JUDGMENT OF THE COURT (Fifth Chamber)

29 April 1999 *

In Case C-267/97,

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 Cour Supérieure de Justice (Luxembourg) for a preliminary ruling in the proceedings pending before that court between

Éric Coursier

and

Fortis Bank SA,

Martine Coursier, née Bellami,

* Language of the case: French.

on the interpretation of the first paragraph of Article 31 of the abovementioned Convention of 27 September 1968 (OJ 1975 L 204, p. 28), 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), 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: J.-P. Puissochet, President of the Chamber, P. Jann, J. C. Moitinho de Almeida, C. Gulmann and D. A. O. Edward (Rapporteur), Judges,

Advocate General: A. La Pergola,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Éric Coursier, by Jean Kauffman, of the Luxembourg Bar,

— Fortis Bank SA, by Jean-Paul Noesen, of the Luxembourg Bar,

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

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Coursier, Fortis Bank SA and the Commission at the hearing on 2 April 1998,

after hearing the Opinion of the Advocate General at the sitting on 28 May 1998,

gives the following

Judgment

1 By judgment of 26 June 1997, received at the Court Registry on 22 July 1997, the Cour Supérieure de Justice (High Court of Justice), Luxembourg, 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 a question on the interpretation of the first paragraph of Article 31 of the abovementioned Convention of 27 September 1968 (OJ 1975 L 204, p. 28), 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), 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, hereinafter 'the Brussels Convention').

2 That question was raised in proceedings brought by Éric Coursier, who lives in France, against Fortis Bank SA ('Fortis'), established in Luxembourg, and

Mrs Coursier, née Bellami, who lives in France, concerning the enforcement in Luxembourg of a judgment delivered on 6 January 1993 by the Cour d'Appel (Court of Appeal), Nancy (France) ('the contested judgment'), ordering Mr and Mrs Coursier to repay to Fortis a loan granted by it to them.

3 On 13 August 1990 Fortis granted a loan of LUF 480 000 to Mrs and Mrs Coursier. Following their failure to meet their obligations, on 22 March 1991 Fortis called the loan in and commenced proceedings against them before the courts of the State in which they were domiciled pursuant to Articles 13 and 14 of the Brussels Convention, which concern jurisdiction in respect of contracts concluded by consumers. The contested judgment granted Fortis an order requiring Mr and Mrs Coursier to repay the sum of LUF 563 282 together with interest at the contractual rate and costs. That judgment was served on the debtors on 24 February 1993.

4 By judgment of 1 July 1993, the Tribunal de Commerce (Commercial Court), Briey (France), converted the court-supervised receivership of Mr Coursier's business — a bar in Rehon (France) — into a court-supervised liquidation, in the context of which Fortis gave notice of a claim.

5 By judgment of 16 June 1994, the Tribunal de Commerce closed the court-supervised liquidation on the ground that there were insufficient assets and stated that 'the right of creditors to bring individual proceedings shall be reinstated only under the conditions specified in Article 169 of the Law of 25 January 1985'.

6 The first paragraph of Article 169 of Law No 85-98 of 25 January 1985 on liquidation of assets and court-supervised liquidation of undertakings, which forms part of Section II, headed 'Discontinuation of court-supervised liquidation proceedings', is worded as follows, in the version in force from 1 October 1994, which does not, for the purposes of this case, change the meaning of the earlier version:

'A judgment closing liquidation proceedings as a result of insufficient assets does not reinstate the right of creditors to bring proceedings individually against the debtor unless their claim derives from:

1. a finding against the debtor in criminal proceedings relating either to circumstances not connected with the profession or occupation of the debtor or to tax evasion, such right in the latter case being available only to the public revenue authorities;

2. rights vested in the creditor personally.

However, a surety or co-obligor who has made payment for the debtor may take proceedings against the latter.'

7 Mr Coursier having thereafter obtained employment in Luxembourg, as a frontier worker, Fortis instituted proceedings before the Justice de Paix, Luxembourg, for attachment of Mr Coursier's salary. In those proceedings, the President of the Tribunal d'Arrondissment, Luxembourg, granted an order on 2 July 1996 for enforcement of the contested judgment under the Brussels Convention.

