Judgment of the Court of 24 June 1981. - Elefanten Schuh GmbH v Pierre Jacqmain. - Reference for a preliminary ruling: Hof van Cassatie - Belgium. - Brussels Convention: Prorogation of jurisdiction. - Case 150/80.

Summary

1 . ARTICLE 18 OF THE CONVENTION OF 27 SEPTEMBER 1968 ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS APPLIES EVEN WHERE THE PARTIES HAVE BY AGREEMENT DESIGNATED A COURT WHICH IS TO HAVE JURISDICTION WITHIN THE MEANING OF ARTICLE 17 OF THAT CONVENTION .

2 . ARTICLE 18 OF THE CONVENTION OF 27 SEPTEMBER 1968 MUST BE INTERPRETED AS MEANING THAT THE RULE ON JURISDICTION WHICH THAT PROVISION LAYS DOWN DOES NOT APPLY WHERE THE DEFENDANT NOT ONLY CONTESTS THE COURT ' S JURISDICTION BUT ALSO MAKES SUBMISSIONS ON THE SUBSTANCE OF THE ACTION , PROVIDED THAT IF THE CHALLENGE TO JURISDICTION IS NOT PRELIMINARY TO ANY DEFENCE AS TO THE SUBSTANCE IT DOES NOT OCCUR AFTER THE MAKING OF THE SUBMISSIONS WHICH UNDER NATIONAL PROCEDURAL LAW ARE CONSIDERED TO BE THE FIRST DEFENCE ADDRESSED TO THE COURT SEISED .

3 . SINCE THE AIM OF ARTICLE 17 OF THE CONVENTION IS TO LAY DOWN THE FORMAL REQUIREMENTS WHICH AGREEMENTS CONFERRING JURISDICTION MUST MEET , CONTRACTING STATES ARE NOT FREE TO LAY DOWN FORMAL REQUIREMENTS OTHER THAN THOSE CONTAINED IN THE CONVENTION . WHEN THOSE RULES ARE APPLIED TO PROVISIONS CONCERNING THE LANGUAGE TO BE USED IN AN AGREEMENT CONFERRING JURISDICTION THEY IMPLY THAT THE LEGISLATION OF A CONTRACTING STATE MAY NOT ALLOW THE VALIDITY OF SUCH AN AGREEMENT TO BE CALLED IN QUESTION SOLELY ON THE GROUND THAT THE LANGUAGE USED IS NOT THAT PRESCRIBED BY THAT LEGISLATION .

Parties

IN CASE 150/80

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 HOF VAN CASSATIE (COURT OF CASSATION), BELGIUM , FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

ELEFANTEN SCHUH GMBH , KLEVE , FEDERAL REPUBLIC OF GERMANY ,

AND

PIERRE JACQMAIN , SCHOTEN , BELGIUM ,

Subject of the case

ON THE INTERPRETATION OF ARTICLES 17 , 18 AND 22 OF THE BRUSSELS CONVENTION OF 27 SEPTEMBER 1968 ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS ,

Grounds

1 BY JUDGMENT DATED 9 JUNE 1980 WHICH WAS RECEIVED AT THE COURT ON 24 JUNE 1980 THE COUR DE CASSATION (COURT OF CASSATION) OF BELGIUM 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 SEVERAL QUESTIONS AS TO THE INTERPRETATION OF ARTICLES 17 , 18 AND 22 OF THAT CONVENTION .

2 THOSE QUESTIONS WERE PUT IN THE CONTEXT OF AN APPEAL IN CASSATION AGAINST A JUDGMENT OF THE ARBEIDSHOF ANTWERPEN (LABOUR COURT , ANTWERP) ORDERING ELEFANTEN SCHUH GMBH , A COMPANY INCORPORATED UNDER GERMAN LAW , AND ELEFANT NV , A COMPANY INCORPORATED UNDER BELGIAN LAW , TO PAY JOINTLY THE SUM OF BFR 3 120 597 TOGETHER WITH INTEREST TO MR PIERRE JACQMAIN FOR HAVING INTER ALIA DISMISSED MR JACQMAIN WITHOUT NOTICE .

