

of Judgment in Civil and Commercial Matters must be interpreted as meaning that a clause conferring jurisdiction within the meaning of that provision may not be considered to have been expressly and specifically agreed to by a person domiciled in Luxembourg unless that clause, besides being in writing as required by Article 17 of the Convention, is mentioned in a provision specially and exclusively meant for this purpose and specifically signed by the party domiciled in Luxembourg; in this respect the signing of the contract as a whole does not in itself suffice. It is not however necessary for that clause to be mentioned in a document separate from the one which constitutes the written instrument of the contract.

Kutscher            Mertens de Wilmars            Mackenzie Stuart

Delivered in open court in Luxembourg on 6 May 1980.

A. Van Houtte  
Registrar

H. Kutscher  
President

OPINION OF MR ADVOCATE GENERAL REISCHL  
DELIVERED ON 20 MARCH 1980<sup>1</sup>

*Mr President  
Members of the Court,*

The present proceedings concern the interpretation of the second paragraph of Article I of the Protocol annexed to the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as "the Brussels Convention"), according to which:

"An agreement concerning jurisdiction, within the meaning of Article 17 [of the

Brussels Convention] shall be valid with respect to a person domiciled in Luxembourg only if that person has expressly and specifically so agreed".

In 1977 the parties to the main action concluded a series of leasing contracts for motor vehicles on the basis of which the German company Porta-Leasing GmbH, the plaintiff in the main action, submitted claims, according to its own statements, for performance of the contracts and damages against the — Luxembourg company Prestige Inter-

<sup>1</sup> — Translated from the German.

national S.A., the defendant in the main action.

The relevant printed contract forms include the following agreement conferring jurisdiction:

“§ 12 General

...

- (5) The place of performance and of jurisdiction for all the obligations arising under this contract shall be the place where the lessor has its seat”.

In the proceedings instituted before the Landgericht Trier the defendant claimed that the Court had no jurisdiction as the clause concerning jurisdiction was not *expressly and specifically* agreed upon by it in accordance with the second paragraph of Article I of the Protocol annexed to the Brussels Convention.

The Landgericht Trier dismissed the case for want of jurisdiction and stated in the reasons for its decision that an agreement concerning jurisdiction is binding on a person domiciled in Luxembourg only if it is contained in a separate document apart from the other terms in the agreement.

The Second Civil Senate of the Oberlandesgericht, Koblenz, before which the case went on appeal, made an order on 28 September 1979 staying the proceedings and referring the following question to the Court of Justice for a preliminary ruling in accordance with Articles 1 and 2 (2) 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:

“Does an agreement conferring jurisdiction which is contained in a standard form contract concluded with and signed by a person resident in

Luxembourg but to which his attention has not specifically been brought satisfy the requirements as to validity contained in the second paragraph of Article I of the Protocol annexed to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters?”

Contrary to the plaintiff's view, that question should be answered in the negative for the following reasons and giving them I shall in essence be following what has been said by the Commission.

In general, an agreement conferring jurisdiction is only effective according to the provisions in Article 17 of the Brussels Convention if there is an agreement in writing or an oral agreement evidenced in writing. In the case of a party domiciled in Luxembourg the effectiveness of an agreement concerning jurisdiction is subject to the additional requirement of form, according to the second paragraph of Article I of the Protocol annexed to the Brussels Convention, that it has been *expressly and specifically* so agreed by that party. As is clear from the Jenard Report (Official Journal 1979 C 59, p. 63), that requirement of form is a protective measure in favour of persons resident in Luxembourg who, on account of the large number of international contracts concluded by them, run the risk of actions being brought against them in foreign courts far more often than parties in the other Contracting States. As the Commission rightly points out, the object of protecting them has already been partly achieved in so far as the validity of an agreement conferring jurisdiction is subject to its being expressly agreed to by the party domiciled in Luxembourg. On the other hand one cannot ignore the fact that many international contracts, as in the present case, contain in a standard form, along with numerous other clauses in the contract, express clauses conferring

jurisdiction, with the result that even though the latter are specifically indicated, insufficient attention is paid to them. That is why the Contracting States made the effectiveness of an agreement conferring jurisdiction for a person domiciled in Luxembourg dependent, under the second paragraph of Article I of the Protocol annexed to the Brussels Convention, on its being expressly *and* specifically agreed. The word "and" linking the two requirements is sufficient to show that specific agreement constitutes a further requirement for effectiveness in addition to the conditions mentioned regarding an agreement conferring jurisdiction.

The Commission is therefore of the opinion that the requirement "specifically so agreed" is only satisfied if the agreement conferring jurisdiction forms the subject-matter of a written,

separate declaration of acceptance by the Luxembourg party, and that that declaration must not contain any contractual provisions apart from the agreement conferring jurisdiction.

I would not go that far, however. It must be conceded on behalf of the plaintiff that the wording of the provision in question does not stipulate the requirement of a separate document. In my opinion the protection envisaged in favour of the Luxembourg party is satisfied if he expressly acknowledges the agreement conferring jurisdiction in a separate written declaration. The acknowledgment may be made in a separate document, but it can also be made by the party declaring acceptance of the agreement conferring jurisdiction, in addition to the other stipulations in the agreement, by means of a separate signature on the same document.

Therefore I suggest that the question which has been referred to the Court for a preliminary ruling should be answered as follows:

An agreement conferring jurisdiction included without specific indication in a standard form contract concluded with and signed by a person resident in Luxembourg does not satisfy the requirements as to validity contained in the second paragraph of Article I of the Protocol annexed to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. In order to satisfy the requirements as to validity in that provision there must be a separate written declaration whereby the party resident in Luxembourg expressly accepts the agreement conferring jurisdiction.