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WORKING GROUP 1

DECLINATION OF JURISDICTION

I. Read the following judgment. While reading it, provide the correct words missing.

JUDGMENT OF THE COURT (Sixth Chamber)

17 March 2016 (*)

In Case C-175/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), made by decision of 5 December 2014, received at the Court on 20 April 2015, in the proceedings

Taser International Inc.

v

SC Gate 4 Business SRL,

Cristian Mircea Anastasiu,

THE COURT (Sixth Chamber),

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment



This (1) for a preliminary ruling concerns the interpretation of Articles 22(4), 23(5) and 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

- (1) a) referring b) reference c) reference d) referral

The reference has been made in the context of a (2) between Taser International Inc. ('Taser International'), a company established in the United States, and both SC Gate 4 Business SRL ('Gate 4'), a company established in Romania, and Mr Cristian Mircea Anastasiu, administrator of Gate 4, regarding the (3) of the Romanian company's contractual obligation to (4) trade marks to Taser International.

- (2) a) procedure b) case c) fight d) dispute

- (3) a) realization b) achievement c) carrying out d) performance

- (4) a) confer b) give c) assign d) award

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

On 4 April and 12 September 2008, Taser International, whose (5) is in the United States, entered into, two non-exclusive distribution agreements with Gate 4. Under those agreements, Gate 4 and its administrator, Mr Anastasiu, undertook to assign to the other contracting party the Taser International trade marks which they had registered, or for which they had (6) for registration, in Romania.

- (5) a) domicile b) residence c) seat d) whereabouts



- (6) a) requested b) applied c) asked d) required

Following Gate 4's and Mr Anastasiu's refusal to (7) that contractual obligation, Taser International brought an action (8) the Tribunalul București (District Court, Bucharest). Regardless of the existence in those contracts of clauses conferring jurisdiction (9) a court situated in the United States, Gate 4 and Mr Anastasiu entered an (10) before the Romanian court without challenging its jurisdiction. By judgment of 31 May 2011, the Tribunalul București (District Court, Bucharest) ordered them to undertake all the formalities necessary for the registration of the assignment.

- (7) a) fulfill b) achieve c) accomplish d) realize

- (8) a) in b) to c) in front of d) before

- (9) a) to b) for c) on d) before

- (10) a) presence b) attendance c) appearance d) participation

Following the Curtea de Apel București's (Court of Appeal, Bucharest) decision to (11) that judgment, Gate 4 and Mr Anastasiu brought an appeal before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice). Although the jurisdiction of the Romanian courts to decide this case has never been (12) by the parties, the referring court considers that it must rule on that point of its own motion.

- (11) a) keep b) maintain c) preserve d) uphold

- (12) a) challenged b) refused c) rejected d) opposed

It is in this context that the referring court seeks clarification as to whether Regulation No 44/2001 is applicable to the dispute before it, since the parties elected, for the (13) of their disputes, the courts of a third country outside the European Union and not



one of the courts of a Member State, as provided for in Article 23(1) of that regulation. The referring court considers that such a clause conferring jurisdiction on a third country may, for this reason alone, preclude the tacit prorogation of jurisdiction under Article 24 of that regulation.

- (13) a) solving b) resolving c) solution d) resolution

On the assumption, however, that that latter rule is applicable, the referring court seeks to (14) whether it should, nevertheless, (15) jurisdiction on another ground.

- (14) a) assure b) ascertain c) insure d) ensure

- (15) a) refuse b) dispute c) decline d) challenge

Furthermore, it is necessary to determine whether Article 22 of Regulation No 44/2001 is applicable, in order to establish whether a dispute concerning an obligation to assign a trade mark, likely to result in a registration under national law, falls within paragraph 4 of that article.

