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COUNCIL

Report

on the accession of the Hellenic Republic to the Community Convention on jurisdiction and the enforcement of judgments in civil and commercial matters

(86/C 298/01)

FOREWORD

This report is the last work to flow from the pen of Professor Demetrios I. Evrigenis, who, as always, was the moving spirit and a principal actor in its creation. It was almost complete when he died, in the prime of life, in Strasbourg on 27 January 1986 when about to return to Thessaloniki to discuss some final matters with me, his co-author. His sudden death obliged me to settle them alone, few in number and little of consequence as they were. The problems of international jurisdiction and the enforcement of the judgments of foreign courts, which absorbed his energies so productively throughout his academic life, have thus become the theme of his parting words at its inexorable end. This work is dedicated to his memory with gratitude and respect.

K. D. KERAMEUS

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I. BACKGROUND TO AND STRUCTURE OF THE CONVENTION

1. On 25 October 1982, representatives of the ten Member States of the European Communities at that time signed the Convention on the accession of the Hellenic Republic to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice with the amendments made to them by the Convention on the accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland. The conclusion of this Convention was provided for in Article 3 (2) of the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties annexed to the Treaty of 28 May 1979 concerning the accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community. In accordance with that provision 'the Hellenic Republic undertakes to accede to the conventions provided for in Article 220 of the EEC Treaty and to the protocols on the interpretation of those conventions by the Court of Justice, signed by the Member States of the Community as originally or at present constituted, and to this end it undertakes to enter into negotiations with the present Member States in order to make the necessary adjustments thereto'. To date, the only existing convention based on Article 220 of the EEC Treaty is the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

2. In preparation for the negotiations for accession to this Convention, the Hellenic Republic drew up a memorandum with proposed adjustments which was forwarded in October 1981 to the other Member States via the Council. The Permanent Representatives Committee convened an *ad hoc* Working Party composed of experts from the Member States and Commission representatives which met on two occasions in Brussels, on 14 December 1981 and 5 April 1982. From these meetings there emerged a draft Convention on the accession of the Hellenic Republic, which was approved by the Permanent Representatives Committee on 11 June 1982 and was signed on 25 October 1982 by representatives of the Member States at a conference of the Ministers for Justice of the Member States in Luxembourg.

3. Before presenting and commenting on the Convention on Greece's accession, it will be useful to list all the individual texts making up the current version of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. These texts are as follows:

3.1.1. Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (hereinafter referred to as the '1968 Convention').

3.1.2. Protocol (hereinafter referred to as the '1968 Protocol').

3.1.3. Joint Declaration (hereinafter referred to as the '1968 Joint Declaration').

The texts referred to in points 3.1.1 to 3.1.3 were signed in Brussels on 27 September 1968 and entered into force on 1 February 1972. The Greek versions were published in *Official Journal of the European Communities* No L 388 of 31 December 1982, page 7.

3.2.1. Protocol on the interpretation by the Court of Justice of the European Communities of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (hereinafter referred to as the '1971 Protocol').

3.2.2. Joint Declaration (hereinafter referred to as the '1971 Joint Declaration').

The texts referred to in points 3.2.1 and 3.2.2 were signed in Luxembourg on 3 June 1971 and entered into force on 1 September 1975. The Greek versions were published in *Official Journal of the European Communities* No L 388 of 31 December 1982, page 20.

3.3.1. Convention on the accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, and the Protocol on its interpretation by the Court of Justice of the European Communities (hereinafter referred to as the '1978 Accession Convention').

3.3.2. Joint Declaration (hereinafter referred to as the '1978 Joint Declaration').

The texts referred to in points 3.3.1 and 3.3.2 were signed in Luxembourg on 9 October 1978 (*). The Greek versions were published in *Official Journal of the European Communities* No L 388 of 31 December 1982, page 24.

3.4.1. Convention on the accession of the Hellenic Republic to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice with the amendments made to them by the Convention on the accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as the '1982 Accession Convention').

This Convention was signed in Luxembourg on 25 October 1982 and published in *Official Journal of the European Communities* No L 388 of 31 December 1982, pages 1 to 6.

All the above texts were published in an unofficial consolidated version prepared by the General Secretariat of the Council, in *Official Journal of the European Communities* No C 97 of 11 April 1983, pages 2 to 29. For the publication of the above texts in the other Community languages, see the table given on page 1 of *Official Journal of the European Communities* No C 97 of 11 April 1983.

4. Explanatory reports were drawn up on the texts referred to in points 3.1.1. to 3.3.2. The report on the 1968 Convention, Protocol and Joint Declaration and the report on the 1971 Protocol and Joint Declaration were drawn up by Mr P. Jenard, Director in the Belgian Ministry of Foreign Affairs and External Trade (1). The report on the 1978 Accession Convention and Joint Declaration was drawn up by Mr P. Schlosser, Professor at the University of Munich (2). A Greek translation of these reports appears in the present edition of the Official Journal. The reports in question contain the background to the preparation of the texts and explain and elucidate the provisions of the texts in relation to the autonomous law of the Contracting Parties. They are of considerable assistance in interpreting the Convention.

5. **Technical legal aspects of accession to the Convention**

As in the case of the accession of Denmark, Ireland and the United Kingdom, in the case of the accession of Greece the Contracting Parties preferred to draft a Convention incorporating adjustments supplementing the existing 1968, 1971 and 1978 texts instead of directly revising them. This solution has clear advantages. It relieves the Contracting Parties of the obligation to ratify once more those parts of the existing Convention which have not been amended through the new accession and, at the same time, permits a clear distinction to be made between the successive stages in the development of the Convention. There are, however, disadvantages, as the result is a gradual accumulation of texts effecting repeated indirect changes to the original Convention. The number of such independent texts is bound to increase with each new enlargement of the Community and, consequently, with each further accession to the Convention. This multiplicity of sources will, of course, create further problems of interpretation in determining the law applicable in a particular case. Of assistance on this point are the consolidations of the texts of the Convention into a single corpus which are usually prepared after each new accession by the Council General Secretariat (3). Anyone seeking to interpret the Convention must not forget, however, that these consolidations are unofficial and therefore do not have binding force.

6. **Brief description of the 1982 Convention**

In contrast to the 1978 Accession Convention, the 1982 Accession Convention did not involve any substantial changes to the text either of the 1968 Convention or the 1971 Protocol, as already amended by the 1978 Accession Convention. The adjustments made to those texts by the 1982 Convention are purely technical and are restricted to additions required as a result of the accession of the new Contracting Party. Greece, as shown by the memorandum which it submitted for the negotiations for its accession to the Convention (4), felt that it could accept the Convention in its entirety, as already amended by the 1978 texts. Two points which might have led to substantial amendments were finally dealt with in the minutes of the *ad hoc* Committee. These points are dealt with below (5).

7. **Structure of the 1968/1978/1982 Convention**

The Convention governs, on the one hand, the international jurisdiction of the courts, and, on the other, the recognition and enforcement of judgments, authentic instruments and court settlements. Given its content, it may be classified as a 'double' convention. In other words, in addition to provisions governing the recognition and enforcement of foreign judgments, it contains direct rules on jurisdiction defining the court competent to deal with a dispute, in contrast to 'single' conventions which deal with jurisdiction only indirectly as a pre-condition for the recognition and enforcement of foreign judgments. The Convention is divided into eight Titles and deals successively with the scope of the Convention itself (Title I, Article 1), jurisdiction (Title II, Articles 2 to 24), recognition and enforcement (Title III, Articles 25 to 49), authentic instruments and court settlements (Title IV, Articles 50 to 51). Title V (Articles 52 to 53) contains general provisions and Title VI (Article 54) transitional provisions to which must be added the provisions of Articles 34 to 36 of the 1978 Convention and of Article 12 of the 1982 Convention. Title VII (Articles 55 to 59) governs the relationship of the Convention to other conventions while Title VIII (Articles 60 to 68) contains the final provisions, to which must be added the corresponding provisions of the 1978 Convention (Articles 37 to 41) and the 1982 Convention (Articles 13 to 17). The 1968 Protocol contains a set of specific provisions.

For the 1971 Protocol on the interpretation of the Convention by the Court of Justice and the amendments thereto in the 1978 and 1982 texts, see Section III. D below, points 91 to 99.

II. THE GREEK SYSTEM OF INTERNATIONAL JURISDICTION AND ENFORCEMENT OF JUDGMENTS OF FOREIGN COURTS

8. After the foundation of the modern Greek State (1830) positive legislation in respect of international jurisdiction and the recognition and enforcement of the judgments of foreign courts went through two major phases. These two phases are quite distinct as regards international jurisdiction ([6]) and less so as regards the recognition and enforcement of foreign judgments ([7]). The following brief account concludes with a description of the international convention provisions governing these matters in force in Greece ([8]).

9. The civil procedure of 1834, which was drawn up by the Bavarian jurist G. L. von Maurer and which applied from 25 January 1835 until 15 September 1968 followed French legal thinking (Articles 14 and 15 of the French Civil Code) in providing for the nationality of the litigants to be the main criterion of international jurisdiction. Thus, under Article 28 of the 1834 civil procedure, Greek courts possessed jurisdiction where *either* the plaintiff *or* the defendant were Greek. As a result, a Greek national could sue a foreign national, and *vice versa,* before the Greek courts irrespective of the geographical location of the dispute or of any other connecting factor providing a link with the Greek State. In addition, however, pursuant to Article 27 of the civil procedure, the international jurisdiction of the Greek civil courts also extended to actions between foreign nationals if they had agreed to submit their dispute to the Greek courts, or if certain, very few, special jurisdictions applied, or if considerations of public policy were involved ([9]).

10. The basis of the system was changed by the introduction of the Civil Code (23 February 1946). Under Article 7 (1) of the law introducing the Code, Articles 27 and 28 of the civil procedure were repealed; Article 126 of the law stipulated that foreign nationals were subject to the jurisdiction of Greek courts and could sue or be sued in the same manner as Greek nationals in accordance with the provisions governing jurisdiction. Thus, at least in the case of foreign nationals, jurisdiction was dissociated from the nationality of the litigants and became a function of place: in litigation between foreign nationals or where only the defendant was a foreign national the Greek civil courts had jurisdiction in every case, provided that any one such court had territorial competence for the dispute in question.

11. However, opinions differed regarding disputes under private international law where the defendant was a Greek national. According to the 'resultant' theory ([10]), the purpose of the legislator in drafting Article 126 of the law introducing the Civil Code was fully to equate foreign and Greek nationals as regards jurisdiction. Consequently, just as, under Article 126, international jurisdiction with regard to foreign nationals was nothing more nor less than the sum total, or the resultant of various particular jurisdictions, so in the case of Greek nationals international jurisdiction could not be exercised by the Greek State unless such nationals were also linked by some general or special jurisdiction to the area of jurisdiction of a Greek civil court, their Greek nationality being insufficient for this purpose. On the other hand, the 'distinction' theory ([11]), which finally prevailed in jurisprudence in the period up to 1968, distinguished between foreign and Greek defendants, requiring only in the case of the former that some form of jurisdiction should exist and in the case of the latter merely that they possess Greek nationality. This conception of jurisdiction as a function of nationality proved in practice to be an unfortunate privilege for Greeks in that it allowed them to be sued in Greek courts without there being any other connecting factor than their nationality, whereas possession of Greek nationality was not sufficient for a *plaintiff* to be able to bring proceedings against a foreign national in Greek courts ([12]).

12. The introduction of the new Code of Civil Procedure (on 16 September 1968) marked the final break with the French system and led to the predominance of the 'resultant' theory. Under Article 53 of the law introducing the Code, Article 126 of the Civil Code was repealed and Article 3 (1) of the Code of Civil Procedure laid down that Greek and foreign nationals were subject to the jurisdiction of the civil courts in so far as a Greek court was competent. The fact that Greek and foreign nationals were referred to on the same basis and on the same level and that Article 3 (1) of the Code of Civil Procedure was stated to be the prime source of international jurisdiction under Greek law resulted, to use the expression frequently encountered in jurisprudence, in Greek law switching from the principle of nationality to the principle of territoriality. Since that time, and irrespective of the nationality of any of the litigants, the pre-requisite for international jurisdiction to lie with the Greek State has been, as a rule, that the dispute must be subject to the general or special jurisdiction of a Greek civil court ([13]). Only by way of exception, namely in matrimonial disputes and disputes between parents and children, will the Greek nationality of any of the litigants of itself constitute a basis of jurisdiction on the part of the Greek courts (Code of Civil Procedure, Articles 612 and 622).

13. The various individual jurisdictions which thus together make up international jurisdiction under modern Greek law do not diverge all that much from general practice under the laws of the other Community

countries ([14]). General jurisdiction is based on the domicile or seat, and secondarily on the residence, of the defendant (Code of Civil Procedure, Articles 22 to 26 and 32). General jurisdiction is automatically set aside when any of the six *special exclusive jurisdictions* under the Code of Civil Procedure applies: jurisdiction of the court for the place where the property is situated in the case of disputes concerning rights *in rem* or similar rights in, or tenancies of, immovable property (Code of Civil Procedure, Article 29); jurisdiction in matters relating to succession, vested in the court for the last place of domicile of the testator (Code of Civil Procedure, Article 30, see also Article 810); jurisdiction based on related actions, where the court hearing the main action has jurisdiction in respect of ancillary proceedings (Code of Civil Procedure, Article 31); jurisdiction in respect of company disputes, covering disputes between a company and its members and between the members themselves, in so far as they arise out of the company relationship, vested in the court for the place where the company has its seat (Code of Civil Procedure, Article 27); jurisdiction in respect of management under a court order, vested in the local court which made the order (Code of Civil Procedure, Article 28); jurisdiction in respect of counter-claims (Code of Civil Procedure, Article 34), although it should be noted that under Greek law the filing of a counter-claim is not obligatory, nor is any substantive connection required between the defendant's counter-claim and the claim brought by the plaintiff.

