JUDGMENT OF THE COURT (FOURTH CHAMBER)
7 JUNE 1984 [1]

Siegfried Zelger v Sebastiano Salinitri (reference for a preliminary ruling from the Oberlandesgericht München)

(Brussels Convention: Article 21, Bringing of proceedings before a court)

Case 129/83

Convention on Jurisdiction and Enforcement of Judgments — Lis pendens — Proceedings brought in the courts of different Contracting States — Court "first seised" — Concept

(Convention of 27 September 1968, Art. 21)

Article 21 of the Convention of 28 September 1968 must be interpreted as meaning that the court "first seised" is the one before which the requirements for proceedings to become definitively pending are first fulfilled, such requirements to be determined in accordance with the national law of each of the courts concerned.

In Case 129/83

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 Enforcement of Judgments in Civil and Commercial Matters by the Oberlandesgericht München [Higher Regional Court, Munich] for a preliminary ruling in the action pending before that court between

SIEGFRIED ZELGER, Munich,

and

1 — Language of the Case: German.

SEBASTIANO SALINITRI, Mascali (Italy),

on the interpretation of Article 21 of the Convention concerning the bringing of proceedings before a court,

THE COURT (Fourth Chamber),

composed of: T. Koopmans, President of Chamber, K. Bahlmann, P. Pescatore, A. O'Keeffe and G. Bosco, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

The two parties in the main action are merchants, of whom one has his place of business in Munich in the Federal Republic of Germany and the other in Mascali in Sicily.

The plaintiff in the main action brought proceedings against the defendant for repayment of an amount outstanding on a loan dating back to 1975 and 1976. He claims that the parties had by express oral agreement designated Munich as the place of performance of the obligation to repay the loan. The defendant in the main action disputed the loan obligation and the agreement on the place of performance.

The document initiating the proceedings which is at issue in this case was lodged at the registry of the Landgericht München I [Regional Court, Munich I] on 5 August 1976 and served on the defendant on 13 January 1977. In addition the plaintiff brought further proceedings involving the same cause of action before the Tribunale Civile [Civil District Court] in Catania, Italy, by a like document which was lodged with that court on 22 or 23 September 1976 and served on the defendant on 23 September 1976.

The Landgericht at first dismissed the proceedings brought by the plaintiff in

the main action on the ground that it lacked international jurisdiction since an informal agreement made by the parties on the place of performance of contractual obligations was not capable of conferring jurisdiction under Article 5 (1) of the Convention. Instead, the formal requirements laid down in Article 17 of the Convention ought to have been observed. The Oberlandesgericht München [Higher Regional Court, Munich] also dismissed the action on the ground that it lacked international jurisdiction. Subsequently the Bundesgerichtshof [Federal Supreme Court] referred to the Court of Justice for a preliminary ruling the question whether an informal agreement between merchants on the place of performance fulfilled the requirements of Article 5 (1) of the Convention.

In its judgment of 17 January 1980 ([1980] ECR 89) the Court ruled in answer to the question:

"If the place of performance of a contractual obligation has been specified by the parties in a clause which is valid according to the national law applicable to the contract, the court for that place has jurisdiction to take cognizance of disputes relating to that obligation under Article 5 (1) of the Convention of Brussels of 27 September 1968, irrespective of whether the formal conditions provided for under Article 17 have been observed."

Accordingly the Bundesgerichtshof annulled the decisions of the lower courts and remitted the case to the Landgericht for reconsideration and a fresh decision.

Once again the Landgericht dismissed the action as inadmissible on the ground that it lacked international jurisdiction. Although the parties had agreed that Munich should be the place of performance of the contractual obligation, the lack of jurisdiction stemmed from the fact that the same cause of action had already given rise to the bringing of proceedings before a court in Catania, which was the court for the place where the defendant was domiciled and which had jurisdiction by virtue of Article 2 of the Convention, and from the fact that the proceedings were still pending before that court. Before the Landgericht München I the proceedings were definitively instituted only on 13 January 1977, by service of the document initiating them (Paragraphs 261 (1) and 253 (1) of the Zivilprozeßordnung [Code of Civil Procedure], and before the court in Catania by service of an equivalent document on 23 September 1976. In the opinion of the Landgericht München the court in Catania had jurisdiction under Article 21 of the Convention which provides:

"Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court."

