JUDGMENT OF THE COURT (Fifth Chamber)

14 November 2002 *

In Case C-271/00,

REFERENCE to the Court 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 by the Hof van Beroep te Antwerpen (Belgium), for a preliminary ruling in the proceedings pending before that court between

Gemeente Steenbergen

and

Luc Baten,

on the interpretation of Article 1 of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), 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 version — 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: Dutch.

THE COURT (Fifth Chamber),

composed of: C.W.A. Timmermans, President of the Fourth Chamber, acting as President of the Fifth Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges,

Advocate General: A. Tizzano,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Gemeente Steenbergen, by J. Jespers, advocaat,

— Mr Baten, by J. de Meester, avocat,

— the Netherlands Government, by V.J.M. Koningsberger, acting as Agent,

— the Austrian Government, by H. Dossi, acting as Agent,

— the Swedish Government, by A. Kruse, acting as Agent,

— the United Kingdom Government, by J.E. Collins, acting as Agent, with K. Beal, Barrister,

— the Commission of the European Communities, by J.L. Iglesias Buhigues and W. Neirinck, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the United Kingdom Government, represented by J.E. Collins and K. Beal, and the Commission, represented by A.-M. Rouchaud and H.M.H. Speyart, acting as Agents, at the hearing on 15 November 2001,

after hearing the Opinion of the Advocate General at the sitting on 18 April 2002,

gives the following

Judgment

1 By order of 27 June 2000, received at the Court on 5 July 2000, the Hof van Beroep te Antwerpen (Court of Appeal, Antwerp) referred to the Court for a preliminary ruling 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 two questions on the interpretation of Article 1 of the abovementioned Convention of

27 September 1968 (OJ 1978 L 304, p. 36), 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 version — 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 were raised in a legal action under a right of recourse brought by Gemeente Steenbergen, a Netherlands local authority, against Mr Baten, resident in Belgium, in order to recover sums of money paid by that authority, by way of social assistance, to the divorced spouse and the child of Mr Baten.

Legal framework

The Brussels Convention

3 The scope of the Brussels Convention is defined in Article 1 thereof, which provides:

'This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

The Convention shall not apply to:

...

3. social security;

...'

4 Under Article 26 of the Brussels Convention, a judgment given in a Contracting State is to be automatically recognised in the other Contracting States without any special procedure being required.

5 However, Article 27 of the Brussels Convention specifies exhaustively the cases in which recognition is to be refused. It is worded as follows:

'A judgment shall not be recognised:

...;

3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;

...'

6 Under Article 55 the Brussels Convention supersedes, for the States which are parties to it, certain conventions listed therein. These include 'the Convention between Belgium and the Netherlands on jurisdiction, bankruptcy and the validity and enforcement of judgments, arbitration awards and authentic instruments signed in Brussels on 28 March 1925' (hereinafter the Belgium-Netherlands Convention of 1925).

7 Under Article 56 of the Brussels Convention the conventions mentioned in Article 55 thereof are to continue to have effect in relation to matters to which the Brussels Convention does not apply.

Netherlands legislation

8 The Algemene Bijstandswet (Law on general assistance, *Staatsblad* 1995, No 199, p. 1, hereinafter the 'ABW') establishes a system of social security in favour of persons residing in the Netherlands without resources.

9 General assistance (*algemene bijstand*) comprises a monthly contribution linked to the statutory minimum wage and intended to enable the recipient to meet the essential costs of subsistence. The assistance is granted by the municipality in which the person concerned is resident.

10 Article 93 of the ABW provides:

'The cost of assistance shall be recovered, up to the limit of the extent of the maintenance obligation under Book I of the Civil Code:

(a) from a person who, living apart from his family, does not, or does not fully, meet his maintenance obligation in respect of his spouse or infant child...;

(b) from persons who do not, or do not fully, meet their maintenance obligations following a divorce...;

(c) ...'

11 Article 94 of the ABW provides:

'An agreement under which spouses or former spouses stipulate that, after their divorce..., they shall in no way be mutually bound by a maintenance obligation or that such obligation shall be limited to a specific amount, shall not preclude

recovery... from one of the parties and shall be without prejudice to determination of the amount to be recovered.'

12 Where the person against whom the municipality decides to seek recovery is not prepared to pay voluntarily, the municipality may bring an action under a right of recourse, in accordance with Article 102 et seq. of the ABW. Such action is governed by the rules of civil procedure.