The general section of the Code of Civil Procedure also lays down six *concurrent special jurisdictions* with the plaintiff being able to choose between them and general jurisdiction (Code of Civil Procedure, Article 41): jurisdiction in respect of legal acts, with either the place where the act was drawn up or the place of performance being taken as connecting factors (Code of Civil Procedure, Article 33); jurisdiction in respect of criminal offences, which in the case of civil disputes arising from acts giving rise to criminal proceedings lies either with the court for the place where the offence was committed or with the court for the place where the consequences of the offence occurred (Code of Civil Procedure, Article 35, Criminal Code, Article 16); jurisdiction in respect of management other than under a court order, which lies with the court for the place of management (Code of Civil Procedure, Article 36); jurisdiction where identical law is applicable, which, mainly in case of jointly defended proceedings, allows the defendants to be sued in a court which has jurisdiction for any one of them (Code of Civil Procedure, Article 37); jurisdiction in matrimonial disputes, which vests in the court for the last place of joint residence of the spouses (Code of Civil Procedure, Article 39); jurisdiction in respect of claims relating to property, where proceedings may be instituted both before the court for the place where the defendant has resided for a reasonable length of time (Code of Civil Procedure, Article 38), and, mainly where proceedings involve a defendant not domiciled in Greece, before the court for the place where property belonging to the defendant or the object in litigation is situated (Code of Civil Procedure, Article 40). With regard to special procedures (Code of Civil Procedure, Articles 591 to 681) Articles 616, 664 and 678 provide for additional forms of concurrent special jurisdiction which in principle favour the plaintiff.

14. The possibility of basing jurisdiction on an agreement between the litigants is very widely recognized in disputes concerning property (Code of Civil Procedure, Articles 3, paragraphs 1, 42 to 44). The agreement may in principle be informal, an agreement in writing being required only where it relates to a potential future dispute. An informal agreement may in principle also be tacit, and be inferred from a defendant's failure to challenge the jurisdiction of the court when entering an appearance at the first hearing of the case. An express agreement is required only where special exclusive jurisdiction is to be set aside. There is a legal presumption that a court on which jurisdiction is conferred has exclusive jurisdiction. In addition, no substantive connecting factor is required between the dispute to which the conferral of jurisdiction relates and the Greek State. The only bar lies in the prohibition against submitting to Greek jurisdiction disputes concerning immovable property situated outside Greece (Code of Civil Procedure, Article 4, first subparagraph, *in fine*). Lastly, just as jurisdiction may be conferred, it may also be removed with the submission of a dispute to a foreign court; such agreements are not considered as infringements of Greek sovereignty or as contrary to public policy; recourse to foreign courts merely has to be possible so that there is no international denial of justice.

15. Jurisdiction of the Greek State with regard to the substance of a dispute is not a pre-condition for provisional measures to be taken. Of course, such measures may be ordered by the court before which the principal case is pending (Code of Civil Procedure, Articles 684 and 683 (2)). However, they can also be ordered by the court with competence *ratione materiae* nearest to the place where they are to be implemented (Code of Civil Procedure, Article 683 (3)). Hence, the fact that the principal action is pending before a foreign court or, even where not so pending, is subject to the international jurisdiction of a State other than Greece does not prevent provisional measures being taken in Greece.

16. Lack of jurisdiction is in general examined by the court of its own motion. However, since jurisdiction can in principle also be based on a defendant's failure to challenge when entering an appearance ([15]), the question of lack of jurisdiction is only examined by the court of its own motion where the defendant *does not* enter an appearance at the first hearing or where he appears and does not challenge but his silence cannot constitute a basis for implied jurisdiction because the dispute relates to immovable property situated outside Greece (Code of Civil Procedure, Article 4, first subparagraph), or because the object of the dispute is not property, or because the law provides for exclusive jurisdiction (Code of Civil Procedure, Article 4, first subparagraph, Article 42 (1), first and second subparagraphs, Article 46, first subparagraph, Article 263 (a)).

Where jurisdiction is found to be lacking, the action will be dismissed as inadmissible (Code of Civil Procedure, Article 4, second subparagraph) and there will be no referral to a foreign court. However, if despite lack of jurisdiction a judgment is given in the case, it may be challenged in law but will not be void unless it infringes the rules of extraterritoriality (Code of Civil Procedure, Article 313 (1) (e)).

17. Under the old civil procedure of 1834 (Articles 858 to 860) a distinction was made in the enforcement in Greece of judgments of foreign courts according to the nationality of the party against whom enforcement was sought ([16]). If that party was a foreigner, enforcement was authorized by the presiding judge of a court of first instance and three conditions had to be satisfied:

(a) the foreign instrument had to be enforceable in the State of origin;

(b) that State must have possessed jurisdiction (which was assessed according to Greek law);

(c) the instrument must not be contrary to Greek public policy.

On the other hand, if the party against whom enforcement was sought was Greek, jurisdiction to authorize enforcement was vested in the three member courts of first instance and two further conditions had to be satisfied:

(d) the judgment could not be in contradiction with proven fact, a requirement which led to a limited review of the foreign judgment as to its substance, and

(e) no events must have occurred to invalidate the claim included in the foreign instrument. These conditions, which were required by law for enforcement to be authorized, were also extended by judicial practice to the simple recognition of the *res judicata* status of foreign judgments ([17]).

18. Here, too ([18]), the new Code of Civil Procedure eliminated all distinction between Greek and foreign nationals ([19]). Irrespective of the nationality of the party against whom enforcement is sought, the following conditions must now be satisfied for the enforcement of a foreign judgment to be authorized in Greece (Code of Civil Procedure, Articles 905 (2) (3), 323, points 2 to 5):

(a) it must be enforceable under the law of the place where it was delivered;

(b) the dispute must have been subject in accordance with Greek law to the jurisdiction of the State in which the judgment originates;

(c) the party against whom the judgment has been given must not have been deprived of the right of defence, or the right of participation in general in the proceedings;

(d) the foreign judgment must not conflict with a judgment which has become *res judicata* delivered by a Greek court in proceedings between the same parties and in the same dispute;

(e) the foreign judgment must not conflict with public morality or public policy. Apart fro these conditions, there is no requirement as to reciprocity or application of the substantive law defined as applicable under Greek private international law, nor may the procedural legality or the correctness as to substance of the foreign judgment be verified ([20]). Lastly, as regards the enforcement of other foreign instruments, these need merely be enforceable under the law of the place where they were issued and must not be contrary to public morality or public policy (Code of Civil Procedure, Article 905 (2)).

19. The distinction between Greek and foreign nationals has also been abolished as regards both jurisdiction ([21]) to authorize enforcement and the relevant procedure. In every case, jurisdiction is vested in the single-member court of first instance in the area of jurisdiction in which the debtor is domiciled or, where this is inapplicable, is resident; where neither connecting factor applies jurisdiction is vested in the single-member court of first instance in Athens. The procedure followed is that applicable in non-contentious proceedings (Code of Civil Procedure, Article 905 (1)), and an enforcement order may be challenged by means of an ordinary appeal, reasoned appeal against a default judgment, judicial review and appeal in cassation (Code of Civil Procedure, Article 905 (1), second subparagraph, Article 760 to 772), none of which have suspensive effect under the law (Code of Civil Procedure, Articles 763, 770, 771 and 774). A foreign instrument, the enforcement of which has been authorized, is enforced in accordance with the enforcement procedure and measures provided for under Greek law ([22]).

20. *Recognition* of the *res judicata* status of foreign judgments is basically subject to the same conditions. The only difference is that instead of the judgment having to be enforceable under the law of the place where it was delivered ([23]), it must have *res judicata* status under Greek law (Code of Civil Procedure, Article 323, point 1). Recognition of *res judicata* status is not subject to any special procedure (Code of Civil Procedure, Article 323 pr.) and such status may be recognized as an incidental matter by any judicial or administrative authority ([24]). Only in the case of the recognition of the *res judicata* force of foreign judgments concerning the status of persons, in particular with respect to divorce, must the same procedure be followed as for authorization of enforcement (Code of Civil Procedure, Article 905 (4)).

21. Greece is not a contracting party to any bilateral international conventions which directly govern jurisdiction ([25]). Any clauses in agreements placing foreign nationals on the same legal footing as Greek nationals are no longer relevant ([26]), from the point of view of jurisdiction, since such assimilation is now a rule of

Greek internal law further to Article 126 of the law introducing the Civil Code and Article 3 (1) of the Code of Civil Procedure ([27]).

22. Greece is a contracting party to eight 'single' ([28]) bilateral conventions concerning recognition and the enforcement of judgments of foreign courts; these are with Czechoslovakia (1927, Law 3617/1928), Yugoslavia (1959, Decree 4007/1959), the Federal Republic of Germany (1961, Law 4305/1963), Romania (1972, Decree 429/1974), Hungary (1979, Law 1149/1981, Articles 24 to 31), Poland (1979, Law 1184/1981, Articles 21 to 31), Syria (1981, Law 1450/1984, Articles 21 to 29) and Cyprus (1984, Law 1548/1985, Articles 21 to 28). As regards their content, these conventions do not differ substantially from Greek internal law in the Code of Civil Procedure, and they apply irrespective of the nationality of the litigants. They do not permit review as to substance, and they do not make recognition dependent on the substantive law applied in the foreign judgment except in questions concerning the status of persons. The most detailed of these conventions, that between Greece and Germany ([29]), covers the enforcement not only of court judgments but also of court settlements and authentic instruments (Articles 13 to 16); it also covers non-contentious proceedings (Article 1 (1), subparagraph 1) and interim orders (Article 6) and allows recognition to be refused on grounds of lack of jurisdiction solely where the courts of the country in which recognition is sought have *exclusive* jurisdiction, or where the court which gave the judgment heard the case exclusively on the basis of jurisdiction in respect of matters relating to property (Article 3 (3) (4)).

23. Multilateral conventions ([30]) which apply in Greece include the Vienna Convention on Diplomatic Relations of 18 April 1961 (Decree 503/1970) and the Vienna Convention on Consular Relations of 24 April 1963 (Law 90/1975), which deal in detail with extra-territoriality. Other conventions applicable include those of 7 February 1970 on the International Carriage of Goods (CIM), Passengers and Luggage (CIV) by Rail (Emergency Law 365/1968), which contain provisions governing jurisdiction (Article 44) and the enforcement of judgments of foreign courts (Article 56). The New York Multilateral Convention of 20 June 1956 on the Recovery abroad of Maintenance, which applies in Greece (Decree 4421/1964), also contains provisions on the enforcement of foreign judgments (Articles 5 and 6). In the area of maritime law there are the Brussels Conventions of 10 May 1952 on Certain Rules concerning Civil Jurisdiction in matters of Collision (Law 4407/1964) and on the Unification of Certain Rules relating to the Arrest of Sea-going Ships (Decree 4570/1966, in particular Article 7 on international jurisdiction). As regards air law there is the Warsaw Convention on the Unification of Certain Rules relating to International Carriage by Air (Emergency Law 596/1937, in particular Article 28 (1) and Article 32 on jurisdiction). In the area of arbitration law there is the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (Decree 4220/1961). However, Greece has not signed the International Conventions of The Hague of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, and of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations; it has signed (but not yet ratified) the earlier Hague Convention of 15 April 1958 concerning the Recognition and Enforcement of Decisions relating to Maintenance Obligations towards Children. It has also signed, but not yet ratified, the Luxembourg European Convention of 20 May 1980 (within the framework of the Council of Europe) on the Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

III. THE COMMUNITY CONVENTION ON JURISDICTION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

A. SCOPE OF THE CONVENTION

24. *The Convention concerns issues of international points of contact.* In so far as it governs the *international* jurisdiction of the courts the Convention obviously concerns international issues or, to use the normal definition, issues which contain a foreign element. This characteristic, which is inherent in the very nature of the Convention, is stressed in the third paragraph of the preamble; this refers in French to determining the 'compétence de (...) juridictions dans l'ordre international' (jurisdiction of the courts at international level), which the Greek version of the Convention renders as 'international jurisdiction'. Furthermore, both in the title and in the text of the Convention the term 'jurisdiction'(French: 'compétence judiciaire') is translated in

Greek as 'international jurisdiction' in line with normal Greek terminology which distinguishes between international jurisdiction and internal competence.

25. The Convention also governs the recognition and enforcement of *foreign* judgments, i.e. judgments delivered in one Contracting State recognition or enforcement of which is sought in another Contracting State; the same applies as regards authentic instruments and court settlements.

26. *The Convention relates to civil and commercial matters.* The meaning of the expression 'civil and commercial matters' (Article 1, first paragraph) is not defined in the Convention.

However, Article 1 specifies that civil or commercial matters are to be classified as such irrespective of the nature of the court before which they are heard or which gave judgment and of whether the proceedings are contentious or non-contentious. Hence the criterion which applies is substantive rather than procedural. According to the Court of Justice of the European Communities (31), it is essentially determined by the legal relationships between the parties to the action or the subject-matter of the action.

27. Although the drafters of the Convention did not attempt to define or to give clear guidance as to the meaning of the expression 'civil and commercial matters', there can be no doubt that it is to be determined on the basis of the Convention. The concept is therefore independent and is not determined by reference to any specific national legal order. Its meaning should accordingly not be sought in the law of the Contracting State of the court seised or even in the law of the State, whether a Contracting State or not, governing the substance of the action. The Court of Justice of the European Communities confirmed this principle of interpretation in its Judgment of 14 October 1976 (32) when it emphasized the independent nature of the concept and stated that it should be interpreted by reference, on the one hand, to the objectives and scheme of the Convention and, on the other, to the general principles which stem from the corpus of the national legal systems. This in the Court's view makes it necessary to ensure, as far as possible, that the rights and obligations which derive from the Convention for the Contracting States and the persons to whom it applies are equal and uniform. The same approach as regards interpretation can be found in more recent judgments of the Court (33).