In those circumstances, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 24 of Regulation No 44/2001 be interpreted as meaning that the expression “jurisdiction derived from other provisions of this Regulation” also covers the situation in which the parties to a contract for the assignment of rights to a trade mark registered in a Member State of the European Union have decided, unequivocally and undisputedly, to confer jurisdiction to settle any dispute regarding fulfilment of contractual obligations on the courts of a State which is not a Member State of the European Union and in which the applicant is domiciled (has its seat), while the applicant has seised a court of a Member State of the European Union in whose territory the defendant is domiciled (has its seat)?



(2) If the answer is in the affirmative:

(a) Must Article 23(5) of Regulation No 44/2001 be interpreted as not referring to a clause conferring jurisdiction on a State that is not a Member State of the European Union, so that the court seised pursuant to Article 2 of the regulation will determine jurisdiction according **to** the rules of private international law in its own national legislation?

(b) Can a dispute relating to the enforcement, through the courts, of the obligation to assign rights to a trade mark registered in a Member State of the European Union, assumed under a contract between the parties to that dispute, be regarded as referring to a right “required to be deposited or registered” within the meaning of Article 22(4) of the regulation, having regard to the fact that, under the law of the State in which the trade mark is registered, the assignment of rights to a trade mark must be entered in the Trade Mark Register and published in the Official Industrial Property Bulletin?

(3) If the answer [to the first question] is in the negative, does Article 24 of Regulation No 44/2001 preclude a court seised pursuant to Article 2 of the regulation, in a situation such as that described in the [first] question, from declaring that it does not have jurisdiction to determine the case, even though the defendant has entered an appearance before that court, including in the final instance, without contesting the jurisdiction?’

On those grounds, the Court (Sixth Chamber) hereby rules:

1. Articles 23(5) and 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in a dispute concerning the non-performance of a contractual obligation, in which the applicant has brought proceedings before the courts of the Member State in which the defendant has its seat, the jurisdiction of those courts may stem from Article 24 of that regulation, where the defendant does not dispute their



jurisdiction, even though the contract between the two parties contains a clause conferring jurisdiction on the courts of a third country.

2. Article 24 of Regulation No 44/2001 must be interpreted as precluding, in a dispute between parties to a contract which contains a clause conferring jurisdiction on the courts of a third country, the court of the Member State in which the defendant has its seat, which has been seised, from declaring of its own motion that it does not have jurisdiction, even though the defendant does not contest the jurisdiction of that court.

II. Explain the following words and phrases or provide synonyms for them.

- (1) the referring court seeks clarification
- (2) main proceedings
- (3) preclude the tacit prorogation of jurisdiction
- (4) to stay the proceedings
- (5) to settle any dispute

III. Answer the following questions:

- (1) What legal aspects are involved in this judgment?
- (2) Can the Romanian court decline jurisdiction in this case? Account for your answer.



WORKING GROUP 2

LIS PENDENS

I. Read the following judgment. While reading it, provide the correct words missing.

JUDGMENT OF THE COURT (Third Chamber)

3 April 2014 (*)

In Case C-438/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht München (Germany), made by decision of 16 February 2012, received at the Court on 2 October 2012, in the proceedings

Irmengard Weber

v

Mechthilde Weber,

THE COURT (Third Chamber),

after hearing the Opinion of the Advocate General at the (1) on 30 January 2014,

(1) a) session

b) meeting

c) sitting

d) action

gives the following

Judgment



This request for a preliminary ruling concerns the interpretation of Articles 22(1), 27 and 28 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

The request has been made in (2) between Ms Irmengard Weber ('Ms I. Weber') and her sister Ms Mechthilde Weber ('Ms M. Weber') in which Ms I. Weber seeks an order that her sister consent to the entry on the Land Register of Ms I. Weber as the owner.

- (2) a) procedure b) proceedings c) action d) case

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

Ms I. Weber and Ms M. Weber, two sisters who are 82 and 78 years old respectively, are co-owners to the (3) of six tenths and four tenths of a property in Munich (Germany).

- (3) a) measure b) degree c) extent d) amount

On the basis of a notarised act of 20 December 1971, a right *in rem* of pre-emption over the four-tenths share belonging to Ms M. Weber was entered in the Land Register in favour of Ms I. Weber.

