OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 30 January 1996 *

Introduction

1. This case involves the interpretation of the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 (hereinafter 'the Convention'). [1] Where a judgment has not been served on its addressee, and an applicant none the less wins an *ex parte* order for its enforcement in another Contracting State, can the applicant be permitted to effect and to prove service during appeal proceedings instigated by the addressee on that basis?

Factual and legal context

2. An insurance provider, the Berufsgenossenschaft der Feinmechanik und Elektrotechnik, the respondent in the main proceedings (hereinafter 'the respondent'), paid the medical expenses of a person injured in 1973 in a road accident in Germany by a car owned by Roger Van Der Linden, the appellant in the main proceedings (hereinafter 'the appellant'), who lives in Belgium. It obtained a judgment in a German court in 1976 to recoup these costs from the appellant, and later that year a further judgment requiring him to pay its legal costs. Both these judgments were obtained by default.

3. The respondent applied *ex parte* to the Rechtbank van Eerste Aanleg, the court specified in Article 32 of the Convention, at Bruges, for enforcement of the first German judgment in July 1980 and was permitted in October 1980 to amend its application in a number of respects, including its extension to the second German judgment on costs. The respondent was granted an enforcement order in respect of both judgments in February 1982. The appellant appealed against this decision in May 1982, pursuant to Article 37 of the Convention, to the Rechtbank van Eerste Aanleg at Bruges, [2] relying on the fact that no proof was supplied with the application for enforcement that he had been served with the German judgments. It appears that the court, on examining the appeal, specified a time-limit for the production of proof of service of the judgment. The

* Original language: English.

1 — Published 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 in OJ 1978 L 304, p. 77.

2 — An 'appeal' against an *ex parte* enforcement order is brought in an *inter partes* procedure, to the same court in some Contracting States, to a higher court in others, pursuant to Article 37 of the Convention. See further below.

appeal was rejected in June 1993, on the ground that the respondent had served the German judgments on the appellant in accordance with Belgian law in January 1987, and that the incompleteness of the original application could no longer prevent the confirmation of the enforcement order. The appellant appealed against this decision in February 1994 to the Hof van Cassatie, pursuant to Article 37, second indent, of the Convention. He submitted that the enforcement order could not, at the stage of an appeal pursuant to Article 37 of the Convention, be cured of defects arising from the respondent's failure to produce essential proofs with its original application. An extraordinary length of time has passed since this case was commenced, but this has not given rise to any direct question from the national court.

4. Title III, Section 2 of the Convention governs enforcement in one Contracting State of judgments given in another. Article 32 of the Convention sets out the courts in each of the Contracting States to which an application for enforcement must be made. Article 34 provides that an initial decision be taken on enforcement, at which stage the party against whom enforcement is sought shall not be entitled to make any submissions on the application. Article 37 sets out the avenues of appeal in the various Contracting States against a decision authorizing enforcement. As has been indicated, the appeal to set aside the *ex parte* order is not taken to a higher court in all Contracting States.

5. Article 33 of the Convention states, in its first and third paragraphs:

'The procedure for making the application [for enforcement] shall be governed by the law of the State in which enforcement is sought

... .

The documents referred to in Articles 46 and 47 shall be attached to the application.'

6. Articles 46 and 47 of the Convention list certain documents which must be produced by a party applying for enforcement of a judgment. Article 46 states:

'A party seeking recognition or applying for enforcement of a judgment shall produce:

1. a copy of the judgment which satisfies the conditions necessary to establish its authenticity;

2. in the case of a judgment given in default, the original or a certified true copy of the document which establishes that the party in default was served with the document instituting the proceedings or with an equivalent document.'

Article 47 of the Convention states:

'A party applying for enforcement shall also produce:

1. documents which establish that, according to the law of the State in which it has been given, the judgment is enforceable and has been served;

2. where appropriate, a document showing that the applicant is in receipt of legal aid in the State in which judgment was given.'

7. The first paragraph of Article 48 of the Convention provides for a degree of discretion in the application of certain aspects of these requirements. It states:

'If the documents specified in Articles 46(2) and 47(2) are not produced, the court may specify a time for their production, accept equivalent documents or, if it considers that it has sufficient information before it, dispense with their production.'

The present case does not come within that dispensing power. It concerns a failure to produce the proof of service of the judgment required by Article 47(1) of the Convention.

