JUDGMENT OF THE COURT (Fifth Chamber)

15 January 2004 *

In Case C-433/01,

REFERENCE to the Court, pursuant to 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 Bundesgerichtshof (Germany) for a preliminary ruling in the proceedings pending before that court between

Freistaat Bayern

and

Jan Blijdenstein,

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,

* Language of the case: German.

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), and 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),

THE COURT (Fifth Chamber),

composed of: P. Jann (Rapporteur), acting for the President of the Fifth Chamber, C.W.A. Timmermans and A. Rosas, Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the German Government, by R. Wagner, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the United Kingdom Government, by G. Amodeo, acting as Agent, and by K. Beal, barrister,

— the Commission of the European Communities, by A.-M. Rouchaud and S. Grünheid, acting as Agents,

having regard to the Report for the Hearing,

after hearing the Opinion of the Advocate General at the sitting on 10 April 2003,

gives the following

Judgment

1 By order of 26 September 2001, received at the Court on 9 November 2001, the Bundesgerichtshof (Federal Court of Justice) referred a question to the Court pursuant to 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 for a preliminary ruling on the interpretation of Article 5(2) of that Convention (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 — amended text — p. 77), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1), and 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; 'the Convention').

2 The question was raised in the course of an action for recovery brought by Freistaat Bayern, a German public body, against Mr Blijdenstein for reimbursement of sums of money it paid by way of an education grant to Mr Blijdenstein's child.

Relevant provisions

The Convention

3 The first paragraph of Article 1 provides that the Convention is to apply in civil and commercial matters.

4 Under the first paragraph of Article 2 of the Convention:

'Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.'

5 Article 5(2) of the Convention states:

'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...'

National legislation

6 Under Paragraph 1602 of the Bürgerliches Gesetzbuch (German Civil Code), parents are obliged to maintain their children. Paragraph 1610(2) of the Code states that this obligation extends to the whole of the cost of living, including the cost of reasonable vocational training.

7 The Bundesausbildungsförderungsgesetz (Federal Law on Educational Support; 'the BAföG') entitles a student who does not have at his disposal the means necessary for his maintenance and education the right to an education grant. That grant is paid by the competent grant-paying Land.

8 Under Paragraph 11 of the BAföG, the calculation of the amount of the grant takes into account the maintenance obligations of the recipient's parents. In accordance with Paragraph 36(1) of the BAföG, should the student prove that his parents are not fulfilling their maintenance obligations, and that his training is at risk, the grant which he is awarded on request and after hearing the parents does not take into account the maintenance payable by them.

9 Paragraph 37(1) of the BAföG is worded as follows:

'If the student has a maintenance claim against his parents under private law for the period in respect of which the education grant is paid to him, the Land is subrogated to that right... on payment, up to the amount of the payments made, but only to the extent that the income and the assets of the parents are to be taken into account under this Law in determining the student's needs.'

The main proceedings and the question referred for a preliminary ruling

10 Mr Blijdenstein lives in the Netherlands.

11 In the 1993/1994 academic year, his daughter began training in an establishment in Munich (Germany). From 1 September 1993, she received an education grant from Freistaat Bayern.

12 Freistaat Bayern brought, first, an action for recovery against Mr Blijdenstein before the Amtsgericht (Local Court) of Munich seeking reimbursement of the grant paid for the 1993/1994 academic year. The action resulted in judgment being entered against the defendant.

13 Freistaat Bayern commenced a second action before the Amtsgericht of Munich claiming reimbursement from Mr Blijdenstein of the grants paid for the 1994/1995 and 1995/1996 academic years.

14 Mr Blijdenstein disputed the jurisdiction of the Amtsgericht of Munich. The Amtsgericht dismissed this plea of lack of jurisdiction and upheld Freistaat Bayern's claim.

15 On appeal by Mr Blijdenstein, the Oberlandesgericht (Higher Regional Court) of Munich (Germany) varied the judgment of the lower court, holding that Freistaat Bayern's claim was inadmissible on the ground that, under the first paragraph of Article 2 of the Convention, alone applicable to the dispute, the defendant could be sued only in the courts of the State in which he is domiciled.

