application to a court in that other State for a judgment against the other party in the same terms as the judgment delivered in the first State. The fact that there may be occasions on which, according to the national law applicable, the procedure set out in Articles 31 et seq. of the Convention may be found to be more expensive than bringing fresh proceedings on the substance of the case does not invalidate these considerations.

Judgment of the Court of 30 November 1976 – ECR p. 1759 Case 42-76, De Wolf v. Cox

2. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Judgment ordering maintenance payments – Obstacles to proceeding with enforcement – Circumstance falling outside the scope of the Convention – Divorce decreed in the State in which enforcement is sought

A foreign judgment whose enforcement has been ordered in a Contracting State pursuant to Article 31 of the Convention and which remains enforceable in the State in which it was given must not continue to be enforced in the State where enforcement is sought when, under the law of the latter State, it ceases to be enforceable for reasons which lie outside the scope of the Convention.

The Convention does not preclude the court of the State in which enforcement is sought from drawing the necessary inferences from a national decree of divorce when considering the enforcement of the foreign order made in regard to maintenance obligations between spouses.

Judgment of the Court of 4 February 1988 – ECR p. 645 Case 145/86, Hoffmann v. Krieg (see paras. 17-18 of the grounds and para. 2 of the operative part of judgment)

ARTICLE 32

A. Issues

- (1) In Article 32(2), should the jurisdiction of local courts be determined either by reference to the place of habitual residence of the party against whom enforcement is sought or to the place of enforcement? And if the party does not habitually reside on the territory of the State in which enforcement is sought, should jurisdiction be determined by the place of enforcement? (Commission)
- (2) Or should the court responsible for practical enforcement also have jurisdiction on the declaration of enforceability (exequatur)? (Austria)
- (3) Should the rule provided for in Article 6(1) be transposed in Article 32 in the event of there being a number of defendants? Should jurisdiction lie with the courts of the place of the defendant's domicile or, if there are several defendants, with the courts of the place of the domicile of any of them? (Commission)

B. Reports

- Jenard, page 49
- Möller, page 38

ARTICLE 34

A. Issues

- (1) Should the notion "without delay" be replaced by a precise time-limit to be defined? If so, should the period begin to run from the date that the application was lodged, or at the latest from the date of expiry of the period laid down by the judge for the production of documents under Article 48? (Commission)

B. Reports

- Jenard, page 50
- Möller, page 80

ARTICLE 36

A. Issues

- (1) Having in mind the modern communication methods for service of documents, should the periods provided for in Article 36 be shorter? (Portugal)

(P.S.) The Norwegian text of the Lugano Convention needs to be completed 36 to be in conformity with the other languages versions.

B. Reports

- Jenard, page 51
- Möller, page 80

C. Case law

Procedures for challenging an enforcement order

1. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Procedures for challenging an enforcement order – Autonomous and complete system established by the Convention – Procedures available to interested third parties under domestic law – Exclusion

The Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters established an enforcement procedure which constitutes an autonomous and complete system, including the matter of appeals. It follows that Article 36 of the Convention excludes procedures whereby interested third parties may challenge an enforcement order under domestic law.

Judgment of the Court (Fifth Chamber) of 2 July 1985 – ECR p. 1981
Case 148/84, Deutsche Genossenschaftsbank v. Brasserie du Pecheur (see para. 17 of the grounds of the judgment)

2. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Failure to appeal against the judgment granting leave to enforce – Pleading, at the execution stage, of grounds for refusal – Not permitted – Obligations on the part of the court seised – Limits

Article 36 of the Convention must be interpreted as meaning that a party who has not appealed against the enforcement order referred to in that provision is thereafter precluded, at the stage of the execution of the judgment, from relying on a valid ground which he could have pleaded in such an appeal, and that that rule must be applied of their own motion by the courts of the State in which enforcement is sought. However, that rule does not apply when it has the result of obliging the national court to make the effects of a national judgment which lies outside the scope of the Convention conditional on its recognition in the State in which the foreign judgment whose enforcement is at issue was given.