8. The Hof van Cassatie is of the view that a ruling on the interpretation of the Convention is necessary for it to give judgment in the appeal before it, and has referred the following questions to the Court, pursuant to Articles 1 to 3 of the Protocol of 3 June 1971 on the interpretation of the Convention (hereinafter 'the Protocol'): [3]

'1. Must Article 47(1) of the Convention of 27 September 1968 between the

3 — The English version of the Protocol can be found in OJ 1978 L 304, p. 50.

Member States of the European Economic Community on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, be interpreted as meaning that the court before which enforcement is sought may order the enforcement of a judgment given in another State only if, either together with the application or before a decision is given on the application, the document referred to in Article 47(1) and in particular proof of service are also produced?

2. If the answer to Question 1 is in the negative [4] must that article be interpreted as meaning that, notwithstanding provisions of national law, the requirement to produce the document is not satisfied where the decision is served only after the application was made and the document evidencing service was drawn up and produced only after a decision was given by the court before which enforcement is sought on the application and the party against whom enforcement is sought has lodged an appeal?'

4 — As will be seen below, it is difficult to give a simple positive or negative answer to the first question, as much of the debate in the written observations related to whether one or other of the conditions specified in that question applied, viz. whether proof of service must be produced together with an application for enforcement, or can be introduced at any point before a decision is given on the application.

Written observations

9. Written observations were submitted by the parties to the proceedings in the Hof van Cassatie, by the German and Austrian Governments and by the Commission. Pursuant to Article 5 of the Protocol, and to Article 44a of its Rules of Procedure, the Court decided, with the consent of the parties, to dispense with an oral hearing.

10. The appellant argues for an affirmative response to the first question (requiring that proof of service should be produced with an application for enforcement), and an affirmative response to the second. Because the judgment must be enforceable in the State of origin before it can be given effect in any other State, and the appellant submits that the proof of enforceability must appear in the same document as the proof of service, he argues that this document cannot be introduced for the first time on appeal. While the Convention is designed to minimize formalities, the power to dispense with certain documentary proofs found in Article 48 is implicitly excluded in respect of documents not mentioned. The appellant relies upon the Jenard Report on the Convention [5] to suggest that a national court may refuse to entertain an application which is not accompanied by the document in question. The Report gives as the reason for the requirement of service the interest in

5 — OJ 1979 C 59, p. 1, at p. 50.

promoting voluntary compliance. [6] The appellant alleges that he was denied this opportunity by the tardy service of the judgment, after he had appealed against the enforcement order against him, but does not indicate that he was in any way prejudiced as a result.

11. The respondent relies on the objective of the Convention to reduce formalism and to facilitate 'free movement' of judgments, [7] and argues that an application for enforcement is not inadmissible merely because of the omission of accompanying documents. It cites the Jenard Report's statement that 'enforcement should not be refused, but the court may stay the proceedings and allow the applicant time to produce the documents'. [8] Article 48 of the Convention provides only a further degree of flexibility, by allowing the national court to accept equivalent documents to those specified in Articles 46(2) and 47(2), or to dispense with them altogether. Service of a judgment should allow the addressee time voluntarily to comply, so that enforcement proceedings will not be necessary. There has been plenty of time for this, even though service was effected only during the appeal proceedings. The appellant's argument amounts simply to obstruction.

12. The German Government argues that a positive response should be given to the first question (requiring proof of service to be introduced at the latest by the moment of decision at first instance), and a negative response to the second. Although an enforcement order should not be granted at the *ex parte* stage without securing proof of service of the judgment at issue, the objectives of the Convention permit correction even after this stage, if national law so provides. The Convention should not be so construed as to make enforcement more difficult; Article 48 should not be read as excluding flexibility on points other than those it governs. If the documents specified in Article 47(1) of the Convention cannot be produced even after the applicant is invited to do so, the application should then be rejected. At the appeal stage, the applicant should not be prejudiced by the failure of the court at the *ex parte* stage to invite such production. Rejection of the possibility of production at the appeal stage would be excessively formalist, as the applicant could simply introduce a new application.

13. The Austrian Government also argues for an affirmative response to the first question (requiring production of proof of service with the original application), but says that the second question does not require a response. It submits that a literal interpretation of Article 47(1) of the Convention requires that proof of service accompany the application when it is deposited. Nothing suggests that this requirement should be distinguished from that of proof of enforceability, which must be produced at the outset.