3 IT APPEARS FROM THE PAPERS PLACED BEFORE THE COURT THAT IN 1970 MR JACQMAIN WAS EMPLOYED AS A SALES AGENT BY THE GERMAN COMPANY HOFFMANN GMBH WHICH SUBSEQUENTLY ADOPTED THE NAME ELEFANTEN SCHUH GMBH ; HOWEVER , HE ACTUALLY WORKED IN BELGIUM , IN PARTICULAR IN THE PROVINCES OF ANTWERP , BRABANT AND LIMBURG , ON INSTRUCTIONS WHICH HE RECEIVED FROM THE BELGIAN SUBSIDIARY OF THAT UNDERTAKING , ELEFANT NV THE MAIN ACTION AROSE AS A RESULT OF DIFFICULTIES WHICH OCCURRED IN 1975 BETWEEN MR JACQMAIN AND THE TWO COMPANIES CONCERNING DETAILS OF THE TRANSFER OF THE CONTRACT OF EMPLOYMENT FROM THE GERMAN COMPANY TO THE BELGIAN COMPANY .

4 MR JACQMAIN BROUGHT AN ACTION IN THE ARBEIDSRECHTBANK ANTWERPEN (LABOUR TRIBUNAL , ANTWERP) AGAINST THE TWO COMPANIES . THE DEFENDANT COMPANIES APPEARED BEFORE THAT COURT AND BY THEIR FIRST SUBMISSIONS THEY CONTESTED THE SUBSTANCE OF THE APPLICATIONS LODGED AGAINST THEM . IN FURTHER SUBMISSIONS LODGED NINE MONTHS LATER THE GERMAN COMPANY CLAIMED THAT THE ARBEIDSRECHTBANK DID NOT HAVE JURISDICTION ON THE GROUND THAT THE CONTRACT OF EMPLOYMENT CONTAINED A CLAUSE STIPULATING THAT THE COURT AT KLEVE IN THE FEDERAL REPUBLIC OF GERMANY WAS TO HAVE EXCLUSIVE JURISDICTION IN THE EVENT OF ANY DISPUTE . THE ARBEIDSRECHTBANK DISMISSED THAT OBJECTION . IT TOOK THE VIEW THAT SUCH A CLAUSE COULD NOT DEROGATE FROM ARTICLE 627 OF THE BELGIAN JUDICIAL CODE WHICH IN DISPUTES OF THIS KIND PROVIDES THAT THE COURT OF THE PLACE WHERE THE OCCUPATION IS PURSUED IS TO HAVE JURISDICTION .

5 THE ARBEIDSHOF ANTWERPEN , TO WHICH AN APPEAL FROM THE JUDGMENT OF THE ARBEIDSRECHTBANK WAS MADE , CONSIDERED THAT PURSUANT TO ARTICLE 17 OF THE BRUSSELS CONVENTION OF 27 SEPTEMBER 1968 THE PARTIES TO THE CONTRACT OF EMPLOYMENT COULD CONFER TERRITORIAL JURISDICTION ON THE COURT OF KLEVE BY AGREEING IN WRITING TO DEROGATE FROM THE RULES ON TERRITORIAL JURISDICTION CONTAINED IN THE BELGIAN JUDICIAL CODE . HOWEVER , THE ARBEIDSHOF HELD THAT THE GERMAN COMPANY COULD NOT RELY ON THE JURISDICTION CLAUSE ON THE GROUND THAT THE CONTRACT OF EMPLOYMENT HAD TO BE WRITTEN IN DUTCH BY VIRTUE OF ARTICLE 10 OF THE DECREE OF 19 JULY 1973 GOVERNING THE USE OF LANGUAGES IN RELATIONS BETWEEN EMPLOYERS AND EMPLOYEES , ADOPTED BY THE CULTUURRAAD VOOR NEDERLANDSE CULTUURGEMEENSCHAP (CULTURE COUNCIL FOR THE NETHERLANDS CULTURAL COMMUNITY) (MONITEUR BELGE , P . 10089). THE ARBEIDSHOF TOOK THE VIEW THAT ARTICLE 10 , WHICH PROVIDES THAT ANY ACT OR DOCUMENT NOT WRITTEN IN DUTCH IS NULL AND VOID , APPLIES TO DOCUMENTS DRAWN UP BEFORE THE DECREE ENTERED INTO FORCE . CONSEQUENTLY THE CONTRACT OF EMPLOYMENT , DRAWN UP IN GERMAN , WAS NULL AND VOID AND THE CLAUSE CONFERRING JURISDICTION CONTAINED THEREIN WAS INVALID .