Judgment of the Court of 4 February 1988 – ECR p. 645
Case 145/86, Hoffmann v. Krieg (see para. 34 of the grounds and para. 4 of the operative part of the judgment)

ARTICLE 37

A. Issues

- (1) Should a single level of appeal be acceptable? (Portugal)

B. Reports

- Jenard, pages 51 and 52
- Möller, page 80

C. Case law

Remedies

1. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Remedies – Appeal in cassation and Rechtsbeschwerde – Judgments contestable by an appeal in cassation

The second paragraph of Article 37 of the Convention of 27 September 1968 must be interpreted as meaning that an appeal in cassation and, in the Federal Republic of Germany, a *Rechtsbeschwerde* may be lodged only against the judgment given on the appeal lodged pursuant to Article 36 .

Judgment of the Court (Fourth Chamber) of 27 November 1984 – ECR p. 3971
Case 258/83, Calzaturificio Brennero v. Wendel GmbH (see para. 16 of the grounds and para. 2 of the operative part of the judgment)

2. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Legal remedies – Appeal in cassation – Judgments which may be contested by an appeal in cassation – Decision by the court with which the appeal against the enforcement order is lodged as to a stay of proceedings or the provision of security – Excluded

The second paragraph of Article 37 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is to be interpreted as meaning that a decision taken under Article 38 of the Convention by which the court with which an appeal has been lodged against an order for the enforcement of a judgment given in another Contracting State has refused to stay the proceedings and has ordered the party to whom the enforcement order was granted to provide security does not constitute a "judgment given on the appeal" within the meaning of the second paragraph of Article 37 of the Convention and may not, therefore, be contested by an appeal in cassation or similar form of appeal. The position is the same where the decision taken under Article 38 of the Convention and the "judgment given on the appeal" within the meaning of the second paragraph of Article 37 of the Convention are given in a single judgment.

Judgment of the Court (Sixth Chamber) of 4 October 1991 – ECR p. I-4743
Case C-183/90, Van Dalfsen and others v. Van Loon and others (see para. 26 of the grounds and para. 1 of the operative part of the judgment)

3. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Remedies – Appeal in cassation and "Rechtsbeschwerde" – Remedy available to interested third parties under domestic law – Excluded

The second paragraph of Article 37 of the Convention must be interpreted as precluding any appeal by interested third parties against the judgment given on an appeal against authorization to enforce a judgment given in another Contracting State, even where the domestic law of the State in which enforcement is sought confers on such third parties a right of appeal.

Judgment of the Court of 21 April 1993 – ECR p. I-1963
Case C-172/91, Sonntag v Waidmann (see para. 35 of the grounds and para. 2 of the operative part of the judgment)

4. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Appeals – Appeal in cassation or similar form of appeal on a point of law – Decisions against which appeals can be brought – Decision on a stay or proceedings by a court seized of an appeal against authorization of enforcement – Excluded – Jurisdiction of the court seized of an appeal on a point of law to decide on such a stay of proceedings – None

Article 37(2) and the first paragraph of Article 38 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, are to be interpreted as meaning that a decision by which a court of a Contracting State, seized of an appeal against authorization to enforce an enforceable judgment of a court in another Contracting State, refuses a stay or lifts a stay previously ordered does not constitute a "judgment given on the appeal" within the meaning of the said Article 37(2) and therefore cannot be contested by an appeal in cassation or similar form of appeal limited to examination of points of law only. Moreover, the court seized of such an appeal on a point of law under Article 37(2) of the Convention does not have jurisdiction to impose or reimpose such a stay.

**Judgment of the Court (Sixth Chamber) of 11 August 1995 – ECR p. I-2269
Case C-432/93, SISRO v. Ampersand Software (see paras 32-33 and 42 of the grounds and the operative part of the judgment)**

ARTICLE 38

A. Issues

- (1) Should it be possible to make clear that the court hearing the second appeal should have the jurisdiction referred to in Article 38 in order to maintain a proper balance of interests between the parties since the judgment may yet be reversed on appeal in its State of origin? (United Kingdom)

B. Reports

- Jenard, page 52
- Möller, page 80

C. Case law

Appeal

1. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments – Recognition or grant of an order for enforcement in one Contracting State of a judgment given in another contracting State – Stay of the proceedings for recognition or enforcement – Appeal lodged in the State in which the judgment was given against the foreign judgment – Concept of "ordinary appeal" within the meaning of Articles 30 and 38 of the Convention – Differences in the legal concepts of the various Contracting States with regard to the distinction between "ordinary" and "extraordinary" appeals – Definition of the concept of "ordinary appeal" solely within the framework of the Convention – Meaning

Because of the differences in the legal concepts of the Member States which are parties to the Convention of 27 September 1968 with regard to the distinction between "ordinary" and "extraordinary" appeals, the meaning of the concept of "ordinary appeal" cannot be determined by reference to a national legal system, whether that of the State in which the judgment was given or that of the State in which recognition or enforcement is sought. This concept may therefore be defined solely within the framework of the Convention itself.