By a notarial contract of 28 October 2009, Ms M. Weber sold her four-tenths (4) to Z. GbR, a company incorporated under German law, of which one of the directors is her son, Mr Calmetta, a lawyer established in Milan (Italy). According to one of the clauses in that contract, Ms M. Weber, as the seller, reserved a right of (5) valid until 28 March 2010 and subject to certain conditions.

- (4) a) share b) part c) dividends d) profit

- (5) a) waiver b) denial c) withdrawal d) refusal



Being informed by the notary who had (6) the contract in Munich, Ms I. Weber exercised her right of pre-emption over that share of the property by letter of 18 December 2009.

- (6) a) set out b) carried out c) laid down d) drawn up

On 25 February 2010, by a contract concluded (7) that notary, Ms I. Weber and Ms M. Weber once more expressly recognised the effective exercise of the right of pre-emption by Ms I. Weber and agreed that the property should be transferred to her for the same price as that (8) in the contract for sale signed between Ms M. Weber and Z. GbR. However, the two parties asked the notary not to (9) the procedures for the registration of the transfer of property in the Land Register in accordance (10) Paragraph 873(1) of the BGB until Ms M. Weber had made a written declaration before the same notary that she had not exercised her right of withdrawal or that she had waived that right (11) from the contract concluded with Z. GbR within the period laid down, which expired on 28 March 2010. On 2 March, Ms I. Weber paid the agreed purchase price of EUR 4 million.

- (7) a) to b) at c) in front of d) before

- (8) a) agreed b) approved c) admitted d) allowed

- (9) a) carry on b) carry out c) set out d) go on

- (10) a) to b) with c) of d) for

- (11) a) appearing b) occurring c) arising d) rising



By letter of 15 March 2010, Ms M. Weber declared that she had exercised her right of withdrawal, with respect to Ms I. Weber, in accordance with the contract concluded on 28 October 2009.

By an application of 29 March 2010, Z. GbR brought (12) against Ms I. Weber and Ms M. Weber, before the Tribunale ordinario di Milano (District Court, Milan), seeking a declaration that the exercise of the right of pre-emption by Ms I. Weber was (13) and invalid, and that the contract concluded between Ms M. Weber and that company was valid.

(12) a) an action b) a trial c) a suit d) a procedure

(13) a) ineffective b) inefficient c) immaterial d) inapplicable

On 15 July 2010, Ms I. Weber brought proceedings against Ms M. Weber before the Landgericht München I (Regional Court, Munich I) (Germany), seeking an order that Ms M. Weber register the transfer of ownership of the four-tenths share with the Land Register. In support (14) her application, Ms I. Weber argues, in particular, that by reason of the exercise of the right of pre-emption, the right of withdrawal agreed between Z. GbR and Ms M. Weber did not form part of the contractual (15) that were applicable to her.

(14) a) for b) to c) with d) of

(15) a) providings b) provisions c) agreements d) approvals

Basing itself on Article 27(1) of Regulation No 44/2001 and, in the alternative, on Article 28(1) and (3) thereof, the Landgericht München I decided to stay the proceedings, having regard to the proceedings already brought before the Tribunale ordinario di Milano. Ms I. Weber appealed against that decision before the Oberlandesgericht München (Higher Regional Court, Munich) (Germany).



Taking the view that, in principle, the conditions laid down by Article 27(1) of that regulation or, at the very least, those laid down in Article 28(1) and (3) thereof had been fulfilled, the Oberlandesgericht München decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Does the scope of Article 27 of [Regulation No 44/2001] extend also to cases in which two parties in one action each have the role of defendant because both parties have been sued by a third party, and in the other action have the roles of applicant and defendant? In such a situation are there proceedings “between the same parties”, or must the different claims raised by the applicant against the two defendants in the first action be examined separately, so that there cannot be taken to be proceedings “between the same parties”?’

