



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

20 December 2017*

(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 — Conciliation authority under Swiss law, responsible for the conciliation procedure prior to all substantive proceedings)

In Case C-467/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Amtsgericht Stuttgart (District Court, Stuttgart, Germany), made by decision of 8 August 2016, received at the Court on 22 August 2016, in the proceedings

Brigitte Schlömp

v

Landratsamt Schwäbisch Hall,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader (Rapporteur), A. Prechal and E. Jarašiūnas, Judges,

Advocate General: M. Szpunar,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 5 July 2017,

after considering the observations submitted on behalf of:

- Ms Schlömp, by D. Adam, Rechtsanwalt,
- the Landratsamt Schwäbisch Hall, by D. Vollmer, Rechtsanwalt,
- the Swiss Government, by M. Schöll and R. Rodriguez, acting as Agents,
- the European Commission, by M. Wilderspin and by M. Heller, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 October 2017,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2009 L 147, p. 1) ('the Lugano II Convention').
- 2 The request has been made in proceedings between Ms Brigitte Schlömp and the Landratsamt Schwäbisch Hall (District Administration) Schwäbisch Hall, Germany, 'the District Administration' concerning an application by Ms Schlömp for a declaration of non-liability to the effect that she has no maintenance obligations ('the application for a declaration of non-liability').

Legal context

The Lugano II Convention

- 3 Title II of the Lugano II Convention, entitled 'Jurisdiction', contains Section 2, entitled 'Special jurisdiction', Article 5(2), which states:

'A person domiciled in a State bound by this Convention may, in another State bound by this Convention, be sued:

...

2. in matters relating to maintenance:
 (a) in the courts for the place where the maintenance creditor is domiciled or habitually resident ...'
- 4 Section 9, entitled 'Lis pendens — related actions' in Title II of that convention, contains Articles 27 to 30 thereof. Under Article 27 of that convention:

'1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different States bound by this Convention, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.'
- 5 Article 30 of that convention provides:

'For the purposes of this Section, a court shall be deemed to be seised:

1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant;

2. if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.'

- 6 Title V, headed ‘General provisions’ of the Lugano II Convention contains, inter alia, Article 62 of that convention which provides:

‘For the purposes of this Convention, the expression “court” shall include any authorities designated by a State bound by this Convention as having jurisdiction in the matters falling within the scope of this Convention.’

- 7 In Title VII of the Lugano II Convention, entitled ‘Relationship to Council Regulation (EC) No 44/2001 and other instruments’, Article 64 of that convention provides:

‘1. This Convention shall not prejudice the application by the Member States of the European Community of the Council Regulation (EC) No 44/2001 [of 22 December 2000] on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [(OJ 2001 L 12, p. 1)], as well as any amendments thereof, of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968, and of the Protocol on interpretation of that Convention by the Court of Justice of the European Communities, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, as well as of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Brussels on 19 October 2005.

2. However, this Convention shall in any event be applied:

- (a) in matters of jurisdiction, where the defendant is domiciled in the territory of a State where this Convention but not an instrument referred to in paragraph 1 of this Article applies, or where Articles 22 or 23 of this Convention confer jurisdiction on the courts of such a State;
- (b) in relation to *lis pendens* or to related actions as provided for in Articles 27 and 28, when proceedings are instituted in a State where the Convention but not an instrument referred to in paragraph 1 of this Article applies and in a State where this Convention as well as an instrument referred to in paragraph 1 of this Article apply;

...’

EU legislation

Regulation No 44/2001

- 8 Section 9, entitled ‘*Lis pendens* and related actions’, in Chapter II of Regulation No 44/2001 contains Articles 27 to 30 thereof. Under Article 27 of that regulation:

‘1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.’

9 Pursuant to Article 30 of that regulation:

‘For the purposes of this Section, a court shall be deemed to be seised:

- (1) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or
- (2) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.’

Regulation (EU) No 1215/2012

10 Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1), which repealed Regulation No 44/2001, is, unlike certain of its provisions, applicable from 10 January 2015.

11 Article 29(1) and (2) and Article 32 of that regulation reproduce in substance the provisions of Article 27 and 30 of Regulation No 44/2001.

Regulation (EC) No 4/2009

12 Article 3 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ 2009 L 7, p. 1) states:

‘In matters relating to maintenance obligations in Member States, jurisdiction shall lie with:

- (a) the court for the place where the defendant is habitually resident, or
- (b) the court for the place where the creditor is habitually resident, or

...’

13 Under Article 68(1) of that regulation:

‘Subject to Article 75(2), this Regulation shall modify Regulation (EC) No 44/2001 by replacing the provisions of that Regulation applicable to matters relating to maintenance obligations.’