In view of the structure of Articles 30 and 38 and of their function in the system of the convention, any appeal which is such that it may result in the annulment or the amendment of the judgement which is the subject-matter of the procedure for recognition or enforcement under the convention and the lodging of which is bound, in the State in which judgment was given to a period which is laid down by the law and starts to run by virtue of that same judgment constitutes an "ordinary appeal" which has been lodged or may be lodged against a foreign judgment.

**Judgment of the Court of 22 November 1977 – ECR p. 2175
Case 43-77, Industrial Diamond Supplies v. Riva**

2. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Appeal against a decision authorizing enforcement – Possibility for the court with which an appeal has been lodged of making enforcement conditional on the provision of security – Conditions

The second paragraph of Article 38 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that a court with which an appeal has been lodged against a decision authorizing enforcement, given pursuant to the Convention, may make enforcement conditional on the provision of security only when it gives judgment on the appeal.

**Judgment of the Court (Fourth Chamber) of 27 November 1984 – ECR p. 3971
Case 258/83, Calzaturificio Brennero v. Wendel GmbH (see para. 13 on the grounds and paragraph 1 of the operative part of the judgment)**

3. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Appeal against the enforcement order – Power of the court with which the appeal is lodged to stay the proceedings – Exercise – Taking into consideration only submissions not already put forward by or known to the applicant at the time of the proceedings before the court of the State in which the judgment was given

The first paragraph of Article 38 of the Convention is to be strictly interpreted so as not to prejudice the effectiveness either of Article 31, which lays down the principle that a judgment given in a Contracting State and enforceable in that State may be enforced in another Contracting State even if it has not yet become *res judicata*, or of the third paragraph of Article 34, which prohibits the courts of the State in which enforcement is sought from reviewing the substance of the judgment given in the first State.

Hence the first paragraph of Article 38 of the Convention is to be interpreted as meaning that a court with which an appeal is lodged against an order for the enforcement of a judgment given in another Contracting State may take into consideration, in a decision concerning an application for the proceedings to be stayed under that paragraph, only such submissions as the appellant was unable to put before the court of the State in which the judgment was given.

**Judgment of the Court (sixth Chamber) of 4 October 1991 – ECR p. I-4743
Case C-183/90, Van Dalfsen and Others v. Van Loon and Others (see paras 28, 30-32
and 37 of the grounds and paragraph 2 of the operative part of the judgment)**

4. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Appeals – Appeal in cassation or similar form of appeal on a point of law – Decisions against which appeals can be brought – Decision on a stay of proceedings by a court seised of an appeal against authorization of enforcement – Excluded – Jurisdiction of the court seised of an appeal on a point of law to decide on such a stay of proceedings – None

Article 37(2) and the first paragraph of Article 38 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, are to be interpreted as meaning that a decision by which a court of a Contracting State, seised of an appeal against authorization to enforce an enforceable judgment of a court in another Contracting State, refuses a stay or lifts a stay previously ordered does not constitute a "judgment given on the appeal" within the meaning of the said Article 37(2) and therefore cannot be contested by an appeal in cassation or similar form of appeal limited to the examination of points of law only. Moreover, the court seised of such an appeal on a point of law under Article 37(2) of the Convention does not have jurisdiction to impose or reimpose such a stay.