6 THE APPEAL IN CASSATION LODGED AGAINST THE JUDGMENT OF THE ARBEIDSHOF BY THE BELGIAN COMPANY WAS DECLARED INADMISSIBLE BY THE HOF VAN CASSATIE (COURT OF CASSATION). AS THE APPEAL IN CASSATION LODGED BY THE GERMAN COMPANY CONCERNED THE

VALIDITY OF THE JURISDICTION CLAUSE IN PARTICULAR THE HOF VAN CASSATIE DECIDED IN VIEW OF ARTICLE 17 OF THE BRUSSELS CONVENTION TO PUT THREE QUESTIONS TO THE COURT OF JUSTICE .

QUESTION 1

7 QUESTION 1 IS WORDED AS FOLLOWS :

' ' 1 . (A) IS ARTICLE 18 OF THE CONVENTION OF 27 SEPTEMBER 1968 ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS APPLICABLE IF PARTIES HAVE AGREED TO CONFER JURISDICTION ON A COURT WITHIN THE MEANING OF ARTICLE 17?

(B)IS THE RULE ON JURISDICTION CONTAINED IN ARTICLE 18 APPLICABLE IF THE DEFENDANT HAS NOT ONLY CONTESTED JURISDICTION BUT HAS IN ADDITION MADE SUBMISSIONS ON THE ACTION ITSELF?

(C)IF IT IS , MUST JURISDICTION THEN BE CONTESTED IN LIMINE LITIS? ' '

8 ARTICLES 17 AND 18 FORM SECTION 6 OF TITLE II OF THE CONVENTION WHICH DEALS WITH PROROGATION OF JURISDICTION ; ARTICLE 17 CONCERNS JURISDICTION BY CONSENT AND ARTICLE 18 JURISDICTION IMPLIED FROM SUBMISSION AS A RESULT OF THE DEFENDANT ' S APPEARANCE . THE FIRST PART OF THE QUESTION SEEKS TO DETERMINE THE RELATIONSHIP BETWEEN THOSE TWO TYPES OF PROROGATION .

9 IN THE FIRST SENTENCE , ARTICLE 18 OF THE CONVENTION LAYS DOWN THE RULE THAT A COURT OF A CONTRACTING STATE BEFORE WHOM A DEFENDANT ENTERS AN APPEARANCE IS TO HAVE JURISDICTION AND IN THE SECOND SENTENCE IT PROVIDES THAT THAT RULE IS NOT TO APPLY WHERE APPEARANCE WAS ENTERED SOLELY IN ORDER TO CONTEST THE JURISDICTION , OR WHERE ANOTHER COURT HAS EXCLUSIVE JURISDICTION BY VIRTUE OF ARTICLE 16 OF THE CONVENTION .

