

JUDGMENT OF THE COURT (Sixth Chamber)

11 August 1995 *

In Case C-432/93,

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 Court of Appeal (Civil Division), London, for a preliminary ruling in the proceedings pending before that court between

Société d'Informatique Service Réalisation Organisation (SISRO)

and

Ampersand Software BV,

on the interpretation of Article 37(2) and the first paragraph of Article 38 of the said Convention of 27 September 1968 (OJ 1978 L 304, p. 36) 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. 1 and — as amended — p. 77),

* Language of the case: English.

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler (Rapporteur), President of the Chamber, G. F. Mancini, C. N. Kakouris, J. L. Murray and G. Hirsch, Judges,

Advocate General: P. Léger,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- Société d'Informatique Service Réalisation Organisation (SISRO), by J. Marks, Barrister, instructed by Gregory, Rowcliffe & Milners, Solicitors,

- Ampersand Software BV, by Paris & Co., Solicitors,

- the United Kingdom, first by J. D. Colahan and then by S. Braviner, of the Treasury Solicitor's Department, acting as Agents, assisted by A. Briggs, Barrister,

- the German Government, by J. Pirrung, Ministerialrat in the Federal Ministry of Justice, acting as Agent,

- the Commission of the European Communities, by N. Khan, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Société d'Informatique Service Réalisation Organisation, Ampersand Software BV, represented by S. Oliver-Jones, Barrister, the United Kingdom, represented by L. Nicoll, of the Treasury Solicitor's Depart-

ment, acting as Agent, and A. Briggs, and the Commission at the hearing on 6 April 1995,

after hearing the Opinion of the Advocate General at the sitting on 8 June 1995,

gives the following

Judgment

- 1 By order of 14 July 1993, received at the Court Registry on 3 November 1993, the Court of Appeal 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 (OJ 1978 L 304, p. 36), 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. 1 and — as amended — p. 77) (hereinafter ‘the Convention’), three questions on the interpretation of Article 37(2) and the first paragraph of Article 38 of the Convention.
- 2 Those questions arose in proceedings between Société d’Informatique Service Réalisation Organisation (‘SISRO’), governed by French law and established in France, and Ampersand Software BV (‘Ampersand’), a company incorporated under Netherlands law and established in the Netherlands.
- 3 It appears from the case-file that on 8 April 1987 SISRO obtained from the Tribunal de Grande Instance, Paris, a provisionally enforceable judgment against Ampersand for damages for infringement of its copyright in a computer program.

4 Ampersand appealed against that judgment to the Cour d'Appel, Paris, on the ground that the French courts did not have jurisdiction to hear the case and that the judgment of 8 April 1987 had been given on the basis of an expert's report which was fraudulent. The appeal is still pending, the Cour d'Appel having stayed the proceedings pending the outcome of the criminal proceedings for forgery brought following complaints lodged by several defendants in the first instance proceedings, other than Ampersand, against the expert appointed by the Tribunal de Grande Instance.

5 Ampersand twice applied to the Paris Cour d'Appel for a stay of enforcement of the judgment of 8 April 1987. The applications were dismissed, the first on procedural grounds and the second on the merits.

6 On 15 December 1987 SISRO obtained in England, where Ampersand has assets, an order for registration of the judgment in order to enforce it in England, in accordance with Article 31 of the Convention.

7 On 8 April 1988 Ampersand appealed to the High Court of Justice against that order, arguing that it was contrary to public policy for a foreign judgment obtained by fraud to be enforced in England. Although the period of two months laid down in the second paragraph of Article 36 of the Convention for lodging such an appeal had expired, the High Court declared it admissible under national procedural rules.

8 By order of 9 October 1989, the High Court, pursuant to the first paragraph of Article 38 of the Convention, stayed Ampersand's appeal against the English order for registration pending the determination of the appeal brought in France.