**Judgment of the Court (Sixth Chamber) of 11 August 1995 – ECR p. I-2269
Case C-432/93, SISRO v. Ampersand Software (see paras 32-33 and 42 of the grounds and
the operative part of the judgment)**

ARTICLE 39

A. Issues

- (1) Should this Article clearly express the idea that protective measures may be taken before the exequatur decision has been served (Commission, Austria) and right up until the ruling on any appeal? (Commission)

B. Reports

- Jenard, page 54
- Schlosser, page 135 (paragraph 223 and 224)
- Möller, page 80

C. Case law

Protective measures

1. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Protective measures against the property of the person against whom enforcement is sought – Application of such measures – Relevant legislation

Article 39 of the Convention of 27 September 1968 merely lays down the principle that the party who has applied for enforcement may, during the period indicated in that article, proceed to apply measures to protect the property of the party against whom enforcement is sought. By contrast, the Convention leaves the matter of resolving any question not covered by specific provisions of the Treaty to the procedural law of the court hearing the proceedings. It must nevertheless be made clear that the application of the requirements of the national procedural law of the court hearing the proceedings must not in any circumstances lead to frustration of the principles laid down in that regard, whether expressly or by implication, by the Convention itself and by Article 39 thereof in particular. Accordingly, the question whether any given provision of the national procedural law of the court hearing the proceedings is applicable to protective measures taken pursuant to Article 39 depends upon the scope of each provision of national law and upon the extent to which it is compatible with the principles laid down by Article 39.

**Judgment of the Court (Fourth Chamber) of 3 October 1985 – ECR p. 3147
Case 119/84, Capelloni and Aquilini v. Pelkmans (see paras 20-21 of the grounds of the judgment)**

2. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Protective measures against the property of the person against whom enforcement is sought – Specific authorization not required – Period within which the protective measures may be applied – Confirmatory judgment required by national law – Not obligatory

By virtue of Article 39 of the Convention a party who has applied for and obtained authorization for enforcement may proceed directly with protective measure against the property of the party against whom enforcement is sought and is under no obligation to obtain specific authorization. Such measures may be taken up to the expiry of the period for lodging an appeal prescribed in Article 36 and, if such an appeal is lodged, until a decision is given thereon.

A party who has proceeded with the protective measures referred to in Article 39 of the Convention is under no obligation to obtain in respect of such measures any confirmatory judgment required by the national law of the court in question. However, Article 39 does not prevent the party against whom those measures have been applied from taking legal proceedings in order to secure, by recourse to the appropriate procedures laid down in the national law of the court dealing with the matter, adequate protection of the rights which he alleges to have been infringed by the measures in question.

**Judgment of the Court (Fourth Chamber) of 3 October 1985 – ECR p. 3147
Case 119/84, Capelloni and Aquilini v. Pelkmans (see paras 26, 30 and 36-37 of the grounds of the judgment)**

ARTICLE 40

A. Issues

- (1) Should the judge determining the appeal under Article 40 be able to make enforcement conditional on provision of security (see Article 38(3)) and order that protective measures be taken (see Article 39(2))? (Commission)
- (2) Should Article 40 define the time-limit for lodging an appeal? (Portugal)

B. Reports

- Jenard, page 53
- Möller, page 80

C. Case law

Appeal against dismissal of an applicaiton for enforcement

1. Convention on Jurisdiction and the Enforcement of Judgments – Enforcement – Appeal against dismissal of an application for enforcement – Obligation to hear the party against whom enforcement is sought – Scope

The Court hearing an appeal by the party seeking enforcement is required to hear the party against whom enforcement is sought, pursuant to the first sentence of the second paragraph of Article 40 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, even though (a) the application for an enforcement order was dismissed simply because documents were not produced at the appropriate time and (b) the enforcement order is applied for in a State which is not the State of residence of the party against whom enforcement is sought.

**Judgment of the Court (Second Chamber) of 12 July 1984 – ECR p. 3033
Case 178/83, Firma P. v. Firma K. (see para. 12 of the grounds and the operative part of the judgment)**

ARTICLE 42

A. Issues

(1) Should the second paragraph of Article 42 be deleted? (Commission)

B. Reports

- Jenard, page 53
- Möller, page 80

C. Case law

Partial enforcement

1. Convention on Jurisdiction and the Enforcement of Judgments – Scope – Civil and commercial matters – Matters relating to maintenance – Decisions rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property – Included – Conditions

If the reasoning of a decision rendered in divorce proceedings shows that the provision which it awards is designed to enable one spouse to provide for himself or herself or if the needs and resources of each of the spouses are taken into consideration in the determination of its amount, the decision will be concerned with maintenance and will therefore fall within the scope of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the Convention of 25 October 1982 on the Accession of the Hellenic Republic. On the other hand, where the provision awarded is solely concerned with dividing property between the spouses, the decision will be concerned with rights in property arising out of a matrimonial relationship and will not therefore be enforceable under the Brussels Convention. A decision which does both these things may, in accordance with Article 42 of the Brussels Convention, be enforced in part if it clearly shows the aims to which the different parts of the judicial provision correspond.

