



## Reports of Cases

**Case C-467/16**

**Brigitte Schlömp**

**v**

**Landratsamt Schwäbisch Hall**

(Request for a preliminary ruling from the Amtsgericht Stuttgart)

(Reference for a preliminary ruling — Area of Freedom, Security and Justice — Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Lugano II Convention — *Lis pendens* — Concept of ‘court’ — Arbitration authority under Swiss law, responsible for the conciliation procedure prior to all substantive proceedings)

Summary — Judgment of the Court (Second Chamber), 20 December 2017

1. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Lugano II Convention — Relationship with Regulation No 44/2001 and the other instruments — Convention does not prejudice the application by the Member States of Regulation No 44/2001 and any amendments thereof — Meaning of ‘any amendments thereof Regulation No 44/2001’ — Regulations No 4/2009 and No 1215/2012 — Included*

(Convention of 30 October 2007, Art. 64(1); European Parliament and Council Regulation No 1215/2012; Council Regulations No 44/2001 and No 4/2009, Art. 68(1))

2. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Convention de Lugano II — Provisions of that convention classified as equivalent to those of Regulations No 44/2001 and No 1215/2012 — Uniform interpretation*

(Convention of 30 October 2007, Arts 27 and 30; Protocol No 2 on the uniform interpretation of the Convention and on the Standing Committee, final recital and Art. 1; European Parliament and Council Regulation No 1215/2012, Arts 29 and 32; Council Regulation No 44/2001, Arts 27 and 30)

3. *Judicial cooperation in civil matters — Jurisdiction and the enforcement of judgments in civil and commercial matters — Convention de Lugano II — Lis pendens — Date on which a ‘court’ is deemed to be seised. — Meaning — date on which the mandatory conciliation procedure before a conciliation authority under Swiss law — Included*

(Convention of 30 October 2007, Arts 27, 30 and 62)

1. According to Article 64(1) of the Lugano II Convention, the latter does not prejudice the application by the Member States of Regulation No 44/2001, as well as any amendments thereof. Regulation No 44/2001 was repealed by Regulation No 1215/2012, which, with the exception of some

of its provisions, is applicable from 10 January 2015. As is clear from Article 68(1) of Regulation No 4/2009, that regulation amends Regulation No 44/2001 by replacing the provisions of the latter applicable to matters relating to maintenance obligations.

In so far as Article 64(1) of the Lugano II Convention refers to any amendments, it must be understood as including Regulations No 4/2009 and No 1215/2012.

(see paras 39-42)

2. See the text of the decision.

(see paras 46-49, 51)

3. Articles 27 and 30 of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008 must be interpreted as meaning that, in the case of *lis pendens*, the date on which a mandatory arbitration procedure was lodged before an arbitration authority under Swiss law is the date on which a 'court' is deemed to be seised.

According to the wording of Article 62 of the Lugano II Convention, the term 'court' includes any authorities designated by a State bound by that convention as having jurisdiction in the matters falling within its scope. It is clear from the Civil Procedure Code that, under Swiss law, a case is brought by lodging an application for arbitration, an action or, joint application for divorce. The arbitration procedure is laid down by law, is subject to the principle of *audi alteram partem* and is, in principle, obligatory. Failure to observe that obligation leads to the inadmissibility of any subsequent legal proceedings. Article 9(2) of the Swiss Federal Code on Private International Law states that, in order to determine when a court in Switzerland is seised, the date of the first act necessary to institute the action is to be decisive and that the initiation of arbitration proceedings is to suffice. Moreover, as the Swiss Government points out in its oral submissions, first, the arbitration authorities are subject to the guarantees laid down by the Civil Procedure Code relating to the disqualification of magistrates and, second, perform their duties with complete independence. It is clear from those provisions that, in the performance of the duties conferred on them by the CCP, the arbitration authorities may be treated as 'courts' within the meaning of Article 62 of the Lugano II Convention.

(see paras 53-56, 58, operative part)