- 9 SISRO then appealed to the Court of Appeal against that order. In view of the second decision of the Paris Cour d'Appel refusing a stay of enforcement of the French judgment of 8 April 1987, the Court of Appeal authorized SISRO to request the High Court to lift the stay it had ordered on 9 October 1989.
- 10 On 23 January 1992 the High Court lifted the stay on the ground that the application for a stay of enforcement of the judgment of 8 April 1987 had been dismissed on the merits in France. It also dismissed Ampersand's appeal against the order for registration of that judgment in England, on the ground that Ampersand had remedies available in France to establish that it had been obtained by fraud and that its enforcement in England was therefore not contrary to public policy.
- 11 Ampersand thereupon appealed to the Court of Appeal against those two decisions.
- 12 The Court of Appeal held that the High Court's decision to dismiss the appeal against the order for registration of the French judgment in England could not be criticized, since no ground under Articles 27 and 28 of the Convention for refusing registration under Article 34 could be relied on.
- 13 In so far as concerned the lifting of the stay of proceedings, on the other hand, the Court of Appeal examined the question of its jurisdiction and considered whether, and to what extent, the court of the State in which enforcement is sought must, when assessing whether a stay of proceedings is appropriate, take into account the outcome in the State of origin of an application for a stay of enforcement of the judgment in question and the reasons for the decision thereon.

14 The Court of Appeal was unsure how the Convention should be interpreted in that respect and referred the following three questions to the Court for a preliminary ruling:

1. Is an appellant in the United Kingdom who has lodged an appeal under Article 36 of the 1968 Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters entitled to seek the relief provided by Article 38, if he is unable to advance successfully one of the reasons specified in Articles 27 and 28 for refusal of an application for registration for enforcement of a judgment given in another Contracting State, and, if so, what are the "proceedings" in respect of which a stay may be ordered?

2. Is the fact that there has been a refusal of a stay on the enforcement of a judgment in the State where the judgment was given
 - i) relevant to and/or

 - (ii) decisive ofthe way in which the power to stay registration proceedings provided for by Article 38 of the Convention should be exercised?

3. If one of the courts referred to in the first paragraph of Article 37 of the Convention
 - (a) refuses to grant a stay, or

 - (b) removes a stay imposed

under Article 36 of the Convention, does the court to which an appeal on a point of law is made under the second paragraph of Article 37 have the power to impose or reimpose such a stay?’

- 15 It must be observed to begin with that since the appeal against the registration order was lodged after the period of two months laid down in the second paragraph of Article 36 of the Convention had expired (see paragraph 7 above), the Court is answering the questions referred to it without prejudice to the issue whether the court with which the appeal was lodged could nevertheless declare it admissible pursuant to national procedural rules.
- 16 It should also be noted that Articles 36, 37 and 38 of the Convention, referred to in the national court’s questions, form part of Section 2 of Title III of the Convention, which deals with the enforcement of judgments which are enforceable in the Contracting State in which they have been given.
- 17 Under Article 31 of the Convention, such judgments are to be enforced in another Contracting State after having been declared enforceable there or, in the United Kingdom, registered for enforcement, on application by any interested party, by the court with jurisdiction specified in Article 32 of the Convention and in accordance with the rules in Article 33 et seq. of the Convention. In England and Wales, the application is made to the High Court, except in the case of a maintenance judgment.
- 18 Article 34 of the Convention provides that the party against whom enforcement is sought cannot submit observations at this stage. Moreover, the application for enforcement can be refused only for one of the reasons set out in Articles 27 and

28 of the Convention; under no circumstances may the foreign judgment be reviewed as to its substance.

- 19 If enforcement has been authorized, the party against whom enforcement is sought may, under Article 36 of the Convention, appeal against that decision within one month of service thereof. The period is two months if the party is domiciled in a Contracting State other than that in which the decision authorizing enforcement was given. No extension of time may be granted on account of distance.
- 20 Under Article 37(1) of the Convention, in England and Wales, the appeal is to be lodged, in accordance with the rules governing procedure in contentious matters, with the High Court, except in the case of a maintenance judgment. Article 39 provides that during the time allowed for an appeal and until any appeal is determined, the only measures which may be taken are protective measures against the property of the person against whom enforcement is sought.
- 21 Under Article 37(2) of the Convention, the judgment given on the appeal may be contested only by an appeal in cassation or similar form of appeal. In the case of the United Kingdom, Article 37(2) specifies that the judgment can be contested only 'by a single further appeal on a point of law'. Pursuant to the Civil Jurisdiction and Judgments Act 1982, whose object is to bring the Convention into force in the United Kingdom, the court with jurisdiction for England is the Court of Appeal.
- 22 Under Article 38 of the Convention,

‘The court with which the appeal under Article 37(1) is lodged may, on the application of the appellant, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.

