

European Court of Justice, 4 February 1988, Hoffman



LITIGATION – PRIVATE INTERNATIONAL LAW

Enforcement of foreign judgments

- Foreign decision to be recognized must have same effects as in the state in which judgment was given

a foreign judgment which has been recognized by virtue of article 26 of the convention must in principle have the same effects in the state in which enforcement is sought as it does in the state in which judgment was given .

- Judgment must not continue to be enforced in the state where enforcement is sought when, under the law of the latter state, it ceases to be enforceable for reasons which lie outside the scope of the convention

That is confirmed by article 27 (4) of the convention, which excludes in principle the recognition of any foreign judgment involving a conflict with a rule - concerning inter alia the status of natural persons - of the private international law of the state in which the recognition is sought. That provision demonstrates that, as far as the status of natural persons is concerned, it is not the aim of the convention to derogate from the rules which apply under the domestic law of the court before which the action has been brought. It follows that the convention does not preclude the court of the state in which enforcement is sought from drawing the necessary inferences from a national decree of divorce when considering the enforcement of the foreign maintenance order. Thus the answer to be given to the national court is that a foreign judgment whose enforcement has been ordered in a contracting state pursuant to article 31 of the convention and which remains enforceable in the state in which it was given must not continue to be enforced in the state where enforcement is sought when, under the law of the latter state, it ceases to be enforceable for reasons which lie outside the scope of the convention .

Irreconcilable judgments

- Irreconcilable within the meaning of article 27(3) of the Brussels Convention are judgments that have legal consequences which are mutually exclusive

In order to ascertain whether the two judgments are irreconcilable within the meaning of article 27(3), it should be examined whether they entail legal conse-

quences that are mutually exclusive. It is apparent from the documents before the court that, in the present case, the order for enforcement of the foreign maintenance order was issued at a time when the national decree of divorce had already been granted and had acquired the force of *res judicata*, and that the main proceedings are concerned with the period following the divorce. That being so, the judgments at issue have legal consequences which are mutually exclusive. The foreign judgment, which necessarily presupposes the existence of the matrimonial relationship, would have to be enforced although that relationship has been dissolved by a judgment given in a dispute between the same parties in the state in which enforcement is sought. The answer to be given to the third question submitted by the national court is therefore that a foreign judgment ordering a person to make maintenance payments to his spouse by virtue of his conjugal obligations to support her is irreconcilable within the meaning of article 27 (3) of the convention with a national judgment pronouncing the divorce of the spouses.

- a party who has not appealed against the enforcement order is thereafter precluded, at the stage of the execution of the judgment, from relying on a valid ground which he could have pleaded in such an appeal against the enforcement order, and that that rule must be applied of their own motion by the courts of the state in which enforcement is sought, unless it has the result of obliging the national court to make the effects of a national judgment which lies outside the scope of the convention conditional on its recognition in the state in which the foreign judgment whose enforcement is at issue was given .

Nevertheless, that rule, arising from the scheme of the convention, cannot apply when - as in this case - it would have the result of obliging the national court to ignore the effects of a national decree of divorce, which lies outside the scope of the convention, on the ground that the decree is not recognized in the state in which the foreign judgment whose enforcement is at issue was given .

As was established in the context of the reply to the second question, the convention contains no rule compelling the courts of the state in which enforcement is sought to make the effects of a national decree of divorce conditional on recognition of that decree in the state in which a foreign maintenance order - falling within the scope of the convention - was made .

Accordingly, the answer to be given to the national court's fourth and fifth questions is that article 36 of the convention must be interpreted as meaning that a party who has not appealed against the enforcement order referred to in that provision is thereafter precluded, at the stage of the execution of the judgment, from relying on a valid ground which he could have pleaded in such an appeal against the enforcement order, and that that rule must be applied of their own motion by the courts of the state in which enforcement is sought . However, that rule does not apply when it has the result of obliging the national court to make the effects of a national judgment which lies outside the

scope of the convention conditional on its recognition in the state in which the foreign judgment whose enforcement is at issue was given .

Source: [Eur-Lex](#); Jur. p. 645.

European Court of Justice, 4 February 1988

(A.J. Mackenzie Stuart, G. Bosco en G.C. Rodriguez Iglesias, T. Koopmans, K. Bahlmann, R. Joliet en T. F. O'Higgins)

(..)

