ORDER OF THE COURT
9 NOVEMBER 1983 [1]

Habourdin International SA and Banque Nationale de Paris v SpA Italocremona (reference for a preliminary ruling from the Tribunale di Varese)

Case 80/83

Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters — Protocol on the interpretation by the Court of Justice of the Convention — National courts which may request the Court of Justice to give a preliminary ruling — Courts sitting "in an appellate capacity" — Concept — Italian court sitting in proceedings at first instance brought against a payment order made under a summary procedure — Exclusion

(Protocol of 3 June 1971, Art. 2 (2))

In Case 80/83

Reference to the Court by order of the President of the Tribunale di Varese [District Court, Varese] of 23 April 1983 for a preliminary ruling in the joined proceedings

HABOURDIN INTERNATIONAL SA, Paris,

and

BANQUE NATIONALE DE PARIS, Paris and Milan,

v

SPA ITALOCREMONA, Varese-Gazzada,

on the interpretation of certain provisions of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters,

1 — Language of the Case: Italian.

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot, Presidents of Chambers, P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

makes the following

ORDER

By Order of 23 April 1983, received at the Court on 6 May 1983, the President of the Tribunale di Varese, 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 (hereinafter referred to as "the Brussels Convention") submitted a question for a preliminary ruling on the interpretation of certain provisions of that Convention.

That Protocol provides that only certain courts, referred to in Article 2 thereof, may request the Court of Justice to give preliminary rulings on the interpretation of the Brussels Convention, so that, in this instance, it is necessary to consider whether the Court of Justice has jurisdiction to reply to the question submitted to it.

Indents 1 and 3 of the above-mentioned Article 2 — the first directly and the second by reference to Article 37 of the Brussels Convention — list, expressly and exhaustively, the courts which may request the Court of Justice to give a preliminary ruling. Article 2 (2) states in addition that "the courts of the Contracting States when they are sitting in an appellate capacity" may also request preliminary rulings.

Article 3 of the Protocol provides that:

"1. Where a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 is raised in a case pending before one of the courts listed in Article 2 (1), that court shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

2. Where such a question is raised before any court referred to in Article 2 (2) or (3), that court may, under the conditions laid down in paragraph 1, request the Court of Justice to give a ruling thereon."

Since the Italian Tribunali [District Courts] are not referred to either in Article 2 (1) of the Protocol or in Article 37 of the Brussels Convention, they may request the Court of Justice to give a preliminary ruling on a question of interpretation only when they are "sitting in an appellate capacity".

It is apparent from the papers in the case that the order requesting a preliminary ruling was made in the course of proceedings at first instance on an action brought pursuant to Article 645 of the Italian Code of Civil Procedure against a payment order made under the summary procedure provided for in Articles 633 *et seq.* of the Code of Civil Procedure. It must therefore be stated that the order of the national court was not made in the circumstances provided for in Article 2 (2) of the Protocol on the interpretation by the Court of Justice of the Convention of 27 September 1968.

Consequently, it is clear that the Court has no jurisdiction to take cognizance of the reference for a preliminary ruling which must therefore be declared inadmissible within the meaning of Article 92 (1) together with Article 103 (2) of the Rules of Procedure.

On those grounds,

THE COURT

hereby orders as follows:

The request for a preliminary ruling made by the President of the Tribunale di Varese by order of 23 April 1983 is inadmissible.

Luxembourg, 9 November 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President