10 THE CASE ENVISAGED IN ARTICLE 17 IS NOT THEREFORE ONE OF THE EXCEPTIONS WHICH ARTICLE 18 ALLOWS TO THE RULE WHICH IT LAYS DOWN . MOREOVER NEITHER THE GENERAL SCHEME NOR THE OBJECTIVES OF THE CONVENTION PROVIDE GROUNDS FOR THE VIEW THAT THE PARTIES TO AN AGREEMENT CONFERRING JURISDICTION WITHIN THE MEANING OF ARTICLE 17 ARE PREVENTED FROM VOLUNTARILY SUBMITTING THEIR DISPUTE TO A COURT OTHER THAN THAT STIPULATED IN THE AGREEMENT .

11 IT FOLLOWS THAT ARTICLE 18 OF THE CONVENTION APPLIES EVEN WHERE THE PARTIES HAVE BY AGREEMENT DESIGNATED A COURT WHICH IS TO HAVE JURISDICTION WITHIN THE MEANING OF ARTICLE 17 .

12 THE SECOND AND THIRD PARTS OF THE QUESTION ENVISAGE THE CASE IN WHICH THE DEFENDANT HAS APPEARED BEFORE A COURT WITHIN THE MEANING OF ARTICLE 18 BUT CONTESTS THE JURISDICTION OF THAT COURT .

13 THE HOF VAN CASSATIE FIRST ASKS IF ARTICLE 18 HAS APPLICATION WHERE THE DEFENDANT MAKES SUBMISSIONS AS TO THE JURISDICTION OF THE COURT AS WELL AS ON THE SUBSTANCE OF THE ACTION .

14 ALTHOUGH DIFFERENCES BETWEEN THE DIFFERENT LANGUAGE VERSIONS OF ARTICLE 18 OF THE CONVENTION APPEAR WHEN IT IS SOUGHT TO DETERMINE WHETHER , IN ORDER TO EXCLUDE THE JURISDICTION OF THE COURT SEISED , A DEFENDANT MUST CONFINE HIMSELF TO CONTESTING THAT JURISDICTION , OR WHETHER HE MAY ON THE CONTRARY STILL ACHIEVE THE SAME PURPOSE BY CONTESTING THE JURISDICTION OF THE COURT AS WELL AS THE SUBSTANCE OF THE CLAIM , THE SECOND INTERPRETATION IS MORE IN KEEPING WITH THE OBJECTIVES AND SPIRIT OF THE

CONVENTION . IN FACT UNDER THE LAW OF CIVIL PROCEDURE OF CERTAIN CONTRACTING STATES A DEFENDANT WHO RAISES THE ISSUE OF JURISDICTION AND NO OTHER MIGHT BE BARRED FROM MAKING HIS SUBMISSIONS AS TO THE SUBSTANCE IF THE COURT REJECTS HIS PLEA THAT IT HAS NO JURISDICTION . AN INTERPRETATION OF ARTICLE 18 WHICH ENABLED SUCH A RESULT TO BE ARRIVED AT WOULD BE CONTRARY TO THE RIGHT OF THE DEFENDANT TO DEFEND HIMSELF IN THE ORIGINAL PROCEEDINGS , WHICH IS ONE OF THE AIMS OF THE CONVENTION .

15 HOWEVER , THE CHALLENGE TO JURISDICTION MAY HAVE THE RESULT ATTRIBUTED TO IT BY ARTICLE 18 ONLY IF THE PLAINTIFF AND THE COURT SEISED OF THE MATTER ARE ABLE TO ASCERTAIN FROM THE TIME OF THE DEFENDANT ' S FIRST DEFENCE THAT IT IS INTENDED TO CONTEST THE JURISDICTION OF THE COURT .

