JUDGMENT OF THE COURT (Fifth Chamber)

17 June 1999 *

In Case C-260/97,

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 Bundesgerichtshof (Germany) for a preliminary ruling in the proceedings pending before that court between

Unibank A/S

and

Flemming G. Christensen,

on the interpretation of Articles 32, 36 and 50 of the abovementioned Convention of 27 September 1968 (OJ 1972 L 299, p. 32), 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) 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: German.

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, J.C. Moitinho de Almeida, D.A.O. Edward (Rapporteur), L. Sevón and M. Wathelet, Judges,

Advocate General: A. La Pergola,

Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Unibank A/S, by Hans Klingelhöffer, Rechtsanwalt, Ettlingen,

— Mr Christensen, by Rüdiger Stäglich, Rechtsanwalt, Darmstadt,

— the German Government, by Rolf Wagner, Regierungsdirektor, Federal Ministry of Justice, acting as Agent,

— the United Kingdom Government, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, and

— the Commission of the European Communities, by José Luis Iglesias Buhigues, Legal Adviser, acting as Agent, assisted by Bertrand Wägenbaur, of the Brussels Bar,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 2 February 1999,

gives the following

Judgment

1 By order of 26 June 1997, received at the Court on 18 July 1997, the Bundesgerichtshof (Federal Court of Justice) 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, two questions on the interpretation of Articles 32, 36 and 50 of that Convention (OJ 1972 L 299, p. 32), 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) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1) (hereinafter 'the Brussels Convention').

2 Those questions have been raised in proceedings between Unibank A/S ('Unibank') and Mr Christensen concerning the former's application for three acknowledgements of indebtedness to be declared enforceable.

Legal background

3 Article 32(2) of the Brussels Convention provides:

'The jurisdiction of local courts shall be determined by reference to the place of domicile of the party against whom enforcement is sought. If he is not domiciled

in the State in which enforcement is sought, it shall be determined by reference to the place of enforcement.'

4 Article 36 of the Brussels Convention states:

'If enforcement is authorised, the party against whom enforcement is sought may appeal against the decision within one month of service thereof.

If that party is domiciled in a Contracting State other than that in which the decision authorising enforcement was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.'

5 Article 50 of the Brussels Convention provided:

'A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, have an order for its enforcement issued there, on application made in accordance with the procedures provided for in Article 31 et seq. The application may be refused only if enforcement of the instrument is contrary to public policy in the State addressed.

The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.

The provisions of Section 3 of Title III shall apply as appropriate.'

6 The first sentence of the first paragraph of Article 50 of the Brussels Convention was amended by Article 14 of the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1, hereinafter 'the Third Accession Convention'), as follows:

'A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State shall, in another Contracting State, be declared enforceable there, on application made in accordance with the procedures provided for in Article 31 et seq.'

7 Following that amendment, the wording of Article 50 of the Brussels Convention coincides exactly with that of Article 50 of the Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1988 L 319, p. 9, hereinafter 'the Lugano Convention').

8 Under Article 478(1)(5) of the Retsplejelov (Danish Code of Civil Procedure), execution may be levied on the basis of written acknowledgements of indebtedness provided that they contain an express provision to that effect.

The dispute in the main proceedings and the questions referred to the Court

9 Between 1990 and 1992 Mr Christensen signed in favour of Unibank, a bank established under Danish law in Arhus (Denmark) three acknowledgments of indebtedness (Gældsbrev) for DKK 270 000, DKK 422 000 and DKK 138 000,

together with interest thereon. The three documents are typewritten and also bear the signature of a third person, apparently an employee of Unibank, who witnessed the debtor's signature. The documents expressly state that they may be used, pursuant to Article 478 of the Retsplejelov, as a basis for execution to be levied.

10 When the acknowledgments of indebtedness were drawn up, the debtor resided in Denmark. He then moved to Weiterstadt, Germany, where the acknowledgments of indebtedness were presented to him for payment. At the request of Unibank, the Landgericht Darmstadt, in whose jurisdiction Weiterstadt is located, authorised enforcement of those documents. Mr Christensen appealed against that decision to the Oberlandesgericht (Higher Regional Court) Frankfurt am Main. In the course of the proceedings, Mr Christensen had indicated that he had left Germany, but had not disclosed his new address. The appeal court thereupon held that Unibank no longer had an interest in pursuing proceedings since it could no longer levy execution in respect of the acknowledgments of indebtedness in Germany and, accordingly, upheld the appeal.

11 Unibank appealed to the Bundesgerichtshof, which stayed proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'1. Is an acknowledgment of indebtedness signed by a debtor without the involvement of a public official — such as the *Gældsbrev* under Danish law (Paragraph 478(1)(5) of the Danish Code of Civil Procedure) — an authentic instrument within the meaning of Article 50 of the Brussels Convention, if that acknowledgment of indebtedness expressly specifies that it can serve as the basis for enforcement and if it can constitute the basis for enforcement under the law of the State in which it was drawn up, albeit subject to the condition that the court with jurisdiction to enforce it may refuse the creditor's application for enforcement if, as a result of objections to the basis for enforcement, there are doubts as to whether enforcement proceedings should be continued?