28. Civil and commercial matters must be distinguished from disputes of public law, which do not come within the scope of the Convention. In the view of the Court of Justice, it would appear that these two categories can be distinguished on the basis of a traditional feature of public law in continental jurisprudence, namely the exercise of sovereign powers (34). The problem assumed a new dimension when the Convention was opened for accession by States belonging to the family of Anglo-Saxon law which do not in principle recognize the distinction between private law and public law. The existence side-by-side in the Community of divergent approaches of this kind naturally creates difficulties in seeking an independent, generally applicable definition. The Court will be impeded in performing its interpretative function in the absence of general principles common to all the legal systems of the Contracting Parties from which a single criterion can be deduced for distinguishing matters which can be classified as coming under public law. A partial solution to the problem was attempted with the addition made by the 1978 Convention (Article 3) to the original text of the first paragraph of Article 1 of the Convention; the addition specifies that the Convention does not extend 'in particular, to revenue, customs or administrative matters'. This distinction, which may have been self-evident in the case of the majority of the Contracting Parties (including Greece), was necessary in the case of those States — Ireland and the United Kingdom — where the distinction between private and public law is not as firmly and extensively established in positive law or in current jurisprudence.

29. Civil and commercial matters also include relationships arising from contracts of employment. This approach, which is in line with prevailing Greek legal thinking, has been confirmed by the Court of Justice of the European Communities (35).

30. **Exclusions**

The second paragraph of Article 1 specifies a series of matters which are excluded from the scope of the Convention. Most represent a genuine limitation of the civil and commercial matters covered, with their exclusion being necessitated for different reasons in every instance. This is the case as regards the relationships listed in point 1 (status or legal capacity of natural persons, rights and property arising out of a matrimonial relationship and succession), point 2 (bankruptcy, proceedings relating to the winding up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings), and point 4 (arbitration). The exclusion contained in point 3 (social security) is justified both by the fact that social security comes under public law in some countries

whilst it falls in the borderline area between private law and public law in others, and because social security matters are increasingly governed by secondary Community legislation.

31. Point 1 of the second paragraph of Article 1 refers to the status or legal capacity of natural persons, rights and property arising out of a matrimonial relationship and succession. The exclusion of these matters from the scope of the Convention was necessitated by their specific characteristics, which are reflected in the great variety of ways they are dealt with at national level in both substantive law and private international law. Their inclusion in the Convention would have meant either that these specific characteristics would have had to be levelled out or, alternatively, that such matters would have been dealt with in a rather inconsistent manner from the point of view of international jurisdiction, although consistency is one of the main aims of the Convention. Faced with this dilemma, the drafters of the Convention preferred to exclude these relationships from its scope.

32. Interpreting these exclusions, the Court of Justice of the European Communities has ruled that the enforcement of a judicial decision on the placing under seal or the freezing of the assets of the spouse as a provisional measure in the course of proceedings for divorce does not fall within the scope of the Convention ([36]). The Court took the same view in the case of an application on the part of the wife for the Court to order the husband, as a provisional protective measure, to deliver up a document in order to prevent its use as evidence in a dispute concerning a husband's management of his wife's property, because the management was closely connected with the proprietary relationship resulting directly from the marriage bond ([37]).

33. Matters relating to maintenance, however, come within the scope of the Convention, as is apparent from Article 5, point 2, which governs jurisdiction with regard to maintenance obligations. As was perhaps to be expected, problems have arisen from the common practice of linking maintenance claims with proceedings relating to the status of persons, and, in particular, with divorce proceedings. The Court of Justice of the European Communities has ruled that the Convention is applicable to an interim maintenance award under a divorce judgment ([38]). This point is expressly dealt with in the 1978 amendment to Article 5, point 2, of the Convention.

34. Point 2 of the second paragraph of Article 1 excludes from the scope of the Convention bankruptcies, proceedings relating to the winding up of insolvent companies or other legal persons, judicial arrangements, composition and analogous proceedings. These matters had to be excluded given that the Member States of the Community intended, and still intend, to draft a separate Community bankruptcy convention. In relation to Article 16, point 2, which stipulates that, in proceedings which have as their object the dissolution of companies or other legal persons or associations of natural or legal persons, the courts of the Contracting State in which the company, legal person or association has its seat have exlusive jurisdiction, this exclusion may give rise to problems where the dissolution is a consequence of bankruptcy, winding up, judicial arrangement, composition, or analogous proceedings ([39]).

35. Arbitration, a form of proceedings encountered in civil and, in particular, commercial matters, (Article 1, second paragraph, point 4) is excluded because of the existence of numerous multilateral international agreements in this area. Proceedings which are directly concerned with arbitration as the principal issue, e.g. cases where the court is instrumental in setting up the arbitration body, judicial annulment or recognition of the validity or the defectiveness of an arbitration award, are not covered by the Convention. However, the verification, as an incidental question, of the validity of an arbitration agreement which is cited by a litigant in order to contest the jurisdiction of the court before which he is being sued pursuant to the Convention, must be considered as falling within its scope.

36. Social security, which is excluded from the Convention by point 3 of the second paragraph of Article 1, is regarded in some national legal systems as a matter of public law and in others as a mixed legal category on the borderline between public law and private law. Although it could perhaps be argued that this feature alone would be enough to exclude social security from the scope of the Convention as defined in the first paragraph of Article 1, its express exclusion was nevertheless thought to be desirable. There were, however, other reasons as well for excluding social security from the scope of the Convention, such as the fact that it is governed by the Treaties and by secondary Community legislation, and the fact that there are numerous bilateral social security agreements between the Community Member States. The drafters of the Convention considered that this legal situation should not be disturbed by extending the Convention to regulate social security.

37. It should, however, be noted that this exclusion concerns relationships directly connected with the insurance aspect and, particularly, relationships between the insuring body and the insured party, his successors in title and the employer. Ancillary matters, such as direct claims of the injured party against the

insuring body or subrogation of the insuring body to the claims of an injured party as against a third party responsible for the injury or damage, are in principle covered by ordinary legal rules and come within the scope of the Convention.

B. JURISDICTION

38. **General state of the law**

In common with Greek internal law (Code of Civil Procedure, Article 3, paragraph 1, 22) the Convention (Article 2, first paragraph) bases international jurisdiction on the domicile of the defendant. The fundamental provision in the first paragraph of Article 2 expressly dissociates jurisdiction from nationality and, secondly, *requires* proceedings against persons domiciled in the territory of a Contracting State to be brought before the courts of that State except where the Convention itself provides otherwise (specifically in Articles 5 to 18). Consequently, the domicile of a defendant in a Contracting State, irrespective of whether he is a national of such a State, also serves as the criterion for defining the application of the Convention externally. Given that the first paragraph of Article 2 excludes nationality as a factor in determining jurisdiction, the second paragraph provides for the positive assimilation of foreigners to nationals of the State concerned by making the former subject to the rules of jurisdiction applicable to the latter ([40]).

39. The Convention does not itself define domicile; instead, reference is made to the internal law of the State in the territory of which domicile is being investigated for the case in point (Article 52). However, the mere place of residence of the defendant was rejected as a basis of jurisdiction ([41]). Consequently, under the Convention, Article 38 of the Greek Code of Civil Procedure may not be invoked in order to extend the jurisdiction of the Greek courts. For the rest, however, the exclusion of residence as an independent basis of jurisdiction on a par with domicile does not affect the application of Article 23 (1) of the Code of Civil Procedure: if the defendant is domiciled in a non-Contracting State but is resident in a Contracting State, Article 2 will of course not be applicable, but nor can recourse be had to Article 23 (1) of the Code of Civil Procedure which consistently prefers domicile wherever it may be found to exist; if, however, a defendant has no domicile at all but has his place of residence in Greece, then, since such residence constitutes the party's closest geographical connecting factor and thus justifies the application of Article 23 (1) of the Code of Civil Procedure, it must be regarded as satisfying the purpose of Article 2 and hence as constituting a basis of jurisdiction.

40. As is apparent from the first paragraph of Article 2, since the Convention governs solely international jurisdiction and not in principle territorial competence, it merely requires that the courts of the State of domicile of the defendant be responsible without stipulating that it be heard by the *particular* court for the place where the defendant is domiciled. The Convention, however, contains no particular provisions determining the legal domicile of certain parties because, as stated above, it generally refers that issue to the internal law of the State concerned. The third paragraph of Article 52 nevertheless stipulates the law applicable when determining the dependent domicile in question. However, the Convention does not easily accommodate national provisions which displace the material time and replace the present domicile by a previous domicile. Thus, the Convention takes precedence over Article 24 of the Code of Civil Procedure, which applies to Greek public servants posted abroad without extraterritorial status (e.g. teachers at Greek schools or works supervisors for Greek workers in another Contracting State) and makes them subject to the jurisdiction of the courts of their place of domicile before being sent abroad. Accordingly, if a Greek teacher previously domiciled in Athens is posted to the Greek school in Munich and becomes domiciled there, general jurisdiction will henceforth be vested exclusively in the Munich courts, and no longer in the Athens courts.

41. The Convention treats the seat of companies and other legal persons as their domicile (Article 53, first paragraph, first sentence). The seat is determined in accordance with the rules of private international law of the court seised (Article 53, first paragraph, second sentence). The basic rule is the same as that in Article 25 of the Code of Civil Procedure, as regards including associations of natural persons who pursue a common aim without legal personality, since it was the intention when framing the Convention ([42]) that they should be covered by the 'company'.

42. **Special bases**

Article 3 enunciates the general principle of the Convention, that persons domiciled in a Contracting State may be sued in the courts of another Contracting State only to the extent permitted under the special jurisdictions stipulated in Articles 5 to 18 of the Convention ([43]). Hence, as regards matters within its scope, the Convention does not allow of the existence of special jurisdictions other than those it itself specifies. However, the restriction applies only to matters within its scope ([44]). In disputes involving no foreign element, it will therefore still be possible, after the Convention's entry into force, for persons domiciled in Greece to be sued in *Greek* courts other than the court of their place of domicile by virtue of special jurisdictions under the

Greek courts other than the court of their place of domicile by virtue of special jurisdictions under the Greek Code of Civil Procedure, even where such jurisdictions are not provided for in the Convention. The exhaustive nature of the special jurisdictions which, according to the Convention, provide the basis for determining jurisdiction becomes apparent once a person is to be sued in a Contracting State other than his State of domicile. The Convention thus allows general jurisdiction of domicile as a basis for international jurisdiction to be set aside only in favour of special jurisdictions exhaustively enumerated in the Convention itself. This approach is not unknown in Greek internal law. Under Article 22 of the Code of Civil Procedure, a person may be sued before a court other than that of his place of domicile only where the law so provides, i.e. where special jurisdiction is stipulated.

43. In this connection, the Convention gives a specific, but only indicative, list of bases of jurisdiction provided for under national procedural rules but considered under the Convention to be exorbitant (*règles de compétence exorbitantes*). These include rules which base jurisdiction on the fact that either the plaintiff or the defendant is a national of the State in question (Belgium, France, Luxembourg, Netherlands), on the service of a writ of summons on national territory on a defendant who is temporarily present there (Ireland, United Kingdom), on the seizure of property situated on national territory (United Kingdom), on the presence on national territory of property belonging to the defendant (Denmark, Federal Republic of Germany, Greece, United Kingdom) or on other forms of unfavourable treatment of foreign nationals (Italy). Consequently, Greek courts will in future be unable to base their jurisdiction on the special jurisdiction in respect of property under Article 40 of the Code of Civil Procedure, if the defendant is domiciled in any Contracting State. The existence, in a State, of property belonging to the defendant, and even the presence there of the object in litigation, are not regarded by the Convention as constituting a sufficient connecting factor to provide a basis of jurisdiction.

44. Both the general provisions of the Convention and the exclusion of exorbitant bases of jurisdiction in the second paragraph of Article 3 relate solely to defendants domiciled in a Contracting State, irrespective of the domicile and, of course, the nationality of the plaintiff. However, where a defendant is not domiciled in a Contracting State the Convention does not contain any rules of its own but refers to the internal law of the State of the court hearing the action (Article 4, first paragraph). As against such a defendant, the Convention permits any person domiciled in a Contracting State, whatever his nationality, to avail himself of the law of that State, including, of course, the rules of exorbitant jurisdiction which are excluded under the second paragraph of Article 3 (Article 4, second paragraph). Consequently, although defendants are treated unequally according to whether or not they are domiciled in a Contracting State, plaintiffs at least enjoy equal treatment irrespective of nationality, provided they are domiciled in a Contracting State. However, the judgment handed down will, in any event, be recognized and enforced in accordance with the Convention. Apart from the possibility of prorogation of jurisdiction pursuant to Articles 17 and 18, an express exception to the principle that the application of the Convention is dependent on the defendant being domiciled in a Contracting State is constituted by the exclusive jurisdiction provided for under Article 16. In the five categories of proceedings listed in Article 16, the Convention considers that the very close link between the dispute and the territory of a Contracting State must prevail over the fact that the defendant is not domiciled in the territory of any of the Contracting States. Thus, in addition to the domicile of the defendant, the Convention also uses the situation of immovable property, the seat of legal persons, the place where entries have been made in public registers and the place where a judgment has been or is to be enforced as objective ([45]) connecting factors for defining its application.