16 THE HOF VAN CASSATIE ASKS IN THIS REGARD WHETHER JURISDICTION MUST BE CONTESTED IN LIMINE LITIS . FOR THE PURPOSES OF INTERPRETING THE CONVENTION THAT CONCEPT IS DIFFICULT TO APPLY IN VIEW OF THE APPRECIABLE DIFFERENCES EXISTING BETWEEN THE LEGISLATION OF THE CONTRACTING STATES WITH REGARD TO BRINGING ACTIONS BEFORE COURTS OF LAW , THE APPEARANCE OF DEFENDANTS AND THE WAY IN WHICH THE PARTIES TO AN ACTION MUST FORMULATE THEIR SUBMISSIONS . HOWEVER , IT FOLLOWS FROM THE AIM OF ARTICLE 18 THAT IF THE CHALLENGE TO JURISDICTION IS NOT PRELIMINARY TO ANY DEFENCE AS TO THE SUBSTANCE IT MAY NOT IN ANY EVENT OCCUR AFTER THE MAKING OF THE SUBMISSIONS WHICH UNDER NATIONAL PROCEDURAL LAW ARE CONSIDERED TO BE THE FIRST DEFENCE ADDRESSED TO THE COURT SEISED .

17 THEREFORE THE ANSWER TO THE SECOND AND THIRD PARTS OF QUESTION 1 SHOULD BE THAT ARTICLE 18 OF THE CONVENTION MUST BE INTERPRETED AS MEANING THAT THE RULE ON JURISDICTION WHICH THAT PROVISION LAYS DOWN DOES NOT APPLY WHERE THE DEFENDANT NOT ONLY CONTESTS THE COURT ' S JURISDICTION BUT ALSO MAKES SUBMISSIONS ON THE SUBSTANCE OF THE ACTION , PROVIDED THAT , IF THE CHALLENGE TO JURISDICTION IS NOT PRELIMINARY TO ANY DEFENCE AS TO THE SUBSTANCE , IT DOES NOT OCCUR AFTER THE MAKING OF THE SUBMISSIONS WHICH UNDER NATIONAL PROCEDURAL LAW ARE CONSIDERED TO BE THE FIRST DEFENCE ADDRESSED TO THE COURT SEISED .

QUESTION 2

18 QUESTION 2 IS AS FOLLOWS :

' ' 2 . (A) IN APPLICATION OF ARTICLE 22 OF THE CONVENTION , CAN RELATED ACTIONS WHICH , HAD THEY BEEN BROUGHT SEPARATELY , WOULD HAVE HAD TO BE BROUGHT BEFORE COURTS OF DIFFERENT CONTRACTING STATES , BE BROUGHT SIMULTANEOUSLY BEFORE ONE OF THOSE COURTS , PROVIDED THAT THE LAW OF THAT COURT PERMITS THE CONSOLIDATION OF RELATED ACTIONS AND THAT COURT HAS JURISDICTION OVER BOTH ACTIONS?

(B)IS THAT ALSO THE CASE IF THE PARTIES TO ONE OF THE DISPUTES WHICH HAVE GIVEN RISE TO THE ACTIONS HAVE AGREED , IN ACCORDANCE WITH ARTICLE 17 OF THE CONVENTION , THAT A COURT OF ANOTHER CONTRACTING STATE IS TO HAVE JURISDICTION TO SETTLE THAT DISPUTE?

' '

19 ARTICLE 22 OF THE CONVENTION IS INTENDED TO ESTABLISH HOW RELATED ACTIONS WHICH HAVE BEEN BROUGHT BEFORE COURTS OF DIFFERENT MEMBER STATES ARE TO BE DEALT WITH . IT DOES NOT CONFER JURISDICTION ; IN PARTICULAR , IT DOES NOT ACCORD JURISDICTION TO A COURT OF A CONTRACTING STATE TO TRY AN ACTION WHICH IS RELATED TO ANOTHER ACTION OF WHICH THAT COURT IS SEISED PURSUANT TO THE RULES OF THE CONVENTION .

20 THE ANSWER TO QUESTION 2 SHOULD THEREFORE BE THAT ARTICLE 22 OF THE CONVENTION APPLIES ONLY WHERE RELATED ACTIONS ARE BROUGHT BEFORE COURTS OF TWO OR MORE CONTRACTING STATES .

