



THE COURT OF APPEAL

CIVIL

Neutral Citation Number: [2017] IECA 18

Appeal No. 2015/609

**Finlay Geoghegan J.
Peart J.
Sheehan J.**

**IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989 AND
IN THE MATTER OF THE FAMILY LAW ACT 1995**

BETWEEN

M. H.

APPLICANT/APELLANT

AND

M. H.

RESPONDENT

**JUDGMENT of the Court delivered by Ms. Justice Finlay Geoghegan on the 24th
day of January 2017**

1. This judgment is for the purpose of giving the reasons in writing for which the Court on the 11th July, 2016, dismissed the appeal against the judgment and order of the High Court (Abbott J.) given and made on the 2nd December, 2015.
2. The applicant/appellant ("the husband") married the respondent ("the wife") in 1982. The marriage has irretrievably broken down. For the purposes of the appeal it was assumed (albeit disputed) that both parties are domiciled in Ireland and were prior to September 2015, habitually resident in England.
3. These proceedings were commenced on behalf of the husband by the issue of a special summons out of the Central Office of the High Court shortly after 2.30 pm on the 7th September, 2015. It was served on the wife on the 9th September, 2015.
4. On behalf of the wife a divorce petition was issued by the Family Court Office in England on the 11th September, 2015. It was served on the husband on the 15th September, 2015. The evidence before the High Court was that the wife's divorce petition in its envelope was delivered by the Document Exchange (DX) to the Family Court Office at 7.53 am on the 7th September, 2015.
5. There was further evidence on affidavit from Ms. Cusworth, the Divorce Unit Administration Officer of the English Family Court Office. She deposed that she did not remember the day in question, but that the DX is usually delivered at 7.45 am and that ten members of the court staff are assigned to open the DX and the post which begins at 8.00am and that it usually takes two to two and half hours.
6. There were two motions before the High Court. The husband's motion seeking a declaration that the Irish High Court had full and exclusive jurisdiction to deal with the within proceedings and consequential orders restraining the wife from taking any steps in the English divorce proceedings. The wife's motion sought orders staying the within proceedings until such time as the jurisdiction of the Court first seised was determined and thereafter declining jurisdiction in favour of that court pursuant to Article 19 of Council Regulation (EC) No. 2201/2003.
7. The High Court found as a fact that the English divorce petition was opened and stamped prior to 10.30 am on the 7th September, 2015. The High Court also determined that on the facts that the Irish High Court was not the court first seised within the meaning of Articles 16 and 19 of Regulation 2201/2003. Accordingly an order was made staying the within proceedings until such time as the jurisdiction of the court first seised was determined pursuant to Article 19 of Regulation 2201/2003.
8. Following the hearing of the appeal this Court delivered an interim ruling on the 15th March, 2016, in which it identified the two issues arising on the appeal:-
 - (i) Was the trial judge entitled to find as a fact, on the evidence before him that the divorce petition was opened and date stamped prior to 10.30 am on the 7th September, 2015; and
 - (ii) The proper interpretation of Article 16.1(a) of Regulation 2201/2003.
9. In that ruling this Court determined on the first question that the civil standard of proof applies and that on the evidence before him the trial judge was entitled to find that as a matter of probability the divorce petition was opened and date stamped prior to 10.30 am on the 7th September, 2015. Accordingly the court upheld that finding of fact, but then stated:-

"In doing so the court is not necessarily concluding that the opening of the envelope and date stamping of the petition is relevant to the determination of the time at which the petition was lodged with the court within the meaning of Article 16.1(a) of Regulation 2201/2003. Such consideration will await the outcome of the preliminary

reference.”

10. This court then made a reference to the Court of Justice of the European Union pursuant to Article 267 of the Treaty on the 18th March, 2016.

11. The question referred by this Court was:-

Is “the time when the document instituting the proceedings . . . are lodged with the court” in Article 16.1(a) of Regulation 2201/2003 to be interpreted as meaning:-

(i) the time at which the document instituting the proceedings is received by the court even if such receipt does not result in the immediate commencement of proceedings or proceedings being considered as pending under national law; or

(ii) the time at which, following receipt of the document instituting the proceedings by the court, the proceedings are commenced or are considered pending under national law.”

and the Court requested the expedited preliminary ruling procedure under Article 105 of the Rules of Procedure.”

The full reference is appended to this judgment as Appendix 1as it sets out the submissions on the issue.