6 — Jenard Report, p. 55.
7 — Jenard Report, p. 42.
8 — Jenard Report, p. 50.

14. The Commission argues for an affirmative response to the first question (requiring proof of service at the latest by the moment of decision at first instance), but says that there should be a negative response to the second. It invokes the twin objectives of the Convention, as identified by the Court: a flexible and rapid enforcement procedure facilitating free movement of judgments, and the importance of the rights of the defence. The interests of the defence are substantially protected during the initial period, before judgment is reached, in order that the obstacles to the later enforcement phase can be reduced. Furthermore, the Convention does not establish a complete enforcement system; its minimum requirements are supplemented, for example, by national procedural rules. Article 48 of the Convention should not be deemed, merely by implication, to restrict the application of permissive national rules to evidentiary requirements outside the scope of that article, so long as the objectives of the Convention are respected. In the instant case, both flexibility and the interests of the defence are secured if the addressee of a judgment has an opportunity voluntarily to comply with it. Where the judge at the *ex parte* stage gives a period for production of documents omitted from the original application for enforcement, these objectives are fully secured so long as a reasonable period is also specified for voluntary compliance after service. As a new application for enforcement can be introduced in the event of rejection, it is better to allow the application to be amended than to cause the entire procedure to be restarted.

Analysis

15. I am in broad agreement with the arguments and suggested answers put forward by the respondent, the German Government and the Commission in respect of the Hof van Cassatie's two questions. In my opinion, proof of service should be introduced at the latest by the end of the *ex parte* enforcement proceedings. None the less, national rules may, in certain circumstances, permit rectification of an omission in this regard after that point. I will address initially the position as regards the *ex parte* stage of the enforcement procedure, which is the subject-matter of the Hof van Cassatie's first question. I will then discuss the appropriate response to its second question, on the possibility of adding to the application at the appeal or *inter partes* stage.

(i) *The* ex parte *stage*

16. It is clear, I think, that proof of service of the judgment in question should ordinarily accompany the application for its enforcement. As well as being consistent with the wording of the third indent of Article 33 of the Convention, this is obviously in the interest of the party seeking enforcement, as it will minimize delay in securing the order sought. It will also ensure that the addressee of the judgment will have had an opportunity to satisfy the judgment voluntarily; if he does not do so, he must anticipate an application for enforcement. However, a failure, for whatever reason, to comply at this stage with the requirement of service, need not be fatal for the application.

17. Article 33 of the Convention requires that the documents referred to in Articles 46 and 47 be attached to the application. This is a practical direction and will assist the court in its task of checking the proofs required for an order for enforcement. However, the first paragraph of Article 33 of the Convention states that the application procedure is governed by the law of the State in which enforcement is sought. If the law of that State permits attachment of documents to the application during the proceedings, in circumstances which do not undermine other requirements of the Convention, this cannot be said to be excluded by the text of Article 33. Indeed, I would go further and state that the obligation in Article 33 to attach documents to the originating application is, to call in aid a common-law concept, merely directory and not mandatory, and does not affect the validity of the application.

18. The real issue is whether and when the proof in question must be produced. The latest point during the *ex parte* procedure at which the various documents specified in Articles 46 and 47 of the Convention must be produced may vary with the content and function of those documents. This point is governed in part, of course, by Article 48, which gives the court three options in the event of failure to produce any of the documents referred to in Articles 46(2) and 47(2) of the Convention: it can set a deadline for their production, it can accept equivalent documents, or, where it feels it has sufficient information, it can dispense with them entirely. However, this provision does not, in my view, define exhaustively the procedural discretion of the national court, in particular in respect of documents not governed by it, such as that proving service of the judgment. It is evident that the Convention does not establish a complete system of enforcement. This is clear from the provision for what might nowadays be called procedural subsidiarity in Article 33. Article 48 should be seen as qualifying that principle of subsidiarity, by setting a minimum degree of flexibility, at the discretion of the court, which must be permitted by the applicable national procedural rules. As a special provision, Article 48 cannot be read as limiting in any other way the general principle that national procedural rules, whether flexible or rigid, which respect the essential requirements of the Convention, apply to the enforcement process.