8 By applications of 9 and 14 August 1996, Mr Coursier appealed, in accordance with Article 36 of the Brussels Convention, against that order to the Cour Supérieure de Justice, contending that since, by virtue of the first paragraph of Article 169 of Law No 85-98, the contested judgment was no longer enforceable in France, no order for its enforcement could be granted in Luxembourg under Article 31 of the Brussels Convention.

9 The Brussels Convention, pursuant to the first paragraph of Article 1 thereof, is to apply in civil and commercial matters whatever the nature of the court or tribunal. However, according to subparagraph 2 of the second paragraph of that article, bankruptcy, proceedings relating to the winding up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings are excluded from its scope.

10 The first paragraph of Article 31, which is in Section 2, entitled 'Enforcement', of Title III of the Brussels Convention, provides:

'A judgment given in a Contracting State and enforceable in that State shall be enforced in another Contracting State when, on the application of any interested party, it has been declared enforceable there.'

11 Considering that the dispute raised a problem concerning the interpretation of the Brussels Convention, the Cour Supérieure de Justice stayed proceedings pending a preliminary ruling from the Court of Justice on the following question:

'Does a judgment delivered in the State of origin in the context of a court-supervised liquidation — a matter which is excluded from the scope of the Brussels Convention — and which is not open to recognition under the national law of the State in which enforcement is sought, but which, in the State in which it was given, confers on one of the parties immunity from execution of the judgment whose

enforcement is sought, affect the quality of enforceability which, according to the first paragraph of Article 31 of the Convention, a judgment must possess in order to be recognised and enforced?'

The scope of the question

12 In replying to the question submitted, it is appropriate to focus first on the aspects of the case relating to the scope and legal effects of the contested judgment and those of the insolvency judgment.

13 It is clear from the terms of the contested judgment that it bears an order for enforcement. That judgment was served on Mr and Mrs Coursier on 24 February 1993 and, in the absence of any appeal against it, has become final.

14 It is common ground that a decision of that kind falls within the scope of the Brussels Convention and, as such, can qualify for recognition and enforcement under the rules contained in Title III thereof.

15 It is clear from the documents before the Court that Mr and Mrs Coursier do not contend that the obligation to pay the debt, which has been judicially recognised, has been extinguished through payment of the debt or some other cause, such as expiry of a limitation period.

16 The insolvency judgment, for its part, concerns a matter (insolvency) which is expressly excluded from the scope of the Brussels Convention by subparagraph 2 of the second paragraph of Article 1 thereof.

17 The documents on the file of the Tribunal de Commerce de Briey show that the latter declared the court-supervised liquidation closed, under Article 167 of Law No 85-98, because the lack of assets made further proceedings impossible.

18 Under the first paragraph of Article 169 of Law No 85-98, the judgment closing the court-supervised liquidation for lack of assets has the effect of preventing creditors individually from bringing actions against the debtor. According to the information before the Court, that provision does not extinguish the debtor's obligation to pay, so that a natural obligation continues to attach to him, and if, on his own initiative, he discharges his debt, such payment cannot be deemed to be one that was not due and so subject to repayment.

The question on which a ruling is sought

19 According to Fortis, Article 169 of Law No 85-98 confers a degree of immunity from enforcement on Mr Coursier alone — and only in France — which does not divest the contested judgment of its intrinsic enforceability under the first paragraph of Article 31 of the Brussels Convention.

20 Mr Coursier considers that the contested judgment has, by virtue of Article 169 of Law No 85-98, ceased to be enforceable against him. It is clear, in his view, particularly from the wording of the first paragraph of Article 31 of the Brussels Convention that the personal immunity from enforcement that he enjoys in France also operates in his favour in the other Contracting States.

21 According to the Commission, the contested judgment does not fulfil the condition laid down in the first paragraph of Article 31 of the Brussels Convention whereby a decision must be duly enforceable in the State of origin. The contested judgment cannot be accorded greater authority and effectiveness than it already has in the State of origin. Even if the insolvency judgment is excluded from the scope of the Brussels Convention by virtue of subparagraph 2 of the second paragraph of Article 1 thereof, its effect is inseparable from enforcement of the contested judgment.

22 In view of the terms of the question submitted, it is important to note that a judgment such as the contested judgment is, in principle, one to which the rules on recognition of decisions contained in Section I of Title III (Articles 26 to 30) of the Brussels Convention apply.