16 Freistaat Bayern brought an appeal on a point of law against that judgment before the Bundesgerichtshof. That court, unsure whether Article 5(2) of the Convention was applicable in a case such as the one before it, decided to stay the proceedings and referred the following question to the Court for a preliminary ruling:

'May a public body which has paid an education grant to a student for a certain period of time under public law rely on the special rule of jurisdiction in

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 on the accession of the Kingdom of Spain and the Portuguese Republic of 26 May 1989, when it seeks, through a statutory subrogation, to enforce in an action for recovery a civil law maintenance claim against the recipient's parents in respect of the grant in question?'

The question referred for a preliminary ruling

17 In this question the referring court is, essentially, seeking to ascertain whether a public body which seeks, in an action for recovery, reimbursement of sums paid under public law by way of an education grant to a maintenance creditor, to whose rights it is subrogated against the maintenance debtor, may rely on the special rule of jurisdiction under Article 5(2) of the Convention which states that the courts for the place where the maintenance creditor is domiciled are to have jurisdiction.

Application of the Convention

18 First of all, the United Kingdom Government claims that an action brought by a public body to recover from the parents of a student sums paid to the student

under public law by way of an education grant is not an act involving 'civil matters' within the meaning of Article 1 of the Convention, even if the student has a maintenance claim against his parents founded on private law.

19 The German Government and the Commission of the European Communities believe, on the other hand, that an action for recovery based on a statutory subrogation comes within the scope of the Convention.

20 In Case C-271/00 *Baten* [2002] ECR I-10489, paragraph 37, the Court held that the first paragraph of Article 1 of the Convention must be interpreted as meaning that the concept of 'civil matters' encompasses an action under a right of recourse whereby a public body seeks from a person governed by private law recovery of sums paid by it by way of social assistance to the divorced spouse and the child of that person, provided that the basis and the detailed rules relating to the bringing of that action are governed by the rules of the ordinary law in regard to maintenance obligations. The Court added however that, where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative of its own, that action cannot be regarded as being brought in 'civil matters'.

21 In the main action, according to the information supplied by the national court, the statutory subrogation enjoyed by the Länder against the parents of recipients of education grants under Article 37(1) of the BAföG is governed by civil law. In view of the criteria noted in the preceding paragraph, it appears therefore that the main proceedings fall within the concept of 'civil matters' within the meaning of the first paragraph of Article 1 of the Convention.

Application of Article 5(2) of the Convention

22 The German, Austrian and United Kingdom Governments and the Commission submit that Article 5(2) of the Convention is not applicable to an action for recovery brought by a public body.

23 They argue, essentially, that jurisdiction for the courts where the maintenance creditor is domiciled provided for in Article 5(2) of the Convention is a derogation from the fundamental rule of jurisdiction of the courts of the domicile of the defendant, stated in Article 2 of the Convention. That derogation is justified by the aim of protecting the maintenance applicant, regarded as the weaker party, and it may therefore only be relied on by that party.

24 It should be remembered that the Convention must be interpreted independently, by reference to its system and objectives (see, in particular, Case C-89/91 *Shearson Lehman Hutton* [1993] ECR I-139, paragraph 13; Case C-295/95 *Farrell* [1997] ECR I-1683, paragraphs 12 and 13; Case C-269/95 *Benincasa* [1997] ECR I-3767, paragraph 12, and *Baten*, cited above, paragraph 28).

25 In addition, the general principle in the system of the Convention is that the courts of the Contracting State in which the defendant is domiciled are to have jurisdiction, and that rules of jurisdiction which derogate from this general principle cannot give rise to an interpretation going beyond the cases expressly envisaged by the Convention (see, in particular, *Shearson Lehman Hutton*, cited above, paragraphs 14 and 16; *Benincasa*, cited above, paragraph 13, and Case C-412/98 *Group Josi* [2000] ECR I-5925, paragraph 49). This interpretation is even more compelling in relation to a rule of jurisdiction like that in Article 5(2) of the Convention, which enables the maintenance creditor to sue the defendant

before the courts of the Contracting State in which the applicant is domiciled. Other than in the cases expressly provided for, the Convention appears hostile towards the attribution of jurisdiction to the courts of the applicant's domicile (see, to this effect, *Shearson Lehman Hutton*, cited above, paragraph 17; *Benincasa*, cited above, paragraph 14, and *Group Josi*, cited above, paragraph 50).