QUESTION 3

21 THE FINAL QUESTION IS WORDED AS FOLLOWS :

' ' 3 . DOES IT CONFLICT WITH ARTICLE 17 OF THE CONVENTION TO RULE THAT AN AGREEMENT CONFERRING JURISDICTION ON A COURT IS VOID IF THE DOCUMENT IN WHICH THE AGREEMENT IS CONTAINED IS NOT DRAWN UP IN THE LANGUAGE WHICH IS PRESCRIBED BY THE LAW OF A CONTRACTING STATE UPON PENALTY OF NULLITY AND IF THE COURT OF THE STATE BEFORE WHICH THE AGREEMENT IS RELIED UPON IS BOUND BY THAT LAW TO DECLARE THE DOCUMENT TO BE VOID OF ITS OWN MOTION?

' '

22 FROM THAT WORDING IT APPEARS THAT THE HOF VAN CASSATIE IS SOLELY CONCERNED WITH THE VALIDITY OF AN AGREEMENT CONFERRING JURISDICTION WHICH IS RENDERED VOID BY THE NATIONAL LEGISLATION OF THE COURT SEISED AS HAVING BEEN WRITTEN IN A LANGUAGE OTHER THAN THAT PRESCRIBED BY THAT LEGISLATION .

23 ARTICLE 17 STIPULATES THAT THE AGREEMENT CONFERRING JURISDICTION MUST TAKE THE FORM OF AN AGREEMENT IN WRITING OR AN ORAL AGREEMENT EVIDENCED IN WRITING .

24 ACCORDING TO THE REPORT ON THE CONVENTION SUBMITTED TO THE GOVERNMENTS OF THE CONTRACTING STATES AT THE SAME TIME AS THE DRAFT CONVENTION THOSE FORMAL REQUIREMENTS WERE INSERTED OUT OF THE CONCERN NOT TO IMPEDE COMMERCIAL PRACTICE , YET AT THE SAME TIME TO CANCEL OUT THE EFFECTS OF CLAUSES IN CONTRACTS WHICH MIGHT GO UNREAD , SUCH AS CLAUSES IN PRINTED FORMS FOR BUSINESS CORRESPONDENCE OR IN INVOICES , IF THEY WERE NOT AGREED TO BY THE PARTY AGAINST WHOM THEY OPERATE . FOR THOSE REASONS JURISDICTION CLAUSES SHOULD BE TAKEN INTO CONSIDERATION ONLY IF THEY ARE THE SUBJECT OF A WRITTEN AGREEMENT , AND THAT IMPLIES THE CONSENT OF ALL THE PARTIES . FURTHERMORE , THE DRAFTSMEN OF ARTICLE 17 WERE OF THE OPINION THAT , IN ORDER TO ENSURE LEGAL CERTAINTY , THE FORMAL REQUIREMENTS APPLICABLE TO AGREEMENTS CONFERRING JURISDICTION SHOULD BE EXPRESSLY PRESCRIBED .

25 ARTICLE 17 IS THUS INTENDED TO LAY DOWN ITSELF THE FORMAL REQUIREMENTS WHICH AGREEMENTS CONFERRING JURISDICTION MUST MEET ; THE PURPOSE IS TO ENSURE LEGAL CERTAINTY AND THAT THE PARTIES HAVE GIVEN THEIR CONSENT .

26 CONSEQUENTLY CONTRACTING STATES ARE NOT FREE TO LAY DOWN FORMAL REQUIREMENTS OTHER THAN THOSE CONTAINED IN THE CONVENTION . THAT IS CONFIRMED BY THE FACT THAT THE SECOND PARAGRAPH OF ARTICLE 1 OF THE PROTOCOL ANNEXED TO THE CONVENTION EXPRESSLY PRESCRIBES SPECIAL REQUIREMENTS OF FORM WITH REGARD TO PERSONS DOMICILED IN LUXEMBOURG .