Swiss law

The Code of Civil Procedure

14 Article 62 of the Schweizer Zivilprozessordnung (Swiss Code of Civil Procedure, ‘the CCP’), entitled ‘Beginning of lis pendens’ under Title 4, headed ‘Lis pendens and Effects of Withdrawal of the Action’ in Part 1 thereof, provides:

‘1. A case becomes pending when an application for conciliation, an action, an application, or a joint request for divorce is filed.

...'

- 15 The conciliation procedure is governed by Articles 197 to 212 of Title 1 of Part 2 of the CCP. According to Article 197 of the CCP, entitled 'Principle':

'Litigation shall be preceded by an attempt at conciliation before a conciliation authority.'

- 16 Article 198 of the CCP lists the exceptions with regard to which the conciliation procedure does not take place.

- 17 Chapter 2, entitled, 'Conciliation procedure' under Title 1 of Part 2 of the CCP includes Articles 202 to 207. Article 202 of the CCP, entitled 'Introduction' provides:

'1. The procedure shall be commenced by the application for conciliation. ...

2. The application for conciliation shall contain the determination of the respondent, the forms of order sort and the description of the subject matter of the dispute.

3. The conciliation authority shall serve the application on the respondent without delay and shall also summon the parties to the hearing.

...'

- 18 Chapter 3, entitled 'Agreement and authorisation to proceed' in Title 1 of Part 2 of the CCP contains Articles 208 and 209. Under Article 208 of the CCP, entitled 'Agreement between the parties':

'1. If an agreement is reached, the conciliation authority shall place on record the terms of the settlement, the acceptance of the claim or the unconditional withdrawal of the action, and have the record signed by the parties. Each party receives a copy of the record.

2. The settlement, acceptance or unconditional withdrawal shall have the effect of a binding decision.'

- 19 According to Article 209 of the CCP, entitled 'Authorisation to proceed':

'1. If no agreement is reached, the conciliation authority records this fact and grants authorisation to proceed:

...

(b) to the plaintiff ...

...

3. The plaintiff is entitled to file the action in court within three months of authorisation to proceed being granted.

...'

- 20 Under the heading 'Draft judgment and decision', Chapter 4 of Title 1 of Part 2 of the CCP contains Articles 210 to 212. Article 210 of the CCP, entitled 'Draft judgment', provides:

'1. The conciliation authority may submit a draft judgment to the parties;

...

c. in other property disputes the value of which does not exceed 5 000 [Swiss francs (CHF)] (approximately EUR 4 350)

...'

21 Article 211 of the CCP, entitled 'Effects', states:

'1. If none of the parties raises an objection to it within 20 days from the day on which it was communicated in writing to the parties, the draft judgment shall be accepted and shall produce the effects of a decision which has become final. The objection need not contain a statement of reasons.

2. After reception of the objection, the conciliation authority shall issue the authorisation to proceed:

...'

22 According to Article 212 of the CCP, entitled 'Decision', 'the conciliation authority may, at the plaintiff's request, rule on the substance of property disputes the value of which does not exceed CHF 2 000 (approximately EUR 1 740)' and 'the procedure shall be oral'.

The Federal Code on private international law

23 The Federal Code on private international law, in the version applicable to the dispute in the main proceedings, provides in Article 9, entitled 'Lis pendens', in Section 2, entitled 'Jurisdiction':

'1. Where an action having the same subject matter is already pending between the same parties abroad, the Swiss court shall suspend the proceedings if it is expected that the foreign court will, within a reasonable time, give a decision which may be recognised in Switzerland.

2. In order to determine when an action was brought in Switzerland, the date of the first act necessary to commence the action shall be decisive, and the initiation of conciliation proceedings shall suffice.

3. The Swiss court shall decline jurisdiction if a foreign judgment which may be recognised in Switzerland is presented to it.'

The dispute in the main proceedings and the question referred for a preliminary ruling

24 Ms Schlömp, who is domiciled in Switzerland, is the biological daughter of Ms H.S, who, by reason of her state of care dependency, has been placed in a hospice in Germany and receives additional social assistance paid for by the local authorities.

25 Under German law, benefits provided by the public authorities are transferred to the body responsible for social welfare, which is entitled to claim back those benefits from the biological children of recipients by way of actions for recovery, subject to ability to pay.

26 On 16 October 2015, the District Authority lodged an application for conciliation before the Friedensrichteramt des Kreises Reiat, Kanton Schaffhausen (Magistrate's Office, District of Reiat, Canton of Schaffhausen), the latter acting as the conciliation authority, seeking the payment by Ms Schlömp of a minimum of EUR 5 000, subject to corresponding amendment of the claim after she has communicated the information requested from her.