2. Are there proceedings involving “the same cause of action” within the meaning of Article 27 of Regulation No 44/2001 if the claims and arguments in the two actions are indeed different, but

(a) the same preliminary issue has to be answered in order to decide both actions, or

(b) in one action, by a claim in the alternative, a declaration is sought as to a legal relationship which features in the other action as a preliminary issue?

3. Are there proceedings which have as their object a right *in rem* in immovable property within the meaning of Article 22(1) of Regulation No 44/2001 if a declaration is sought that the defendant did not validly exercise a right *in rem* of pre-emption over land situated in Germany which indisputably exists in German law?

4. Is the court second seised, when making its decision under Article 27(1) of Regulation No 44/2001, and hence before the question of jurisdiction is decided by the court first seised, obliged to ascertain whether the court first seised lacks jurisdiction because of Article 22(1) of Regulation No 44/2001, because such lack of jurisdiction of the court first seised would, under



Article 35(1) of Regulation No 44/2001, lead to a judgment of the court first seised not being recognised? Is Article 27(1) of Regulation No 44/2001 not applicable for the court second seised if the court second seised comes to the conclusion that the court first seised lacks jurisdiction because of Article 22(1) of Regulation No 44/2001?

5. Is the court second seised, when making its decision under Article 27(1) of Regulation No 44/2001, and hence before the question of jurisdiction is decided by the court first seised, obliged to examine the complaint of one party that the other party acted in abuse of process by bringing proceedings before the court first seised? Is Article 27(1) of Regulation No 44/2001 not applicable for the court second seised if the court second seised comes to the conclusion that the bringing of proceedings before the court first seised was an abuse of process?

6. Does the application of Article 28(1) of Regulation No 44/2001 presuppose that the court second seised has previously decided that Article 27(1) of Regulation No 44/2001 does not apply in the specific case?

7. May account be taken in the exercise of the discretion allowed by Article 28(1) of Regulation No 44/2001:

(a) of the fact that the court first seised is situated in a Member State in which proceedings statistically last considerably longer than in the Member State in which the court second seised is situated,

(b) of the fact that, in the assessment of the court second seised, the law of the Member State in which the court second seised is situated is applicable,

(c) of the age of one of the parties,

(d) of the prospects of success of the action before the court first seised?



8. In the interpretation and application of Articles 27 and 28 of Regulation No 44/2001, in addition to the aim of avoiding irreconcilable or contradictory judgments, must the second applicant's entitlement to justice be taken into account?

On those grounds, the Court (Third Chamber) hereby rules:

1. Article 22(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, must be interpreted as meaning that there falls within the category of proceedings which have as their object 'rights *in rem* in immovable property' within the meaning of that provision an action such as that brought in the present case before the courts of another Member State, seeking a declaration of invalidity of the exercise of a right of pre-emption attaching to that property and which produces effects with respect to all the parties.

2. Article 27(1) of Regulation No 44/2001 must be interpreted as meaning that, before staying its proceedings in accordance with that provision, the court second seised is required to examine whether, by reason of a failure to take into consideration the exclusive jurisdiction laid down in Article 22(1) thereof, the decision of the court first seised will be recognised in the other Member States in accordance with Article 35(1) of that regulation.

II. Explain the following words and phrases or provide synonyms for them.

- (1) seeking a declaration;
- (2) questions referred for a preliminary ruling;
- (3) brought proceedings against;
- (4) stay the proceedings;
- (5) right of pre-emption.



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III. Answer the following questions:

- (1) What legal aspects are involved in this judgment?
- (2) According to the Court, what should the court second seised examine?



WORKING GROUP 3

STAYING OF PROCEEDINGS

I. Read the following judgment. While reading it, provide the correct words missing.

JUDGMENT OF THE COURT (Full Court)

In Case C-116/02,

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 Oberlandesgericht Innsbruck (Austria) for a preliminary ruling in the proceedings pending before that court between

Erich Gasser GmbH

and

MISAT Srl,

on the interpretation of Article 21 of the abovementioned Convention of 27 September 1968, 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), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1), 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) and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1),



THE COURT (Full Court),

gives the following

Judgment

By judgment of 25 March 2002, received at the Court on 2 April 2002, the Oberlandesgericht (Higher Regional Court) Innsbruck 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 (the Protocol), a number of questions on the interpretation of Article 21 of the abovementioned Convention of 27 September 1968, 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), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1), 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) and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1) (the Brussels Convention or ‘the Convention’).