45. The following sections 2 to 6 of Title II (Articles 5 to 18) contain special rules directly governing jurisdiction. They lay down special bases of jurisdiction, in some cases supplementing general jurisdiction based on domicile, (e.g. Article 5 dealing with certain categories of proceedings and Article 6 dealing with certain categories of persons, in particular defendants), and in others excluding such jurisdiction (Article 16). For certain categories of proceedings which, it was felt, required special procedural arrangements, such as matters relating to insurance and consumer contracts, the relevant Sections 3 (Articles 7 to 12a) and 4 (Articles 13 to 15) lay down self-contained rules on jurisdiction in the sense that, of all the other provisions of the Convention relating to jurisdiction, only Article 4 dealing with the case of defendants with no domicile in a Contracting State ([46]) and Article 5, point 5, dealing with disputes arising out of the operation of a branch, apply as well. Consequently, in the case of matters relating to insurance and in the case of consumer contracts, the domicile of the parties to the dispute is taken into account as a possible basis of jurisdiction only in so far as it is specifically referred to in the relevant section, and recourse may not be had to the general provision in Article 2.

46. **Special concurrent jurisdiction**

Articles 5 to 6a, which lay down a series of objective (Article 5) and subjective (Article 6) connecting factors, specify the cases in which the Convention allows a

person domiciled in one Contracting State to be sued in another such State. In other words, they provide for 'special jurisdiction', which, provided that a defendant is domiciled in a Contracting State and that the bases of the special jurisdiction exist, in the case in question, in the territory of another Contracting State, assign jurisdiction to the latter State as well as to the State of domicile of the defendant. The choice is a matter for the plaintiff and is expressed when proceedings are instituted ([47]).

47. Article 5 of the original Convention contained five cases of special jurisdiction (points 1 to 5), namely matters relating to contracts, to maintenance obligations, to tort, delict or quasi-delict, to civil claims for damages in criminal courts and to disputes arising out of the operations of a branch. With the accession of Denmark, Ireland and the United Kingdom, the 1978 Accession Convention added two further cases, namely disputes relating to trusts and disputes relating to the payment of remuneration in respect of salvage. Article 5 is one of the most important and most frequently applied articles of the Convention.

48. Article 5, point 1, regarding matters relating to contracts establishes the jurisdiction of the court of the place of performance of the obligation in question. The place of performance is thus recognized as a connecting factor which, for the purposes of jurisdiction, can apply with respect to all matters arising out of the operation of a contract. According to the case law of the Court of Justice of the European Communities, this special jurisdiction may be invoked even where the existence of the contract on which the claim is based is in dispute between the parties ([48]). Matters relating to a contract can also include obligations in regard to the payment of a sum of money which have their basis in the relationship existing between an association and its members, irrespective of whether the obligations in question arise simply from the act of becoming a member or from that act in conjunction with one or more decisions made by organs of the association ([49]). The definition of the courts referred to in the Article gives rise to greater difficulties than the delimitation of the matters covered. Thus, it has been held that the place of performance of an obligation is to be determined in accordance with the law which governs the obligation in question according to the rules of private international law of the court before which the matter is brought ([50]). If the national law applicable so permits, the place of performance may be specified by the parties without it being necessary for their agreement to fulfil the formal conditions required under Article 17 of the Convention for prorogation of jurisdiction ([51]). Finally, as regards the obligation the place of performance of which constitutes the basis of special jurisdiction, whereas the Court previously defined it as the contractual obligation (of any kind) forming the basis of the legal proceedings ([52]), it now appears to be limited, in the case of proceedings based on a number of obligations possibly to be performed in a number of places, to the obligation which characterizes the contract ([53]).

49. Special jurisdiction based on the place of performance of a contractual obligation differs from current Greek internal law (Code of Civil Procedure, 33) in two respects. Firstly, it relates only to disputes concerning contracts, with unilateral legal acts not being covered by the actual wording of the provision. However, if the term 'contract' in Article 5, point 1, is interpreted specifically within the framework of the Convention, it would probably include quasi-contractual obligations within the meaning of Article 33 (2) of the Code of Civil Procedure, whereas it remains an open question whether disputes arising from unilateral legal acts are covered. Secondly, under Article 5 only the place of performance of the obligation is considered to be relevant and not also, as in Article 33 (1) of the Greek Code of Civil Procedure, the place where the contract was concluded. Finally, in line with current Greek legal thinking, it is clear under the Convention that the place of performance means the place where the obligation has been or is to be performed, obviously as determined by the parties or under the law applicable ([54]). It should be noted here that with regard to disputes between the master and a member of the crew of a sea-going ship registered in Denmark, in Greece or in Ireland, Article Vb of the 1968 Protocol provides for the possibility of intervention by the competent diplomatic or consular officers.

50. Article 5, point 2, basically provides that jurisdiction in respect of maintenance claims, whatever their legal origin or content ([55]), can also be exercised by the courts for the place where the maintenance creditor is domiciled or habitually resident. This affords the latter a degree of legal protection since he is thus not obliged to call upon a court some distance away from the place where he is established. The 1978 Accession Convention extended this form of special jurisdiction. It now includes maintenance proceedings which are combined, or heard jointly, with proceedings concerning the status of a person — which do not, in themselves, come within the scope of the Convention — and the jurisdiction of the court hearing the main action is thus extended to ancillary maintenance proceedings, unless such jurisdiction is based solely on the nationality of one of the parties. The dependence of the maintenance claim on the main action concerning the status of a person will therefore extend jurisdiction in every case where the latter is not construed solely on the basis of the nationality of one of the parties. Accordingly, since Greek

law provides by way of exception that in matrimonial disputes, and disputes between parents and children, international jurisdiction can be based simply on the nationality of any one of the parties (Code of Civil Procedure, Articles 612 and 622), the combining, or joint hearing, of such proceedings with maintenance proceedings (Code of Civil Procedure, Articles 592 (2) and 614 (2)) is not an option which can be exercised under the Convention unless there is a further criterion other than nationality on which international jurisdiction can be based.

51. Article 5, point 3, provides for the special jurisdiction of the *forum delicti commissi*. This covers all obligations, pecuniary or otherwise, resulting from torts, delicts or quasi-delicts, and refers them to the courts for the place where the harmful event occurred. According to the Court of Justice of the European Communities ([56]), this can be either the place where the damage occurred or the place of the event giving rise to it. While this interpretation of the Convention on the subject of the relevant place is in line with current Greek law, the Convention nevertheless differs from Greek law in that, as it does not require that an act giving rise to criminal proceedings must have been committed (Code of Civil Procedure, 35), it also covers claims resulting from purely civil delicts.

52. Civil claims for damages (or restitution) based on an *act giving rise to criminal proceedings* are covered by Article 5, point 4. Under this provision, the possibility of bringing a civil action in the context of criminal proceedings constitutes an independent basis of jurisdiction, with the result that the criminal court, even if sitting elsewhere than 'the place where the harmful event occurred' (Article 5, point 3) ([57]), can acquire jurisdiction in respect of the civil action to the extent that its internal law so permits. While national legal systems thus remain free to determine whether civil actions in such circumstances are permissible and how criminal courts should proceed with respect to such actions, national codes of criminal procedure are directly affected by Article II of the 1968 Protocol. In particular, this Article provides (in the first paragraph) for the possibility of representation ('by persons qualified to do so') for defendants domiciled in a Contracting State who are being prosecuted in the criminal courts of another Contracting State of which they are not nationals for an offence which was not intentionally committed. According to the Court of Justice of the European Communities, this provision applies if subsequent civil proceedings have been, or may be, brought ([58]). By comparison with this provision, Greek law (Code of Criminal Procedure, 340, paragraph 2, first subparagraph) is in principle more strict, in that it permits a defendant to be represented only where he is accused of a petty offence or a minor crime carrying a financial penalty, a fine or a prison sentence of not more than three months, and not in every case of prosecution for an offence not intentionally committed. Consequently, under the Convention, Article 340, paragraph 2, first subparagraph, of the Code of Criminal Procedure will be replaced by Article II of the 1968 Protocol where it applies ([59]).

53. Jurisdiction in the case of disputes arising out of the operations of a branch, agency or other establishment (Article 5, point 5) is recognized under Greek law only in the form of jurisdiction based on partial domicile for business purposes (Civil Code, Article 51, subparagraph 3, as amended by Article 2 of Law 1329/1983; Code of Civil Procedure, Article 23, paragraph 2) and has not been commonly applied as a basis of jurisdiction. However, as regards the application of the Convention, the Court of Justice of the European Communities has delivered three judgments clarifying the meaning of the provision in question. Firstly, it did not apply the provision to the case of a sole agent who was not subject either to the control or to the direction of the principal ([60]). Secondly, it interpreted the meaning of a 'branch', stressing in particular that it must have the appearance of permanency as a place of business and as an extension of a parent body, and the meaning of disputes arising out of 'operations', which it considered as comprising contractual and non-contractual obligations concerning the management of the branch itself and undertakings entered into in the name of the parent body ([61]). Thirdly, it did not apply the provision in the case of an independent commercial agent entitled to represent several undertakings at the same time and who being free to arrange his own time and work did no more than transmit orders to the parent undertaking ([62]).

54. The provision contained in Article 5, point 6, is foreign to Greek law, which does not recognize trusts as such. This provision was added under the 1978 Accession Convention and it stipulates that the disputes to which it refers and which concern the creation or operation of a trust are subject to the jurisdiction of the Contracting State in which the trust is domiciled.

55. Article 5, point 7, introduces into the Convention as a basis of special jurisdiction the arrestment of cargo or freight in disputes concerning remuneration in respect of salvage at sea. Following the uncertainties which existed prior to the introduction of the Code of Civil Procedure, arrestment is not recognized as a basis of jurisdiction under modern Greek internal law. The latter, of course, recognizes jurisdiction based on property (Code of Civil Procedure, Article 40) in the more

general sense, but precisely this jurisdiction is not allowed under the Convention ([63]). Article 5, point 7, of the Convention has to some extent re-introduced jurisdiction based on property, but in a very restricted form, i.e. only in the case of disputes concerning remuneration in respect of the salvage of a cargo or freight and further subject, in accordance with the traditional approach under common law ([64]), to the condition that the cargo or freight has been or could have been arrested.

56. The bases of special jurisdiction under Article 6 of the Convention which arise from personal connecting factors are in substance known in Greek law. The main differences between the Convention and the Greek Code of Civil Procedure relate to the following three points which correspond to the three special jurisdictions under the Convention:

(a) Jurisdiction in the case of joint proceedings is confined under the Convention to the courts for the place where any one of the defendants is *domiciled*. Greek law goes further and permits the institution of joint proceedings before the court which is vested with either general or some special form of jurisdiction in respect of any one of the defendants.

(b) Article 6, point 2, of the Convention limits jurisdiction based on related actions (see Code of Civil Procedure, Article 31) as a basis of international jurisdiction to third party proceedings. However, even in such instances it is not allowed as a basis of jurisdiction if it is found that the sole purpose of the third party proceedings was to distort the normal limits of international jurisdiction by removing the third party from the jurisdiction of the court which would be competent in his case. As third party proceedings are not recognized under German law, the Federal Republic of Germany preferred not to recognize this basis of jurisdiction in the case of its courts and instead to retain the requirements of notice of proceedings (German Code of Civil Procedure, 72 to 74, 1968 Protocol, Article V).

(c) Whereas jurisdiction based on a counter-claim does not, under Greek law, require that the opposing claims be related (Code of Civil Procedure, Articles 34 and 268), the Convention limits this jurisdictional basis and requires that the counter-claim must arise 'from the same contract or facts on which the original claim was based'.

57. Under Article 6a, which was added by the 1978 Accession Convention, a court with jurisdiction in actions relating to liability arising from the use or operation of a ship also has jurisdiction over claims for limitation of such liability. This makes it legally easier for shipowners to limit their liability since they will be able to institute proceedings for such limitation before the courts of their place of domicile.

58. Matters relating to insurance

The whole of Section 3 (Articles 7 to 12a) which governs international jurisdiction in matters relating to insurance, is essentially concerned with the legal protection of policy-holders *vis-à-vis* insurers. It provides for proceedings to be brought against an insurer before the courts for the place where the policy-holder is domiciled (Article 8, point 2), or, in the case of liability insurance or insurance of immovable property, before the courts for the place where the harmful event occurred (Article 9). The same points of contact also apply in the case of actions brought by an injured party directly against the insurer, where such direct actions are permitted (Article 10, second paragraph). In addition, in so far as the law of the court permits third party proceedings, the Convention extends jurisdiction to cover the case of an insurer being joined in proceedings which an injured party has brought against the insured (Article 10, first paragraph), obviously without there being the restriction laid down by Article 6, point 2, in respect of false third party proceedings. There is also a corresponding legal requirement imposed on the insurer in cases where it is he who institutes proceedings. An insurer 'may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled, irrespective of whether he is the policy-holder, the insured or a beneficiary' (Article 11, first paragraph). Lastly, Articles 12 and 12a provide limited scope for prorogation by permitting agreements between the parties provided that they are entered into after the dispute has arisen (Article 12, point 1) or that they are to the advantage of the party in dispute with the insurer (Article 12, points 2 and 3).

59. Consumer contracts

The content in Section 4 (Articles 13 to 15) dealing with jurisdiction over consumer contracts (it has been found that sale of a machine on instalment credit terms by one company to another is not a contract of this nature) ([65]) is in substance similar and are also unknown in Greek internal law. Thus, a seller or a lender may be sued in the courts for the place where the buyer or borrower (the consumer) is domiciled (Article 14, first paragraph), whereas a seller suing a buyer, or a lender suing a borrower, can only do so in the courts where the defendant is domiciled (Article 14, second paragraph).

Here too there is limited scope for prorogation, agreements between the parties being permitted only if they are entered into after the dispute has arisen (Article 15, point 1) or if they are to the advantage of the buyer or borrower (i.e. the consumer) (Article 15, point 2, see also point 3).

