

JUDGMENT OF THE COURT (Fifth Chamber)
27 February 1997 *

In Case C-220/95,

REFERENCE to the Court under the Protocol of 3 June 1971, on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, by the Arrondissementsrechtbank te Amsterdam (District Court, Amsterdam) for a preliminary ruling in the proceedings pending before that court between

Antonius van den Boogaard

and

Paula Laumen

on the interpretation of the second paragraph of Article 1 of the aforementioned Convention of 27 September 1968, 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 (OJ 1978 L 304, p. 77) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1),

* Language of the case: Dutch.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, C. Gulmann, D. A. O. Edward, J.-P. Puissochet and P. Jann (Rapporteur), Judges,

Advocate General: F. G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Austrian Government, by F. Cede, Ambassador at the Federal Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities, by B. J. Drijber, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Van den Boogaard, represented by M. Wigleven, of the Amsterdam Bar; of Miss Laumen, represented by R. Th. R. F. Carli, of the Hague Bar; and of the Commission, represented by B. J. Drijber, at the hearing on 24 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 12 December 1996,

gives the following

Judgment

- 1 By judgment of 14 June 1995, received at the Court on 21 June 1995, the Arrondissementsrechtbank te Amsterdam referred to the Court for a preliminary ruling under the Protocol of 3 June 1971, on the interpretation by the Court of Justice 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 (OJ 1978 L 304, p. 77) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1, hereinafter 'the Brussels Convention') a question on the interpretation of the second paragraph of Article 1 of that Convention.

- 2 The question has been raised in proceedings between Antonius van den Boogaard and Paula Laumen concerning an application for enforcement, in the Netherlands, of a judgment given on 25 July 1990 by the High Court of Justice of England and Wales.

- 3 According to the order for reference, Mr Van den Boogaard and Miss Laumen were married in the Netherlands in 1957 under the regime of community of property. In 1980, they entered into a marriage contract, again in the Netherlands, which altered their matrimonial regime into one of separation of goods. In 1982, they moved to London. By judgment of 25 July 1990, the High Court dissolved the marriage and also dealt with an application made by Miss Laumen for full ancillary relief. Since the wife sought a 'clean break' between herself and her

husband, the English court awarded her a capital sum so that periodic payments of maintenance would be unnecessary. It also held that the Netherlands separation of goods agreement was of no relevance for the purposes of its decision in the case.

4 In its decision the High Court set the total amount which Miss Laumen should be awarded in order to provide for herself at £875 000. Part of that amount, £535 000, was covered by her own funds, by the sale of moveable property, by the transfer of a painting and, finally, by the transfer of immovable property. For the rest, the English court ordered Mr Van den Boogaard to pay Miss Laumen a lump sum of £340 000, to which was added £15 000 to meet the costs of earlier proceedings.

5 By application lodged on 14 April 1992 at the Arrondissementsrechtbank te Amsterdam, Miss Laumen sought enforcement of the English judgment, relying on the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations (hereinafter 'the Hague Convention').

6 On 21 May 1992 the President of the Arrondissementsrechtbank granted that application.

7 On 19 July 1993 Mr Van den Boogaard appealed against the grant of leave to enforce.

8 The Arrondissementsrechtbank te Amsterdam, which had jurisdiction to hear and determine that appeal, was uncertain whether the High Court's judgment of 25 July 1990 was to be classified as a 'judgment given in matters relating to maintenance', in which case leave to enforce would be properly granted, or whether it

was to be classified as a 'judgment given in a matter relating to rights in property arising out of a matrimonial relationship', in which case the Hague Convention could provide no basis for enforcement.

- 9 The Amsterdam court considered that the High Court's judgment had such consequences for the parties' relations as regards property rights that it could not be regarded as a 'decision in respect of maintenance obligations' within the meaning of Article 1 of the Hague Convention. It therefore considered that enforcement was not to be granted on the basis of that Convention. It then went on to consider whether the Brussels Convention could provide a basis for granting leave for enforcement.
- 10 Article 1 of the Brussels Convention provides:

'This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to:

1. the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and successions;

...'

11 Article 5 of the Convention provides:

‘A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. ...

2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;

...’

12 The first paragraph of Article 57 of the Brussels Convention provides:

‘This Convention shall not affect any conventions to which the Contracting States are or will be parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.’

13 Article 23 of the Hague Convention is worded as follows:

‘This Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining recognition or enforcement of a decision or settlement.’