In case 145/86

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 Hoge Raad der Nederlanden (Supreme Court of the Netherlands), for a preliminary ruling in the proceedings pending before that court between [...] Hoffman, residing at Enschede (Netherlands),

And Adelheid Krieg, residing at Neckargemoend (Federal Republic of Germany),

On the interpretation of articles 26, 27, 31 and 36 of the convention of 27 september 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters,

The court

Composed of : Lord Mackenzie Stuart, president, G . Bosco and G . C . Rodriguez Iglesias (presidents of chambers), T . Koopmans, K . Bahlmann, R . Joliet and T . F . O' Higgins, judges,

Advocate general : M . Darmon

Registrar : D . Louterman, administrator

After considering the observations submitted on behalf of

Horst Hoffman, the appellant in the main proceedings, in the written procedure by E . Korthals Altes, of the Hague Bar, and in the oral procedure by H . AE . Uniken Venema, also of the Hague Bar,

Adelheid krieg, the respondent in the main proceedings, in the written procedure by H . J . Bronkhorst, of the Hague Bar, and in the oral procedure by B . J . Drijber, also of the Hague Bar,

The government of the Federal Republic of Germany by C . Boehmer, acting as agent,

The United Kingdom by S . J . Hay, acting as agent,

The commission of the European Communities, in the written procedure by L . Gyselen, a member of its legal department, acting as agent, assisted by S . Pieri, an Italian civil servant on secondment to the commission, and in the written procedure by H . Van Ier, a member of its legal department,

Having regard to the report for the hearing and further to the hearing on 20 May 1987,

After hearing the opinion of the advocate general delivered at the sitting on 9 July 1987, gives the following judgment

Grounds

1. By a judgment of 6 June 1986, which was received at the court on 13 June 1986, the Hoge Raad der Nederlanden 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 (hereinafter referred to as "the convention ") five questions on the interpretation of a number of articles contained in that convention .

2. The questions arose in the course of proceedings between H . L . M . Hoffman (hereinafter referred to as "the husband ") and A . Krieg (hereinafter "the wife "), concerning the enforcement in the Netherlands of a judgment of the *amtsgericht* (local court) Heidelberg, ordering the husband to make monthly maintenance payments to the wife .

3. It is apparent from the documents before the court that the parties to the main proceedings are German nationals who were married in 1950 and that, in 1978, the husband left the matrimonial home in the federal republic of Germany and settled in the Netherlands . On application by the wife, the husband was ordered by a decision of the *amtsgericht*, heidelberg of 21 August 1979 to make maintenance payments to her as a separated spouse .

4. On the application of the husband, the *arrondissementsrechtbank* (district court), Maastricht, granted a decree of divorce by a judgment of 1 May 1980 given in default, applying German law in accordance with Netherlands rules on the conflict of laws . On 19 August the divorce was entered in the civil register at the Hague whereupon in the Netherlands the marriage was dissolved . The decree of divorce, which falls outside the scope of the convention, had not been recognized in the federal republic of Germany at the time which the national court considers material for the purposes of the case .

5. On the application of the wife, the president of the *arrondissementsrechtbank*, Almelo, made an order on 29 July 1981 for the enforcement of the judgment of the *amtsgericht*, Heidelberg, in accordance with article 31 of the convention . In April 1982 notice of that enforcement order was served on the husband who did not appeal against the order .

6. On 28 February 1983 the wife obtained an attachment of the husband' s earnings paid by his employer . The husband brought interlocutory proceedings before the *arrondissementsrechtbank*, Almelo, in order to have the attachment order discharged, or at least suspended . He was successful at first instance but on appeal the *gerechtshof* (regional court of appeal), Arnhem, dismissed his application . He appealed in cassation against that judgment to the Hoge Raad .

7. The Hoge Raad took the view that the resolution of the dispute depended on the interpretation of a number of articles in the convention and referred the following questions to the court for a preliminary ruling :

"1). Does the obligation imposed on the contracting states to recognize a judgment given in another contracting state (article 26 of the Brussels convention)

mean that such a judgment must be given the same effect in the other contracting states as it has under the law of the state in which it was given and does this mean that it is therefore enforceable in the same cases as in that state?

2) . If question 1 is answered in the affirmative :

Must articles 26 and 31 of the Brussels convention, read together, be interpreted as meaning that the obligation to recognize a judgment given in a contracting state requires that, because the judgment remains enforceable under the law of the state in which it was given, it is also enforceable in the same cases in the other contracting state?

3) . If question 2 is answered in the affirmative:

In a case such as this, is it possible to plead that the German maintenance order is irreconcilable with the subsequent Netherlands decree of divorce or to plead public policy (article 27 (1) and (3) of the Brussels convention)?

4) . Does (the scheme of) the Brussels convention require acceptance of the rule that, if the party against whom enforcement is sought of a judgment given in another contracting state fails to plead, in the appeal against the order for enforcement of the judgment, matters of which he was aware before the end of the period referred to in the first paragraph of article 36 of the Brussels convention and which preclude (further) enforcement of that judgment, he may no longer plead those matters in subsequent execution proceedings in which he is appealing against (continued) enforcement?

5) . If question 4 is answered in the affirmative :

Does (the scheme of) the Brussels convention require it to be assumed that the court of the state in which an enforcement order is issued must apply of its own motion the rule referred to in the fourth question in subsequent execution proceedings, even if its own law makes no provision for the application of such a rule?

