Elefanten Schuh GmbH

v.

Pierre Jacqmain

C-150/80

24 June 1981

Convention on jurisdiction and the enforcement of judgments – Prorogation of jurisdiction – Appearance of the defendant before the court seised – Agreement conferring jurisdiction designating another court – Challenge as to jurisdiction and defence on the substance – Agreements conferring jurisdiction – Formal requirements

OPERATIVE PART:

1. Article 18 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters applies even where the parties have by agreement designated a court which is to have jurisdiction within the meaning of Article 17 of that Convention.

2. Article 18 of the Convention of 27 September 1968 must be interpreted as meaning that the rule on jurisdiction which that provision lays down does not apply where the defendant not only contests the court's jurisdiction but also makes submissions on the substance of the action, provided that, if the challenge to jurisdiction is not preliminary to any defence as to the substance, it does not occur after the making of the submissions which under national procedural law are considered to be the first defence addressed to the court seised.

3. Article 22 of the Convention of 27 September 1968 applies only where related actions are brought before courts of two or more contracting states.

4. Article 17 of the Convention of 27 September 1968 must be interpreted as meaning that the legislation of a contracting state may not allow the validity of an agreement conferring jurisdiction to be called in question solely on the ground that the language used is not that prescribed by that legislation.

EXCERPT FROM THE REASONS:

1 By judgment dated 9 June 1980 which was received at the Court on 24 June 1980 the Cour de cassation (Court of cassation) of Belgium referred to the Court for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters several questions as to the interpretation of Articles 17, 18 and 22 of that Convention.

2 Those questions were put in the context of an appeal in cassation against a judgment of the Arbeidshof Antwerpen (Labour Court, Antwerp) ordering Elefanten Schuh GmbH, a company incorporated under German law, and Elefant NV, a company incorporated un-

Elefanten Schuh GmbH

protiv

Pierrea Jacqmaina

C-150/80

24. lipnja 1981.

Konvencija o nadležnosti i ovrsi sudskih odluka – prorogacija nadležnosti – pojavljivanje tuženika pred sudom pred kojim se vodi postupak – sporazum o nadležnosti koji upućuje na drugi sud – osporavanje nadležnosti i očitovanje o biti spora – sporazum o nadležnosti – pretpostavke u pogledu oblika

IZREKA:

1. Članak 18. Konvencije od 27. rujna 1968. o nadležnosti i ovrsi sudskih odluka u građanskim i trgovačkim stvarima primjenjuje se i onda kada su stranke sporazumno odredile sud koji je nadležan prema članku 17. Konvencije.

2. Članak 18. Konvencije od 27. rujna 1968. treba tumačiti na način da se pravilo o nadležnosti iz te odredbe ne primjenjuje ako tuženik ne samo osporava nadležnost suda, već se i očituje o biti spora, pod uvjetom da se, ako osporavanje nadležnosti nije prethodilo eventualnim prigovorima u pogledu biti spora, ono ne iznosi tek nakon navoda koji se prema nacionalnom procesnom pravu smatraju prvim iznošenjem obrane pred sudom.

3. Članak 22. Konvencije od 27. rujna 1968. primjenjuje se samo ako se povezane tužbe podnose pred sudovima dviju ili više država ugovornica.

4. Članak 17. Konvencije od 27. rujna 1968. treba tumačiti na način da se zakonodavstvom neke države ugovornice ne može dopustiti da se valjanost sporazuma o nadležnosti dovodi u pitanje samo zbog toga što nije upotrijebljen jezik propisan tim zakonodavstvom.

IZ OBRAZLOŽENJA:

1 Presudom od 9. lipnja 1980. primljenom u pisarnici Suda 24. lipnja 1980., *Cour de cassation* (Kasacijski sud) Belgije uputio je, prema Protokolu od 3. lipnja 1971. o tumačenju Suda Konvencije od 27. rujna 1968. o nadležnosti i ovrsi sudskih odluka u građanskim i trgovačkim stvarima, Sudu u prethodno tumačenje nekoliko pitanja o tumačenju članaka 17., 18. i 22. Konvencije.