- 27 Since the conciliation attempt was unsuccessful, on 25 January 2016, the Friedensrichteramt des Kreises Reiat, (Magistrate's Office, District of Reiatfied), issued an 'authorisation to institute proceedings', which was notified to the District Authority on 26 January 2016.
- 28 On 11 May 2016, the District Authority brought an action against Ms H. Schlömp before the Kantonsgericht Schaffhausen (Cantonal Court, Schaffhausen) seeking payment, as maintenance, of the minimum amount mentioned in paragraph 26 of the present judgment, subject to the increase of that amount in the event that it received further information concerning her ability to pay.
- 29 After the application for conciliation had been lodged, but before the Kantonsgericht Schaffhausen (Cantonal Court, Schaffhausen) was seised, Ms Schlömp brought an action on the basis of Article 3(a) or (b) of Regulation No 4/2009 before the Amtsgericht (Familien gericht) Schwäbisch Hall (Family Division of the District Court Schwäbisch Hall, Germany), by document of 19 February 2016, received by the court on 22 February 2016, seeking a negative declaration.
- 30 By order of 7 March 2016, that court declared that it lacked territorial jurisdiction and referred the proceedings to the Amtsgericht (Familiengericht) Stuttgart. Those proceedings were brought before the Amtsgericht (Familiengericht) Stuttgart on 21 March 2016.
- 31 On 17 May 2016, following service on the District Authority of the application for a negative declaration on 26 April 2016, the District Authority raised an objection of *lis pendens* on the ground that proceedings were pending in Switzerland which should make the referring court to stay the proceedings before it in accordance with Article 27(1) of the Lugano Convention. Ms Schlömp argued that the exception of *lis pendens* should be rejected on the ground that the conciliation authority was not a 'court' so that the provisions of Article 27(1) of the Lugano II Convention were not applicable.
- 32 Basing its decision on the case-law of the Court of Justice in the judgments of 8 December 1987, *Gubisch Maschinenfabrik* (144/86, EU:C:1987:528) and 6 December 1994, *Tatry* (C-406/92, EU:C:1994:400), the referring court considers that the action for payment and the request for information brought in Switzerland by the District Authority and the application for a negative declaration brought in Germany both arise from the question whether Ms Schlömp has a maintenance obligation by virtue of a legal subrogation.
- 33 The referring court states that the provisions of the CCP, in particular Article 62(1) thereof, read together with Article 202(1) that, under Swiss law, subject to certain exceptions which are not applicable in the present case, the proceedings must be instituted by lodging an application for conciliation. Consequently, that court considers that the conciliation procedure and subsequent legal proceedings constitute a single set of proceedings.
- 34 However, the referring court wonders whether the conciliation authority, before which an application for conciliation has been made, may be classified as a 'court' within the meaning of Article 27 and 30 of the Lugano Convention II.
- 35 In those circumstances, the Amtsgericht Stuttgart (Local Court, Stuttgart) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- 'Is a conciliation authority under Swiss law also covered by the term "court" within the scope of Articles 27 and 30 of the [Lugano II Convention]?'

Consideration of the question referred

36 By its question, the referring court asks essentially whether Articles 27 and 30 of the Lugano II Convention must be interpreted as meaning that, in the case of *lis pendens*, the date on which the mandatory conciliation procedure before a conciliation authority under Swiss law is the date on which a ‘court’ is deemed to be seised.

Applicability of the Lugano II Convention

37 The Lugano II Convention entered into force between the European Union and the Swiss Confederation on 1 January 2011 (OJ 2011 L 138, p. 1). In accordance with Article 5(2) of that convention states that disputes in matters relating to maintenance are, in principle, within the scope of the convention.

38 As a preliminary point, it must be examined whether, in the light of Article 64 of the Lugano II Convention which governs the relationship between that convention and Regulation No 44/2001, the Lugano II Convention is therefore applicable to the dispute in the main proceedings.

39 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. However, as is clear from Article 64(2)(b) thereof, that the convention applies, in any event, in relation to *lis pendens* or to related actions when proceedings are instituted in a State where the Convention applies, but not an instrument referred to in paragraph 1 of this article applies — such as the Swiss Confederation, and in a State where this Convention as well as an instrument referred to in paragraph 1 of this Article apply — such as the Federal Republic of Germany.

40 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.

41 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. Subject to the transitional provisions of Regulation No 4/2009, the Member States must, in matters relating to maintenance obligations, apply the provisions of that regulation on jurisdiction, recognition and enforcement of judgments and on legal aid, in the place of those of Regulation No 44/2001. Among the provisions of Regulation No 4/2009 on jurisdiction is Article 3(a) thereof.

42 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.

43 Therefore, in accordance with Article 64(2) of the Lugano II convention, it applies to the dispute in the main proceedings.

Substance

44 Thus, it follows from the terms of Article 27(1) of the Lugano II Convention that a situation of *lis pendens* arises where proceedings involving the same object and cause of action and between the same parties are brought in the courts of different Member States.