...

The court may also make enforcement conditional on the provision of such security as it shall determine.’

23 As regards the particular circumstances in which the present reference was made, it should be noted that an ‘appeal on a point of law’ has been lodged with the Court of Appeal, in accordance with Article 37(2) of the Convention, against the High Court’s decision on the appeal brought under Article 36 of the Convention against the registration for enforcement in England of an enforceable judgment given in another Contracting State.

24 In that appeal the Court of Appeal is asked by the party against whom enforcement is sought in England to rule both on the lawfulness of the High Court’s dismissal of the appeal against the order for registration and on whether the High Court was right to lift the stay of proceedings previously ordered.

25 The Court of Appeal’s uncertainty as to the interpretation of the Convention extends, however, only to the stay of proceedings referred to in the first paragraph of Article 38. It thus asks the Court of Justice whether the court with which an appeal in cassation or similar appeal on a point of law is lodged under Article 37(2) has power to impose or reimpose a stay under the first paragraph of Article

38 (Question 3). If so, it requests the Court to specify the extent and conditions of exercise of the power to grant or refuse such a stay (Questions 1 and 2).

26 In those circumstances, Question 3 should be examined first.

Question 3

27 By this question the national court seeks essentially to know whether Article 37(2) and the first paragraph of Article 38 of the Convention are to be interpreted as meaning, firstly, that a decision by which a court of a Contracting State, seised of an appeal against authorization to enforce an enforceable judgment given in another Contracting State, refuses a stay or lifts a stay previously ordered can be contested by an appeal in cassation or similar form of appeal limited to the examination of points of law only and, secondly, that the court seised of such an appeal on a point of law under Article 37(2) of the Convention has jurisdiction to impose or reimpose such a stay of proceedings.

28 In answering that question, it must first be noted that the experts' reports written when the Convention was drawn up and when it was amended emphasized the need for Article 37(2) of the Convention to be interpreted strictly: 'An excessive number of avenues of appeal might be used by the losing party purely as delaying tactics, and this would constitute an obstacle to the free movement of judgments which is the object of the Convention' (Jenard Report, OJ 1979 C 59, p. 52). The Convention 'limit [s] the number of appeals, in the interests of rapid enforcement, to a single appeal which may involve a full review of the facts and a second one limited to points of law' (Schlosser Report, OJ 1979 C 59, p. 133). 'Only the court seised of the appeal [the first appeal under Articles 36 and 37(1) of the Convention] has the power to stay the proceedings' (Jenard Report, p. 52).

29 Moreover, the Court has on several occasions favoured a restrictive interpretation of the phrase 'judgment given on the appeal' in Article 37(2) of the Convention.

30 In Case 258/83 *Brennero v Wendel* [1984] ECR 3971, paragraph 15, it held that under the general scheme of the Convention and in the light of one of its principal objectives, namely to simplify procedures in the State in which enforcement is sought, that provision cannot be extended so as to enable an appeal in cassation to be lodged against a judgment other than that given on the appeal, such as a preliminary or interlocutory order requiring preliminary inquiries to be made.

31 Similarly, in Case C-183/90 *van Dalfsen v van Loon* [1991] ECR I-4743, paragraph 21, the Court held that since the object of the Convention is to facilitate the free movement of judgments by establishing a simple and rapid procedure in the Contracting State in which the enforcement of a foreign judgment is sought, the expression 'judgment given on the appeal' in Article 37(2) of the Convention is to be understood as denoting only judgments deciding on the substance of the appeal lodged against an order for the enforcement of a judgment given in another Contracting State, to the exclusion of judgments given under Article 38.