The dispute in the main proceedings and the questions referred for a preliminary ruling

13 The marriage between Mr Baten and Mrs Kil was dissolved by a divorce decree granted by consent on 14 May 1987 by a Belgian court. In the agreement prior to the divorce entered into on 25 March 1986 before a notary established in Belgium, the spouses agreed that no maintenance would be payable as between themselves and that Mr Baten would pay BEF 3 000 per month by way of contribution to the maintenance of the infant child of the marriage.

14 Mrs Kil and her child settled in the municipality of Steenbergen (Netherlands), which granted them an allowance by way of social assistance under the ABW.

15 Subsequently, the municipality of Steenbergen sought recovery from Mr Baten under Article 93 et seq. of the ABW of the amounts paid. Since Mr Baten did not accede to that claim, the municipality of Steenbergen brought an action under a right of recourse against him under Article 102 of the ABW before the Arrondissementstrechtbank te Breda (District Court, Breda) (Netherlands).

16 By order of 22 July 1996 the Arrondissementsrechtbank te Breda ordered Mr Baten to pay to the municipality of Steenbergen the amounts granted to Mrs Kil and her child by way of social assistance.

17 By order of 11 February 1998 the President of the Rechtbank van eerste aanleg te Turnhout (Court of First Instance, Turnhout) (Belgium) declared the order of 22 July 1996 enforceable.

18 Mr Baten appealed against that order. By judgments of 17 March and 23 June 1999 the Rechtbank van eerste aanleg te Turnhout declared that appeal well founded and held that enforcement of the order of 22 July 1996 of the Arrondissementsrechtbank te Breda was not possible 'owing to the incompatibility of that decision with the divorce decree by consent of 14 May 1987 which by implication includes and confirms the instrument notarised on 25 March 1986'.

19 The municipality of Steenbergen appealed against those two judgments to the Hof van Beroep te Antwerpen. It claimed that, since the dispute concerns a matter of social security it comes not within the scope of the Brussels Convention but within that of the Belgium-Netherlands Convention of 1925.

20 Under those circumstances the Hof van Beroep te Antwerpen decided to stay proceedings and refer the two following questions to the Court for a preliminary ruling:

'1. Is a legal action under a right of recourse under the Netherlands Algemene Bijstandswet (Law on General Assistance) brought by a municipality entitled to seek recovery against a person liable to pay maintenance, as referred to in

Article 93 of the Algemene Bijstandswet, a civil matter within the meaning of the first paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, and does a judicial decision delivered in such an action come for that reason within the scope of that Convention?

2. Is a legal action under a right of recourse under the Netherlands Algemene Bijstandswet brought by a municipality entitled to seek recovery against a person liable to pay maintenance, as referred to in Article 93 of the Algemene Bijstandswet, a case relating to social security within the meaning of Article 1, second paragraph, point 3, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, and does a judicial decision delivered in such an action for that reason fall outside the scope of that Convention?'

The first question

21 In this question the referring court is, essentially, seeking to ascertain whether the concept of 'civil matters' in the first paragraph of Article 1 of the Brussels Convention encompasses an action under a right of recourse under which a public body seeks recovery from a private person of sums paid by it by way of social assistance to the divorced spouse and the child of that person.

Observations submitted to the Court

22 In their observations to the Court the parties to the main proceedings, the Member States and the Commission are at one in acknowledging that the concept

of 'civil matters' in Article 1 of the Brussels Convention must be defined autonomously. They are also at one in pointing out that disputes between the public authority and an individual may come within the scope of the Brussels Convention provided that the public authority has not acted in the exercise of its public powers.

23 However, the observations are at variance in regard to the application of those principles to the dispute in the main proceedings.

24 The municipality of Steenbergen and the United Kingdom Government maintain that a public authority which brings an action against an individual in order to recover sums paid by it by way of social assistance is acting in the exercise of its public powers.

25 The Commission, too, supported that view during the written procedure, on the basis of the fact that under the ABW the municipality granting social assistance has a broad discretion in determining both the persons entitled to and the amount of assistance, and in deciding whether or not to recover that amount. However, at the hearing it altered its view, basing itself on a different reading of the ABW. On that reading, the municipality is obliged to seek recovery once there is a person under a statutory obligation to pay maintenance, although the action under a right of recourse can be availed of only within the limits of the maintenance obligation not complied with by that person. The municipality is thus exercising a right of a civil-law nature.

26 The Austrian and Swedish Governments likewise contend that the action under a right of recourse in point here is linked to a civil-law right to maintenance, in the present case vested in Mrs Kil and her daughter *vis-à-vis* Mr Baten. The fact that that right was transferred to a public authority did not alter its character.