26 It is in the light of those principles that Article 5(2) of the Convention should be interpreted.

27 The wording of Article 5(2) of the Convention states only that this provision is applicable 'in matters relating to maintenance' and does not contain any indication as to the party who may be the applicant. From that point of view, as the referring court pointed out, Article 5(2) of the Convention can be distinguished from Article 14 of the Convention. Article 14 lays down special rules of jurisdiction in matters relating to consumer contracts on the basis of the position of the consumer in the proceedings, which led the Court to hold that those rules protect the consumer only in so far as he personally is the plaintiff or defendant in proceedings (*Shearson Lehmann Hutton*, cited above, paragraph 23).

28 However, as the Commission points out, this difference in the drafting of the provisions is explained by the different position of Articles 5 and 14 of the Convention in the system established by it. Article 5 provides for a jurisdiction which does not preclude the application of the general jurisdiction in Article 2 of the Convention, whereas the provisions of Article 14 on jurisdiction are exhaustive. The different wording of these provisions cannot therefore be relied on to justify a wide application of Article 5(2) of the Convention by extending it to proceedings in which the maintenance creditor is not personally the applicant.

29 That analysis is borne out by the arguments developed by the Court in paragraph 19 of the *Farrell* judgment, cited above, in which it held that the derogation provided for in Article 5(2) of the Convention is intended to offer the maintenance applicant, who is regarded as the weaker party in such proceedings, an alternative basis of jurisdiction. According to the Court, 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 of the Convention, which is to protect the defendant as the party who, being the person sued, is generally in a weaker position.

30 However, a public body which brings an action for recovery against a maintenance debtor is not in an inferior position with regard to the latter. Moreover, the maintenance creditor, whose maintenance has been covered by the payments of the public body, is no longer in a precarious financial position.

31 It follows that, since the maintenance creditor has benefited from the grant to which she could lay claim, there is no need to deny the maintenance debtor the protection offered by Article 2 of the Convention, particularly as the courts of the defendant are better placed to determine the latter's resources.

32 Additional confirmation of this interpretation is provided by the Schlosser Report on the Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom to the Convention (OJ 1979 C 59, p. 71, paragraph 97). According to this report, 'it is not... the purpose of the special rules of jurisdiction in Article 5(2) to confer jurisdiction in respect of compensation claims on the courts of the domicile of the maintenance creditor or even those of the seat of the public authority — whichever of the two abovementioned methods a legal system may have opted for.'

33 As to the argument raised by the referring court that maintenance creditors might be better protected if actions for recovery brought by public bodies fell within Article 5(2) of the Brussels Convention, as the competent bodies would have an incentive to pay maintenance creditors advances of maintenance, it is relevant, as the German Government has rightly stated, that these bodies make advances only in accordance with legal obligations set out by the national legislature according to the situation of the recipients concerned.

34 Therefore the answer to the question referred must be that Article 5(2) of the Convention must be interpreted as meaning that it cannot be relied on by a public body which seeks, in an action for recovery, reimbursement of sums paid under public law by way of an education grant to a maintenance creditor, to whose rights it is subrogated against the maintenance debtor.

Costs

35 The costs incurred by the German, Austrian and United Kingdom Governments and by the Commission, 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 (Fifth Chamber),

in answer to the question referred to it by the Bundesgerichtshof by order of 26 September 2001, hereby rules:

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, by the Convention of 25 October 1982 on the accession of the Hellenic Republic and by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic must be interpreted as meaning that it cannot be relied on by a public body which seeks, in an action for recovery, reimbursement of sums paid under public law by way of an education grant to a maintenance creditor, to whose rights it is subrogated against the maintenance debtor.

Jann Timmermans Rosas

Delivered in open court in Luxembourg on 15 January 2004.

R. Grass

Registrar

V. Skouris

President