2 Ta pitanja iznesena su u kontekstu žalbe u kasacijskom postupku protiv presude suda *Arbeidshof Antwerpen* (Radni sud u Antwerpenu) kojom se nalaže Elefanten Schuh GmbH, društvu osnovanom prema njemačkom pravu te Elefant NV, društvu osnovanom prema belgijskom pravu, da zajedno plate iznos od BFR 3 120 597 s kamatom gospodinu

der Belgian law, to pay jointly the sum of BFR 3 120 597 together with interest to Mr Pierre Jacqmain for having inter alia dismissed mr Jacqmain without notice.

3 It appears from the papers placed before the Court that in 1970 Mr Jacqmain was employed as a sales agent by the German company Hoffmann GmbH which subsequently adopted the name Elefanten Schuh GmbH; however, he actually worked in Belgium, in particular in the provinces of Antwerp, Brabant and Limburg, on instructions which he received from the Belgian subsidiary of that undertaking, Elefant NV the main action arose as a result of difficulties which occurred in 1975 between Mr Jacqmain and the two companies concerning details of the transfer of the contract of employment from the German company to the Belgian company.

4 Mr Jacqmain brought an action in the Arbeidsrechtbank Antwerpen (Labour Tribunal, Antwerp) against the two companies. The defendant companies appeared before that court and by their first submissions they contested the substance of the applications lodged against them. In further submissions lodged nine months later the German company claimed that the Arbeidsrechtbank did not have jurisdiction on the ground that the contract of employment contained a clause stipulating that the court at Kleve in the Federal Republic of Germany was to have exclusive jurisdiction in the event of any dispute. The Arbeidsrechtbank dismissed that objection. It took the view that such a clause could not derogate from Article 627 of the Belgian Judicial Code which in disputes of this kind provides that the court of the place where the occupation is pursued is to have jurisdiction.

5 The Arbeidshof Antwerpen, to which an appeal from the judgment of the Arbeidsrechtbank was made, considered that pursuant to Article 17 of the Brussels Convention of 27 September 1968 the parties to the contract of employment could confer territorial jurisdiction on the court of Kleve by agreeing in writing to derogate from the rules on territorial jurisdiction contained in the Belgian Judicial Code. However, the Arbeidshof held that the German company could not rely on the jurisdiction clause on the ground that the contract of employment had to be written in Dutch by virtue of Article 10 of the decree of 19 july 1973 governing the use of languages in relations between employers and employees, adopted by the Cultuurraad voor nederlandse cultuurgemeenschap (Culture Council for the Netherlands Cultural Community) (Moniteur belge, p. 10089). The Arbeidshof took the view that Article 10, which provides that any act or document not written in Dutch is null and void, applies to documents drawn up before the decree entered into force. Consequently the contract of employment, drawn up in German, was null and void and the clause conferring jurisdiction contained therein was invalid.

6 The appeal in cassation lodged against the judgment of the Arbeidshof by the Belgian company was declared inadmissible by the Hof van cassatie (Court Of Cassation). As the appeal in cassation lodged by the German company concerned the validity of the jurisdiction clause in particular the Hof van cassatie decided in view of Article 17 of the Brussels Convention to put three questions to the Court of Justice.

Question 1

7 Question 1 is worded as follows:

"1. (a) is Article 18 of the Convention of 27 september 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters applicable if parties have agreed to confer jurisdiction on a court within the meaning of Article 17?

Pierreu Jacqmainu zbog toga što su mu, među ostalim, otkazali ugovor bez otkaznog roka.

