

## Case C-116/02

Erich Gasser GmbH

v

MISAT Srl

(Reference for a preliminary ruling from  
the Oberlandesgericht Innsbruck (Austria))

(Brussels Convention — Article 21 — *Lis pendens* — Article 17 — Agreement conferring jurisdiction — Obligation to stay proceedings of court second seised designated in an agreement conferring jurisdiction — Excessive duration of proceedings before courts in the Member State of the court first seised)

Opinion of Advocate General Léger delivered on 9 September 2003 . . . I-14696  
Judgment of the Court (Full Court), 9 December 2003 . . . . . I-14721

### Summary of the Judgment

1. *Convention on Jurisdiction and the Enforcement of Judgments — Protocol on the Interpretation of the Convention by the Court of Justice — Preliminary rulings — Jurisdiction of the Court of Justice — Question relying on the submissions of a party to the main proceedings — Whether admissible — Conditions*  
(Brussels Convention of 27 September 1968; Protocol of 3 June 1971)

2. *Convention on Jurisdiction and the Enforcement of Judgments — Lis pendens — Actions brought before courts in different Contracting States — Jurisdiction of the court second seised claimed under an agreement conferring jurisdiction — Not relevant to the obligation to decline jurisdiction*  
(Brussels Convention of 27 September 1968, Art. 21)
3. *Convention on Jurisdiction and the Enforcement of Judgments — Lis pendens — Actions brought before courts in different Contracting States — Excessive duration of proceedings before courts in the Member State of the court first seised — Not relevant to the application of Article 21 of the Convention*  
(Brussels Convention of 27 September 1968, Art. 21)

1. A national court may, under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, refer to the Court of Justice a request for interpretation of the Brussels Convention, even where it relies on the submissions of a party to the main proceedings of which it has not yet examined the merits, provided that it considers, having regard to the particular circumstances of the case, that a preliminary ruling is necessary to enable it to give judgment and that the

questions on which it seeks a ruling from the Court are relevant. It is nevertheless incumbent on the national court to provide the Court of Justice with factual and legal information enabling it to give a useful interpretation of the Convention and to explain why it considers that a reply to its questions is necessary to enable it to give judgment.

(see para. 27, operative part 1)

2. Article 21 of the Brussels Convention must be interpreted as meaning that a court second seised whose jurisdiction

has been claimed under an agreement conferring jurisdiction must nevertheless stay proceedings until the court first seised has declared that it has no jurisdiction.

That fact is not such as to call in question the application of the procedural rule contained in Article 21 of the Convention, which is based clearly and solely on the chronological order in which the courts involved are seised.

(see paras 47, 54, operative part 2)

3. Article 21 of the Brussels Convention of 27 September 1968 must be interpreted as meaning that it cannot be derogated from where, in general, the duration of proceedings before the courts of the Contracting State in which the court first seised is established is excessively long.

An interpretation whereby the application of that article should be set aside in such a situation would be manifestly contrary both to the letter and spirit and to the aim of the Convention.

(see paras 70, 73, operative part 3)