8. Reference is made to the report for the hearing for a fuller account of the facts, the course of the procedure and the written observations submitted to the court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the court .

9. The national court' s first question seeks, in essence, to establish whether a foreign judgment, which has been recognized pursuant to article 26 of the convention, must in principle have the same effects in the state in which enforcement is sought as it does in the state in which judgment was given .

10. In that regard it should be recalled that the convention "seeks to facilitate as far as possible the free movement of judgments, and should be interpreted in this spirit ". Recognition must therefore "have the result of conferring on judgments the authority and effectiveness accorded to them in the state in which they were given" (Jenard report on the convention on jurisdiction and the enforcement of judgments in civil and commercial matters, official journal 1979, c 59, pp . 42 and 43).

11. It follows that the answer to be given to the national court' s first question is that a foreign judgment which has been recognized by virtue of article 26 of the con-

vention must in principle have the same effects in the state in which enforcement is sought as it does in the state in which judgment was given .

12. In the circumstances of the main proceedings, as disclosed by the documents before the court, the national court' s second question seeks, in essence, to establish whether a foreign judgment whose enforcement has been ordered in a contracting state pursuant to article 31 of the convention must continue to be enforced in all cases in which it would still be enforceable in the state in which it was given even when, under the law of the state in which enforcement is sought, the judgment ceases to be enforceable for reasons which lie outside the scope of the convention .

13. In this instance, the judgment whose enforcement is at issue is one which orders a husband to make maintenance payments to his spouse by virtue of his obligations, arising out of the marriage, to support her . Such a judgment necessarily presupposes the existence of the matrimonial relationship .

14. Consideration should therefore be given to whether the dissolution of that matrimonial relationship by a decree of divorce granted by a court of the state in which the enforcement is sought can terminate the enforcement of the foreign judgment even when that judgment remains enforceable in the state in which it was given, the decree of divorce not having been recognized there .

15. In that connection it must be observed that indent (1) of the second paragraph of article 1 of the convention provides that the convention does not apply *inter alia* to the status or legal capacity of natural persons . Moreover, it contains no rule requiring the court of the state in which enforcement is sought to make the effects of a national decree of divorce conditional on recognition of that decree in the state in which the foreign maintenance order is made .

16. That is confirmed by article 27(4) of the convention, which excludes in principle the recognition of any foreign judgment involving a conflict with a rule - concerning *inter alia* the status of natural persons - of the private international law of the state in which the recognition is sought . That provision demonstrates that, as far as the status of natural persons is concerned, it is not the aim of the convention to derogate from the rules which apply under the domestic law of the court before which the action has been brought .

17. It follows that the convention does not preclude the court of the state in which enforcement is sought from drawing the necessary inferences from a national decree of divorce when considering the enforcement of the foreign maintenance order .

18. Thus the answer to be given to the national court is that a foreign judgment whose enforcement has been ordered in a contracting state pursuant to article 31 of the convention and which remains enforceable in the state in which it was given must not continue to be enforced in the state where enforcement is sought when, under the law of the latter state, it ceases to be enforceable for reasons which lie outside the scope of the convention.

19. The national court's third question seeks, in essence, to establish whether a foreign judgment ordering a person to make maintenance payments to his spouse by virtue of his conjugal obligations to support her is irreconcilable within the meaning of article 27 (3) of the convention with a national judgment pronouncing the divorce of the spouses or, alternatively, whether such a foreign judgment is contrary to public policy in the state in which recognition is sought within the meaning of article 27 (1).

20. The provisions to be interpreted set out the grounds for not recognizing foreign judgments . Under the second paragraph of article 34, an enforcement order may be refused for those same reasons .

21. As far as the second part of the third question is concerned, it should be noted that, according to the scheme of the convention, use of the public-policy clause, which "ought to operate only in exceptional cases" (Jenard report, cited above, at p . 44) is in any event precluded when, as here, the issue is whether a foreign judgment is compatible with a national judgment; the issue must be resolved on the basis of the specific provision under article 27 (3), which envisages cases in which the foreign judgment is irreconcilable with a judgment given in a dispute between the same parties in the state in which enforcement is sought .

22. In order to ascertain whether the two judgments are irreconcilable within the meaning of article 27 (3), it should be examined whether they entail legal consequences that are mutually exclusive .

23. It is apparent from the documents before the court that, in the present case, the order for enforcement of the foreign maintenance order was issued at a time when the national decree of divorce had already been granted and had acquired the force of *res judicata*, and that the main proceedings are concerned with the period following the divorce .

24. That being so, the judgments at issue have legal consequences which are mutually exclusive . The foreign judgment, which necessarily presupposes the existence of the matrimonial relationship, would have to be enforced although that relationship has been dissolved by a judgment given in a dispute between the same parties in the state in which enforcement is sought.