32 The Court accordingly held in that judgment that a decision taken under Article 38 of the Convention by which the court seised of an appeal against an order for the enforcement of a judgment given in another Contracting State has refused to stay the proceedings does not constitute a 'judgment given on the appeal' within the meaning of Article 37(2) of the Convention, and may not, therefore, be contested by an appeal in cassation or similar form of appeal.

- 33 That interpretation applies to any decision on a stay of proceedings taken by the court with which an appeal has been lodged against the authorization of enforcement or registration for enforcement of a judgment given in another Contracting State, including a decision to lift a stay previously ordered.
- 34 Both the wording of the Convention and its general scheme show that it distinguishes between the 'court with which the appeal ... is lodged' within the meaning of the first paragraph of Article 38 and the court in which 'the judgment given on the appeal' is contested within the meaning of Article 37(2), the former term relating to Articles 36 and 37(1) to the exclusion of Article 37(2).
- 35 Furthermore, since the effect of procedural issues is to delay the enforcement in one Contracting State of a judgment given in another Contracting State, they represent a derogation from the Convention's object of establishing a simple and rapid machinery for the enforcement of judgments which are enforceable in the State of origin, and hence the rules relating to them must be interpreted strictly.
- 36 For the same reasons, the court referred to in Article 37(2) of the Convention does not have jurisdiction to decide on a stay of proceedings under Article 38.
- 37 The United Kingdom observes, however, that that court must have jurisdiction to decide on the stay provided for in the Convention, if it possesses that power under its own procedural rules. It bases this argument on the specific features of its own legal system. In most of the original Contracting States, if a court hearing an appeal in cassation quashes the decision of an inferior court, it simply remits the

case to another court for a decision on the substance; the latter court may then stay the proceedings under Article 38 of the Convention. In the United Kingdom, on the other hand, the superior court cannot remit the case, but always decides on the substance. It must therefore, in the United Kingdom's view, itself be able to decide on the stay.

38 That argument cannot be accepted.

39 As the Advocate General has explained in point 37 of his Opinion, it follows from the case-law (see Joined Cases 9/77 and 10/77 *Bavaria Fluggesellschaft and Germanair v Eurocontrol* [1977] ECR 1517, paragraph 4, and Case 148/84 *Deutsche Genossenschaftsbank v Brasserie du Pêcheur* [1985] ECR 1981, paragraph 17), firstly, that the Convention established an enforcement procedure which constitutes an autonomous and complete system independent of the legal systems of the Contracting States and, secondly, that the principle of legal certainty in the Community legal system and the objectives of the Convention in accordance with Article 220 of the EEC Treaty, which is at its origin, require a uniform application in all Contracting States of the Convention rules and the relevant case-law of the Court.

40 Moreover, the adjustments required for the accession of the United Kingdom to the Convention because of the particular features of that State's legal system were effected by the Convention of 9 October 1978.

41 In those circumstances, a court in the United Kingdom with which an appeal on a point of law has been lodged, within the meaning of Article 37(2) of the Convention, cannot have more extensive powers under Article 38 of the Convention than any other court of a Contracting State which, as a court of cassation, restricts its review to points of law without reappraising the facts of the case. Uniform application of the Convention in all the Contracting States precludes parties against

whom enforcement is sought in some States from enjoying greater procedural possibilities than in other Contracting States for delaying the enforcement of an enforceable judgment given in the Contracting State of origin.

- 42 In view of all the foregoing, the reply to Question 3 should be that Article 37(2) and the first paragraph of Article 38 of the Convention must 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 cannot be contested by an appeal in cassation or similar form of appeal limited to 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.

Questions 1 and 2

- 43 In view of the answer to Question 3, there is no need to rule on Questions 1 and 2 submitted by the national court.

Costs

- 44 The costs incurred by the German Government, the United Kingdom and 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 (Sixth Chamber),

in answer to the questions referred to it by the Court of Appeal by order of 14 July 1993, hereby rules:

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 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.

Schockweiler

Mancini

Kakouris

Murray

Hirsch

Delivered in open court in Luxembourg on 11 August 1995.

R. Grass

F. A. Schockweiler

Registrar

President of the Sixth Chamber