23 The rules on enforcement of decisions are contained in Section 2 of Title III (Articles 31 to 45) of the Brussels Convention. It is clear from the first paragraph of Article 31, which forms part of those rules, that the enforceability of a decision in the State of origin is a precondition for its enforcement in the State in which enforcement is sought.

24 However, the question whether a decision is, in formal terms, enforceable in character must be distinguished from the question whether that decision can any longer be enforced by reason of payment of the debt or some other cause.

25 The Brussels Convention is intended to facilitate the free movement of judgments by establishing a simple and rapid procedure in the Contracting State where enforcement of a foreign decision is applied for. That enforcement procedure constitutes an autonomous and complete system (see to that effect Case 148/84 *Deutsche Genossenschaftsbank* v *Brasserie du Pêcheur* [1985] ECR 1981, paragraph 17, and Case C-172/91 *Sonntag* v *Waidmann* [1993] ECR I-1963, paragraphs 32 and 33).

26 Thus, under Article 34 of the Brussels Convention, the procedure for obtaining authorisation for enforcement is carried out with the utmost speed, without the party against whom enforcement is sought being able, at that stage of the procedure, to make submissions.

27 Under Article 36 of the Brussels Convention, the party against whom enforcement is sought may make submissions only at a later stage in the procedure, namely in an appeal against the decision authorising enforcement before one of the courts mentioned in Article 37(1) of the Convention.

28 Thus, the Court has held that the Brussels Convention merely regulates the procedure for obtaining an order for the enforcement of foreign enforceable instruments and does not deal with execution itself, which continues to be governed by the domestic law of the court in which execution is sought (see *Deutsche Genossenschaftsbank*, cited above, paragraph 18, and Case 145/86 *Hoffmann* v *Krieg* [1988] ECR 645, paragraph 27).

29 In those circumstances, it follows from the general scheme of the Brussels Convention that the term 'enforceable' in Article 31 thereof refers solely to the enforceability, in formal terms, of foreign decisions and not to the circumstances in which such decisions may be executed in the State of origin.

30 That interpretation is supported by the Report on the Convention of 26 May 1989 (OJ 1990 C 189, p. 35). According to paragraph 29 of that report, although the expression 'when it has been declared enforceable' in Article 31 of the Brussels Convention replaced the expression 'when the order for its enforcement has been issued' which appeared in its original version in order to bring the convention into line with the Lugano Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1988 L 319, p. 9), those two expressions may be considered virtually equivalent.

31 It follows that a decision such as the contested judgment, which bears a formal order for enforcement, must, in principle, be covered by the rules on enforcement in Title III of the Brussels Convention.

32 As regards a judgment such as the insolvency judgment which concerns a matter expressly excluded from the purview of the Brussels Convention, it is for the court of the State in which enforcement is sought, in appeal proceedings brought under Article 36 of the Brussels Convention, to determine, in accordance with its domestic law including the rules of private international law, the legal effects of that judgment within its territory.

33 The answer to the question submitted must therefore be that the term 'enforceable' in the first paragraph of Article 31 of the Brussels Convention is to be interpreted as referring solely to the enforceability, in formal terms, of foreign decisions and not to the circumstances in which such decisions may be executed in the State of origin. It is for the court of the State in which enforcement is sought, in appeal proceedings brought under Article 36 of the Brussels Convention, to determine, in accordance with its domestic law including the rules of private international law, the legal effects of a decision given in the State of origin in relation to a court-supervised liquidation.

Costs

34 The costs incurred by the Commission of the European Communities, which has 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 Cour Supérieure de Justice by judgment of 26 June 1997, hereby rules:

The term 'enforceable' in the first paragraph of Article 31 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, is to be interpreted as referring solely to the enforceability, in formal terms, of foreign decisions and not to the circumstances in which such decisions may be executed in the State of origin. It is for the court of the State in which enforcement is sought, in appeal proceedings brought under Article 36 of the Brussels

Convention, to determine, in accordance with its domestic law including the rules of private international law, the legal effects of a decision given in the State of origin in relation to a court-supervised liquidation.

Puissochet Jann Moitinho de Almeida

Gulmann Edward

Delivered in open court in Luxembourg on 29 April 1999.

R. Grass J.-P. Puissochet

Registrar President of the Fifth Chamber