The plaintiff appealed to the Oberlandesgericht contending that the decisive time was not the moment at which the document initiating the proceedings was served but the moment at which the court was seised of the proceedings.

The Oberlandesgericht München considered that the questions involved the interpretation of the aforementioned Convention. It therefore stayed the proceedings and by order of 22 June 1983 referred the following question to the Court for a preliminary ruling:

"For the purpose of resolving the question which court of a Contracting State was first seised of proceedings (Article 21 of the Convention) it is the moment at which the document initiating them was lodged with the court ("Anhängigkeit") that is decisive or the moment at which — by service of that document on the defendant — the proceedings have become fully instituted ("Rechtshängigkeit")?"

The order making the reference was registered at the Court Registry on 8 July 1983.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the plaintiff in the main action, Mr Zelger, represented by Messrs. Grasmüller, Peter and Hartl, Rechtsanwälte of Munich, by the Italian Government, represented by its Agent, Mr O. Fiumara, and by the Commission of the European Communities, represented by its Legal Adviser, Mr E. Zimmermann, assisted by Wolf-Dietrich Krause-Ablass, Rechtsanwalt of Düsseldorf.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

By order of 7 December 1983 the Court assigned the case to the Fourth Chamber pursuant to Article 95 (1) and (2) of the Rules of Procedure.

III — Written observations

The *plaintiff in the main* action states that the application initiating the proceedings which is at issue in this case was lodged at the registry of the Landgericht München I on 5 August 1976. As far as it has been possible to ascertain, the application made in Italy was lodged with the Italian court on 22 September 1976. The application in Italy was served on the defendant on 23 September 1976 and the application lodged with the Landgericht München I was served on 13 January 1977.

Once the document initiating the proceedings had first been lodged with the Landgericht München the proceedings thus became "anhängig". The court in Catania was therefore a court other than the court first seised of the proceedings and should therefore, in accordance with the provisions of Article 21 of the Convention, of its own motion decline jurisdiction in favour of the Landgericht München I.

The plaintiff in the main action contends that the wording of Article 21 incorporates the concept of "anhängig" rather than "Rechtshängig" or "erhoben". In support of that contention he puts forward three arguments:

1. The wording of Article 21 is clear. There are no grounds for supposing that the authors of the Convention were not aware of the distinction between "anhängig" and "rechtshängig" or "erhoben".

   German lawyers took part, together with others, in the drafting of the Convention and they were just as well aware of the distinction as the other negotiators concerned.

2. Article 21 of the Convention refers to "proceedings involving the same cause of action and between the same parties" which "are brought (anhängig)" and Article 22 refers to "actions" which "are brought (erhoben) in the courts of different Contracting States."

   The authors therefore demonstrated in express terms that they knew how to distinguish between the concepts of "anhängig" and "erhoben" (in the sense of "rechtshängig sein ").

3. In deciding which court of the Member States should deal with the substance of his claim it is altogether sensible and appropriate to refer to the moment at which the document initiating the proceedings was lodged with the court. Like the German provisions relating to venue, the Convention allows a choice to be made between a number of courts. It must therefore be left to the parties to choose the court with which and the moment at which the document initiating the proceedings is lodged. A party has made its choice and, at the same time, has done all that is in its

power, when it lodges that document with the court it has chosen. Service is not a matter for which the parties are responsible. For that reason the question of jurisdiction cannot depend on delays in effecting service.

It is appropriate for the courts, too, to focus on the moment at which the document initiating the proceedings is lodged. Thus once that document is lodged, it is settled which court has jurisdiction.

The *Italian Government* considers that it follows from the heading of the section in which Article 21 is to be found and from the provision contained therein that the Convention refers to two "pending" actions, the identification of the moment as from which each must be regarded as pending being determined by reference to the different national legal systems; thus the "bringing" (proposizione) of the proceedings, which the provision in question mentions, appears to be significant only in so far as — and as soon as — it determines the moment at which the proceedings become pending before the court seised thereof according to the law of the State in which that court is situated.