19. I am not convinced by the arguments either that proof of enforceability and of service should appear in the same document, or that the requirements as to the point of production of the one should determine those of the other. With regard to the first point, the text of the Convention indicates the possibility of multiple documents in all but one language version. [9] Even if the text were in the singular, requiring both proofs to be contained in a single document would be excessively formalist, and without function under

9 — The Danish version of Article 47(1) of the Convention uses the singular, *et dokument*. The English, Irish and German versions use the plural: *documents*, *doicaméid* and *die Urkunden*. The other language versions use terms which can embrace one or a number of documents: French, *tout document*; Dutch, *enig document*; Italian, *qualsiasi documento*; Spanish, *cualquier documento*; Portuguese, *qualquer documento*; Greek, .

the scheme of the Convention. In respect of the second point, the function of a document in the enforcement proceedings determines the latest point at which it must be produced. While I do not need to express an opinion on the possibility of rectifying an omission of the proof that a judgment is enforceable at the time of application, or of continuing with enforcement proceedings, after any appropriate period of delay for service and compliance, in respect of a judgment which became enforceable only after their commencement, [10] I think it is clear that proof of enforceability is a condition precedent to enforcement which is different in nature and function to proof of service. Enforceability in the Contracting State of origin is, as can be seen from Article 31 of the Convention, a *sine qua non* of any judgment whose enforcement, as distinct from recognition, [11] is sought. Proof of prior service of the judgment has the more limited function of ensuring that the judgment debtor has had an opportunity of voluntary compliance. [12]

20. Different statements from a passage in the Jenard Report were relied upon to different effect in the written observations. It is worthwhile quoting the passage in full:

'In the view of the Committee, if the applicant does not produce the required documents, enforcement should not be refused, but the court may stay the proceedings and allow the applicant time to produce the documents. If the documents produced are not sufficient and the court cannot obtain sufficient information, it may refuse to entertain the application.' [13]

21. This passage from the Report indicates that the Convention is, at the very least, permissive of flexibility on aspects of the application other than those which benefit from Article 48. [14] As I have already stated, the court does not prejudice the various interests served by the Convention merely by permitting an applicant to rectify his application during the *ex parte* proceedings. However, the court should respect the interest of the addressee of the judgment (and the general interest) in avoiding enforcement proceedings through voluntary compliance. The Jenard Report indicates that this interest

10 — These two alternatives serve to highlight the distinction between the belated existence of a fact, and the belated production of proof of a pre-existing fact.

11 — See Article 26 of the Convention.

12 — Jenard Report, p. 55. It has been suggested, by S. O'Malley and A. Layton, *European Civil Practice*, (London, 1989), p. 803, that service should not be treated as a distinct and mandatory substantive requirement of the Convention in cases where service is not necessary for the enforceability of the judgment in question in the originating jurisdiction; otherwise, they argue, the Convention would raise an obstacle to enforcement in other Contracting States which does not obtain in the jurisdiction of origin. There is nothing in the material before the Court to indicate that the judgments at issue in this case were enforceable in Germany without service. None the less, I would like to mark my disagreement with this view. The Convention establishes common criteria for the enforcement of judgments, which are designed, *inter alia*, to protect the rights of the defence. The interest of the defence in an opportunity for voluntary satisfaction, highlighted in the Jenard Report, constitutes a justification for a mandatory requirement of service, even of judgments service of which would not be necessary for domestic enforcement.

13 — Jenard Report, p. 50.

14 — In the context of the present reference, it is unnecessary to inquire whether the Convention actually *requires* flexibility in relation to the late production of documents, even where national rules are relatively strict. The judgment in Case 178/83 *Firma P* v *Firma K* [1984] ECR 3033 suggests that it does not.

underlies the requirement of proof of service in Article 47(1) of the Convention. [15]

22. The above-quoted passage from the Jenard Report also indicates that there are limits to the flexibility of the court in accommodating the applicant. If, after a period of grace has been given to effect service, the relevant proof cannot be attached to the application, the application should not be entertained. As the addressee of the judgment is not represented, it is for the court to ensure that he is not subjected to an enforcement order in respect of a judgment which he might happily have satisfied without further compulsion. The applicant should bear the consequences, financial or otherwise, of refusal.