60. **Special exclusive jurisdiction.**

As in the case of Greek internal law (Code of Civil Procedure, Articles 27 to 31 and Article 34), the Convention (Article 16) specifies a number of bases of *exclusive* jurisdiction in the sense that if the pre-conditions for any one of them are fulfilled, a plaintiff may not sue before the courts of the Contracting State in which the defendant is domiciled as in the case of the matters covered by Articles 5 and 6, and, irrespective of whether or not the defendant is domiciled in a Contracting State, may sue only before the courts of the State vested with the relevant exclusive jurisdiction. The list of bases of exclusive jurisdiction given in the Convention (Article 16) is in several respects more restrictive than under Greek internal law. Under the Convention (Article 16, point 1), 'proceedings which have as their object rights *in rem* in, or tenancies of, immovable property' are subject to the jurisdiction of the *forum rei sitae* but, unlike Article 29 (1) of the Greek Code of Civil Procedure, this does not appear to cover claims against any person in possession *(actiones in rem scriptae)*, proceedings for compensation for expropriation ([66]) or disputes relating to the transfer of a usufructuary right in immovable property ([67]).

In contrast to the generalized jurisdiction in respect of company disputes under Greek law (Code of Civil Procedure, Article 27), which includes disputes arising out of the relationship between a company and its members and between the members themselves, the Convention (Article 16, point 2) limits the corresponding exclusive jurisdiction to proceedings concerned with validity, nullity or dissolution — albeit not only as regards companies but as regards legal persons in general — and not only as regards the existence of the legal persons as such but also as regards the validity of the decisions of their organs. Similarly, in Article 16, point 5 (enforcement of judgments), the Convention is narrower than Greek internal law, not as regards the proceedings covered but as regards the courts stated to have jurisdiction; reference is made only to the courts of the Contracting State in which the judgment has been or is to be enforced ([68]) and not also to the courts vested with general jurisdiction in respect of the third party entering the objection, which courts may be competent under Greek law pursuant to Article 933 (2) in conjunction with Article 584 of the Code of Civil Procedure in cases where an order has been granted but other enforcement measures have not (yet) been taken. Nor does this point cover, under the enforcement procedure, objections which are based on claims over which the courts of the State of enforcement have no jurisdiction ([69]). Lastly, the Convention does not recognize jurisdiction based on related actions to the extent provided in Article 31 (1) of the Code of Civil Procedure: it confines such jurisdiction to third party proceedings (Article 6, point 2; but see also Article 22) ([70]) and assigns it concurrent status only. By contrast with these restrictive features, the Convention (Article 16, points 3 and 4) confers exclusive jurisdiction in proceedings which have as their object the validity of entries in public registers and proceedings concerned with the registration or validity of patents, trademarks, designs or other similar rights upon the courts of the State in which the relevant records are kept. The former category, namely entries in public registers, may be considered, at least as regards rights *in rem* in immovable property, as covered in Greek internal law by Articles 29 (1) and 791 (2) of the Code of Civil Procedure taken together. As regards the latter category, relating to proceedings concerned with industrial property ([71]), Greek internal law provides for wider, and not exclusive, jurisdiction, with competence in respect of trademarks devolving upon the normal administrative tribunals. With particular reference to European (as opposed to Community) patents which are not valid throughout the Community, it is specified that exclusive jurisdiction rests with the courts of the particular Contracting State with respect to which the validity of the patent in the particular case is challenged (Article Vd of the 1968 Protocol) ([72]).

61. **Prorogation of jurisdiction**

The rules on prorogation of jurisdiction occupy a central position in the Convention and have repeatedly been the subject of interpretations by the Court of Justice of the European Communities. Exactly as in the presumption in Article 44 of the Code of Civil Procedure, the Convention firstly recognizes the exclusive nature of agreements conferring jurisdiction (Article 17, first paragraph, first sentence *in fine*) and allows either a specific court or the *courts in general* of a Contracting State to be designated as having jurisdiction ([73]). Again in common with Greek internal law (Code of Civil Procedure, Article 43), the Convention allows jurisdiction to be conferred in respect of disputes which may arise in the future only where they are in connection 'with a particular legal relationship' (Article 17, first paragraph, first sentence). However, in contrast to Greek law (Code of Civil Procedure, Articles 42 and 43) no distinction is made as regards the form of the agreement conferring jurisdiction according to whether it relates to present or future disputes (Article 17, first paragraph, first sentence: '... disputes which have arisen or which may arise...').

62. The Convention is more strict in its requirements as to the form an agreement conferring jurisdiction must take than Greek internal law, which does not in principle require that the agreement be in writing (Code of Civil Procedure, Article 42, see also the exception in Article 43). The Convention is basically oriented towards such agreements being formulated in writing and requires them to be in one of the following three forms:

(a) agreement in writing;

(b) oral agreement evidenced in writing;

and

(c) in international trade or commerce, a form which accords with practices in that trade or commerce of which the parties are or ought to have been aware.

With regard to forms (a) and (b), the Court of Justice of the European Communities has ruled that the requirement as to written form is fulfilled if the clause conferring jurisdiction is included among the general conditions printed on the back of a contract, provided that the contract contains an express reference to those general conditions ([74]); it has also ruled that in the case of an orally concluded contract, the vendor's written confirmation must have been accepted in writing by the purchaser, oral acceptance by the purchaser being sufficient only within the framework of a continuing trading relationship between the parties which is based on the general conditions of one of them, which conditions must contain a clause conferring jurisdiction ([75]). Recent judgments of the Court of Justice have become even more liberal. The Court has ruled that the second form, i.e. oral agreement evidenced in writing, can be complied with if the clause conferring jurisdiction is printed on a bill of lading which has been signed by only the carrier ([76]) and, more generally, if the clause has been confirmed in writing by one party only, provided that the document concerned has been received by the other and that the latter has raised no objection ([77]). In addition, agreements conferring jurisdiction which pre-date the entry into force of the Convention, and which would have been void under the national law in force at that time, can be regarded as valid if the proceedings were instituted after the entry into force of the Convention, the existence of jurisdiction being assessed, pursuant to Article 54, in accordance with Title II of the Convention ([78]). Finally, prorogation of jurisdiction is also rendered easier by the Court of Justice's view that agreement between the parties with regard to the place of performance, which constitutes a basis of jurisdiction pursuant to Article 5, point 1 ([79]), is clearly a substantive agreement and is not subject to the formal conditions laid down in Article 17 for prorogation of jurisdiction ([80]).

63. The Court of Justice of the European Communities has also widened the subjective and objective limits of agreements conferring jurisdiction. Thus, in the case of a contract of insurance for the benefit of a third party, it has ruled that the third party (the insured) may rely on conferral of jurisdiction even where he was not a party to the contract and did not sign the clause conferring jurisdiction provided that the consent of the insurer in that respect has been clearly manifested ([81]). The same holds true in the case of a third party holding a bill of lading *vis-à-vis* the carrier, provided that the national law applicable considers the third party to have succeeded to the shipper's rights and obligations ([82]). Further, as regards the objective scope of agreements conferring jurisdiction, the Court of Justice has found that the court before which a dispute has thereby been brought is not prohibited from taking into account a set-off connected with the legal relationship in dispute ([83]).

64. The effect of agreements conferring jurisdiction is limited by two factors under the Convention. The existence of exclusive jurisdiction under Article 16 cannot, in the case in point, simply be circumvented, as in Greek law (Code of Civil Procedure, Article 42 (1), second paragraph), by an express agreement conferring jurisdiction, but is a bar to *any form* of prorogation. This is also true in the case of conflict with Articles 12 or 15 of the Convention which permit agreements conferring jurisdiction in the case of matters relating to insurance and in the case of consumer contracts, provided that they are entered into after the dispute has arisen, or that they are to the advantage of the policyholder, buyer or borrower ([84]). An agreement conferring jurisdiction is however not invalidated by the fact that it is drawn up in a language other than that prescribed by the legislation of a Contracting State ([85]). Under the Convention, the effect of agreements conferring jurisdiction also differs according to the domicile of the parties. The rules of the Convention apply in full if at least one of the parties is domiciled in a Contracting State (Article 17, first paragraph, first sentence). If none of the parties is so domiciled and the agreement confers jurisdiction on the courts of a Contracting State, its effect will be determined according to the law of that State, and the courts of other Contracting States might as a result lose any legitimate jurisdiction they might otherwise have. The third sentence of the first paragraph of Article 17 is specifically aimed at ensuring that this effect of loss of jurisdiction is dealt with in a uniform manner: it allows the courts of other Contracting States to have jurisdiction only if the courts chosen in the agreement have declined it ([86]), which means that the courts of other Contracting Parties may not examine

the validity of the agreement conferring jurisdiction as an incidental issue.

65. As in the case of Greek internal law (Code of Civil Procedure, Article 42 (2), 3 (1)) the Convention (Article 18) also provides for tacit conferral of jurisdiction where a defendant enters an appearance before a court which lacks jurisdiction and he does not plead the court's lack of jurisdiction. The Court of Justice of the European Communities ([87]) has widened this basis of jurisdiction to cover unrelated counter-claims which, though not subject to the jurisdiction of the court, are lodged by the defendant and contested by the plaintiff in court in proceedings on the substance of the case. There can be tacit conferral even if jurisdiction has already been expressly conferred on another court pursuant to Article 17 ([88]). Furthermore, as in the case of Greek law, according to the consistent judicial practice of the Court of Justice of the European Communities ([89]), a defendant wishing to challenge a tacit conferral of jurisdiction is not obliged to confine his defence to contesting the court's jurisdiction, but may also make subsidiary submissions on the substance of the action in order not to be left without a defence in case the court finds that it has jurisdiction.

66. **Examination as to jurisdiction**

As in the case of Greek internal law (Code of Civil Procedure, Articles 4, 46, first subparagraph and 263 (a)), under the Convention (Articles 19 and 20) a court must in principle examine of its own motion whether it has jurisdiction. This rule applies without exception where, by virtue of Article 16, the courts of another Contracting State have exclusive jurisdiction (Article 19) which cannot be set aside either by an express (Article 17, third paragraph) or tacit (Article 18 *in fine*) agreement conferring jurisdiction; the rule is indeed so strict that it requires the national court to declare of its own motion that it has no jurisdiction where the courts of another Contracting State have exclusive jurisdiction, even if, as in the case of ordinary appeals (Code of Civil Procedure, Articles 522, 533 (1) and 535 (1)) and further appeals (in cassation) (Code of Civil Procedure, Article 562 (4) by implication and 577 (3)), the national rules of procedure limit the court's reviewal to the grounds raised by the parties and these do not include a claim of lack of jurisdiction ([90]). However, if the defendant is domiciled in a Contracting State — the classic case to which the Convention applies ([91]) — the fact that jurisdiction may be implied where a defendant enters an appearance before a court without contesting its jurisdiction (Article 18) means that, as under Greek law (Code of Civil Procedure, Article 4, first subparagraph, see also Article 263 (a)), a court will of its own motion examine jurisdiction only where the defendant does not enter an appearance (Article 20, first paragraph). As for the subject-matter itself, the court's examination will of course be confined to the grounds from which jurisdiction may be derived pursuant to the Convention (Article 20, first paragraph *in fine*). The Convention adds the rule, which is new to Greek law ([92]) that before giving a judgment in default, the court must verify that the defendant has been able to receive the document instituting the proceedings in sufficient time to enable him to arrange for his defence, or at least that all necessary steps have been taken to this end (Article 20, second paragraph). This transitional provision has, however, already been replaced (Article 20, third paragraph) by Article 15 of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil and commercial matters, which Greece has ratified ([93]). As well as this, and on a more general basis, the second paragraph of Article IV of the 1968 Protocol provides that documents for service may also be sent by the appropriate public officers of the State in which they have been drawn up directly to the appropriate public officers of the State in which the addressee is to be found, thus enabling there to be direct communication between public officers in the Contracting States ([94]).

67. **Lis pendens**

Article 21 of the Convention expressly regulates jurisdiction in cases of *lis pendens* in a way which corresponds to Greek internal law (Code of Civil Procedure, Article 222 (1)), but instead of obliging courts other than that first seised to stay their proceedings (as under the Code of Civil Procedure, Article 222 (2)), it requires them to dismiss the action on the grounds that they lack jurisdiction (Article 21, first paragraph, directly, and Article 21, second paragraph, by implication). Only as an exception may a court which would be required to decline jurisdiction stay its proceedings if the jurisdiction of the other court is contested (Article 21, second paragraph). However, the question of when proceedings may be regarded as having been instituted, and thus as definitively pending, in particular whether the filing of an action is enough, or whether notice must also be served, is one to be determined in accordance with the national law of each of the courts concerned ([95]).

68. **Related actions**

The Convention also provides for a corresponding possibility of stay of proceedings in the case of related actions (Article 22). Under the Convention, related actions do not constitute an independent basis of jurisdiction, but possible grounds for staying proceedings before any court other than that first seised where proceedings are pending before the courts of two or more Contracting States ([96]). In addition to a stay of

proceedings, the Convention also allows a court other than that first seised to decline jurisdiction in respect of a related action pending before it if the following three conditions are all fulfilled:

(a) one of the parties so requests;

(b) the court first seised has jurisdiction over both actions; such jurisdiction cannot however be based on the fact that they are related except in the cases covered by Article 6, point 2 ([97]);

(c) the law of the court other than that first seised permits the consolidation of related actions pending in different courts ([98]).

This last condition is not recognized by Greek law, which allows actions to be heard jointly if they are in principle pending in the same court (Code of Civil Procedure, Article 246). Under the Convention, Greek courts would therefore be able to stay their proceedings, but not to decline jurisdiction in favour of the courts of another Contracting State. Lastly, the Convention gives a quasi-legislative definition of related actions (Article 22, third paragraph) which is vaguer and thus broader than the definition given to the concept in Greek internal law (Code of Civil Procedure, Article 31(1)).