45 Article 30 of the Lugano II Convention defines the date on which a court is deemed to be seised for the purposes of the application of Section 9 of Title II of that convention as being the date on which the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to

have service effected on the defendant; if the document has to be served before being lodged with the court at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

- 46 First of all, it must be observed that those provisions of the Lugano II Convention are drafted in terms almost identical to the corresponding articles of Regulations No 44/2001 and 1215/2012.
- 47 As also observed by the Advocate General in paragraph 27 of his Opinion, the objective of a uniform interpretation of the equivalent provisions of the Lugano II Convention and of Regulation No 44/2001 and any amendment to it is clear, in particular, from the final recital in Protocol No 2 on the uniform interpretation of the Convention and on the Standing Committee (OJ 2007 L 339, p. 27) and Article 1 thereof, according to which any court applying and interpreting that convention are to ensure a converging interpretation of equivalent provisions.
- 48 The Court also notes that the objectives and wording of Regulation No 44/2001 and the provisions of the Lugano II Convention are identical guaranteeing the coherence between the two legal regimes (see, to that effect, Opinion 1/03 (new Lugano Convention) of 7 February 2006, EU:C:2006:81, paragraphs 152 and 153).
- 49 Next, having regard to the parallel approach existing between the mechanism to resolve situations of *lis pendens* introduced by the Lugano II Convention and Regulations No 44/2001 and 1215/2012, and in light of the objective of a uniform interpretation set out in paragraph 47 of the present judgment, it must be held that Article 27 of the Lugano II Convention is objective and automatic and is based on the chronological order in which the courts concerned were seised (see, by analogy, judgment of 4 May 2017, *HanseYachts*, C-29/16, EU:C:2017:343, paragraph 28 and the case-law cited).
- 50 In that context, as was also observed by the Advocate General in paragraph 41 of his Opinion, Article 30 of the Lugano II Convention defines objectively and independently the date on which a court is deemed to be seised for the application of Section 9 of Title II of that convention, in particular Article 27 thereof, in order to reduce the risk of parallel proceedings in different Contracting States.
- 51 Finally, as far as concerns the conditions laid down in Article 27(1) of the Lugano II Convention, relating to the identity of the parties and the cause of action brought before the courts of different States, it must be observed that, as is clear from the case-law of the Court relating to the interpretation of Article 27 of Regulation No 44/2001, which is transposable to the interpretation of Article 27 of the Lugano II Convention, that an action seeking to have the defendant held liable for causing loss has the same cause of action as an action brought by that defendant seeking a declaration that he is not liable for that loss (see, to that effect, judgment of 19 December 2013, *NIPPONKOA Insurance*, C-452/12, EU:C:2013:858, paragraph 42 and the case-law cited).
- 52 In the present case, as the referring court found, a situation of *lis pendens* exists between the case pending before it and that before the *Kontonsgericht Schaffhausen* (Cantonal Court, Schaffhausen) since those two cases are both based on whether Ms Schlömp has a maintenance obligation by virtue of a legal subrogation.
- 53 It is clear from the CCP that, under Swiss law, a case is brought by lodging an application for conciliation, an action or, joint application for divorce. The conciliation 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. That procedure may give rise either to a binding judgment, for disputes the value of which does not exceed CHF 2 000 (approximately EUR 1 740), a draft judgment which may become final in the absence of challenge for disputes whose value does not exceed CHF 5 000 (approximately EUR 4 350), the signing of a conciliation agreement, or the issue of an authorisation to institute proceedings. In the latter case,

the plaintiff is entitled to bring an action before the courts within three months of authorisation to proceed being granted. 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 conciliation proceedings is to suffice.

- 54 Moreover, as the Swiss Government points out in its oral submissions, first, the conciliation authorities are subject to the guarantees laid down by the CCP relating to the disqualification of magistrates and, second, perform their duties with complete independence.
- 55 It is clear from those provisions that, in the performance of the duties conferred on them by the CCP, the conciliation authorities may be treated as ‘courts’ within the meaning of Article 62 of the Lugano II Convention.
- 56 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.
- 57 Thus, as stated in the explanatory report on that convention, drafted by Mr Fausto Pocar and approved by the Council (OJ 2009 C 319, p. 1), the wording of Article 62 of the Lugano II Convention takes a functional approach according to which an authority is classified as a court based on the functions it carries out rather than by its formal classification under national law.
- 58 In the light of all of the foregoing considerations, the answer to the question referred is that Articles 27 and 30 of the Lugano II Convention must be interpreted as meaning that, in the case of *lis pendens*, the date on which a mandatory conciliation procedure was lodged before a conciliation authority under Swiss law is the date on which a ‘court’ is deemed to be seised.

Costs

- 59 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Articles 27 and 30 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 conciliation procedure was lodged before a conciliation authority under Swiss law is the date on which a ‘court’ is deemed to be seised.

[Signatures]