

2. *The principle of non-discrimination laid down by Article 7(4) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community does not preclude a person carrying on an activity as a post-graduate student, such as the person in the main proceedings, from being deemed, in a Member State, to be a trainee fellowship student who is not entitled to any rights under the national system of unemployment benefits, even though in other Member States a person carrying on similar activities is deemed to be carrying on an occupational activity and is entitled to benefits under the unemployment benefits system.*

(<sup>1</sup>) OJ C 118 of 18.5.2002.

## JUDGMENT OF THE COURT

of 9 December 2003

**in Case C-116/02 (Reference for a preliminary ruling from the Oberlandesgericht Innsbruck): Erich Gasser GmbH v MISAT Srl** (<sup>1</sup>)

**(Brussels Convention — Article 21 — Lis pendens — Article 17 — Agreement conferring jurisdiction — Obligation to stay proceedings of court second seised designated in an agreement conferring jurisdiction — Excessive duration of proceedings before courts in the Member State of the court first seised)**

(2004/C 21/12)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-116/02: 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 Oberlandesgericht Innsbruck (Austria) for a preliminary ruling in the proceedings pending before that court between Erich Gasser GmbH and MISAT Srl, on the interpretation of Article 21 of the abovementioned 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. 1, and — amended text — p. 77), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) and by the Convention of 29 November 1996 on the accession of the

Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1), the Court, composed of: V. Skouris, President, P. Jann, C. W. A. Timmermans, C. Gulmann, J. N. Cunha Rodrigues and A. Rosas (Presidents of Chambers), D.A.O. Edward, A. La Pergola, J.-P. Puissochet, R. Schintgen (Rapporteur), F. Macken, N. Colneric and S. von Bahr, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 9 December 2003, in which it has ruled:

1. A national court may, 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, by the Convention of 25 October 1982 on the accession of the Hellenic Republic, by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, refer to the Court of Justice a request for interpretation of the Brussels Convention, even where it relies on the submissions of a party to the main proceedings of which it has not yet examined the merits, provided that it considers, having regard to the particular circumstances of the case, that a preliminary ruling is necessary to enable it to give judgment and that the questions on which it seeks a ruling from the Court are relevant. It is nevertheless incumbent on the national court to provide the Court of Justice with factual and legal information enabling it to give a useful interpretation of the Convention and to explain why it considers that a reply to its questions is necessary to enable it to give judgment.
2. Article 21 of the Brussels Convention must be interpreted as meaning that a court second seised whose jurisdiction has been claimed under an agreement conferring jurisdiction must nevertheless stay proceedings until the court first seised has declared that it has no jurisdiction.
3. Article 21 of the Brussels Convention must be interpreted as meaning that it cannot be derogated from where, in general, the duration of proceedings before the courts of the Contracting State in which the court first seised is established is excessively long.

(<sup>1</sup>) OJ C 144 of 15.6.2002.