69. The rule that the court first seised takes precedence, as contained in Greek law (Code of Civil Procedure, Article 41, 221(1), point (c)) and expressed in the provisions on *lis pendens* and related actions in the Convention, also applies under the latter in particular in the rare instances where several courts have exclusive jurisdiction (Article 23). In such cases, exclusive jurisdiction as to the subject-matter gives way to the criterion as to time, i.e. to the rule of precedence of the court first seised of the action.

70. **Provisional and protective measures**

Although, in matters falling within its scope ([99]), the Convention does not prevent the court vested with international jurisdiction as to the substance from ordering provisional and protective measures, it also allows the simultaneous application of the various national laws in respect of provisional or protective measures in order not to impede the operation of interim judicial protection. Thus, Article 24 of the Convention leaves the courts of a Contracting State free to order provisional or protective measures available under the law of that State even if, under the Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter; this is in line with the principle that jurisdiction in respect of provisional or protective measures is separate, as expressed in Greek internal law in Articles 683 (3) and 889 (1) of the Code of Civil Procedure: the limitation that a particular court has jurisdiction as to the substance of the dispute does not in principle affect the possibility of provisional or protective measures being taken by other courts.

C. RECOGNITION AND ENFORCEMENT

71. Recognition and enforcement of judgments is dealt with in Title III (Articles 25 to 49). Title IV (Articles 50 and 51) deals with the enforcement of authentic instruments and court settlements.

72. Title III begins with a definition of judgments which are to be recognized or enforced in accordance with the Convention (Article 25) and is divided into three sections, the first of which (Articles 26 to 30) covers the recognition of judgments, the second (Articles 31 to 45) the enforcement of judgments, while the third (Articles 46 to 49) contains common provisions concerning the whole Title.

73. Such judgments will be recognized and enforced as fall within the scope of the Convention, i.e. judgments in civil and commercial matters subject to the qualifications and exceptions laid down in Article 1 ([100]). Moreover, in accordance with Article 25, the judgments concerned must have been delivered by a court in a Contracting State, whatever such judgments may be called nationally (e.g. decree, order, decision or writ of execution) and irrespective of the nationality or domicile of the parties. Under the same provision, the determination of costs or expenses by an officer of the court is also deemed to be a judgment. The Court of Justice of the European Communities has, however, found that judicial decisions authorizing provisional or protective measures which have been delivered without the party against which they are directed having been summoned to appear and which are intended to be enforced in their country of issue without prior service cannot be recognized or enforced under the Convention ([101]).

74. The Convention draws a distinction between the recognition and enforcement of judgments. This distinction, which has always been known in Greek procedural law, is legally enshrined in the Code of Civil Procedure (Articles 323, 780, 905; see also Articles 903, 906).

75. **Recognition**

By its recognition a judgemnt generates the same legal effects in the State addressed as those conferred on it by the State in which the judgment was given. The Convention facilitates considerably the free movement

of judgments in the Contracting States to a reasonable degree. As regards the recognition of judgments, this principle is expressed at two levels: firstly, at procedural level, by providing for automatic recognition, i.e. without any prior special assessment by a judicial body (Article 26, first paragraph). This solution is also known in Greek law, in respect of the recognition of the *res judicata* force of foreign judgments (Code of Civil Procedure, Article 323) ([102]). It should be noted that the Convention allows the recognition of foreign judgments at whatever stage in the judicial proceedings, including, therefore, decisions which have not acquired the force of *res judicata*. However, if an ordinary appeal has been lodged against a judgment or, in particular in the case of judgments given in Ireland or the United Kingdom, if enforcement is suspended in the State in which the judgment was given by reason of an appeal, the court of the State addressed may stay the proceedings for recognition of the judgment. Secondly, the principle applies in respect of the conditions for recognition, which are comparatively limited and are negatively framed, thereby constituting grounds for refusing recognition rather than positive conditions (Articles 27 and 28; see also Code of Civil Procedure, Article 323).

76. The automatic recognition of judgments at procedural level obviously operates in cases where there is no dispute between the interested parties as to the validity of the judgment in the State addressed. If, as often happens in commerce, the validity of the judgment is disputed, the party wishing to rely on it may seek recognition either as a principal or incidental issue. Where the application for recognition is the principal issue, the rules of Sections 1 and 2 of Title III governing the enforcement of judgments apply. If the recognition of a judgment is sought as an incidental question, the court of the Contracting State entertaining the principal proceedings will also have jurisdiction over the question of recognition (Article 26, second and third paragraphs). These rules also successfully resolve in a more general context the problems which arose in Greece from the lack of a special procedure for the recognition of foreign judgments and which led to the addition of paragraph 4 to Article 905 of the Code of Civil Procedure.

77. Articles 27 and 28 set forth a series of grounds for refusing recognition. A comparison of these grounds with the corresponding conditions in Article 323 of the Code of Civil Procedure shows similarities and differences which it is not possible to detail in this report ([103]). The point to be emphasized is that as a consequence of its character as a 'double' convention ([104]), the Convention does not in principle allow the State addressed to review the jurisdiction of the court which gave the judgment (Article 28, third paragraph), in contrast to the provisions in point 2 of Article 323 of the Code of Civil Procedure. To the list of grounds for refusing recognition of foreign judgments must be added that laid down by Article II of the 1968 Protocol.

78. This solution can be explained if two facts are taken into account: firstly, that jurisdiction both in the State in which the judgment was given and in the State addressed is dealt with in a uniform manner by the Convention and, secondly that, in as much as Article 29 (see also Article 34, third paragraph) contains the general rule that foreign judgments may not be reviewed as to their substance, the court of the State addressed does not have the power to carry out a substantive examination of the findings on which the court of the State in which the judgment was given based its jurisdiction ([105]). There is a basically irrefutable presumption that the judgment to be recognized was given by a court which had jurisdiction in accordance with the Convention. The Convention also rules out the possibility of the court in the State addressed invoking public policy as a ground for reviewing any breach of the rules on jurisdiction by the court of the State in which the judgment was given. Thus, according to the second phrase in the third paragraph of Article 28, 'the test of public policy referred to in point 1 of Article 27 may not be applied to the rules relating to jurisdiction'.

79. To a limited degree, however, the Convention does allow the State addressed to review the jurisdiction of the Court which delivered the judgment. According to the first paragraph of Article 28, a judgment will not be recognized if it conflicts with the provisious of Sections 3, 4 and 5 of Title II, i.e. the rules on jurisdiction relating to insurance matters (Articles 7 to 12a), consumer contracts (Articles 13 to 15) and cases of exclusive jurisdiction (Article 16). The case provided for in Article 59 also requires there to be a possibility of reviewing the jurisdiction of the court which delivered the judgment and for that reason it has been included in the exceptions listed in the first paragraph of Article 28. It should nevertheless be noted that in its examination of jurisdiction in cases covered by this exhaustive list of exceptions, the court or authority in the State addressed which is called upon to recognize the judgment 'shall be bound by the findings of fact on which the court of the State in which the judgment was given based its jurisdiction' (Article 28, second paragraph). Consequently, the examination carried out in the State addressed will concern the legal aspects of the considerations on which the court of the State in which the judgment was given based its jurisdiction.

80. As has already been pointed out, the Convention does not allow a foreign judgment to be reviewed as to

its substance (Article 29). The court or authority of the State addressed which is called upon to recognize the judgment is not entitled to review the substantive or legal soundness of the conclusions of the court which gave the judgment or to refuse to recognize the judgment if it discovers a substantive or legal defect. The rule prohibiting reviews as to substance is, however, subject to certain restrictions: as was observed above, the first and second paragraphs of Article 28 permit a legal review of the judgment as regards certain bases of jurisdiction ([106]). The possibility of review must, out of logical necessity, also be accepted with respect to point 4 of Article 27, which requires in each case an examination both of the factual and legal aspects of the judgment to be recognized. Moreover, examination of the judgment to ensure that recognition is not contrary to public policy in the State addressed (Article 27, point 1) may lead to a re-assessment of its factual or legal considerations. Subject to these reservations, the rule that a judgment may not be reviewed as to its substance is one of the principles of the Convention.

81. Article 30 provides for the possibility of staying recognition proceedings if an ordinary appeal has been logded against the judgment in the State in which it was given. The meaning of the concept of 'ordinary appeal' is to be interpreted on an autonomous basis and covers any appeal which is such that it may result in the annulment or the amendment of the judgment under appeal, and the lodging of which is bound to a period which is laid down by law and which is linked to the actual judgment ([107]).

82. **Enforcement**

While the recognition of foreign judgments does not require a specific procedure to be followed, enforcement of such judgments is only possible if an order for enforcement has been issued in the State addressed or, in the case of the United Kingdom, if the judgments are registered for enforcement. The order for enforcement and, *mutatis mutandis,* registration for enforcement presuppose that a judgment has been given in a Contracting State and is enforceable in that State; the order is then issued or registration effected by the court (specifically defined in the Convention) of the State in which enforcement is sought, following an application which any interested party may submit for the enforcement of the judgment.

83. The procedure for making such applications is governed by the law of the State in which enforcement is sought. If the applicant is not domiciled within the area of jurisdiction of the court applied to, he must, in accordance with the requirements laid down by the law of the State in which enforcement is sought, either give an address for service of process or appoint a representative *ad litem* in that area; the choice of domicile must, as a matter of principle, be made in accordance with the procedures laid down under the law of the State in which enforcement is sought, or, failing this, at the latest on service of the enforcing judgement and the sanctions provided for under this law can in no case adversely affect the objectives of the Convention ([108]). The documents which are to accompany the application are specified in Articles 46 and 47 (Article 33).

84. The procedure for obtaining enforcement of foreign judgments is exclusive in the sense that a successful party must resort to it in order to obtain satisfaction of his claim and cannot, instead, initiate the same proceedings anew in any other State in which the Convention applies ([109]). The procedure operates on three levels of jurisdiction:

(a) The application is submitted to the court specifically designated for each State of enforcement. For Greece the Μονομελές Πρωτοδικειο has jurisdiction (Article 32, first paragraph). The jurisdiction of local courts is determined by reference to the place of domicile of the party against whom enforcement is sought or by reference to the place of enforcement where that party is not domiciled in the State of enforcement (Article 32, second paragraph).

The procedure for issuing the order for enforcement is simple and rapid. There is no obligation to inform the party against whom enforcement is sought of the submission of the application or of the date of the proceedings, and even if that party learns of the proceedings, he is not entitled at this stage to appear or make submissions on the application. The court must give its decision without delay. The foreign judgment may not be reviewed as to its substance and the application may be refused only for one of the reasons specified in Articles 27 and 28 (Article 34). The appropriate officer of the court will without delay bring the decision to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought (Article 35).

(b) The party against whom enforcement is sought has the right to lodge an appeal against the decision granting the application with the court designated for each Contracting State in Article 37. The appeal must be lodged within one month of service of the decision authorizing enforcement if the party against whom enforcement is sought is domiciled in the State of enforcement (Article 36, first paragraph). This time limit will be two months from the date on which the decision is served on that party in person or at his residence if the latter is in a Contracting State other than that in which the decision authorizing enforcement is given. No extension of time may be granted on account of distance (Article 36, second paragraph). The Convention does not deal with the situation where the party against whom enforcement is sought is domiciled outside the territory of the Contracting States. In such cases it is accepted that the time

limit will be one month which may be extended on account of distance in accordance with the law of the State authorizing enforcement of the foreign judgment ([110]). The Court of Justice of the European Communities has ruled that appeals under Article 31 are the only appeals which may be lodged against decisions authorizing enforcement of foreign judgments and has excluded the possibility of lodging any other appeals available under national law ([111]). In Greece the Εφετείο has jurisdiction to hear appeals. Appeals are to be lodged and heard in accordance with the rules governing procedure in contentious matters (Article 37). The court having jurisdiction to hear an appeal by the party against whom enforcement is sought may, on the application of that party, stay the proceedings if an ordinary appeal ([112]) has been lodged against the judgment in the State in which that judgment was given or if the time for such an appeal has not yet expired. The same court may make enforcement conditional on the provision of a security (Article 38); the provision of a security will be ordered in the judgment on the appeal ([113]).

(c) The second paragraph of Article 37 gives an exhaustive list, for each Contracting State, of the types of further appeal which may be filed against the judgment given on the appeal lodged, in accordance with Article 36 and the first paragraph of Article 37, by the party against whom enforcement is sought. In Greece only an appeal in cassation is allowed.

85. A party seeking enforcement of a foreign judgment also has the right to lodge an appeal if an application submitted in accordance with Articles 31 *et seq.* is refused. The courts with jurisdiction to hear such appeals are specified for each Contracting State in the first paragraph of Article 40. In Greece such appeals are heard by the Εφετείο. When the appeal is heard, the person against whom enforcement is sought must be summoned ([114]), and if he fails to appear the provisions of the second and third paragraphs of Article 20 of the Convention apply. A judgment given on such an appeal may be contested only by one form of appeal in each Contracting State, as specified in Article 41. In Greece this may only be by an appeal in cassation.

86. Throughout the time specified for an appeal against the decision authorizing enforcement of the foreign judgment ([115]) and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought. The decision authorizing enforcement of the foreign judgment constitutes the legal basis for taking such measures (Article 39), without any special leave or subsequent confirmation being required of the national court ([116]).

87. The court of the State in which enforcement is sought may authorize partial enforcement of the foreign judgment if that judgment was given in respect of several matters and enforcement cannot be authorized for all of them, or if the applicant requests partial enforcement of the judgment (Article 42). Articles 44 and 45 deal with legal aid and prohibit any sort of security being required of a party applying for enforcement of a foreign judgment, in accordance with the Convention, on the grounds of his status as a foreigner or because he is not domiciled or resident in the State in which enforcement is sought. It should also be noted that Article III of the 1968 Protocol prohibits any charge, duty or fee calculated by reference to the value of the matter in issue from being levied in the State in which enforcement is sought in proceedings for the issue of an order for enforcement.

