JUDGMENT OF THE COURT (Sixth Chamber)
20 March 1997 *

In Case C-295/95,

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 Circuit Court, County of Dublin, for a preliminary ruling in the proceedings pending before that court between

Jackie Farrell

and

James Long

on the interpretation of Article 5(2) of the abovementioned 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 — in the amended version — 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: English.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, C. N. Kakouris (Rapporteur), G. Hirsch, H. Ragnemalm and R. Schintgen, Judges,

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Ms Farrell, by Inge Clissmann, Senior Counsel, and Felix McEnroy, Barrister, instructed by David Bergin, Solicitor, of Messrs O'Connor & Bergin,

— Mr Long, by Ann Kelly, Barrister, instructed by Lavery Kirby & Co., Solicitors,

— the Irish Government, by Michael A. Buckley, Chief State Solicitor, acting as Agent,

— the German Government, by Jörg Pirrung, Ministerialrat in the Federal Justice Ministry, acting as Agent,

— the United Kingdom Government, by Stephen Braviner, of the Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities, by José Luis Iglesias Buhigues, Legal Adviser, and Barry Doherty, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Farrell, represented by David Bergin, Inge Clissmann and Felix McEnroy; of Mr Long, represented by Sean Moylan, Senior Counsel, and Ann Kelly; of the Irish Government, represented by Nuala Butler and Mary Cooke, Barristers; and of the Commission, represented by José Luis Iglesias Buhigues and Barry Doherty, at the hearing on 21 November 1996,

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

gives the following

Judgment

1 By order of 15 May 1995, received at the Court on 15 September 1995, the Circuit Court, County of Dublin, 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, hereinafter 'the Convention'), 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 — in the amended version — p. 77) and by the Convention of 25 October 1982 on the Accession of the Hellenic Republic

(OJ 1982 L 388, p. 1), a question on the interpretation of Article 5(2) of the Convention.

2 That question was raised in proceedings between Ms Farrell, residing in Dalkey, Ireland, and Mr Long, who is habitually resident in Bruges, Belgium.

3 It appears from the documents in the main proceedings that Ms Farrell is the mother of a child born on 3 July 1988 whose father is, she claims, Mr Long. She brought an action against Mr Long before the District Court, applying for a maintenance order in favour of that child.

4 Mr Long denies that he is the father of the child and contests the jurisdiction of the Irish courts to entertain Ms Farrell's application.

5 Ms Farrell maintains that the Irish courts have jurisdiction under Article 5(2) of the Convention. That provision, which derogates from the rule in the first paragraph of Article 2 conferring jurisdiction on the courts of the Contracting State in which the defendant is domiciled, is in the following terms:

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

(...)

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'.

6 Mr Long, on the other hand, maintains that that provision cannot apply. He contends that Ms Farrell is not a maintenance creditor within the meaning of Article 5(2) of the Convention because she has not obtained any maintenance order recognizing her as such.

7 At first instance, the District Court dismissed the application on the ground of lack of jurisdiction. Ms Farrell appealed against that judgment to the Circuit Court, which has referred the following question to the Court for a preliminary ruling:

'Do the provisions of Article 5(2) of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on the 27th day of September 1968, require as a condition precedent to the institution of maintenance proceedings in the Irish courts by an applicant who is domiciled in Ireland against a respondent who is domiciled in Belgium that the applicant has previously obtained an order for maintenance against the respondent?'

8 By that question, the national court seeks in essence to ascertain whether the first limb of Article 5(2) of the Convention must be interpreted as meaning that the term 'maintenance creditor' covers any person applying for maintenance, including

a person bringing a maintenance action for the first time, or only persons whose entitlement to maintenance has already been recognized by a previous judicial decision.

9 The national court's question is prompted by the fact that the Jurisdiction of Courts and Enforcement of Judgments (European Communities) Act, 1988, which introduced the Brussels Convention into Irish law, contains, in section 1, the following definition:

— '"maintenance creditor" means, in relation to a maintenance order, the person entitled to the payments for which the order provides.'

Admissibility of the question referred

10 The respondent in the main proceedings denies that the question referred is pertinent, on the ground that the maintenance obligation at issue in the dispute before the national court is ancillary to the issue of paternity, which is a matter of status, and that the applicable provision is therefore not the first limb of Article 5(2), in which the term 'maintenance creditor' appears, but the second limb.

11 In the light of the division of responsibilities in the preliminary ruling procedure laid down by the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention, it is for the national court alone to define the questions which it proposes to refer to the Court. According to settled law, it is solely for

the national court before which the dispute has been brought, and which must assume the 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 it to deliver judgment and the relevance of the questions which it submits to the Court (Case C-127/92 *Enderby* [1993] ECR I-5535, paragraph 10).

The question referred

12 For the purpose of answering the question referred, it must be noted that, according to settled law (see, in particular, Case C-125/92 *Mulox IBC* v *Geels* [1993] ECR I-4075, paragraph 10, and Case C-383/95 *Rutten* v *Cross Medical* [1997] ECR I-57, paragraph 12), the Court will, in principle, interpret the terms of the Convention autonomously so as to ensure that it is fully effective having regard to the objectives of Article 220 of the EEC Treaty, for the implementation of which it was adopted.