23. The position I have taken thus far is reinforced by consideration of the general objectives of the Convention, and by the case-law of the Court on analogous questions. The Court has stated that 'the object of the Convention is to facilitate free movement of judgments by establishing a simple and rapid procedure in the Contracting State in which application is made for enforcement'. [16] This objective is particularly served through the suppression of excessive formalism. [17] The Court has also highlighted the protection of the rights of the defence, while emphasizing that, within the scheme of the Convention, this protection is at its greatest during the court proceedings leading to the original judgment. [18] Where there exists a judgment, against which no substantive or procedural objection can be raised, it is clearly in keeping with the objective of simple and rapid enforcement that the court hearing the application for enforcement should permit errors or omissions in the application to be remedied. No prejudice is done thereby to the rights of the defence. The national court can ensure, in accordance with national law, that the applicant is responsible for any unnecessary costs, and that (in a case such as the present, involving an apparent failure to serve the judgment in question) the addressee of the judgment is given an appropriate period of time to comply voluntarily with the judgment once he is notified of it.

24. In *Carron* v *Germany*, [19] the Court gave a preliminary ruling on two points which are relevant in the present context. [20] The applicant in that case had failed to comply with the requirement in the second paragraph of Article 33 of the Convention, that an applicant for an enforcement order must give an address for service of process within the area of jurisdiction of the court applied to. The Court stated that it is clear from Article 33 'that the law of the State in which enforcement is sought governs the entire procedure for making the application'. [21]

15 — Jenard Report, p. 55.

16 — Case C-183/90 *Van Dalfsen and Others* [1991] ECR I-4743, paragraph 21 of the judgment.

17 — Article 220 of the Treaty establishing the European Community speaks of 'the simplification of formalities governing the reciprocal recognition and enforcement of judgments'; this undertaking is referred to in the preamble to the Convention.

18 — Case 166/80 *Klomps* v *Michel* [1981] ECR 1593, paragraph 7 of the judgment; see further Case 125/79 *Denilauler* [1980] ECR 1553, and Case C-123/91 *Minalmet* [1992] ECR I-5661.

19 — Case 198/85 [1986] ECR 2437.

20 — The second point in *Carron* will be discussed in the section below dealing with the *inter partes* procedure.

21 — Paragraph 10 of the judgment.

25. The Court went on to hold in *Carron* that 'the obligation to give an address for service of process laid down in [Article 33 of the Convention] must be fulfilled in conformity with the rules laid down by the law of the State in which enforcement is sought, and if that law is silent as to the time at which that formality must be observed, no later than the date on which the decision authorizing enforcement is served'. As I have already observed, the point in the *ex parte* proceedings at which procedural requirements must be fulfilled varies with the function of the requirement in question. An address for service of appeal proceedings is clearly not needed until the addressee of an enforcement order is made aware of it; the Convention requires proof of service of a judgment, and of the opportunity of voluntary compliance, before such an order is made. Subject to that different requirement, the point in *Carron* applies equally to the present case, that national procedural rules apply to all aspects of the enforcement application.

26. To conclude this section, I would answer the first question referred by the Hof van Cassatie as follows:

Article 47(1) of the Convention must be interpreted as meaning that the court before which enforcement is sought may order the enforcement of a judgment given in another Contracting State only if proof of service of the judgment is also produced. Where national procedural rules permit, such proof may be accepted at any point before a decision is given on the application, provided that the addressee has had an adequate opportunity after service voluntarily to comply with the judgment, and that the applicant bears responsibility for any unnecessary proceedings.

(ii) *The* inter partes *stage*

27. The second question referred to the Court by the Hof van Cassatie relates more specifically to the facts of the instant case, where the procedural requirements I set out in answer to the first question were not fully observed in the context of the *ex parte* application. Can such a defect be cured? It can, in my view, provided, as before, that national procedural rules permit this, and the terms and objectives of the Convention are complied with. The general interest in the free movement of judgments which are, in themselves, in conformity with the requirements of the Convention, must counter any tendency to read the Convention as requiring an over-formalist distinction between the *ex parte* and *inter partes* stages in this regard. As long as the position of the addressee of the judgment is not prejudiced by a late attempt to rectify the application during the appeal proceedings, [22] no provision of the

22 — Thus, while an enforcement order ordinarily brings with it the possibility of protective measures under Article 39, I reserve my position on whether these would be available in a case where an enforcement order had been secured without the addressee having first been served with the judgment in question.