An express reference to the fact that pendency (pendenza) is the sole deciding factor and that when an action becomes pending is determined by the national legal systems is to be found in the "report" on the Convention (Bulletin of the European Communities, supplement 12/72), which states that "By virtue of Article 21, the courts of a Contracting State must, even of their own motion, decline jurisdiction if proceedings concerning the same claim are already pending in the court of another State"; that a court should consider the question of its own motion when the circumstances are such as to lead it to believe that "the same proceedings are pending in the courts of another country"; and finally that "The Committee decided that there was no need to specify in the text the point in time from which the proceedings should be considered to be pending, and left this question to be settled by the internal law of each Contracting State".

The order in which the proceedings are brought, to which the Convention refers, must therefore be determined by reference to "the pendency" of the action which is to be ascertained according to the different national rules.

So far as the Italian legal system is concerned, the question of *lis alibi pendens* is governed by Article 39 of the Code of Civil Procedure which, in terms similar to those of Article 21 of the Convention, provides that "if the same action is brought before two different courts, the court which was the second to be seised ... shall make a finding of *lis alibi pendens*" and states that "priority shall be determined by service of the document initiating the proceedings.

The Italian Government considers that the German version of Article 21 may be interpreted in the same manner as the Italian and French texts. The heading of the section in the French text is "Litispendance et connexité". Article 21 of the Convention provides that where proceedings involving the same cause of action and between the same parties are brought (siano state proposte) in the courts of different Contracting States, any court other than the court first seised (il giudice successivamente adito) must of its own motion decline jurisdiction in favour of that court. In the German language the section is headed "Rechtshängigkeit und im Zu-

sammenhang stehende Verfahren" and Article 21 states that the case is "anhängig gemacht" and that the "später angerufene" court must decline jurisdiction. Article 22 does not refer to "Anhängigkeit" but to "Erhebung", which is a term which relates specifically to service of the document initiating the proceedings. Although the text refers to proceedings which are "anhängig" and subsequently, in Article 22, to actions which are "erhoben" whereas, in both cases, in the Italian version the term "proposte", in the French version the term "formées" and in the Dutch version the term "aanhängig" is used, primary importance must be attached to the concept of pendency expressed in the heading of the section ("Rechtshängigkeit") and to the order in which courts are seised (das später angerufene Gericht — il giudice successivamente adito — la jurisdiction saisie en second lieu — any court other than the court first seised) in relation to the moment at which the proceedings become pending, so that the "Anhängigkeit" of the proceedings to which the provision refers is significant only in so far as — and as soon as — it determines when the proceedings become pending (Rechtshängigkeit").

The four language versions must yield a single interpretation. It would seem to be possible to derive the single interpretation suggested above without any difficulty from the Italian and French versions and that interpretation would appear to be in no way incompatible with the German and Dutch versions.

Consequently the Italian Government submits that the question referred to the Court for a preliminary ruling should be answered as follows: „For the purpose of resolving the question which court of a Contracting State was first seised of proceedings for the purposes of Article 21 of the Brussels Convention it is necessary to take into account the moment at which each action became pending in accordance with the national legal systems."

The *Commission* contends that the Convention does not contain any provision concerning the conditions governing the manner in which proceedings are to be brought before the national courts. In particular, Article 21 of the Convention does not expressly state whether service of the document initiating the proceedings is a precondition for the bringing of an action in the sense of "Erhebung" or "Anhängigmachung".

The various terms used in Articles 21 and 22 of the Convention, that is to say:

"Lis pendens" ("Rechtshängigkeit" (heading of Section 8 of the Convention)

"Proceedings ... brought" ("Klage ... anhängig gemacht") (first paragraph of Article 21)

"The court ... seised" ("das angerufene Gericht") (first paragraph of Article 21 and Article 22)

"Actions ... brought" ("Klagen ... erhoben") (first paragraph of Article 22) are of no assistance. The different significance of the terms "Klageerhebung" on the one hand and "Anhängigkeit" on the other hand, which are explained in the order making the reference to the Court, is only apparent by reference to German procedural law which defines them differently. Yet the two aforementioned terms are used in Articles 21 and 22 of the Convention without its being possible to establish a material difference between them. The French text does not make a distinction between "Klage ... anhängig gemacht" (first paragraph of Article 21) and "Klagen ... erhoben" (first paragraph of Article 22). The wording is the same in both cases ("demandes formées").