27 WHEN THOSE RULES ARE APPLIED TO PROVISIONS CONCERNING THE LANGUAGE TO BE USED IN AN AGREEMENT CONFERRING JURISDICTION THEY IMPLY THAT THE LEGISLATION OF A CONTRACTING STATE MAY NOT ALLOW THE VALIDITY OF SUCH AN AGREEMENT TO BE CALLED IN QUESTION SOLELY ON THE GROUND THAT THE LANGUAGE USED IS NOT THAT PRESCRIBED BY THAT LEGISLATION .

28 MOREOVER , ANY DIFFERENT INTERPRETATION WOULD RUN COUNTER TO ARTICLE 17 OF THE CONVENTION THE VERY PURPOSE OF WHICH IS TO ENABLE A COURT OF A CONTRACTING STATE TO BE CHOSEN BY AGREEMENT WHERE THAT COURT , IF NOT SO CHOSEN , WOULD NOT NORMALLY HAVE JURISDICTION . THAT CHOICE MUST THEREFORE BE RESPECTED BY THE COURTS OF ALL THE CONTRACTING STATES .

29 CONSEQUENTLY , THE ANSWER TO QUESTION 3 MUST BE THAT ARTICLE 17 OF THE CONVENTION MUST BE INTERPRETED AS MEANING THAT THE LEGISLATION OF A CONTRACTING STATE MAY NOT ALLOW THE VALIDITY OF AN AGREEMENT CONFERRING JURISDICTION TO BE CALLED IN QUESTION SOLELY ON THE GROUND THAT THE LANGUAGE USED IS NOT THAT PRESCRIBED BY THAT LEGISLATION .

Decision on costs

30 THE COSTS INCURRED BY THE GOVERNMENT OF THE UNITED KINGDOM AND THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . SINCE THE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN ACTION ARE CONCERNED , A STEP IN THE ACTION PENDING BEFORE THE NATIONAL COURT , THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

Operative part

ON THOSE GROUNDS ,

THE COURT ,

IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE HOF VAN CASSATIE BY JUDGMENT OF 9 JUNE 1980 , HEREBY RULES :

1 . ARTICLE 18 OF THE CONVENTION OF 27 SEPTEMBER 1968 ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS APPLIES EVEN WHERE THE PARTIES HAVE BY AGREEMENT DESIGNATED A COURT WHICH IS TO HAVE JURISDICTION WITHIN THE MEANING OF ARTICLE 17 OF THAT CONVENTION .

2 . ARTICLE 18 OF THE CONVENTION OF 27 SEPTEMBER 1968 MUST BE INTERPRETED AS MEANING THAT THE RULE ON JURISDICTION WHICH THAT PROVISION LAYS DOWN DOES NOT APPLY WHERE THE DEFENDANT NOT ONLY CONTESTS THE COURT ' S JURISDICTION BUT ALSO MAKES SUBMISSIONS ON THE SUBSTANCE OF THE ACTION , PROVIDED THAT , IF THE CHALLENGE TO JURISDICTION IS NOT PRELIMINARY TO ANY DEFENCE AS TO THE SUBSTANCE , IT DOES NOT OCCUR AFTER THE MAKING OF THE SUBMISSIONS WHICH UNDER NATIONAL PROCEDURAL LAW ARE CONSIDERED TO BE THE FIRST DEFENCE ADDRESSED TO THE COURT SEISED .

3 . ARTICLE 22 OF THE CONVENTION OF 27 SEPTEMBER 1968 APPLIES ONLY WHERE RELATED ACTIONS ARE BROUGHT BEFORE COURTS OF TWO OR MORE CONTRACTING STATES .

4 . ARTICLE 17 OF THE CONVENTION OF 27 SEPTEMBER 1968 MUST BE INTERPRETED AS MEANING THAT THE LEGISLATION OF A CONTRACTING STATE MAY NOT ALLOW THE VALIDITY OF AN AGREEMENT CONFERRING JURISDICTION TO BE CALLED IN QUESTION SOLELY ON THE GROUND THAT THE LANGUAGE USED IS NOT THAT PRESCRIBED BY THAT LEGISLATION .