3 Iz isprava koje su predane Sudu proizlazi da je 1970. gospodin Jacqmain bio zaposlen kao trgovački zastupnik njemačkog društva Hoffmann GmbH koje je poslije promijenilo ime u Elefanten Schuh GmbH; međutim u stvarnosti je radio u Belgiji, i to osobito u provincijama Antwerpenu, Brabantu i Limburgu, po uputama koje je primao od belgijskog društva kćeri toga poduzeća, Elefant NV. Glavni spor nastao je kao rezultat poteškoća koje su nastale 1975. godine između gospodina Jacqmaina i dvaju navedenih društava u vezi s pojedinostima prijenosa ugovora o radu s njemačkog na belgijsko društvo.

4 Gospodin Jacqmain pokrenuo je postupak pred sudom *Arbeidsrechtbank Antwerpen* (Radni sud u Antwerpenu) protiv dvaju navedenih društava. Tužena društva pojavila su se pred sudom i u svojim prvim podnescima osporila osnovanost zahtjeva koji su bili podneseni protiv njih. U daljnjim podnescima, koji su predani devet mjeseci poslije, njemačko društvo tvrdilo je da *Arbeidsrechtbank* nije bio nadležan, zato što je ugovor o radu sadržavao klauzulu prema kojoj je za eventualne sporove isključivo nadležan sud u Kleveu u Saveznoj Republici Njemačkoj. *Arbeidsrechtbank* je odbio taj prigovor. Zauzeo je stajalište da takva klauzula ne može odstupati od članka 627. belgijskog Zakonika o sudovima prema kojem je za sporove te vrste nadležan sud mjesta gdje se posao obavlja.

5 *Arbeidshof Antwerpen*, kojem je podnesena žalba protiv presude suda *Arbeidsrechtbank*, smatrao je da prema članku 17. Bruxelleske konvencije od 27. rujna 1968., strane ugovora o radu mogu uspostaviti mjesnu nadležnost suda u Kleveu pisanim sporazumom kojim odstupaju od odredaba belgijskog Zakonika o sudovima o mjesnoj nadležnosti. Međutim, *Arbeidshof* je smatrao da se njemačko društvo ne može pozvati na klauzulu o nadležnosti na temelju toga što je ugovor o radu trebao biti sastavljen na nizozemskom na temelju članka 10. Uredbe od 19. srpnja 1973. o uporabi jezika u odnosima između poslodavaca i radnika, koji je usvojio *Cultuurraad voor nederlandse cultuurgemeenschap* (Kulturno vijeće Nizozemske kulturne udruge) (Moniteur belge, str. 10089). *Arbeidshof* je zauzeo stajalište da se članak 10., koji propisuje ništetnost svakog akta ili isprave koja nije sastavljena u Nizozemskoj, primjenjuje na isprave sastavljene prije nego što je uredba stupila na snagu. Slijedom toga, ugovor o radu sastavljen na njemačkom jeziku bio je ništetan, a u njemu sadržana klauzula o nadležnosti nevaljana.

6 Žalba u kasacijskom postupku koju je belgijsko društvo podnijelo protiv presude *Arbeidshofa* utvrđena je nedopuštenom od strane *Hof van cassatie* (Kasacijski sud). Kako se žalba u kasacijskom postupku koju je podnijelo njemačko društvo odnosila upravo na valjanost klauzule o nadležnosti, *Hof van cassatie* odlučio je, u pogledu članka 17. Bruxelleske konvencije, postaviti Sudu tri pitanja.

Pitanje 1

7 Pitanje 1 glasi:

"1. (a) primjenjuje li se odredba članka 18. Konvencije od 27. rujna 1968. o nadležnosti i ovrsi sudskih odluka u građanskim i trgovačkim stvarima ako su se stranke sporazumjele o nadležnosti nekog suda u smislu članka 17.?

(b) is the rule on jurisdiction contained in Article 18 applicable if the defendant has not only contested jurisdiction but has in addition made submissions on the action itself?

(c) if it is, must jurisdiction then be contested in limine litis?"

8 Articles 17 and 18 form Section 6 of Title II of the Convention which deals with prorogation of jurisdiction; Article 17 concerns jurisdiction by consent and Article 18 jurisdiction implied from submission as a result of the defendant's appearance. The first part of the question seeks to determine the relationship between those two types of prorogation.

9 In the first sentence, Article 18 of the Convention lays down the rule that a court of a contracting state before whom a defendant enters an appearance is to have jurisdiction and in the second sentence it provides that that rule is not to apply where appearance was entered solely in order to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 16 of the Convention.

10 The case envisaged in Article 17 is not therefore one of the exceptions which Article 18 allows to the rule which it lays down. Moreover neither the general scheme nor the objectives of the Convention provide grounds for the view that the parties to an agreement conferring jurisdiction within the meaning of Article 17 are prevented from voluntarily submitting their dispute to a court other than that stipulated in the agreement.

11 It follows that Article 18 of the Convention applies even where the parties have by agreement designated a court which is to have jurisdiction within the meaning of Article 17.

12 The second and third parts of the question envisage the case in which the defendant has appeared before a court within the meaning of Article 18 but contests the jurisdiction of that court.

13 The Hof van cassatie first asks if Article 18 has application where the defendant makes submissions as to the jurisdiction of the court as well as on the substance of the action.

14 Although differences between the different language versions of Article 18 of the Convention appear when it is sought to determine whether, in order to exclude the jurisdiction of the court seised, a defendant must confine himself to contesting that jurisdiction, or whether he may on the contrary still achieve the same purpose by contesting the jurisdiction of the court as well as the substance of the claim, the second interpretation is more in keeping with the objectives and spirit of the Convention. In fact under the law of civil procedure of certain contracting states a defendant who raises the issue of jurisdiction and no other might be barred from making his submissions as to the substance if the court rejects his plea that it has no jurisdiction. An interpretation of Article 18 which enabled such a result to be arrived at would be contrary to the right of the defendant to defend himself in the original proceedings, which is one of the aims of the Convention.

15 However, the challenge to jurisdiction may have the result attributed to it by Article 18 only if the plaintiff and the court seised of the matter are able to ascertain from the time of the defendant's first defence that it is intended to contest the jurisdiction of the court.

16 The Hof van cassatie asks in this regard whether jurisdiction must be contested in limine litis. For the purposes of interpreting the Convention that concept is difficult to apply in view of the appreciable differences existing between the legislation of the con-

(b) je li pravilo o nadležnosti sadržano u članku 18. primjenjivo ako tuženik nije samo osporio nadležnost, već se, osim toga, očitovao i o samom tužbenom zahtjevu?

(c) ako jest primjenjivo, mora li se nadležnost u tom slučaju osporiti *in limine litis*?"

8 Članci 17. i 18. čine odjel 6. poglavlja II. Konvencije koji se odnosi na prorogaciju nadležnosti; članak 17. tiče se nadležnosti na temelju sporazuma, a članak 18. nadležnosti koja proizlazi iz očitovanja kao rezultat tuženikova sudjelovanja u postupku. Prvim dijelom pitanja traži se određenje odnosa između tih dviju vrsta prorogacije.

9 U prvoj rečenici, članak 18. Konvencije propisuje pravilo prema kojemu je sud države ugovornice pred kojim se tuženik pojavio nadležan, a u drugoj rečenici navodi da se to pravilo ne primjenjuje ako je tuženik sudjelovao u postupku samo da bi osporio nadležnost ili ako je neki drugi sud isključivo nadležan prema članku 16. Konvencije.

10 Slučaj predviđen u članku 17. stoga ne spada među iznimke koje članak 18. dopušta u pogledu pravila koje se u njemu navodi. Osim toga, ni opća shema ni ciljevi Konvencije ne predviđaju osnovu za stajalište da su stranke sporazuma o nadležnosti u smislu članka 17. spriječene u tome da svoj spor sporazumno podvrgnu sudu različitom od onoga koji je naveden u ugovoru.

11 Slijedi da se članak 18. Konvencije primjenjuje čak ako su se stranke sporazumjele o sudu koji je nadležan u smislu članka 17.

12 Drugi i treći dio pitanja odnose se na slučaj u kojem se tuženik pojavio pred sudom u smislu članka 18., ali osporava njegovu nadležnost.

13 *Hof van cassatie* najprije pita primjenjuje li se članak 18. ako se tuženik očituje kako o nadležnosti suda tako i o biti spora.

14 Iako između različitih jezičnih verzija članka 18. Konvencije postoje razlike u pogledu toga mora li se, radi isključenja nadležnosti suda pred kojim se vodi postupak, tuženik ograničiti samo na osporavanje nadležnosti ili nasuprot tomu može ostvariti isti cilj osporavanjem kako nadležnosti tako i tužbenog zahtjeva, ovo potonje tumačenje više je u skladu s ciljevima i duhom Konvencije. Zapravo, prema građanskom postupku nekih država ugovornica tuženik koji ospori nadležnost, a ne ospori ništa drugo, može biti spriječen u tome da se očituje o biti spora ako sud odbije taj prigovor nenadležnosti. Tumačenje članka 18. koje omogućuje da se takav ishod postigne bio bi protivan pravu tuženika da se brani u izvornom postupku, što je upravo jedan od ciljeva Konvencije.

15 Međutim, osporavanje nadležnosti može imati ishod koji mu se pripisuje u članku 18. samo ako tužitelj i sud pred kojim se postupak vodi mogu ustanoviti od trenutka tuženikove prve obrane da se njome osporava nadležnost suda.

16 *Hof van cassatie* u tom pogledu pita mora li se nadležnost osporavati *in limine litis*. U svrhu tumačenja Konvencije, taj je pojam teško primijeniti u svjetlu znatnih razlika koje postoje u zakonodavstvu država ugovornica u pogledu podnošenja tužbi pred sudovima, pojavljivanja tuženika te načina na koji stranke trebaju sastavljati svoja očitovanja. Međutim, iz ciljeva članka 18. slijedi da ako prigovor nadležnosti nije prethodio eventualnoj obrani u pogledu biti spora, nikako se ne može podnijeti tek nakon očitovanja koja se prema nacionalnom procesnom pravu smatraju prvom obranom upućenom sudu pred kojim se vodi postupak.

tracting states with regard to bringing actions before courts of law, the appearance of defendants and the way in which the parties to an action must formulate their submissions. However, it follows from the aim of Article 18 that if the challenge to jurisdiction is not preliminary to any defence as to the substance it may not in any event occur after the making of the submissions which under national procedural law are considered to be the first defence addressed to the court seised.

17 Therefore the answer to the second and third parts of question 1 should be that Article 18 of the Convention must be interpreted as meaning that the rule on jurisdiction which that provision lays down does not apply where the defendant not only contests the court's jurisdiction but also makes submissions on the substance of the action, provided that, if the challenge to jurisdiction is not preliminary to any defence as to the substance, it does not occur after the making of the submissions which under national procedural law are considered to be the first defence addressed to the court seised.

Question 2

18 Question 2 is as follows:

"2. (a) in application of Article 22 of the Convention, can related actions which, had they been brought separately, would have had to be brought before courts of different contracting states, be brought simultaneously before one of those courts, provided that the law of that court permits the consolidation of related actions and that court has jurisdiction over both actions?

(b) is that also the case if the parties to one of the disputes which have given rise to the actions have agreed, in accordance with Article 17 of the Convention, that a court of another contracting state is to have jurisdiction to settle that dispute?"

19 Article 22 of the Convention is intended to establish how related actions which have been brought before courts of different member states are to be dealt with. it does not confer jurisdiction; in particular, it does not accord jurisdiction to a court of a contracting state to try an action which is related to another action of which that court is seised pursuant to the rules of the Convention.

20 The answer to question 2 should therefore be that Article 22 of the Convention applies only where related actions are brought before courts of two or more contracting states.

Question 3

21 The final question is worded as follows:

"3. Does it conflict with Article 17 of the Convention to rule that an agreement conferring jurisdiction on a court is void if the document in which the agreement is contained is not drawn up in the language which is prescribed by the law of a contracting state upon penalty of nullity and if the court of the state before which the agreement is relied upon is bound by that law to declare the document to be void of its own motion?"

22 From that wording it appears that the Hof van cassatie is solely concerned with the validity of an agreement conferring jurisdiction which is rendered void by the national legislation of the court seised as having been written in a language other than that prescribed by that legislation.

17 Odgovor na drugi i treći dio pitanja 1 treba biti da članak 18. Konvencije treba tumačiti tako da se pravilo o nadležnosti iz te odredbe ne primjenjuje ako tuženik ne samo osporava nadležnost suda, već se i očituje o biti spora, pod uvjetom da se, ako osporavanje nadležnosti nije prethodilo eventualnim prigovorima u pogledu biti spora, ono ne iznosi tek nakon navoda koji se prema nacionalnom procesnom pravu smatraju prvim iznošenjem obrane pred sudom.

Pitanje 2

18 Pitanje 2 glasi:

"2. (a) kod primjene članka 22. Konvencije, mogu li se povezane tužbe koje bi, da su bile podnesene odvojeno, morale biti podnesene pred sudovima različitih država ugovornica, podnijeti istodobno pred jednim od tih sudova, pod uvjetom da pravo toga suda dopušta spajanje povezanih tužbi te da je sud nadležan za obje tužbe?

(b) je li to slučaj i onda kada su se stranke u jednom od sporova koji su bili povod tužbama sporazumjele, u skladu s člankom 17. Konvencije, o nadležnosti suda neke države ugovornice za rješavanje toga spora?"

19 Cilj članka 22. Konvencije jest ustanoviti kako valja postupati u slučaju povezanih tužbi koje su podnesene pred sudovima različitih država članica. On ne zasniva nadležnost; konkretno, on ne zasniva nadležnost suda države ugovornice za tužbu povezanu s nekom drugom tužbom podnesenom pred tim sudom prema odredbama Konvencije.

20 Odgovor na drugo pitanje treba stoga biti da se članak 22. Konvencije primjenjuje samo ako su povezane tužbe podnesene pred sudovima dviju ili više država ugovornica.

Pitanje 3

21 Posljednje pitanje glasi:

"3. Je li protivno članku 17. Konvencije odlučiti da je sporazum o sudskoj nadležnosti ništetan ako isprava u kojoj je sporazum sadržan nije sastavljena na jeziku koji je prema pravu neke države ugovornice propisan pod prijetnjom ništavosti, a sud države pred kojom se poziva na sporazum dužan je prema tom pravu utvrditi ništetnost po službenoj dužnosti?"

22 Pitanje suda *Hof van cassatie* odnosi se samo na valjanost sporazuma o nadležnosti koji je ništetan prema nacionalnom zakonodavstvu suda pred kojim se vodi postupak jer je napisan na jeziku različitom od onog koji je propisan tim zakonodavstvom.

23 Article 17 stipulates that the agreement conferring jurisdiction must take the form of an agreement in writing or an oral agreement evidenced in writing.

24 According to the report on the Convention submitted to the governments of the contracting states at the same time as the draft Convention those formal requirements were inserted out of the concern not to impede commercial practice, yet at the same time to cancel out the effects of clauses in contracts which might go unread, such as clauses in printed forms for business correspondence or in invoices, if they were not agreed to by the party against whom they operate. For those reasons jurisdiction clauses should be taken into consideration only if they are the subject of a written agreement, and that implies the consent of all the parties. furthermore, the draftsmen of Article 17 were of the opinion that, in order to ensure legal certainty, the formal requirements applicable to agreements conferring jurisdiction should be expressly prescribed.

25 Article 17 is thus intended to lay down itself the formal requirements which agreements conferring jurisdiction must meet; the purpose is to ensure legal certainty and that the parties have given their consent.

26 Consequently contracting states are not free to lay down formal requirements other than those contained in the Convention. That is confirmed by the fact that the second paragraph of Article 1 of the Protocol annexed to the Convention expressly prescribes special requirements of form with regard to persons domiciled in Luxembourg.

27 When those rules are applied to provisions concerning the language to be used in an agreement conferring jurisdiction they imply that the legislation of a contracting state may not allow the validity of such an agreement to be called in question solely on the ground that the language used is not that prescribed by that legislation.

28 Moreover, any different interpretation would run counter to Article 17 of the Convention the very purpose of which is to enable a court of a contracting state to be chosen by agreement where that court, if not so chosen, would not normally have jurisdiction. That choice must therefore be respected by the courts of all the contracting states.

29 Consequently, the answer to question 3 must be that Article 17 of the Convention must be interpreted as meaning that the legislation of a contracting state may not allow the validity of an agreement conferring jurisdiction to be called in question solely on the ground that the language used is not that prescribed by that legislation.

23 Članak 17. propisuje da sporazum o nadležnosti mora biti sklopljen u pisanom obliku ili usmeno s pismenom potvrdom.

24 Prema izvještaju koji je uz Konvenciju podnesen vladama država ugovornica istodobno s nacrtom Konvencije, te su formalne pretpostavke uvedene radi toga da se ne ometa trgovačka praksa, a da se istodobno isključe učinci klauzula u ugovorima koje bi mogle ostati nepročitane, kao što su klauzule u tiskanom obliku koje služe za poslovnu prepisku ili na računima, ako na njih nije pristala stranka protiv koje se ističu. Iz tih razloga klauzule o nadležnosti valja uzeti u obzir samo ako su u pisanom obliku, što podrazumijeva suglasnost sviju strana. Nadalje, autori članka 17. smatrali su da, iz razloga pravne sigurnosti, formalne pretpostavke mjerodavne za sporazume o nadležnosti treba izrijekom propisati.

25 Cilj članka 17. jest dakle u tome da se u njemu samome navedu formalne pretpostavke kojima moraju udovoljavati sporazumi o nadležnosti; svrha je osigurati pravnu sigurnost i postojanje suglasnosti stranaka.

26 Slijedom toga, države ugovornice nemaju slobodu propisivati formalne pretpostavke različite od onih koje su navedene u Konvenciji. To potvrđuje činjenica da drugi stavak članka 1. Protokola priloženog uz Konvenciju izrijekom propisuje posebne formalne pretpostavke u pogledu osoba koje imaju prebivalište u Luksemburgu.

27 Kada se ta pravila primijene na odredbe koje se odnose na jezik koji se upotrebljava u sporazumu o nadležnosti, ona podrazumijevaju da zakonodavstvo neke države ugovornice ne smije dopustiti da se valjanost takvih sporazuma dovodi u pitanje samo na osnovi toga da je upotrijebljen jezik koji nije propisan tim zakonodavstvom.

28 Štoviše, svako drukčije tumačenje bilo bi protivno članku 17. Konvencije čija je svrha upravo omogućiti sudu države ugovornice da bude izabran sporazumom kada taj sud, da nije tako bio izabran, ne bi bio nadležan. Taj izbor moraju dakle poštovati i sudovi svih drugih država ugovornica.

29 Slijedom toga, odgovor na pitanje 2 mora biti da članak 17. treba tumačiti na način da zakonodavstvo neke države ugovornice ne smije dopustiti da se dovodi u pitanje valjanost sporazuma o nadležnosti samo na osnovi toga da se u njemu upotrebljava jezik koji nije propisan tim zakonodavstvom.