27 The Netherlands Government also contends that the action in point in the main proceedings is an action in a civil matter. However, it prefers to regard it as an action for reparation of the loss occasioned to the municipality concerned as a result of the fact that it had to pay an allowance by way of social assistance to a person without resources to whom maintenance was owed.

Findings of the Court

28 It is settled case-law that, since Article 1 of the Brussels Convention serves to indicate the area of application of the Convention, it is necessary, in order to ensure, as far as possible, that the rights and obligations which derive from it for the Contracting States and the persons to whom it applies are equal and uniform, that the terms of that provision should not be interpreted as a mere reference to the internal law of one or other of the States concerned. The concept referred to must therefore be regarded as an independent concept to be interpreted by reference, first, to the objectives and, secondly, to the general principles which stem from the national legal systems as a whole (Case 29/76 *LTU* [1976] ECR 1541, paragraph 3; Case 133/78 *Gourdain* [1979] ECR 733, paragraph 3; Case 814/79 *Rüffer* [1980] ECR 3807, paragraph 7; and Case C-172/91 *Sonntag* [1993] ECR I-1963, paragraph 18).

29 The Court has made it clear that that interpretation results in the exclusion of certain judicial decisions from the scope of the Brussels Convention, owing either to the legal relationships between the parties to the action or to its subject-matter (*LTU*, cited above, paragraph 4).

30 Thus the Court has held that, although certain judgments in actions between a public authority and a person governed by private law may come within the scope

of the Brussels Convention, it is otherwise where the public authority is acting in the exercise of its public powers (*LTU*, cited above, paragraph 4, and *Rüffer*, paragraph 8).

31 In order to determine whether that is so in a case such as that in point in the main proceedings, in which a public body seeks from a person governed by private law recovery of sums paid by it by way of social assistance to the former spouse and the child of that person, it is necessary to examine the basis and the detailed rules governing the bringing of that action.

32 In that regard, it appears from Article 93 of the ABW that the costs of social assistance are recoverable up to the limit of the maintenance obligation under Book I of the Netherlands Civil Code. Thus it is the rules of the civil law which determine the cases in which the public body may bring an action under a right of recourse, namely where there is a person under a statutory obligation to pay maintenance. It is on the basis of those same rules that the person against whom the public body may proceed, namely the person under a statutory obligation to pay maintenance, is identified, and that the limits to the amounts recoverable by that body are determined, those limits being coterminous with those of the statutory maintenance obligation itself.

33 As regards the detailed rules governing the bringing of an action under a right of recourse, Article 103 of the ABW states that that action must be brought before the civil courts and is that it governed by the rules of civil procedure.

34 Accordingly, as the Advocate General stated at paragraph 36 of his Opinion, the legal situation of the public body *vis-à-vis* the person liable for maintenance is comparable to that of an individual who, having paid on whatever ground another's debt, is subrogated to the rights of the original creditor, or is comparable to the situation of a person who, having suffered loss as a result of an act or omission imputable to a third party, seeks reparation from that party.

35 However, that finding calls for some qualification by reason of Article 94 of the ABW under which an agreement between spouses or former spouses for the purpose of precluding or limiting their maintenance obligations after their divorce does not preclude recovery from one of the parties and is without prejudice to determination of the amounts to be recovered.

36 To the extent to which that provision allows the public body, in a proper case, to disregard an agreement lawfully entered into between spouses or former spouses, producing binding effects between them and enforceable against third parties, it places the public body in a legal situation which derogates from the ordinary law. That is all the more so inasmuch as that provision allows the public body to disregard an agreement approved by a judicial decision and covered by the force of *res judicata* attaching to that decision. In those circumstances, the public body is no longer acting under rules of the civil law but under a prerogative of its own, specifically conferred on it by the legislature.

37 In light of the foregoing considerations, the reply to the first question must be that the first paragraph of Article 1 of the Brussels Convention must be interpreted as meaning that the concept of 'civil matters' encompasses an action under a right of recourse whereby a public body seeks from a person governed by private law recovery of sums paid by it by way of social assistance to the divorced spouse and the child of that person, provided that the basis and the detailed rules relating to the bringing of that action are governed by the rules of the ordinary law in regard to maintenance obligations. Where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative of its own, that action cannot be regarded as being brought in 'civil matters'.

Second question

38 In this question the referring court is, essentially, seeking to ascertain whether the concept of 'social security' at point 3 of the second paragraph of Article 1 of the

Brussels Convention encompasses an action under a right of recourse by which a public body seeks from a person governed by private law recovery of sums paid by it by way of social assistance to the divorced spouse and the child of that person.

Observations submitted to the Court

39 The Netherlands, Austrian and United Kingdom Governments, and the Commission, note that the Brussels Convention does not define the concept of 'social security' and refer in that regard to Article 4 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1, hereinafter 'Regulation No 1408/71').