14 Unsure about the interpretation to be given to the Brussels Convention, the Arrondissementsrechtbank te Amsterdam referred the following question to the Court for a preliminary ruling:

‘Must the decision of the English judge, which in any case relates in part to a maintenance obligation, be regarded as a decision which relates (in part) to rights in property arising out of a matrimonial relationship within the meaning of indent 1 of the second paragraph of Article 1 of the Brussels Convention even though:

- (a) the income requirement is capitalized;
- (b) an order was made to transfer the house and the De Heem painting which, according to the decision, belong to the husband;
- (c) in his decision, the English judge himself expressly stated that he did not regard the marriage settlement as binding;
- (d) it cannot be made out from that decision to what extent the factor mentioned in (c) influenced the English judge’s decision?’

- 15 By this question the national court is asking in substance whether 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 is excluded from the scope of the Brussels Convention by virtue of point 1 of the second paragraph of Article 1 thereof on the ground that it relates to rights in property arising out of a matrimonial relationship, or whether it may be covered by that Convention on the ground that it relates to maintenance. It also inquires whether the fact that the court of origin disregarded a marriage contract in arriving at his decision is relevant.
- 16 As a preliminary point, it must be observed that at the hearing it was asserted that Mr Van den Boogaard had lodged an appeal after the two-month period laid down in Article 36 of the Brussels Convention for appealing against decisions authorizing enforcement had expired. That fact does not affect in any way the Court's jurisdiction to give a preliminary ruling since, according to settled case-law, it is solely for national courts before which disputes are brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court (see the judgment in Case C-127/92 *Enderby* [1993] ECR I-5535, paragraph 10).
- 17 It must also be observed that, for the reasons explained by the Advocate General in paragraphs 24 to 29 of his Opinion, the Hague Convention, by virtue of Article 23 thereof, does not preclude application of the Brussels Convention, notwithstanding Article 57 of the latter Convention.
- 18 It is common ground that the Brussels Convention does not define 'rights in property arising out of a matrimonial relationship' or 'maintenance'. These two terms must be distinguished, however, since only maintenance is covered by the Brussels Convention.

- 19 As is stated in the Schlosser Report, in no legal system of a Member State ‘do maintenance claims between spouses derive from rules governing “matrimonial regimes”’ (Report on the Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and to the Protocol on its interpretation by the Court of Justice, OJ 1979 C 59, p. 71, paragraph 49).
- 20 As the Advocate General points out in paragraphs 54 to 62 of his Opinion, on divorce courts in England and Wales have a wide discretion to make financial provision. They may, in particular, order periodical payments or lump sum payments to be made and ownership in property belonging to one spouse to be transferred to the former spouse. Thus, they have the task of regulating, in a single decision, the matrimonial relationships and maintenance obligations arising from dissolution of a marriage.
- 21 Owing precisely to the fact that on divorce an English court may, by the same decision, regulate both the matrimonial relationships of the parties and matters of maintenance, the court from which leave to enforce is sought must distinguish between those aspects of the decision which relate to rights in property arising out of a matrimonial relationship and those which relate to maintenance, having regard in each particular case to the specific aim of the decision rendered.
- 22 It should be possible to deduce that aim from the reasoning of the decision in question. If this shows that a provision awarded 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. 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.

- 23 It makes no difference in this regard that payment of maintenance is provided for in the form of a lump sum. This form of payment may also be in the nature of maintenance where the capital sum set is designed to ensure a predetermined level of income.
- 24 In the present case, as the Advocate General points out in paragraph 59 of his Opinion, the court of origin was under an obligation to consider whether it had to impose a clean break between the spouses and to order payment of a lump sum instead of periodical payments. It is clear that the choice of method of payment made by the court of origin cannot alter the nature of the aim pursued by the decision.
- 25 Likewise, the fact that the decision of which enforcement is sought also orders ownership in certain property to be transferred between the former spouses cannot call in question the nature of that decision as an order for the provision of maintenance. The aim is still to make provision, by means of a capital sum, for the maintenance of one of the former spouses.
- 26 Finally, for the reasons explained by the Advocate General in paragraphs 69 to 72 of his Opinion, the English court's statement that it did not consider itself bound by the separation of goods agreement should be read in its context and in any event is not relevant for the purposes of defining the nature of the decision in question.

- 27 Consequently, the answer to be given must be 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 Brussels 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.

Costs

- 28 The costs incurred by the Austrian Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Arrondissementsrechtbank te Amsterdam by judgment of 14 June 1995, hereby rules:

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 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, 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.

Moitinho de Almeida

Gulmann

Edward

Puissochet

Jann

Delivered in open court in Luxembourg on 27 February 1997.

R. Grass

J. C. Moitinho de Almeida

Registrar

President of the Fifth Chamber