Those questions were raised in proceedings between Erich Gasser GmbH (‘Gasser’), a company incorporated under Austrian law, and MISAT Srl (‘MISAT’), a company incorporated under Italian law, following a (1) in their business relations.

- (1) a) breakup b) breakdown c) breakthrough d) breakin



The main proceedings and the questions referred to the Court

The registered office of Gasser is in Dornbirn, Austria. For several years it sold children's clothing to MISAT, of Rome, Italy.

On 19 April 2000 MISAT brought (2) against Gasser before the Tribunale Civile e Penale (Civil and Criminal District Court) di Roma seeking a ruling that the contract between them had terminated *ipso jure* or, in the alternative, that the contract had been terminated following a disagreement between the two companies. MISAT also asked the court to find that it had not failed to (3) the contract and to order Gasser to pay it (4) for failure to fulfil the obligations of fairness, diligence and (5) and to (6) certain costs.

- (2) a) procedure b) procedures c) proceeds d) proceedings
- (3) a) fulfill b) realize c) carry out d) perform
- (4) a) damages b) damage c) restitution d) relief
- (5) a) good will b) will c) good faith d) faith
- (6) a) grant b) reimburse c) give d) give back

On 4 December 2000 Gasser brought an action against MISAT (7) the Landesgericht (Regional Court) Feldkirch, Austria, to obtain payment of outstanding invoices. In support (8) the jurisdiction of that court, the claimant (9) that it was not only the court for the place of (10) of the contract, within the meaning of Article 5(1) of the Convention but was also the court designated by a choice-of-court clause which had appeared on all invoices sent by Gasser to MISAT, without the (11) having raised any objection in that regard. According to Gasser, that showed that, in accordance (12) their practice and the usage prevailing in trade between Austria and Italy, the parties had concluded an agreement conferring jurisdiction within the meaning of Article 17 of the Brussels Convention.



- (7) a) to b) at c) before d) in front of
- (8) a) for b) of c) to d) in
- (9) a) submitted b) suggested c) said d) claimed
- (10) a) occurrence b) performance c) realization d) achievement
- (11) a) last b) late c) latest d) latter
- (12) a) to b) with c) of d) for

MISAT contended that the Landesgericht Feldkirch had no jurisdiction, on the ground that the court of competent jurisdiction was the court for the place where it was established, under the general rule laid down in Article 2 of the Brussels Convention. It also (13) the very existence of an agreement conferring jurisdiction and stated that, before the action was brought by Gasser before the Landesgericht Feldkirch, it had commenced proceedings before the Tribunale Civile e Penale di Roma in respect of the same business relationship.

- (13) a) denied b) refused c) contested d) appealed

On 21 December 2001, the Landesgericht Feldkirch decided of its own motion to stay proceedings, pursuant (14) Article 21 of the Brussels Convention, until the jurisdiction of the Tribunale Civile e Penale di Roma had been established. It confirmed its own jurisdiction as the court for the place of performance of the contract, but did not rule (15) the existence or otherwise of an agreement conferring jurisdiction, observing that although the invoices issued by the claimant systematically included a reference to the courts of Dornbirn under the heading ‘Competent Courts’, the orders, on the other hand, did not record any choice of court.

- (14) a) from b) with c) to d) through
- (15) a) for b) against c) about d) on

Gasser appealed against that decision to the Oberlandesgericht Innsbruck, contending that the Landesgericht Feldkirch should be declared to have jurisdiction and that proceedings should not be stayed.