40 Those governments maintain, none the less, as does the Commission, that the exclusion of social-security disputes from the scope of the Brussels Convention must be strictly construed. It concerns only disputes between the institutions and recipients of benefits and does not extend to actions brought by an institution against a third party.

Findings of the Court

41 As a preliminary point, it should be observed that a reply to this question is called for only if the public body is acting in accordance with the rules of the ordinary law and where the decision in the action under a right of recourse brought by it may be regarded as a decision in 'civil matters' under the first paragraph of Article 1 of the Brussels Convention.

42 Inasmuch as the concept of 'social security' serves to indicate the area of application of the Brussels Convention, it must, as the Court has stated at paragraph 28 above, be regarded as an independent concept, to be interpreted by reference to the objectives and scheme of the Brussels Convention.

43 In view of the link between the Brussels Convention and Community law (see Case C-398/92 *Mund & Fester* [1994] ECR I-467, paragraph 12, and Case C-7/98 *Krombach* [2000] ECR I-1935, paragraph 24), regard must be had to the substance of that concept in Community law.

44 By adopting Regulation No 1408/71 on the basis of Article 51 of the EEC Treaty (subsequently Article 51 of the EC Treaty, and now, after amendment, Article 42 EC), the Community legislature laid down rules coordinating national legislation on social security. As the Advocate General noted at paragraphs 46 and 47 of his Opinion, those rules establish a system under which as a matter of principle the exclusive legislative competence of a Member State is matched by the competence of the administrative and judicial authorities of the same State. It follows that legal situations are effectively protected by the designation of a national system competent in its entirety and do not require recognition of judgments relating to that area.

45 It must therefore be held that the substance of the concept of 'social security' in the second paragraph of Article 1 of the Brussels Convention encompasses the matters covered by Regulation No 1408/71, as defined in Article 4 thereof and clarified in the Court's case-law.

46 However, irrespective of how, in the light of Article 4 of Regulation No 1408/71, benefits paid by way of social assistance by a public body to persons without resources are to be characterised, the action under a right of recourse brought by

that body against a third party, a person governed by private law, as the subject of an obligation to pay maintenance to the persons assisted, is not concerned with the conditions under which the benefits in question are granted but with recovery of the sums paid in that regard.

47 It follows that, in any event, the subject-matter of the dispute does not concern the application of Regulation No 1408/71.

48 That interpretation is borne out by both the Jenard Report on the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1979 C 59, pp. 1, 12 and 13) and the Schlosser Report on the Convention on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Brussels Convention (OJ 1979 C 59, p. 71, paragraph 60). According to those reports the exclusion of social security from the scope of the Brussels Convention concerns only litigation in that area, that is to say disputes arising out of the relationship between the administration and employers or employees. Those reports add that the Brussels Convention is applicable where the administration exercises a direct right of action against a third party liable for injury or is subrogated as regards that third party to the rights of a victim insured by it, because it is then acting under the rules of the ordinary law.

49 In the light of the foregoing considerations, the reply to the question submitted must be that point 3 of the second paragraph of Article 1 of the Brussels Convention must be interpreted as meaning that the concept of 'social security' does not encompass the action under a right of recourse by which a public body seeks from a person governed by private law recovery in accordance with the rules of the ordinary law of sums paid by it by way of social assistance to the divorced spouse and the child of that person.

Costs

50 The costs incurred by the Netherlands, Austrian, Swedish and United Kingdom Governments, which submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action 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 Hof van Beroep te Antwerpen by order of 27 June 2000, hereby rules:

1. The first paragraph of Article 1 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, must be interpreted as meaning that the concept of 'civil matters' encompasses an action under a right of recourse

whereby a public body seeks from a person governed by private law recovery of sums paid by it by way of social assistance to the divorced spouse and the child of that person, provided that the basis and the detailed rules relating to the bringing of that action are governed by the rules of the ordinary law in regard to maintenance obligations. Where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative of its own, that action cannot be regarded as being brought in 'civil matters'.

2. Point 3 of the second paragraph of Article 1 of the Brussels Convention must be interpreted as meaning that the concept of 'social security' does not encompass the action under a right of recourse by which a public body seeks from a person governed by private law recovery in accordance with the rules of the ordinary law of sums paid by it by way of social assistance to the divorced spouse and the child of that person.

Timmermans Edward La Pergola

Jann von Bahr

Delivered in open court in Luxembourg on 14 November 2002.

R. Grass M. Wathelet

Registrar President of the Fifth Chamber