Although service of the document initiating the proceedings is a re-

quirement laid down by the Convention in another context, it is, however, not possible to infer from this that the Convention also makes such service a prerequisite for the bringing of proceedings. As it noted in the Schlosser Report of 9 October 1979 on the Convention on the Association of Denmark, Ireland and the United Kingdom to the Convention (Official Journal 1979, C 59, p. 71), service of the document instituting the proceedings is not always necessary for a claim to become pending. That therefore confirms the view which had previously been taken in the Jenard Report (Official Journal 1979, C 59, p. 1):

"The Committee decided that there was no need to specify in the text the point in time from which the proceedings should be considered to be pending, and left this question to be settled by the internal law of each Contracting State."

With regard to that solution it is possible to raise the objection that, in the interests of a uniform interpretation of the Convention in all the Contracting States, an autonomous interpretation of Article 21 of the Convention should be sought and that therefore the requirements governing the bringing of proceedings should also be laid down in a uniform manner for all the Contracting States. In the present state of Community law and of unification of the procedural law of the Member States, it is, however, impossible to give effect without reservation to the principle of the autonomous interpretation of the Convention. As the Court stated in its judgment of 6 October 1976 in Case 12/76, *Tessili* v *Dunlop* [1976] ECR 1473, the legal concepts of the Convention may, in an appropriate case, be regarded as a reference to the substantive rules of law of the Member States.

Although it is necessary, on the basis of the aforementioned considerations, to refer to the national procedural law in order to establish the requirements for the valid institution of proceedings, that does not mean, however, that the question submitted by the national court is to be answered exclusively by reference to the procedural law applicable to the courts seised of the proceedings in this case, namely those in Germany and Italy. Since the bringing of an action often extends over a certain period of time (the lodging of the document initiating the proceedings at the registry of the court and the subsequent service thereof on the defendant) the question also arises whether Article 21 of the Convention refers to the definitive institution of proceedings or to some earlier stage, for example the time when the document is lodged with the court. That is a question which must be answered by means of an autonomous interpretation of the Convention because there are no reasons of the kind mentioned above, which make it necessary to refer to the national law of the Contracting States. On the contrary, in the interests of a uniform interpretation of the Convention, the same principles should in this respect be applied to all Contracting States.

It is true that no inference can be drawn from the wording of Articles 21 and 22 of the Convention which would enable the questions referred to the Court to be answered since for the reasons set out above the differences in the choice of words cannot be used to support one interpretation or the other. The answer to the question must therefore be derived from the context of the other provisions and the spirit and purpose of the Convention.

By virtue of Article 20 of the Convention it is possible for jurisdiction which exists by virtue of the rules governing jurisdiction contained in Articles 2 to 17 of the Convention to be subsequently

displaced. That rule is an exception which must be interpreted strictly. It would seem to be justified to displace jurisdiction which exists by virtue of the provisions of the Convention only if proceedings have already been instituted before the court of another Contracting State and have resulted in that court's being seised thereof definitively. As long as that court is not seised definitively it is not clear whether those proceedings will actually take their course. Thus, for example in German procedural law an application may simply be withdrawn before service on the defendant without that amounting to a formal discontinuance of the proceedings. Furthermore, it must not be forgotten that the defendant does not, as a general rule, have any knowledge of the fact that proceedings have been instituted against him before the document initiating them is served upon him and that in those circumstances he cannot yet raise the plea of *lis alibi pendens*. For that reason the moment at which the proceedings are definitively instituted must be retained as the deciding factor for the purposes of Article 21 of the Convention.

On the other hand it may be argued that for the sake of protecting the defendant the moment at which an action becomes pending ("rechtshängig"), which is decisive for the purposes of Article 21 of the Convention, should be fixed at the earliest possible point in time so that the defendant does not lose, in so far as he has learned in some other way that the document initiating the proceedings has been lodged, the right to raise the plea of *lis alibi pendens* because of a delay in serving that document. Nevertheless in that respect account must be taken of the fact that the defendant is protected by Articles 20, 27 (2) and 46 of the Convention against serious disadvantages arising from delayed service. Accordingly, with regard to the question which of two actions pending in the circumstances envisaged by Article 21 of the Convention should be given priority there seems to be no need, for the sake of protecting the defendant, to fix upon an earlier point in time as the moment at which the proceedings became pending.