If the answer to Question 1 is in the affirmative:

2. Can an application for recognition of a decision or authentic instrument submitted to a court having local jurisdiction within the meaning of Article 32(2) of the Brussels Convention be rendered inadmissible or unfounded by reason of the fact that, while appeal proceedings (Article 36 of the Brussels Convention) are pending, the debtor has left the State in which the proceedings were instituted and his new place of residence is unknown?'

The first question

12 By its first question, the national court seeks essentially to ascertain whether an enforceable acknowledgment of indebtedness which has been drawn up without the involvement of a public authority constitutes an authentic instrument within the meaning of Article 50 of the Brussels Convention.

13 Unibank submits that the answer to that question should be in the affirmative. Conversely, Mr Christensen, the German and United Kingdom Governments and the Commission contend that the adjective 'authentic' means that the procedures for enforcement provided for by the Brussels Convention apply not to every instrument but only to those whose authenticity has been established by a competent public authority.

14 It must be borne in mind at the outset that Article 50 of the Brussels Convention treats a 'document which has been formally drawn up or registered as an authentic instrument and is enforceable in one Contracting State' in the same way, with regard to its enforceability in the other Contracting States, as judgments within the meaning of Article 25 of that Convention, in that it declares the provisions on enforcement contained in Article 31 et seq. thereof also to be

applicable to such documents. The purpose of those provisions is to achieve one of the fundamental objectives of the Brussels Convention, which is to facilitate, to the greatest possible extent, the free movement of judgments by providing for a simple and rapid enforcement procedure (see Case 148/84 *Deutsche Genossenschaftsbank* [1985] ECR 1981, paragraph 16, and Case C-414/92 *Solo Kleinmotoren* [1994] ECR I-2237, paragraph 20).

15 Since the instruments covered by Article 50 of the Brussels Convention are enforced under exactly the same conditions as judgments, the authentic nature of such instruments must be established beyond dispute so that the court in the State in which enforcement is sought is in a position to rely on their authenticity. Since instruments drawn up between private parties are not inherently authentic, the involvement of a public authority or any other authority empowered for that purpose by the State of origin is needed in order to endow them with the character of authentic instruments.

16 That interpretation of Article 50 of the Brussels Convention is supported by the Jenard-Möller Report on the Lugano Convention (OJ 1990 C 189, p. 57, hereinafter 'the Jenard-Möller Report').

17 Paragraph 72 of the Jenard-Möller Report states that the representatives of the Member States of the European Free Trade Area (EFTA) requested that the conditions which had to be fulfilled by authentic instruments in order to be regarded as authentic within the meaning of Article 50 of the Lugano Convention should be specified. In that connection the report mentions three conditions, namely: 'the authenticity of the instrument should have been established by a public authority; this authenticity should relate to the content of the instrument and not only, for example, the signature; the instrument has to be enforceable in itself in the State in which it originates'.

18 According to the same report, the involvement of a public authority is therefore essential for an instrument to be capable of being classified as an authentic instrument within the meaning of Article 50 of the Lugano Convention.

19 It is true that Article 50 of the Brussels Convention and Article 50 of the Lugano Convention were not identically worded at the material time in the present case and that the Jenard Report on the Brussels Convention (OJ 1979 C 59, p. 1) does not indicate the criteria to be fulfilled by authentic instruments but merely reproduces the conditions laid down by Article 50 of the latter Convention.

20 However, the only difference in the wording of the two Conventions on that point was that the Brussels Convention used the expression 'have an order for its enforcement issued' whereas the Lugano Convention used the expression 'declared enforceable'. Moreover, it is clear from paragraph 29 of the De Almeida Cruz, Desantes Real and Jenard Report on the Third Accession Convention (OJ 1990 C 189, p. 35) that the latter Convention, by adopting for Article 50 of the Brussels Convention the same wording as that of Article 50 of the Lugano Convention, sought to bring the wording of the two Conventions into line with each other on that point, the two expressions cited above being considered virtually equivalent.

21 It follows from all the foregoing that the answer to the first question must be that an acknowledgment of indebtedness enforceable under the law of the State of origin whose authenticity has not been established by a public authority or other authority empowered for that purpose by that State does not constitute an authentic instrument within the meaning of Article 50 of the Brussels Convention.

The second question

22 In view of the answer given to the first question, it is unnecessary to answer the second.

Costs

23 The costs incurred by German 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 proceedings 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 questions referred to it by the Bundesgerichtshof by order of 26 June 1997, hereby rules:

An acknowledgment of indebtedness enforceable under the law of the State of origin whose authenticity has not been established by a public authority or other authority empowered for that purpose by that State does not constitute an authentic instrument within the meaning of Article 50 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.

Puissochet Moitinho de Almeida Edward

Sevón Wathelet

Delivered in open court in Luxembourg on 17 June 1999.

R. Grass — Registrar

J.-P. Puissochet — President of the Fifth Chamber