Convention prevents the operation of national rules permitting such rectification.

28. Two decisions of the Court are helpful in answering this point. In *Carron*, the Court held that 'the consequences of a failure to comply with the rules on the furnishing of an address for service are, by virtue of Article 33 of the Convention, governed by the law of the State in which enforcement is sought, provided that the aims of the Convention are respected'.

29. In *Lancray*, [23] the Court considered the requirement in Article 27(2) of the Convention that a judgment not be recognized, where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings in sufficient time to enable him to arrange for his defence. The Court held that Article 27(2) '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'. Therefore, the possibility of rectifying an omission (in that case, to serve a translation of the document instituting the proceedings) is acknowledged even in respect of the first, pre-judgment stage, during which, as we have seen, the protection of the rights of the defence is given greater priority.

30. National procedural rules permitting the applicant to remedy his application during an appeal pursuant to Article 37 should also, by analogy, be consistent with the Convention, provided that the position of the defence is not thereby prejudiced. [24] I do not accept that permitting the rectification of the application at this stage would encourage negligence on the part of the applicant, or a lack of vigilance on the part of the court on behalf of the absent addressee of the judgment during the *ex parte* proceedings. As to the former argument, the applicant will almost certainly be burdened by greater costs by his negligence. With regard to the second, the possibility of rectification at the appeal stage of applications or pleadings, under the national procedural laws of a Contracting State, is evidence, if it were needed, that such a lack of vigilance is not to be feared. Interpretative questions may not be referred to the Court at the *ex parte* stage. [25] The first point at which this can be done is the appeal stage, which suggests that a court in a Contracting State, hearing an appeal pursuant to Article 37, may seek guidance as to the conduct of the proceedings before it. Of course, the same does not apply to an appeal such as that to the Hof van Cassatie in the present case, which is limited by Article 41 to points of law. [26]

23 — Case C-305/88 [1990] ECR I-2725.

24 — The application of the national procedural rules of the State where enforcement is sought avoids one of the chief criticisms of the decision in *Lancray*, that it required the court adjudicating on enforcement to apply the national procedural rules of another jurisdiction, viz. that in which the judgment originated; see G. Hogan, 'Procedure and Practice and the Judgments Convention' *Irish Journal of European Law 1992* Vol 1, p. 82, at p. 90.

25 — The court hearing the *ex parte* application is not included among the courts which, pursuant to Article 2 of the Protocol, may request preliminary rulings from the Court of Justice.

26 — Courts hearing appeals against enforcement pursuant to Article 41 of the Convention are, needless to say, entitled to refer questions, such as those under consideration, which relate to the regularity of procedure in the court below.

31. I would therefore answer the second question referred by the Hof van Cassatie as follows:

Article 47(1) of the Convention must be interpreted as meaning that the court before which an appeal is taken against an order for the enforcement of a judgment given in another Contracting State, on the grounds that the order was made without proof of service of the judgment, may confirm that order only if proof of service is produced, and national procedural rules permit such production at the appeal stage, and provided that the addressee has had an adequate opportunity after service voluntarily to comply with the judgment, that the applicant bears responsibility for any unnecessary proceedings, and that the addressee is not otherwise prejudiced by the rectification of the application at that stage.

Conclusion

32. I would therefore answer the questions referred by the Hof van Cassatie as follows:

(1) Article 47(1) of the Convention must be interpreted as meaning that the court before which enforcement is sought may order the enforcement of a judgment given in another Contracting State only if proof of service of the judgment is also produced. Where national procedural rules permit, such proof may be accepted at any point before a decision is given on the application, provided that the addressee has had an adequate opportunity after service voluntarily to comply with the judgment, and that the applicant bears responsibility for any unnecessary proceedings.

(2) Article 47(1) of the Convention must be interpreted as meaning that the court before which an appeal is taken against an order for the enforcement of a judgment given in another Contracting State, on the grounds that the order was made without proof of service of the judgment, may confirm that order only if proof of service is produced, and national procedural rules permit such production at the appeal stage, and provided that the addressee has had an adequate opportunity after service voluntarily to comply with the judgment, that the applicant bears responsibility for any unnecessary proceedings, and that the addressee is not otherwise prejudiced by the rectification of the application at that stage.