It follows that a decision rendered in divorce proceedings ordering payment of a lump sum and transfer of ownership in certain property by one party to his or her former spouse must be regarded as relating to maintenance and therefore as falling within the scope of the Convention if its purpose is to ensure the former spouse's maintenance. The fact that in its decision the court of origin disregarded a marriage contract is of no account in this regard.

Judgment of the Court (Fifth Chamber) of 27 February 1997 – ECR p. I-1147 Case C-220/95, Van den Boogaard v. Laumen (see paras 22 and 27 of the grounds and the operative part of the judgment)

ARTICLE 43

A. Issues

- (1) Should Article 43 make clear that judgments coming within the scope of the Conventions are also enforceable where they require some action to be taken or refrained from, and the penalty payment accrues to the State and not the creditor? (Germany)

B. Reports

- Jenard, pages 53 and 54
- Möller, page 80

ARTICLE 44

A. Issues

- (1) Should paragraph 2 be deleted having regard to Article 15 of the 1973 Hague Convention (Maintenance Obligations) as well as the preparatory work for that Convention? (Finland)
- (2) Should Norway be mentioned in Article 44(2), for the purposes of legal aid or exemption from costs or expenses? (Norway)

B. Reports

- Jenard, page 54
- Schlosser, page 135 (Paragraphs 223 and 224)
- Möller, page 80

ARTICLE 45

A. Issues

- (1) Should the prohibition on requiring "cautio judicatum solvi" be extended to the original proceedings for persons who have their habitual residence in a Member State? (Commission)

B. Reports

- Jenard, page 54
- Möller, page 80

ARTICLE 46

A. Issues

- (1) Should a uniform application form be drawn up which should be used (or at least could be used) for making applications in all contracting States? (Austria, Germany, Portugal)
- (2) Should the requirement of proof of service be dispensed with? (Austria, Germany)
- (3) Should the creditor be expected to produce proof if the party against whom enforcement is sought raises the fact that the document has been served late or not at all in the appeal? (Austria)

B. Reports

- Jenard, pages 54 and 55
- Schlosser, page 136 (paragraph 225)

ARTICLES 47 and 48

A. Issues

- (1) Should the court also be able to waive the need for evidence of service of the judgment in Articles 47 and 48?(Germany)

B. Reports

- Jenard, pages 55 and 56

C. Case law

Documents to be produced

1. Convention on Jurisdiction and the Enforcement of Judgments – Recognition and enforcement – Procedure – Application for an enforcement order – Documents to be produced – Service of the judgment for which an enforcement order is sought – Production after the application has been lodged – Whether permissible – Conditions

Article 47(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, is to be interpreted as meaning that, where the domestic procedural rules of the State in which application is made so permit, proof of service of the judgment delivered in the State of origin may be produced after the application has been made, in particular during the course of appeal proceedings subsequently brought by the party against whom enforcement is sought, provided that that party is given a reasonable period of time in which to satisfy the judgment voluntarily and that the party seeking enforcement bears all costs unnecessarily incurred.

Judgment of the Court (Fifth Chamber) of 14 March 1996 – ECR p. I-1393 Case C-275/94, Van den Linden v. Berufsgenossenschaft der Feinmechanik und Elektrotechnik (see para. 19 of the grounds and the operative part of the judgment)

ARTICLE 50

A. Issues

- (1) Should the concept of authentic instruments be narrowed and only apply in both Conventions to debts certificates for a specified or specifiable amount and to debts certificates an authority (normally a public official) with a view to adopting a very simplified enforcement procedure? (Portugal)(see extended comments on this issue on pages 40 and 41 of document 13301/97 JUSTCIV 91)

B. Reports

- Jenard, page 56
- Schlosser, page 136 (paragraph 226)
- Möller, page 80

ARTICLE 54a

A. Issues

- (1) Has the International Convention relating to the Arrest of sea-going ships entered into force in the territories of Denmark and Ireland? If so, should Article 54a of the Brussels Convention be revised? (Commission)