13 Such autonomous interpretation is alone capable of ensuring uniform application of the Convention, the objectives of which include unification of the rules on jurisdiction of the Contracting States, so as to avoid as far as possible multiplication of the bases of jurisdiction in relation to one and the same legal relationship and to reinforce the legal protection available to persons established in the Community by, at the same time, allowing the plaintiff easily to identify the court before which he may bring an action and the defendant reasonably to foresee the court before which he may be sued (*Mulox IBC*, paragraph 11, and *Rutten*, paragraph 13).

14 Those considerations must also apply to the interpretation of the term 'maintenance creditor' in the first limb of Article 5(2) of the Convention, since there is nothing to suggest that its meaning is intended under that provision to be determined in accordance with the *lex fori*.

15 As to the meaning of that term, two arguments in particular have been advanced before the Court. According to the first of those arguments, put forward by the respondent in the main proceedings, the term covers only persons whose entitlement to maintenance has already been recognized by a previous judicial decision. Consequently, an initial action brought by a maintenance applicant, seeking a finding that maintenance is payable in principle, does not fall within that provision.

16 According to the second argument, advanced by the appellant in the main proceedings, by the Irish, German and United Kingdom Governments and by the Commission, the term must be construed as referring to any person applying for maintenance, including a person bringing a maintenance action for the first time.

17 It is necessary in that regard to determine the objective of Article 5(2) of the Convention.

18 Article 5 introduces a series of derogations from the rule laid down in the first paragraph of Article 2, which confers jurisdiction on the courts of the Contracting

State where the defendant is domiciled. Each of the derogations from that rule provided for by Article 5 pursues a specific objective.

19 In particular, the derogation provided for in Article 5(2) is intended to offer the maintenance applicant, who is regarded as the weaker party in such proceedings, an alternative basis of jurisdiction. In adopting that approach, the drafters of the Convention considered that that specific objective had to prevail over the objective of the rule contained in the first paragraph of Article 2, which is to protect the defendant as the party who, being the person sued, is generally in a weaker position.

20 It is common ground that that was the intention of the authors of the Convention in cases where the entitlement to maintenance of a plaintiff in an action brought on the basis of Article 5(2) has already been recognized by a previous judicial decision and the new action seeks an order fixing the amount of the maintenance, if it has not been fixed by the previous decision, varying the amount already fixed, or requiring the maintenance to be paid where the defendant is in arrears or refuses to pay.

21 It is necessary, therefore to examine whether that was also the intention of the authors of the Convention in cases where a person brings a maintenance action on the basis of Article 5(2) without having previously obtained a judicial decision recognizing his or her entitlement to maintenance.

22 That question must be answered in the affirmative.

23 Article 5(2) refers to 'the maintenance creditor' in general terms, without drawing any distinction between those already recognized and those not yet recognized as entitled to maintenance.

24 That finding is borne out by the report drawn up by the committee of experts who drafted the text of the Convention, known as the Jenard Report (OJ 1979 C 59, p. 1, in particular p. 25). As regards Article 5(2) of the Convention, that report states as follows:

'... the court for the place of domicile of the maintenance creditor is in the best position to know whether the creditor is in need and to determine the extent of such need.

However, in order to align the Convention with the Hague Convention, Article 5(2) also confers jurisdiction on the courts for the place of habitual residence of the maintenance creditor. This alternative is justified in relation to maintenance obligations since it enables in particular a wife deserted by her husband to sue him for payment of maintenance in the courts for the place where she herself is habitually resident, rather than the place of her legal domicile.

...

As regards maintenance payments, the Committee did not overlook the problems which might be raised by preliminary issues (for example, the question of affiliation). However, it considered that these were not properly problems of jurisdic-

tion, and that any difficulties should be considered in the chapter on recognition and enforcement of judgments.'

25 It follows that Article 5(2) of the Convention is framed in such a way as to apply to all actions brought in maintenance matters, including the initial action brought by a person applying for maintenance, and that consideration of the question of paternity as a preliminary issue in such proceedings did not prompt the authors of the Convention to adopt any different solution.

26 Moreover, no decisive argument has been advanced against such an interpretation.

27 Having regard to the foregoing considerations, the first limb of Article 5(2) of the Convention must be interpreted as meaning that the term 'maintenance creditor' covers any person applying for maintenance, including a person bringing a maintenance action for the first time.

Costs

28 The costs incurred by the Irish, German and United Kingdom Governments 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 proceedings 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 question referred to it by the Circuit Court, County of Dublin, by order of 15 May 1995, hereby rules:

The first limb of Article 5(2) 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, must be interpreted as meaning that the term 'maintenance creditor' covers any person applying for maintenance, including a person bringing a maintenance action for the first time.

Mancini Kakouris Hirsch

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 20 March 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber