

In Case 143/78

REFERENCE to the Court in pursuance of the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Bundesgerichtshof for a preliminary ruling in the action pending before that court between

JACQUES DE CAVEL, Flughafenbereich Ost, Gebäude 124-2040, D-6000 Frankfurt am Main,

appellant,

and

LUISE DE CAVEL, 20 Dielmannstraße, D-6000 Frankfurt am Main

respondent,

on the interpretation of subparagraph (1) of the second paragraph of Article 1 of the Convention of 27 September 1968.

## THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keefe, G. Bosco and A. Touffait, Judges,

Advocate General: J.-P. Warner

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Facts and Issues

The order making the reference and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

#### I — Facts and procedure

In divorce proceedings pending before the Tribunal de Grande Instance, Paris, the husband, in applying for an order for

enforcement, requested the adoption of protective measures. By order of 19 January 1977 the judge of family matters at the Tribunal de Grande Instance, Paris, acceding to that request, authorized the putting under seal of the furniture, effects and other objects in the couple's flat at Frankfurt am Main and on the safe hired in the wife's name in a banking establishment in the same city. The judge also authorized the freezing of the wife's bank account and in addition declared that in the event of difficulties the wife should have the right to apply for the adoption of interim measures to the court dealing with the order for enforcement in the Federal Republic of Germany.

In reliance on Article 31 of the Convention of 27 September 1968 (hereinafter referred to as "the Convention"), Mr de Cavel applied to the President of the Landgericht (Regional Court) Frankfurt am Main for an order for the enforcement of the decision of the French court; however, the application was dismissed on the ground that the applicant had not produced the documents which, in accordance with Article 47 of the Convention must be produced by the party applying for enforcement.

An appeal against that decision was dismissed by the Oberlandesgericht (Higher Regional Court) Frankfurt am Main, which took the view that the Convention was not applicable in this case as the measures applied for, which related to the status of natural persons, were, by virtue of subparagraph (1) of the second paragraph of Article 1 of the Convention, excluded from its field of application.

The case was brought before the Bundesgerichtshof (Federal Court of Justice), which, by order of 22 May 1978, in pursuance of Article 3 of the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention, referred the following question to the Court of Justice for a preliminary ruling:

"Is the Convention of the European Community of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters inapplicable to an order made by a French judge of family matters simultaneously with proceedings for the dissolution of marriage pending before a French court for putting under seal and freezing assets, since it relates to proceedings incidental to an action concerning personal status or rights in property arising out of a matrimonial relationship (subparagraph (1) of the second paragraph of Article 1 of the Convention)?"

The order referring the matter to the Court was lodged at the Court Registry on 19 June 1978.

The appellant and the respondent in the main action, the Government of the Federal Republic of Germany, the Government of the United Kingdom and the Commission submitted written observations in pursuance of Article 5 of the Protocol of 3 June 1971 in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

## II — Observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

### *A — Observations of the appellant in the main action*

According to the appellant in the main action the question to be settled is whether the "measure applied for", that is to say the protective measures (freezing the assets of the wife in

Germany and any bank accounts she may have there) authorized by the French court, for which an order for enforcement is sought from the German court, may be severed from proceedings relating to the status of persons and rights in property arising out of a matrimonial relationship.

The appellant in the main action draws attention to Article 24 of the Convention according to which: "Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the subject of the matter"; he deduces from this, first, that "the court from which the measure is applied for" is not required to consider whether or not the application is well founded and secondly that the position would be the same, to some extent *a fortiori*, in the case of a court called upon to issue an order for enforcement (Article 31) of a foreign decision ordering or authorizing provisional or protective measures.

Thus the Convention itself recognizes in principle in Article 24 the "severable" and independent nature of provisional and protective measures whilst subparagraph (1) of the second paragraph of Article 1 of the Convention, which excludes from the field of application of the Convention the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession, does not affect such "severability". The independent nature — from the judicial point of view — of provisional or protective measures and their severability from lawsuits excluded from the field of application of the Convention, when they are connected with similar lawsuits, are moreover confirmed both by Article 5 (2) of the Convention, which, from the point of view of jurisdiction *ratione loci*, "severs" actions for maintenance from

actions relating to status and capacity with which they are frequently connected, and by Article 27 (4) of the Convention the wording of which implies that judicial decisions concerning status and capacity only partially escape the rules of the Convention relating to recognition of judgments.

Passing next to a consideration of the question whether measures of the kind which form the subject-matter of the application for enforcement are or are not to be considered by themselves (that is to say severed from the actions as to the substance of a matter, to which they are a concomitant) as relating to the status and capacity of persons or rights in property arising out of a matrimonial relationship, the appellant in the main action takes the view, in reliance on the case-law of the court, that this question must be resolved having regard to the objectives both of the system of the Convention and of the general principles which may be discerned from national laws and that, from this point of view, these matters come within the field of application of the first and not the second paragraph of Article 1.

The appellant in the main action suggests that the Court should rule that:

"— Judgments delivered in the matter of provisional and protective measures must be viewed intrinsically and severed from any lawsuit as to the substance of the matter and hence recognized within the meaning of the Community Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

— Provisional or protective judicial measures concerning the proprietary interests of the parties fall within the field of application of the Convention even when such orders and judicial measures are adopted prior to divorce proceedings."

*B — Observations of the respondent in the main action*

Mrs de Cavé, the respondent in the main action, first reminds the Court that the French judge of family matters ordered her husband to pay her maintenance and she then obtained from the Landgericht Frankfurt am Main an order for the enforcement of the French order. On appeal the Oberlandesgericht Frankfurt am Main quashed that decision on the ground that the matter came under the heading of status and capacity of persons and was therefore excluded from the field of application of the Convention. The "Rechtsbeschwerde" (appeal on a point of law) lodged before the Bundesgerichtshof is still pending.

Passing next to a consideration of the problems raised by the reference to the Court of Justice for a preliminary ruling, the respondent in the main action points out first of all the grounds of substance on which she opposes the provisional and protective measures which her husband wishes to apply in Germany and next maintains that these measures come within the sphere of rights in property arising out of a matrimonial relationship and are therefore excluded from the scope of the Convention.

Alluding to the different position which she adopts in the matter of enforcement in respect of the maintenance awarded her and the execution of the provisional measures obtained by her husband, the respondent in the main action points out that considerations of fundamental rights may justify this difference of approach but finally she suggests awaiting any order which may be made by the Bundesgerichtshof before which the question of the decision as to the order for enforcement with regard to the maintenance is pending so that the two problems may be examined together.

The respondent in the main action suggests that "the decision with regard to the reference for a preliminary ruling

made by the Bundesgerichtshof in Case VIII ZB 39/77 — Register No 93 434 of the European Court of Justice — should be suspended until another reference has been made in Case VIII ZB 34/78 pending before the Bundesgerichtshof — or until the case has been dismissed, which, in view of the precedents, is probable".

*C — Observations of the Federal Republic of Germany*

According to the German Government in order to ensure the most uniform possible application of the Convention the expressions "status of persons" and "rights in property arising out of a matrimonial relationship" must be interpreted in an independent manner taking into consideration the objectives and the system of the Convention as well as the general principles which may be discerned from the national legal systems, viewed as a whole.

In this respect important evidence may be found in the *Jenard* report on the Convention itself and in the *Schlosser* report drafted on the occasion of negotiations for the accession of the new Member States to the Convention and the modifications then to be made to it (Official Journal 1979, No C 59).

According to this evidence although the provisions of the Convention limiting its field of application exclude from its scope actions relating to the status and capacity of persons and to rights in property arising out of a matrimonial relationship, such provisions nevertheless keep within the sphere of application actions relating to maintenance in spite of the often decisive importance of problems of status in the respective situations of the maintenance creditor and debtor. By reason of the growing importance accorded in Member States — within the framework of new family laws — to the principle of the joinder of proceedings which means that courts dealing with questions of status consider

also the ancillary problems, the new draft Convention, in particular in the new version of Article 5 (2) drawn up on the occasion of the accession of the new Member States, tends, whilst recognizing this principle, to limit its effects.

The Government of the Federal Republic of Germany deduces from this, first, that it is not possible to find in the Convention a general principle that ancillary proceedings are excluded from its sphere of application simply because the main action is excluded therefrom. It observes next that up to the present the Convention does not contain any express provision with regard to the question whether ancillary decisions concerning judgments relating to the status of persons come within its sphere of application but that the new version of Article 5 (2) regarding maintenance, negotiated between the old and new Member States by no means leads, by reason of its inapplicability to questions of status, to the conclusion that it must not apply either to an ancillary decision. Finally the Government of the Federal Republic of Germany sees no special necessity to treat provisional measures adopted in the context of divorce proceedings otherwise than provisional protective measures in general are treated. It follows that, where the right which is asserted falls as such within the scope of the Convention the application of the Convention is not excluded by the fact that the claim is only provisional and is only made within the framework of proceedings concerning status of persons.

What is decisive on the other hand is the nature of the right which the protective measure seeks to protect. In this respect the order referring the matter to the Court of Justice contains no information and the Government of the Federal Republic therefore considers, in reliance in particular on the *Schlosser* report to which reference has already been made, that, to the extent to which it may be possible, in the case of a provisional measure adopted in the course of divorce

proceedings and intended to serve proprietary interests, to establish that the objective is not to safeguard maintenance obligations (for example by reason of the absence of the need for maintenance), this is a matter of the effects of marriage on property and consequently of a question relative to property rights arising out of a matrimonial relationship which are excluded from the sphere of application of the Convention. The Government of the Federal Republic of Germany therefore proposes that the reply should be:

- “1. Proceedings relative to provisional measures in matrimonial matters are not excluded from the sphere of application of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by reason of the fact that they are proceedings ancillary to actions relating to the status of persons or rights in property arising out of a matrimonial relationship.
2. The Convention may be applicable to the placing under seal and freezing of assets ordered by the judge in family matters in the course of divorce proceedings to the extent to which it is (also) necessary to protect maintenance obligations; it is not applicable if the purpose is solely to protect claims to matrimonial property.”

*D — Observations of the Government of the United Kingdom*

According to the Government of the United Kingdom, the terms of Article 1 of the Convention make it inapplicable

to proceedings which are principally concerned with the status of natural persons and proceedings for the dissolution of marriage fall into that category. In such proceedings the Convention can therefore play no part and the position is the same as regards orders ancillary to or made simultaneously with such proceedings since an ancillary order must follow the course of the main proceedings. Divorce laws are rooted in different moral and religious attitudes which make it difficult for one country to accept the decisions of the another country in these matters. By excluding divorce judgments from its scope the Convention recognizes these differences and it would therefore be illogical to require the courts of another Member State to assist in the exercise of such different jurisdictions by giving effect to ancillary orders given in the course of exercising it. The French court whose decision is the subject of the application for enforcement will not, when it entertained the divorce petition, have been bound by the rules of the Convention regarding the assumption of jurisdiction over persons domiciled elsewhere in the Community; it may even be that in the framework of the Convention it would have had no jurisdiction since territorial jurisdiction in divorce matters is in national legislation frequently determined by criteria which the Convention for its part does not admit.

The inclusion within the scope of the Convention of ancillary orders made in proceedings which otherwise fall outside the scope of the Convention might have even more serious legal consequences. As the Convention permits the exercise of jurisdiction only on the strength of the rules set out in it, if it were to apply to interim orders seizing property irrespective of the nature of the main cause of action to which the proceedings relate, then the basis for assuming jurisdiction to make the interim order will itself have to be found in the

Convention (Article 3 (1)). Usually there will be such a basis, but in divorce proceedings that will not always be so.

The Government of the United Kingdom next deals with a similar problem relating to ancillary orders for maintenance. Since the Convention applies to maintenance (Article 5 (2)), even when the obligation stems from the status of persons, such orders cannot be made to accompany divorce or other status proceedings and this defect in the original Convention is the subject of an amendment which will be in the new text accepted by the nine Member States.

If the United Kingdom's contention is accepted and orders made ancillary to status proceedings are excluded from the scope of the Convention it does not follow that they will necessarily be unenforceable in the courts of other countries. Under Article 56 existing bilateral conventions on recognition and enforcement of judgments continue to apply to matters to which the Convention does not apply.

The United Kingdom takes the view that an order freezing property in anticipation of an ultimate redistribution of the property of the spouses following a divorce would be sufficiently closely linked with rights arising out of a matrimonial relationship to be covered

by subparagraph (1) of the second paragraph of Article 1 of the Convention and thus excluded from the Convention's sphere of application.

#### *E — Observations of the Commission*

In the view of the Commission the concepts "status of natural persons" and "rights in property arising out of a matrimonial relationship" must be interpreted in an independent and uniform manner for all Member States since otherwise certain Member States might restrict or extend the sphere of application of the Convention. Consequently to interpret such concepts it is necessary to refer first to the objectives and system of the Convention and secondly to the general principles which may be discerned from the totality of the systems of national laws.

Since an independent interpretation must emerge from the wording it must be deduced that the concept of "status of persons" refers to the status of a person and not to the consequential effects on property of such status. The divorce proceedings pending in the present case before the Tribunal de Grande Instance, Paris, relate to the status of persons within the meaning of Article 1 of the Convention inasmuch as they involve a change in the civil status of a married couple but that does not mean that the other decisions taken within the framework of divorce proceedings are *ipso facto* excluded from the sphere of application of the Convention. The question whether problems connected with divorce such as for example that of maintenance, must be treated in the context of the divorce proceedings or must constitute the subject-matter of special proceedings, depends not only on the different national rules of procedure but also in certain cases on the desire of the parties to the action to introduce such questions into the divorce proceedings or to make them the subject-matter of special proceedings. Such

scope for manoeuvre is not only objectively unjustified but furthermore contrary to the Convention and in particular to Article 42, which is based on the principle that for any request for partial enforcement and, *a fortiori*, for any partial decision adopted within the framework of a single action, the conditions for the applicability of the Convention are to be examined separately.

The Commission takes the view in addition that the applicability of the Convention does not depend, either, in the question whether the decision relates to a definitive measure or to provisional measures of a protective nature (Article 24 of the Convention). This opinion is confirmed by a decision of the Oberlandesgericht Karlsruhe of 4 June 1976 and another of the Court of Appeal, Brussels, of 1 April 1977 (*Journal des Tribunaux*, 1978, p. 119) both adopted within the context of divorce proceedings.

The Commission concludes on this point that the solution in the present case depends on the question whether the disputed measures ordered by the judge in family matters in Paris, apart from their connexion with divorce proceedings, relate to one of the matters excluded from the sphere of application of the Convention.

In reply to that question the Commission points out that the decision of the judge in family matters does not relate to the status of persons within the meaning of Article 1 of the Convention because that concept relates to the status of a person and not those aspects connected therewith which concern property but that, on the other hand, that decision, which settles the legal situation of assets belonging to one of the spouses, may concern the matrimonial relationship of the parties to the divorce proceedings.

The concept of "rights in property arising out of a matrimonial relationship" is interpreted differently in the various languages so that there is a

need to interpret the concept in a uniform manner. Once that choice has been made there is room for doubt whether the interpretation should be broad or restrictive.

In favour of a restrictive interpretation of the concept of "rights in property arising out of a matrimonial relationship", limiting the exclusion of these matters from the sphere of application of the Convention, the following arguments might be put forward:

- (a) If the Contracting States had had the intention of excluding generally from the sphere of application of the Convention all special proprietary relationships between spouses it would easily have been possible to express this clearly by a sufficiently broad wording as in subparagraph (1) of the second paragraph of Article 1 of The Hague Convention of 17 March 1969 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.
- (b) It follows from Article 5 (2) of the Convention, on the subject of maintenance, that proprietary relationships between spouses are not in principle excluded from the sphere of application of the Convention.

In favour of a broad interpretation of the concept of "rights in property arising out of a matrimonial relationship", extending the number of matters excluded from the sphere of application of the Convention, it might on the other hand be pointed out that a restrictive interpretation does not sufficiently take into account the economic significance of the concept in question. It follows, however, from the objective at which the Contracting States were aiming that special proprietary relationships between spouses created by the rights in property arising out of their matrimonial relationship must not be excluded from the sphere of application since the exclusions referred to relate only to areas of law in which there are considerable differences between the

legal systems of the Contracting States, namely proceedings concerning the creation, the existence and the ending of rights in property arising out of a matrimonial relationship. Once this preliminary question is dealt with the rights and obligations flowing from such rights raise no further difficulties of the type which led the Contracting States to exclude rights in property arising out of a matrimonial relationship from the sphere of application of the Convention.

Any decision on the rights and obligations of spouses on the basis of the rights in property arising out of their matrimonial relationship certainly presupposes in general that the court before which the matter comes decides a preliminary question concerning the nature of the property rights of the spouses but the problems flowing from it for the application of the Convention may be resolved on the basis of Article 27 (4) of the Convention which states that execution of a foreign decision which has decided this preliminary question in a way that conflicts with a rule of the private international law of the State in which the recognition is sought may be refused unless the same result would have been reached by the application of the rules of private international law of that State.

The Commission consequently takes the view that the decision of the judge in family matters at the Tribunal de Grande Instance, Paris, does not concern rights in property arising out of a matrimonial relationship and that there is no occasion to establish whether his decision is based on provisions relating to such rights in property or to special proprietary relationships between spouses or on the contrary on general civil law provisions of the legislative system applied by the French court. Even if the decision were based on provisions relating to rights in property arising out of a matrimonial relationship such rights as between spouses engaged in divorce proceedings only constitute a preliminary question not excluding the application of the

Convention and afford the judge of the enforcing State only the possibility of carrying out a review within the framework of Article 27 (4) of the Convention.

In conclusion the Commission suggests that the reply should be as follows:

- “1. In pursuance of subparagraph (1) of the second paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, provisional measures adopted in the framework or divorce proceedings are not excluded from the field of application of the Convention when they do not directly concern one of the excluded matters enumerated in the said subparagraph.
2. The decision to seal and freeze assets of the defendant, adopted by the French judge of family matters within the context of pending divorce proceedings does not relate to the excluded matters “status of

persons” and “rights in property arising out of a matrimonial relationship” referred to in subparagraph (1) of the second paragraph of Article 1 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.”

### III — Oral procedure

The appellant, represented by L. Levi-Valensin, of the Paris Bar, and by Mr Gillen, of the Luxembourg Bar, the respondent, represented by W. Beck, of the Frankfurt-am-Main Bar, the Commission of the European Communities, represented by its Agent, Mr Wägenbaur, assisted by Mr Krause-Ablass, presented oral argument at the hearing on 31 January 1979.

The Advocate General delivered his opinion at the hearing on 22 February 1979.

## Decision

- 1 By an order of 22 May 1978, which was received at the Court on 19 June 1978, the Bundesgerichtshof referred to the Court of Justice for a preliminary ruling pursuant to the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial (hereinafter referred to as “the Convention”) a question relating to the interpretation of subparagraph (1) of the second paragraph of Article 1 of the Convention which excludes from the scope of the Convention the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession.
- 2 The question was raised in the context of a dispute concerning the enforcement in the Federal Republic of Germany of an order made on 19 January 1977 by the judge of family matters at the Tribunal de Grande

Instance, Paris, authorizing, as a protective measure in divorce proceedings pending between the parties, the putting under seal of furniture, effects and other objects in the flat at Frankfurt-am-Main belonging to the parties and the freezing of the assets and accounts of the respondent at two banking establishments in that city.

In reliance on Article 31 of the Convention the husband, who had commenced proceedings for the divorce, and in whose favour the authorization to freeze the assets was made, applied to the President of the Landgericht Frankfurt-am-Main for an order for the enforcement of the decision of the French court, but that application was dismissed on the ground that the applicant had not produced the documents referred to in Article 47 of the Convention.

On appeal, the Oberlandesgericht Frankfurt-am-Main also rejected the application, on the ground that the protective measures enforcement of which was sought formed part of divorce proceedings and were therefore excluded from the scope of the Convention by subparagraph (1) of the second paragraph of Article 1.

- 3 The case was then brought before the Bundesgerichtshof which referred to the Court of Justice the following question:

“Is the Convention of the European Community of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters inapplicable to an order made by a French judge of family matters simultaneously with proceedings for the dissolution of marriage pending before a French court for putting under seal and freezing assets, since it relates to proceedings incidental to an action concerning personal status or right in property arising out of a matrimonial relationship (subparagraph (1) of the second paragraph of Article 1 of the Convention)?”

- 4 The Commission and the appellant argue that the answer should be given that the proceedings referred to fall within the scope of the Convention, while the Governments of the United Kingdom and of the Federal Republic of Germany and the respondent contend that the answer should be that the Convention is inapplicable.

- 5 It appears from the file on the case that the matters in dispute before the German courts concern, on the one hand, the connexion between the measures ordered by the French judge of family matters and the divorce proceedings and, on the other, the question whether the Convention is applicable in view of the proprietary nature of the protective measures in question.

- 6 In the words of Article 1, the Convention is to apply in “civil and commercial matters”.

Nevertheless, because of the specific nature of certain matters, including “the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession”, disputes relating to such matters are excluded from its scope.

- 7 The enforced settlement on a provisional basis of proprietary legal relationships between spouses in the course of proceedings for divorce is closely linked to the grounds for the divorce and the personal situation of the spouses or any children of the marriage and is, for that reason, inseparable from questions relating to the status of persons raised by the dissolution of the matrimonial relationship and from the settlement of rights in property arising out of the matrimonial relationship.

Consequently, *the term “rights in property arising out of a matrimonial relationship”* includes not only property arrangements specifically and exclusively envisaged by certain national legal systems in the case of marriage but also any proprietary relationships resulting directly from the matrimonial relationship or the dissolution thereof.

Disputes relating to the assets of spouses in the course of proceedings for divorce may therefore, depending on the circumstances, concern or be closely connected with:

- (1) questions relating to the status of persons; or
- (2) proprietary legal relationships between spouses resulting directly from the matrimonial relationship or the dissolution thereof; or
- (3) proprietary legal relations existing between them which have no connexion with the marriage.

Whereas disputes of the latter category fall within the scope of the Convention, those relating to the first two categories must be excluded therefrom.

- 8 The foregoing considerations are applicable to measures relating to the property of spouses whether they are provisional or definitive in nature.

As provisional protective measures relating to property — such as the affixing of seals or the freezing of assets — can serve to safeguard a variety of rights, their inclusion in the scope of the Convention is determined not by their own nature but by the nature of the rights which they serve to protect.

- 9 Furthermore, in relation to the matters covered by the Convention, no legal basis is to be found therein for drawing a distinction between provisional and definitive measures.

That conclusion is not affected by Article 24 of the Convention whereby: "Application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter".

In fact that provision expressly envisages the case of provisional measures in a Contracting State where "under this Convention" the courts of another Contracting State have jurisdiction as to the substance of the matter and it cannot, therefore, be relied on to bring within the scope of the Convention provisional or protective measures relating to matters which are excluded therefrom.

- 10 It may therefore be concluded that judicial decisions authorizing provisional protective measures — such as the placing under seal or the freezing of the assets of the spouses — in the course of proceedings for divorce do not fall within the scope of the Convention as defined in Article 1 thereof if those measures concern or are closely connected with either questions of the status of the persons involved in the divorce proceedings or proprietary legal relations resulting directly from the matrimonial relationship or the dissolution thereof.

#### Costs

- 11 The costs incurred by the Government of the United Kingdom, the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Bundesgerichtshof by order of 22 May 1978, hereby rules:

**Judicial decisions authorizing provisional protective measures — such as the placing under seal or the freezing of the assets of the spouses — in the course of proceedings for divorce do not fall within the scope of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgment in Civil and Commercial Matters as defined in Article 1 thereof if those measures concern or are closely connected with either questions of the status of the persons involved in the divorce proceedings or proprietary legal relations resulting directly from the matrimonial relationship or the dissolution thereof.**

Kutscher    Mertens de Wilmars    Mackenzie Stuart    Donner    Pescatore  
Sørensen                    O’Keeffe                    Bosco                    Touffait

Delivered in open court in Luxembourg on 27 March 1979.

A. Van Houtte  
Registrar

H. Kutscher  
President

OPINION OF MR ADVOCATE GENERAL WARNER  
DELIVERED ON 22 FEBRUARY 1979

*My Lords,*

This case comes to the Court by way of a reference for a preliminary ruling

ordered by the Bundesgerichtshof under the Protocol of 3 June 1971 on the interpretation by the Court of the Convention of 27 September 1968 on Jurisdiction and Enforcement of