88. Articles 46 to 49 specify, in the interests of simplification, the supporting documents which a party seeking authorization of enforcement of a foreign judgment must produce before the court. Translation of such documents into the language of the proceedings is not obligatory, although it may be required by the court. The translation may be certified by any person qualified to do so in any of the Contracting States. In particular, it should be noted that Article 49 relieves the party concerned of any obligation to legalize documents which he submits.

89. **Enforcement of authentic instruments and court settlements**

Title IV contains provisions governing enforcement of authentic instruments (Article 50) and court settlements (Article 51). This concerns authentic instruments which have been drawn up or registered and are enforceable in a Contracting State. They will be declared enforceable in another Contracting State in accordance with the procedures laid down in Articles 31 *et seq.* An application for a foreign authentic instrument to be declared enforceable may be refused only if enforcement of the instrument is contrary to public policy in the State in which enforcement is sought (Article 50, first paragraph). The same rules also apply for the enforcement of court settlements approved by a court in a Contracting State and enforceable in that State (Article 51). These provisions of the Convention lay down arrangements which are in substance identical to those under Greek law (Articles 904 and 905 of the Code of Civil Procedure).

90. **General provisions**

Title V (Articles 52 and 53) lays down rules and connecting factors establishing the law applicable for determining the domicile of natural persons and the seat of a company or other legal person and also the domicile of trusts. In order to determine whether a party is domiciled in a Conctracting State, including the State in which the proceedings were initiated, the court will apply the internal law of that State. It will apply the internal law of the relevant Contracting State,

to the exclusion of the rules of private international law (Article 52, first and second paragraphs) ([117]). If however, in accordance with a party's national law his domicile depends on that of another person or on the seat of an authority, his domicile will be determined in accordance with his national law (Article 52, third paragraph). The Convention does not, however, contain rules governing the domicile of a party outside the territory of the Contracting States. In this case the court seised of the matter will rule on the basis of the *lex fori* ([118]). Finally, in order to determine the seat of a company or other legal person or the domicile of a trust, the court seised of the matter will apply its rules of private international law (Article 53) ([119]).

D. THE 1971 PROTOCOL ON INTERPRETATION

91. Aware of the need to ensure that the Convention was applied as effectively as possible, to prevent differences of interpretation from restricting its unifying effect, and to avoid possible claims and disclaimers of jurisdiction, the Contracting States, in the Joint Declaration of 1968, expressed their intention to study these questions and in particular to examine the possibility of conferring jurisdiction in certain matters of interpretation on the Court of Justice of the European Communities and, if necessary, to negotiate an agreement to that effect. This undertaking resulted in the 1971 Protocol which confers jurisdiction on the Court of Justice of the European Communities to interpret the Convention. The Protocol has, of course, been adjusted by the 1978 and 1982 Accession Conventions.

92. The arrangements provided for in the 1971 Protocol are largely in line with the provisions of Article 177 of the EEC Treaty; that Article lays down that the national court can, or, in appropriate cases, must, refer questions on the interpretation of Community law and of the validity of acts by Community institutions to the Court of Justice for preliminary rulings. However, certain modifications were necessary in view of the particular nature of the matters governed by the Convention. The authors of the Protocol attempted to keep these changes to a minimum in their desire to maintain unity in the judicial practice of the Court of Justice of the European Communities in giving preliminary rulings on interpretation, as laid down by the Treaty, and not to disturb the system of cooperation which had been established over a period of many years between the Community Court and national courts. This intention is also clear from Article 5 (1) of the Protocol, which states that the provisions of the Treaty and of the Protocol on the Statute of the Court of Justice relating to preliminary rulings also apply to any proceedings for the interpretation of the Convention and the other instruments referred to in Article 1 of the Protocol, except where the latter provides otherwise.

93. The jurisdiction conferred upon the Court of Justice of the European Communities to give rulings on interpretation concerns the instruments referred to in Article 1 of the Protocol. These instruments are the 1968 Convention, the 1968 Protocol and the 1971 Protocol, together with the instruments adjusting them, i.e. the 1978 and 1982 Accession Conventions.

94. The Protocol provides for three types of referral for preliminary rulings to the Court of Justice of the European Communities: firstly, optional referral by certain courts; secondly, obligatory referral by certain courts and, thirdly, referral 'in the interests of the law' by the competent national authorities.

95. Under Article 3 of the Protocol, both optional and obligatory referrals for a preliminary ruling are provided for where a question of interpretation of the Convention or of one of the other instruments referred to in Article 1 of the Protocol is raised in a case pending and a decision on the question of interpretation is necessary to enable the national court to give judgment.

96. Referrals may be made by the courts of the Contracting States when they are sitting in an appellate capacity (Article 2, point 2, and Article 3 (2) of the Protocol), and the courts of the Contracting States mentioned in Article 37 of the Convention where they are exercising the jurisdiction laid down in that provision (Article 2, point 3, and Article 3 (2) of the Protocol).

97. Referrals for a preliminary ruling on questions of interpretation must be made by the national courts mentioned in Article 2, point 1, of the Protocol. These are the national supreme courts which are specifically listed for the majority of Contracting States, with the exception of the United Kingdom and Greece. These two exceptions were made on the grounds of the judicial structure of the countries in question. In particular in the case of Greece it was considered advisable not to refer exclusively by name to the two main supreme courts, the Άρειος Πάγος and the Συμβούλιο της Επικρατείας, in order to extend the power to submit requests for preliminary rulings to the other supreme judicial bodies with general or specific jurisdiction, such as the special supreme court referred to in Article 100 of the Constitution and the Ελεγκτικό Συνέδριο. If only exceptionally, the matters falling within the jurisdiction of such courts may involve questions of interpretation of the Convention.

98. A request for the interpretation of the Convention or of one of the other instruments referred to in

Article 1 of the Protocol may be submitted to the Court of Justice of the European Communities by the competent national authorities in accordance with Article 4 (1). In accordance with Article 4 (3), these authorities are the Procurators-General of the Courts of Cassation of the Contracting States or any other authority designated by a Contracting State (see also Article 10 (c)). This possibility of obtaining an interpretation 'in the interests of the law' may be exercised by the national authorities when judgments by courts in their country conflict with the interpretation already given either by the Court of Justice of the European Communities or by one of the courts of another Contracting State referred to in point 1 or 2 of Article 2. This power, however, only exists in respect of judgments which have become *res judicata*. Article 4 (2) of the Protocol specifies that the interpretation given in such cases by the Court of Justice of the European Communities does not affect the judgments by national courts which gave rise to the request for interpretation. Finally, in accordance with Article 4 (4), requests for interpretation submitted to the Court of Justice of the European Communities pursuant to Article 4 are to be notified to the Contracting States, to the Commission and to the Council of the European Communities, which are then entitled within two months of the notification to submit statements of case or written observations to the Court; new Member States who have not yet signed the Convention but will accede to it in the future are also entitled to submit observations ([120]). To accommodate the particular nature of requests for interpretation submitted pursuant to Article 4 of the Protocol, Article 4 (4) thus amends Article 20 of the Protocol on the Statute of the Court of Justice annexed to the Treaty establishing the European Economic Community, in accordance with which the decision of a national court or tribunal which submits a request for a preliminary ruling is notified by the Registrar of the Court of Justice of the European Communities to the parties, to the Member States and to the Commission, and also to the Council if the act, the validity or interpretation of which is in dispute, originates from the Council.

99. The frequency with which national courts submit requests for interpretation to the Court of Justice of the European Communities may be described as satisfactory. Application of the Protocol has already led to nearly fifty rulings being given by the Court of Justice.

E. TRANSITIONAL AND FINAL PROVISIONS. PROBLEMS OF TERMINOLOGY

100. Transitional provisions

The 1968 Convention (Title VI, Article 54) and the 1978 Accession Convention (Title V, Articles 34 to 36) contain a number of transitional provisions. Transitional provisions are also contained in the 1982 Convention on the Accession of Greece. In accordance in particular with Article 12 of the 1982 Accession Convention, the 1968 Convention and the 1971 Protocol, as amended by the 1978 and 1982 Accession Conventions, apply only to legal proceedings instituted and to authentic instruments formally drawn up or registered after the entry into force of the 1982 Convention in the State of origin and, where recognition or enforcement of a judgment or authentic instrument is sought, in the State addressed. Paragraph 2 of the Article, however, states that the provisions on recognition and enforcement in the Convention (Title III) also apply to judgments given in proceedings instituted before the entry into force of the 1982 Accession Convention, such entry into force being defined in particular in Article 12 (1) of that Convention, if jurisdiction was founded upon rules of the Community Convention or any other convention which was in force between the State of origin and the State addressed when the proceedings were instituted.

101. Relationship between the Convention and other conventions and Community law

Title VII (Articles 55 to 59) contains a number of provisions regarding the position of the numerous, in particular bilateral, conventions on jurisdiction and enforcement of judgements previously concluded between the Contracting States. The Convention, as a Community instrument, naturally supersedes these more particular conventions (Article 55) to the extent that it coincides with them in terms of date of application and the subject matter covered (Article 56) ([121]). Moreover, the Convention does not affect the validity, or prevent the conclusion by the Contracting Parties, of conventions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments, nor does it affect corresponding existing or possible future legal acts of Community bodies or provisions of national law harmonized in implementation of such acts (Article 57).

102. Language versions of the Convention

All the texts of the Convention ([122]) have drawn up in the eight official languages of the Community, as constituted after the accession of Greece: Danish, Dutch, English, French, German, Greek, Irish and Italian (Article 68 of the 1968 Convention, Article 37, first paragraph, and Article 41 of the 1978 Accession Convention, Article 13, first paragraph, and Article 17 of the 1982 Accession Convention). All the language versions are equally authentic (Article 68 of the 1968 Convention, Article 37, second paragraph, and Article 41 of the 1978 Accession Convention, Article 13, second paragraph, and Article 17 of the 1982 Accession Convention).

103. Terminological problems in the Greek version of the Convention

There follows a list of points in the Greek version of the Convention which require clarification or correction:

(a) In the first sentence of the first paragraph of Article 1, the word 'δικαστήριο' (court) was preferred to the word 'δικαιοδοσία' (jurisdiction) in order to avoid the suggestion that a distinction is being made between contentious and non-contentious proceedings, when in fact the provision relates to the nature of the court itself (e.g. civil, criminal, administrative).

(b) In the section on *lis pendens* (Articles 21 to 23), a general rather than a technical term, 'επιλαμβάνεται', was used for the court 'seised', in order not to prejudge the solution to the question which has already been referred to the Court of Justice of the European Communities ([123]) as to whether this is a term with its own specific meaning in the Convention, or a general reference to the internal rules on jurisdiciton of the Contracting States. Similar considerations led to the use of the more general expression 'αναστολή της διαδικασίας' (stay of proceedings) in preference to 'αναστολή της αποφάσεως' (stay of judgment) (Article 21, second paragraph, Article 22, first paragraph).

(c) In Article 24, 'provisional, including protective, measures' has been rendered by the general and established term 'ασφαλιστικά μέτρα' instead of 'προσωρινά' or 'συντηρητικά μέτρα' (provisional or safeguard measures) to avoid giving the impression that distinctions previously made in Greek procedural law are being revived.

(d) In the second paragraph of Article 26 and the first paragraph of Article 31, reference is made to 'κάθε ενδιαφερόμενος' (any interested party) rather than to 'κάθε διάδικος' (any litigant) as being entitled to apply for the recognition or enforcement of a judgment. The general term has been used in order to avoid the impression that the text of the Convention itself confines such entitlement to the litigants in the original proceedings before the foreign court.

(e) In point 2 of Article 16 clearly 'ακυρότητα' (nullity) and not 'εγκυρότητα' is meant in contrast to the immediately following term 'κύρος' (validity).

(f) The meaning of 'καταχώριση' (article 16, point 4, of the Convention) and of 'εγγραφή' (Article V d of the 1968 Protocol) of patents is the same. What is involved in both cases is the public act which formally protects the right of the inventor. Both terms render the term 'registration' into Greek.

104. Entry into force of the Convention

The 1968 Convention entered into force on 1 February 1973 and the 1971 Protocol on 1 September 1975. As at 31 March 1986 the 1978 Accession Convention had been ratified by five States; it has not yet entered into force ([124]). The entry into force of the 1982 Accession Convention is governed by Article 15, in accordance with which the Convention 'shall enter into force, as between the States which have ratified it, on the first day of the third month following the deposit of the last instrument of ratification by the Hellenic Republic and those States which have put into force the 1978 Convention in accordance with Article 39 of that Convention'. The entry into force of the 1982 Accession Convention therefore depends on the entry into force of the 1978 Accession Convention and on the ratification of the 1982 Accession Convention by Greece.