On the basis of the foregoing considerations the Commission submits that the question referred to the Court should be answered as follows:

"For the purpose of determining which court was first seised of proceedings for the purposes of Article 21 of the Convention of 27 September 1968 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters the deciding factor for each court seised is the moment at which the proceedings have become instituted definitively according to the provisions of the procedural law applicable to it."

III — Oral procedure

At the sitting on 16 February 1984, the defendant, represented by Jürgen Blume, Rechtsanwalt of Munich, and the Commission, represented by E. Zimmermann, Legal Adviser, assisted by W. D. Krause-Ablass, Rechtsanwalt of Düsseldorf, presented oral argument and answered questions put by the Court.

The defendant in the main action contended that the German court did not have jurisdiction because notice of the application was given in Italy before being given in Germany. The term "Anhängigkeit" in the German version of the Convention was not used in the same way as it was used in German law.

The difference in German law between the terms: "Anhängigkeit" and "Rechtshängigkeit" had no effect on the interpretation of the Convention, an international convention between several Member States. It must therefore be interpreted in only one way.

The defendant in the main action concluded that the question of *lis alibi pendens* must be determined according to the national law of each Contracting State. In order to decide which court has jurisdiction within the meaning of Article 21 of the Convention, it must first be established where the action was definitively brought. That question must be determined in accordance with the *lex fori* of the court before which it has been brought.

The Advocate General delivered his opinion at the sitting on 11 April 1984.

Decision

1 By an order of 22 June 1983, received at the Court on 8 July 1983, the Oberlandesgericht München 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 Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as "the Convention") a question on the interpretation of Article 21 of that Convention.

2 The two parties in the main action are merchants, one of whom has his place of business in Munich in the Federal Republic of Germany and the other in Mascali in Sicily. The plaintiff in the main action brought proceedings against the defendant for repayment of an amount outstanding on a loan dating back to 1975 and 1976. The application which is the subject of the dispute was lodged at the Registry of the Landgericht München I on 5 August 1976 and served on the defendant in the main action on 13 January 1977. In addition, the plaintiff in the main action brought further proceedings with the same purpose and involving the same cause of action before the Tribunale Civile in Catania, Italy, by an application which was lodged with that court on 22 or 23 September 1976 and served on the defendant on 23 September 1976.

3 The Landgericht dismissed the proceedings on the ground that it lacked international jurisdiction. Before the Landgericht the proceedings were definitively instituted only on 13 January 1977, by service of the document initiating them (Paragraphs 261 (1) and 253 (1) of the Zivilprozeßordnung [Code of Civil Procedure]) whereas they had been definitively instituted before the court in Catania by service of an equivalent document on 23 September 1976. In the opinion of the Landgericht München the court in Catania had jurisdiction by virtue of Article 21 of the Convention.

4 The plaintiff appealed to the Oberlandesgericht contending that the decisive time was not the moment at which the document initiating the proceedings was served but the moment at which the court was seised of the proceedings.

5 The Oberlandesgericht München considered that the dispute raised questions concerning the interpretation of the aforesaid Convention. It therefore stayed the proceedings and by order of 22 June 1983 referred the following question to the Court for a preliminary ruling:

"For the purpose of resolving the question which court of a Contracting State was first seised of proceedings (Article 21 of the Convention) is it the moment at which the document initiating them was lodged with the court ("Anhängigkeit") that is decisive or the moment at which — by service of that document on the defendant — the proceedings have become fully instituted ("Rechtshangigkeit")?"

6 Article 21 of the Convention provides:

"Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court.

A court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested."

7 The plaintiff in the main action considers that Article 21 of the Convention adopts as the moment at which the proceedings are brought the date on which the application is lodged at the court. The German text of the Convention uses the word "anhängig" as being equivalent to the word "formées" ["brought"] in the French version. An action is "anhängig" in German law as soon as the document initiating the proceedings is lodged at the registry of the court. On the other hand, the word "formées" in the French text of Article 22 of the Convention has been translated as "erhoben" in the German text. The plaintiff in the main action concludes that the Convention intended to distinguish between the concept of the bringing of proceedings within the meaning of Article 21, in which case the mere lodging of the document initiating the proceedings is sufficient, and the concept of bringing an action within the meaning of Article 22, for which the action

must be definitively pending according to the national law of the Member State concerned.