B. Reports

- Möller, page 81
- Möller, Almeida Cruz, Desantes Real and Jenard, page 49

ARTICLE 54b

A. Issues

- (1) Should Article 54b of the Lugano Convention be amended in the sense that the concepts of "Member State of the European Communities" and "State which is not a member of the European Communities" should be replaced by that of "Contracting State to the Brussels Convention" and "State which is not a Contracting State of the Brussels Convention"? (Commission)

B. Reports

- Möller, page 81

ARTICLE 57

A. Issues

- (1) Should the text of Article 57 be revised since this provision is in certain regards a source of confusion? (Netherlands)
- (2) In particular, should be revised the rule provided for in Article 57 that gives priority to an enforcement Convention rather than to the Brussels Convention be revised? (Netherlands)
- (3) Should article 57(4) of the Lugano Convention be revised? (Switzerland)

B. Reports

- Jenard, pages 59 to 61
- Schlösser, pages 139 to 142 (paragraphes 238 to 247)
- Möller, pages 81 to 83

C. Case law

Conventions on a specific matter

1. Convention on jurisdiction and the enforcement of judgments – Relationship to other conventions – Conventions on a specific matter – Convention including rules of jurisdiction – Exclusion of application of the Brussels Convention – Limits – Applicability of that convention to questions not governed by the specialized convention

On a proper construction, Article 57 of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, means that, where a Contracting State is also a contracting party to another convention on a specific matter containing rules on jurisdiction, that specialized convention precludes the application of the provisions of the Brussels Convention only in cases governed by the specialized convention and not in those to which it does not apply. Where a specialized convention contains certain rules of jurisdiction but no provision as to *lis pendens* or related actions, Articles 21 and 22 of the Brussels Convention accordingly apply.

Judgment of the Court of 6 December 1994 – ECR p. I-5439
Case C-406/92, Tetry v. Maciej Rataj (see paras 25 and 28 of the grounds and para. 1 of the operative part of the judgment)

ARTICLE 58

A. Issues

- (1) Should Article 58 of the Lugano Convention be deleted? (Commission)

Scope of application of jurisdiction

A. Issues

- (1) Should the scope of application of jurisdiction (see Article 2) be laid down in a single general provision? (Netherlands)(see extended comments on this issue on page 43 of document 13301/97 JUSTCIV 91)
- (2) Should the Brussels Convention apply either to the defendant that has his domicile in a Contracting State or be one who has his domicile in a third State? (Netherlands)

B. Reports

- Jenard, pages 18 and 19
- Schlosser, pages 94 to 100 (paragraphes 69 to 86)
- Möller, pages 70 to 71

Final provisions

A. Issues

- (1) Should the Brussels Convention benefit from the final provisions provided on most recent Conventions adopted by the Council? (Commission)

B. Reports

- Jenard, page 62
- Schlosser, page 143 (paragraph 252)

Attachment and transfer of the claims of the party against whom enforcement is sought

A. Issues

- (1) Should the Conventions stipulate that attachment and transfer judgments given in the State where the principal party against whom enforcement is sought is domiciled (or in the State where the party has his habitual residence) should be recognised in all contracting States? (Austria)

Acts of the European Communities

A. Issues

- (1) Should the Lugano Convention be revised where a provision contained in a act of the European communities is incompatible with that Convention as, for example, questions relating to intellectual property and to posted workers? (Switzerland)

B. Reports

- Schlösser, page 142 (paragraph 247)
- Möller, page 83 and 93 to 96

Article IV of the Protocol of the Brussels Convention

A. Issues

- (1) Should this Article be revised taking account of the adoption of the Convention on service of documents? (Commission)

B. Reports

- Jenard, page 63
- Möller, page 88

Updating of Protocol n°1 of the Lugano Convention

A. Issues

- (1) Should Protocol n°1 of the Lugano Convention be aligned with the Protocol of the Brussels Convention, as modified by the accession Convention to the Brussels Convention by Austria, Finland and Sweden? (Sweden)(see extended comments on this issue on pages 46 of document 13301/97 JUSTCIV 91)

B. Reports

- Möller, pages 86 to 89
-
-