(1) OJ No C 59, 5. 3. 1979, pp. 1 to 65 and pp. 66 to 70.
(2) OJ No C 59, 5. 3. 1979, pp. 71 to 151.
(3) See point 3 *in fine*.
(4) See point 2.
(5) See points 49 and 52.
(6) See points 9 to 16.
(7) See points 17 to 20.
(8) See points 21 to 23.
(9) On all these questions, see Frangistas, Δικαιοδοσία επί διεθνών διαφορών ιδιωτικού δικαίου (1934), *passim*, in particular 26 to 96.
(10) Frangistas, in Ερμηνεία του αστικού κώδικος ΕισΝ 126 αριθ. 12-22; Rammos, Στοιχεία ελληνικής πολιτικής δικονομίας I/1[5] (1961) 148, 146; Mitsopoulos, Problèmes de juridiction internationale en droit grec, *Εράνιον προς Γ. Σ. Μαριδάκην* II (1963) 301-312.
(11) Maridakis, Η δικαιοδοσία της ελληνικής Πολιτείας επί ελλήνων κατοικούντων εις την αλλοδαπήν, *Νέον δίκαιον* 1956, 1-5; P. Valindras, *Εφημερίς των Ελλήνων Νομικών* 1950, 532-533.
(12) See Evrigenis, Το ιδιωτικόν διεθνές δίκαιον εις την ελληνικήν νομολογίαν, Armenopoulos 1964, 409 *et seq.* (465-490, in particular 470-478).
(13) See however, Maridakis, Ιδιωτικόν διεθνές δίκαιον καθά ισχύει εις την Ελλάδα II[2] (1968) 188-191, in which he continues to defend the 'distinction' theory under the Code of Civil Procedure.
(14) For the following, see Rammos, Εγχειρίδιον αστικού δικονομικού δικαίου I (1978) 185-233; Mitsopoulos, Πολιτική δικονομία A (1972) 204-261; Kerameas, Αστικό δικονομικό δίκαιο. Γενικό Μέρος (1986) 48-85.
(15) See point 14.
(16) For the following; see Maridakis, Η εκτέλεσις αλλοδαπών αποφάσεων κατά το ισχύον εις την Ελλάδα δίκαιον[2] (1946), in particular 60-120; by the same author, Η αντίφασις των αλλοδαπών αποφάσεων εις αποδεδειγμένα πράγματα (1930)· *Ευρυγένη*, Ζητήματα εκ της εκτελέσεως και αναγνωρίσεως αλλοδαπών αποφάσεων, *Επιστημονική Επετηρίς της Σχολής των Νομικών και Οικονομικών Επιστημών του Αριστοτελειου Πανεπιστημίου Θεσσαλονικης* VIII: Μνημόσυνον Γεωργίου Σ. Σιμωνέτου (1957) 323 – 360.
(17) Evrigenis, *ibid.*, 329 and point 8.
(18) See point 12.
(19) For the following, see principally Maridakis, Η εκτέλεσις αλλοδαπών αποφάσεων κατά το ισχύον εις την Ελλάδα δίκαιον[3] (1970), *passim*, in particular 54-109.
(20) Maridakis, *ibid*, 66-99.
(21) See point 17.
(22) See Maridakis, (footnote 19) 83-85.
(23) See point 18, condition (a).
(24) See Maridakis (footnote 19) 107.
(25) In specific areas, jurisdiction is directly governed by certain *multilateral* conventions; see point 23 below.
(26) Frangistas and Gesiou-Faltsi, Αι διεθνείς συβάσεις της Ελλάδος εις το αστικόν δικονομικόν δίκαιον, Συμβατικά κείμενα και ερμηνευτικαί συμβολαί (1976) ιστ' - ιθ'.
(27) See points 10 and 12.
(28) See point 7.
(29) For this Convention in particular, see Kerameus, Rechtsmittelfestigkeit und Vollstreckung von ausländischen Entscheidungen, *Multitudo legum ius unum: Festschrift für Wilhelm Wengler* II (1973) 383-395. P. Gesiou-Faltsi, Zeitschrift für Zivilprozess 96 (1983) 67-89. Pouliadis, Die Bedeutung des deutsch-griechischen Vertrages vom 4. 11. 1961 für die Anerkennung und Vollstreckung deutscher Entscheidungen in der griechischen Praxis, IPrax 5 (1985) 357-369.
(30) See Frangistas and Gesiou-Faltsi (footnote 26), p. 241-292.
(31) Judgment of 16. 12. 1980, Case 814/79, Ruffer v. Netherlands, paragraph 14.
(32) Judgment of Case 29/76, LTU v. Eurocontrol.
(33) Judgment of 14. 10. 1976, 22. 2. 1979, Case 133/78, Gourdain v. Nadler. See also Judgment of 22. 11. 1978, Case 33/78, Somafer v. Saar-Ferngas.
(34) Judgments of 14. 10. 1976 and 16. 12. 1980 referred to above in footnotes 32 and 31.
(35) Judgment of 13. 11. 1979, Case 25/79, Sanicentral v. Collin.
(36) Judgment of 27. 3. 1979, Case 143/78, de Cavel v. de Cavel I.
(37) Judgment of 31. 3. 1982, Case 25/81, C.H.W. v. G.J.H.
(38) Judgment of 6. 3. 1980, Case 120/79, de Cavel v. de Cavel II.
(39) Jenard, report, page 10, section IV *in fine; Schlosser*, report, paragraphs 55 *et seq.*
(40) *Cf.* Code of Civil Procedure, 3, paragraph 1, and, previously, the Law introducing the Civil Code, Article 126.
(41) See Jenard, report, pages 15 and 16.
(42) Jenard, report, page 57, *re* Article 53.
(43) See point 38.
(44) See point 24.
(45) See point 38.
(46) See point 44.
(47) See Code of Civil Procedure, Articles 41 and 221 paragraph 1, subparagraph c.
(48) Judgment of 4. 3. 1982, Case 38/81, Effer v. Kanter.
(49) Judgment of 22. 3. 1983, Case 34/82, Martin Peters v. ZNAV.
(50) Judgment of 6. 10. 1976, Case 12/76, Tessili v. Dunlop.
(51) Judgment of 17. 1. 1980, Case 56/79, Zelger v. Salinitri.
(52) Judgment of 6. 10. 1976, Case 14/76, de Bloos v. Bouyer.
(53) Judgment of 26. 5. 1982, Case 133/81, Ivenell v. Schwab. If, however, the obligation which characterices the contract does not form the subject of the dispute, all depends on the obligation which provides the basis for the action; Judgment of 15.1.1987, Case 266/85, Shenavi v. Kreischer.
(54) See Judgment of 6. 10. 1976, referred to in footnote 52.
(55) Schlosser, report, pages 101 to 103, points 91 to 97.
(56) Judgment of 30. 11. 1976, Case 21/76, Bier v. Mines de potasse d'Alsace.
(57) See Jenard, report, page 26 I.
(58) Judgment of 26. 5. 1981, Case 157/80, Rinkau.
(59) The possibility of the defendant's being represented was extended, by Article 6 (3) of Law 1653 of 8 November 1986 to offences liable to up to six months imprisonment.
(60) Judgment of 6. 10. 1976, see footnote 52.
(61) Judgment of 22. 11. 1978, see footnote 33.
(62) Judgment of 18. 3. 1981, Case 139/80, Blanckaert & Willems v. Trost.
(63) See point 43 *in fine*.
(64) See Schlosser, report, pages 108 and 109, points 121, 122; Collins, The Civil Jurisdiction and Judgments Act 1982 (1983) 65.
(65) Judgment of 21. 6. 1978, Case 150/77, Bertrand v. Ott.
(66) See Schlosser, report, page 120, point 163.
(67) Despite the restrictive interpretation of this provision (Judgment of 14. 12. 1977, Case 73/77, Sanders v. Van der Putte), the Court of Justice of the EC recently ruled that the exclusive jurisdiction provided for in Article 16, point 1, also applies to proceedings in respect of the payment of rent, and that this includes short-term lettings of holiday homes: Judgment of 15. 1. 1985, Case 241/83, Rösler v. Rottwinkel.
(68) As in the case of third party objections under Greek law: Code of Civil Procedure, 936, paragraph 1, third subparagraph.
(69) 'Clear abuse of the process', Judgment of 4. 7. 1985, Case 220/84, Autoteile v. Malhé.
(70) See point 68.
(71) But not including disputes between employees and employers over their respective patent rights arising out of the contract of employment: Judgment of 15. 11. 1983, Case 288/82, Duijnstee v. Goderbauer.
(72) See Schlosser, report, page 123, point 173.

(73) Each party may also designate a different group of courts in which it may be sued: Judgment of 9. 11. 1978, Case 23/78, Meeth v. Glacetal. If an agreement conferring jurisdiction has been stipulated in favour of only one of the parties, the convention (Article 17, fourth paragraph) allows this party to bring the matter before any other court with jurisdiction under the Convention. At all events, the Court of Justice of the EC took the view (in its Judgment given on 24. 6. 1987 in Case 22/85, Anterist v. Crédit Lyonnais) that, for such an agreement to exist in favour of only one of the parties, it would not be enough for the parties to have agreed on the international jurisdiction of a court or courts of a contracting State in the territory of which the 'advantaged' party is domiciled, but the common desire to favour the party must be clearly brought to light.

(74) Judgment of 14. 12. 1976, Case 24/76, Estasis Salotti v. RÜWA. However, in the particular case of persons domiciled in Luxembourg, the second paragraph of Article I of the 1968 Protocol requires that an express and specific clause conferring jurisdiction, which the Court of Justice of the European Communities has held to be the case (Judgment of 6. 5. 1980, Case 784/79, Porta-Leasing v. Prestige International) when the provision in question is separate, has been signed and is contained in the same document as the principal contract between the parties.

(75) Judgment of 14. 12. 1976, Case 25/76, Segoura v. Bonakdarian.

(76) Judgment of 19. 6. 1984, Case 71/83, Tilly Russ v. Haven.

(77) Judgment of 11. 7. 1985, Case 221/84, Berghoefer v. ASA. Along the same lines, now also Judgment of 11. 11. 1986 in Case 313/85, Iveco Fiat v. Van Hool, concerning the written prorogation of an agreement conferring jurisdiction.

(78) Judgment of 13. 11. 1979, see footnote 35.

(79) See points 48 and 49.

(80) Judgment of 17. 1. 1980, see footnote 51.

(81) Judgment of 14. 7. 1983, Case 201/82, Gerling v. Amministrazione del Tesoro dello Stato.

(82) Judgment of 19. 6. 1984, see footnote 76.

(83) Judgment of 9. 11. 1978, see footnote 73.

(84) See above, point 58 *in fine* and point 59 *in fine*.

(85) Judgment of 24. 6. 1981, Case 150/80, Elefanten Schuh v. Jacqmain.

(86) See Schlosser, report, page 124, paragraphs 176 and 177.

(87) Judgment of 7. 3. 1985, Case 38/84, Spitzley v. Sommer.

(88) Judgments of 24. 6. 1981, see footnote 84 and 7. 3. 1985, see footnote 87.

(89) Judgments of 24. 6. 1981, see footnote 84; 22.10.1981, Case 27/81, Rohr v. Ossberger; 31. 3. 1982, see footnote 37; 14. 7. 1983, see footnote 81.

(90) Judgment of 15. 11. 1983, see footnote 71.

(91) See points 38 and 44.

(92) See Jenard, report, pp. 39 to 41.

(93) Law No 1334/1983.

(94) See Jenard, report, pp. 40 and 41.

(95) Judgment of 7. 6. 1984, Case 129/83, Zelger v. Salinitri.

(96) Judgment of 24. 6. 1981, see footnote 84; a similar rule exists in Greek law in the Code of Civil Procedure, Articles 249 and 250.

(97) See point 56.

(98) See Jenard, report, page 41.

(99) Judgment of 31. 3. 1982, see footnote 37.

(100) See points 24 to 37.

(101) Judgment of 21. 5. 1980, Case 125/79, Denilauler v. Couchet Frères.

(102) However, as regards the recognition of the *res judicata* force of foreign judgments concerning status, see Code of Civil Procedure, Article 905, point 4, ΑΠ (supreme court) 569/1972, *Legal Gazette*, 1972, 1427, ΑΠ 1007/1982, *Legal Gazette* 1983, 1006.

(103) The question of whether, in the case of a judgment given in default, the document which instituted the proceedings was served on the defendant in sufficient time to enable him to arrange for his defence (Article 27, point 2, of the Convention) is, according to the case law of the Court of Justice of the European Communities, to be examined by the court of the State in which enforcement is sought separately and without reference to the law on service applicable in the State of origin (Judgment of 16. 6. 1981, Case 166/80, Klomps v. Michel; the point was made more clearly recently: Judgment of 11. 6. 1985, Case 49/84, Debaecker v. Bouwman) or to the opinion of the court which delivered the judgment recognition or enforcement of which is sought (Judgment of 15. 7. 1982, Case 228/81, Pendy Plastic v. Pluspunkt).

(104) See point 7.

(105) Jenard, report, page 46.

(106) See point 79.

(107) Judgment of 22. 11. 1977, Case 43/77, Industrial Diamond Supplies v. Riva.

(108) Judgment of 10. 7. 1986, Case 198/85, Carron v. Federal Republic of Germany.

(109) Judgment of 30. 11. 1976, Case 42/76, De Wolf v. Cox.

(110) Jenard, report, page 51.

(111) Judgment of 2. 7. 1985, Case 148/84, Deutsche Genossenschaftsbank v. Brasserie du Pêcheur.

(112) See point 81 and footnote 107.

(113) Judgment of 27. 11. 1984, Case 258/83, Brennero v. Wendel.

(114) See Judgment of 12. 7. 1984, Case 178/83, P. v. K.

(115) See point 84 (b).

(116) Judgment of 3. 10. 1985, Case 119/84, Capelloni v. Pelkmans.

(117) Jenard, report, page 17.

(118) Jenard, report, page 16.

(119) See also point 41.

(120) Judgment of 6. 10. 1976, see footnote 50.

(121) Judgment of 14. 7. 1977, Cases 9 and 10/77, Bavaria v. Eurocontrol.

(122) See point 3.

(123) See footnote 95.

(*) *Editor's note*

Since this report was drawn up the 1978 Accession Convention entered into force, in relations between the six original Member States of the European Communities and the Kingdom of Denmark, on 1 November 1986. It will enter into force, with regard to the United Kingdom of Great Britain and Nothern Ireland, on 1 January 1987.

The Greek language edition of *Official Journal of the European Communities* also contains the Greek version of the Reports by Mr P. JENARD and Professor Pr. P. SCHLOSSER. These reports are published in Danish, Dutch, English, French, German and Italian, in *Official Journal of the European Communities* No C 59 of 5 March 1979.