The national court considers, first, that this is a case of *lis pendens* since the parties are the same and the claims made before the Austrian and Italian courts have the same cause of action within the meaning of Article 21 of the Brussels Convention, as interpreted by the Court of Justice (see, to that effect, Case 144/86 *Gubisch Maschinenfabrik* [1987] ECR 4861).

After noting that the Landesgericht Feldkirch had not ruled as to the existence of an agreement conferring jurisdiction, the national court raises the question whether the fact that one of the parties repeatedly and without objection settled invoices sent by the other even though those invoices contained a jurisdiction clause can be seen as acceptance of that clause, in accordance with Article 17(1)(c) of the Brussels Convention. The national court states that such conduct by the parties reflects a usage in international trade and commerce which is applicable to the parties and of which they are aware or are deemed to be aware. In the event of the existence of an agreement conferring jurisdiction being established, then, according to the national court, the Landesgericht Feldkirch alone has jurisdiction to deal with the dispute under Article 17 of the Convention. In those circumstances, the question arises whether the obligation to stay proceedings, provided for in Article 21 of the Convention, should nevertheless apply.

In addition, the national court asks to what extent the excessive and generalised slowness of legal proceedings in the Contracting State where the court first seised is established is liable to affect the application of Article 21 of the Brussels Convention.

It was in those circumstances that the Oberlandesgericht Innsbruck stayed proceedings and referred the following questions to the Court for a preliminary ruling:

‘1. May a court which refers questions to the Court of Justice for a preliminary ruling do so purely on the basis of a party's (unrefuted) submissions, whether they have been contested or not contested (on good grounds), or is it first required to clarify those



questions as regards the facts by the taking of appropriate evidence (and if so, to what extent)?

2. May a court other than the court first seised, within the meaning of the first paragraph of Article 21 of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [“the Brussels Convention”], review the jurisdiction of the court first seised if the second court has exclusive jurisdiction pursuant to an agreement conferring jurisdiction under Article 17 of the Brussels Convention, or must the agreed second court proceed in accordance with Article 21 of the Brussels Convention notwithstanding the agreement conferring jurisdiction?

3. Can the fact that court proceedings in a Contracting State take an unjustifiably long time (for reasons largely unconnected with the conduct of the parties), so that material detriment may be caused to one party, have the consequence that the court other than the court first seised, within the meaning of Article 21, is not allowed to proceed in accordance with that provision?

THE COURT (Full Court),

in answer to the questions referred to it by the Oberlandesgericht Innsbruck by judgment of 25 March 2002, hereby rules:

1. A national court may, 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, 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, by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the



Portuguese Republic and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, refer to the Court of Justice a request for interpretation of the Brussels Convention, even where it relies on the submissions of a party to the main proceedings of which it has not yet examined the merits, provided that it considers, having regard to the particular circumstances of the case, that a preliminary ruling is necessary to enable it to give judgment and that the questions on which it seeks a ruling from the Court are relevant. It is nevertheless incumbent on the national court to provide the Court of Justice with factual and legal information enabling it to give a useful interpretation of the Convention and to explain why it considers that a reply to its questions is necessary to enable it to give judgment.

2. Article 21 of the Brussels Convention must be interpreted as meaning that a court second seised whose jurisdiction has been claimed under an agreement conferring jurisdiction must nevertheless stay proceedings until the court first seised has declared that it has no jurisdiction.

3. Article 21 of the Brussels Convention must be interpreted as meaning that it cannot be derogated from where, in general, the duration of proceedings before the courts of the Contracting State in which the court first seised is established is excessively long.

II. Explain the following words and phrases or provide synonyms for them.

- (1) seeking a ruling that the contract between them had terminated *ipso jure*
- (2) the usage prevailing in trade between Austria and Italy
- (3) the party commenced proceedings before the Italian court
- (4) the court decided to stay the proceedings



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- (5) a party's (unrefuted) submissions
- (6) material detriment may be caused to one party

III. Answer the following questions:

- (1) What legal aspects are involved in this judgment?
- (2) Does the length of the proceedings influence the determination of jurisdiction? Account for your answer.