25. The answer to be given to the third question submitted by the national court is therefore that a foreign judgment ordering a person to make maintenance payments to his spouse by virtue of his conjugal obligations to support her is irreconcilable within the meaning of article 27 (3) of the convention with a national judgment pronouncing the divorce of the spouses .

26. The national court's fourth and fifth questions ask whether article 36 of the convention must be interpreted as meaning that a party who has not appealed against the enforcement order in accordance with that provision is precluded, at the stage of the execution of the judgment, from relying on a valid argument which he could have raised in an appeal against the enforcement order, and whether that rule must be applied of

their own motion by the courts of the state in which enforcement is sought .

27. In answering those questions it should first be pointed out that, in order to limit the requirements to which the enforcement of a judgment delivered in one contracting state may be subjected in another contracting state, the convention lays down a very simple procedure for the issue of the enforcement order, which may be withheld only on the grounds exhaustively set out in articles 27 and 28 . However, the 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 (judgment of 2 July 1985 in case 148/84 *Deutsche Genossenschaftsbank v Brasserie du Pecheur* ((1985)) ecr 1981).

28. Consequently, a foreign judgment for which an enforcement order has been issued is executed in accordance with the procedural rules of the domestic law of the court in which execution is sought, including those on legal remedies .

29. However, the application, for the purposes of the execution of a judgment, of the procedural rules of the state in which enforcement is sought may not impair the effectiveness of the scheme of the convention as regards enforcement orders .

30. It follows that the legal remedies available under national law must be precluded when an appeal against the execution of a foreign judgment for which an enforcement order has been issued is lodged by the same person who could have appealed against the enforcement order and is based on an argument which could have been raised in such an appeal . In those circumstances, to challenge the execution would be tantamount to again calling in question the enforcement order after the expiry of the strict time-limit laid down by the second paragraph of article 36 of the convention, and would thereby render that provision ineffective .

31. In view of the mandatory nature of the time-limit laid down by article 36 of the convention, the national court must ensure that it is observed . It should therefore of its own motion dismiss as inadmissible an appeal lodged pursuant to national law when that appeal has the effect of circumventing that time-limit .

32. Nevertheless, that rule, arising from the scheme of the convention, cannot apply when - as in this case - it would have the result of obliging the national court to ignore the effects of a national decree of divorce, which lies outside the scope of the convention, on the ground that the decree is not recognized in the state in which the foreign judgment whose enforcement is at issue was given .

33. As was established in the context of the reply to the second question, the convention contains no rule compelling the courts of the state in which enforcement is sought to make the effects of a national decree of divorce conditional on recognition of that decree in the state in which a foreign maintenance order - falling within the scope of the convention - was made .

34 Accordingly, the answer to be given to the national court's fourth and fifth questions is that article 36 of the convention must be interpreted as meaning that a party who has not appealed against the enforcement order referred to in that provision is thereafter precluded, at the stage of the execution of the judgment, from relying on a valid ground which he could have pleaded in such an appeal against the enforcement order, and that that rule must be applied of their own motion by the courts of the state in which enforcement is sought. However, that rule does not apply when it has the result of obliging the national court to make the effects of a national judgment which lies outside the scope of the convention conditional on its recognition in the state in which the foreign judgment whose enforcement is at issue was given.

side the scope of the convention conditional on its recognition in the state in which the foreign judgment whose enforcement is at issue was given.

Decision on costs

Costs

35. The costs incurred by the government of the Federal Republic of Germany, the United Kingdom and the commission of the European communities, which have submitted observations to the court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 Hoge Raad by a judgment of 6 June 1986, hereby rules :

(1) A foreign judgment which has been recognized by virtue of article 26 of the convention must in principle have the same effects in the state in which enforcement is sought as it does in the state in which the judgment was given;

(2) A foreign judgment whose enforcement has been ordered in a contracting state pursuant to article 31 of the convention and which remains enforceable in the state in which it was given must not continue to be enforced in the state where enforcement is sought when, under the law of the latter state, it ceases to be enforceable for reasons which lie outside the scope of the convention;

3. A foreign judgment ordering a person to make maintenance payments to his spouse by virtue of his conjugal obligations to support her is irreconcilable within the meaning of article 27 (3) of the convention with a national judgment pronouncing the divorce of the spouses;

4. Article 36 of the convention must be interpreted as meaning that a party who has not appealed against the enforcement order referred to in that provision is thereafter precluded, at the stage of the execution of the judgment, from relying on a valid ground which he could have pleaded in such an appeal against the enforcement order, and that that rule must be applied of their own motion by the courts of the state in which enforcement is sought. However, that rule does not apply when it has the result of obliging the national court to make the effects of a national judgment which lies out-