8 In the view of the plaintiff in the main action, service of the proceedings is, in German law, a matter for the court and not for the parties. The jurisdiction of the court seised thus cannot depend on delays in service effected by the court itself.

9 The defendant in the main action considers that the difference between the German words used in Articles 21 and 22 of the Convention as being equivalent to "formées" in the French version cannot have any effect on the interpretation of the Convention. He contends that the concept of bringing proceedings within the meaning of Article 21 of the Convention must be interpreted as meaning the definitive initiation of the action and that that concept must be determined by reference to the *lex fori* of the court seised.

10 It should be pointed out that the rules of procedure of the various Contracting States are not identical as regards determining the date at which the courts are seised.

11 It appears from information on comparative law placed before the Court that in France, Italy, Luxembourg and the Netherlands the action is considered to be pending before the court from the moment at which the document initiating the proceedings is served upon the defendant. In Belgium the court is seised when the action is registered on its general roll, such registration implying in principle prior service of the writ of summons on the defendant.

12 In the Federal Republic of Germany the action is brought, according to Paragraph 253 (1) of the Zivilprozeßordnung, when the document initiating the proceedings has been served on the defendant. Service is effected of its own motion by the court to which the document has been submitted. The procedural stage between the lodging of the document at the registry of the court and service is called "Anhängigkeit". The lodging of the document initiating the proceedings plays a role as regards limitation periods and compliance with procedural time-limits but in no way determines the moment at which the action becomes pending. It is clear from the aforementioned Paragraph 253, read together with Paragraph 261 (1) of the

Zivilprozeßordnung, that an action becomes pending once the document initiating the proceedings has been served on the defendant.

13 It follows from the comparison of the legislation mentioned above that a common concept of *lis pendens* cannot be arrived at by a rapprochement of the various relevant national provisions. *A fortiori*, therefore, it is not possible to extend to all the contracting parties, as is proposed by the plaintiff in the main action, a concept which is peculiar to German law and which, because of its characteristics, cannot be transposed to the other legal systems concerned.

14 It may properly be inferred from Article 21, read as a whole, that a court's obligation to decline jurisdiction in favour of another court only comes into existence if it is established that proceedings have been definitively brought before a court in another State involving the same cause of action and between the same parties. Beyond that, Article 21 gives no indication of the nature of the procedural formalities which must be taken into account for the purposes of considering whether or not to recognize the existence of such an effect. In particular, it gives no indication as to the answer to the question whether a *lis pendens* comes into being upon the receipt by a court of an application or upon service or notificaiton of that application on or to the party concerned.

15 Since the object of the Convention is not to unify those formalities, which are closely linked to the organization of judicial procedure in the various States, the question as to the moment at which the conditions for definitive seisin for the purposes of Article 21 are met must be appraised and resolved, in the case of each court, according to the rules of its own national law. That method allows each court to establish with a sufficient degree of certainty, by reference to its own national law, as regards itself, and by reference to the national law of any other court which has been seised, as regards that court, the order or priority in time of several actions brought within the conditions laid down by the Convention.

16 The answer to the question raised by the Oberlandesgericht München is therefore that Article 21 of the Convention must be interpreted as meaning that the court "first seised" is the one before which the requirements for proceedings to become definitively pending are first fulfilled, such requirements to be determined in accordance with the national law of each of the courts concerned.

Costs

17 The costs incurred by the Italian Government and by the Commission, which submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber)

in answer to the question referred to it by the Oberlandesgericht München, by order of 22 June 1983, hereby rules:

Article 21 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that the court "first seised" is the one before which the requirements for proceedings to become definitively pending are first fulfilled, such requirements to be determined in accordance with the national law of each of the courts concerned.

Koopmans Bahlmann

Pescatore O'Keeffe Bosco

Delivered in open court in Luxembourg on 7 June 1984.

J. A. Pompe
Deputy Registrar

T. Koopmans
President of the Fourth Chamber