12. The CJEU by a reasoned order of the Court (6th Chamber) of the 22nd June, 2016, answered the request by making the following ruling:-

“Article 16(1)(a) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted to the effect that the ‘time when the document instituting the proceedings or an equivalent document is lodged with the court’, within the meaning of that provision, is the time when that document is lodged with the court concerned, even if under national law lodging that document does not of itself immediately initiate proceedings.”

13. The full order of the court is attached to this judgment as Appendix 2.

14. As appears the CJEU relied upon an order made by it in *P.* (C-507/14, not published, EU: C: 2015: 512) of which neither the parties nor this Court had been aware at the time of making the request for the preliminary ruling.

Reasons for Decision

15. It follows from the ruling of the CJEU that what this Court had to determine is the time at which the documents instituting the two proceedings were “lodged” with the English Family Court Office and with the Central Office of the High Court. Whilst the question put by this Court referred to the time a document is “received” the CJEU in its response referred to when it is “lodged”.

16. On the finding of fact made by the High Court and upheld by this Court in its interim ruling, the English divorce petition was opened and date stamped by the Family Court Office prior to 10.30 am on the 7th September, 2015. The High Court also held that the divorce petition in its envelope was delivered to the Family Court Office at 7.53 am on the 7th September, 2015 and that finding was not disputed on appeal. Each of those events on the undisputed evidence took place prior to the presentation of the special summons in the within proceedings to the Central Office of the High Court at about 2.30 pm on the 7th September.

17. This Court concluded that the English divorce petition was “lodged” with the English court at latest by 10.30 am on the 7th September, 2015. By that time it was recorded as received and on any ordinary meaning of the word “lodged” as used in Article 16(1) (a) of Regulation 2201/2003 and having regard to the decision of the CJEU it was at latest by then lodged with the English Family Court Office. Further the Court was satisfied that the wife as the applicant in the English divorce proceedings had not subsequently failed to comply with any condition relating to service of the divorce petition on the respondent. Accordingly, the Court concluded that the English court was seised within the meaning of Article 16(1)(a) of Regulation 2201/2003 at latest by 10.30 am on the 7th September, 2015. The Irish High Court was not seised until at earliest 2.30 pm on the 7th September, when the special summons was lodged by being presented in the Central Office of the High Court.

18. The Court wishes to make clear that it is not deciding on this appeal whether or not delivery of an originating document in an envelope, albeit that the envelope is not immediately opened, is or is not the lodgement of the document with a court for the purposes of Article 16(1) of Regulation 2201/2003. That is an issue which must remain for decision if it arises in another proceeding. Whilst the court is conscious of potential practical difficulties in establishing the time at which a document is lodged by such a delivery nevertheless it does appear from the observations of the CJEU at paras. 26 and 27 of the ruling given, that a court is seised within the meaning of Article 16 when one condition is satisfied namely “that of lodging the document instituting proceedings or an equivalent document”. Further that “for the purposes of checking compliance with that condition, account would not be taken of delays caused by the judicial system applicable, but only of any failure of the applicant to act diligently . . .”.

19. It is for the foregoing reasons that the Court decided to dismiss the appeal herein.

Appendix 1

THE COURT OF APPEAL

CIVIL

Appeal No. 2015/609

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**IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989 AND
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BETWEEN

M. H.

APPLICANT/APPELLANT

AND

M. H.

RESPONDENT

Request for a preliminary ruling from the Court of Justice of the European Union.

1. The Court of Appeal of Ireland requests a preliminary ruling on the interpretation of Article 16 of Council Regulation (EC) No. 2201/2003 of the 27th November, 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matter of parental responsibility ("the Regulation") which it considers necessary to resolve this appeal. The court also requests that the preliminary ruling be determined pursuant to an expedited procedure under Article 105 of the Rules of Procedure and suggests a proposed answer.

Question

2. Is "the time when the document instituting the proceedings . . . are lodged with the court" in Article 16.1(a) of Regulation 2201/2003 to be interpreted as meaning:-

(i) the time at which the document instituting the proceedings is received by the court even if such receipt does not of itself immediately commence the proceedings in accordance with national law; or

(ii) the time at which, following receipt of the document instituting the proceedings by the court, the proceedings are commenced in accordance with national law.

Facts

3. The applicant/appellant ("the husband") married the respondent ("the wife") on the 26th June, 1982. The marriage has irretrievably broken down. For the purposes of the appeal and this reference it is assumed (albeit disputed) that both parties are domiciled in Ireland and were prior to September 2015, habitually resident in England.

4. The following facts decided by the High Court are upheld by this Court in its interim decision in relation to the relevant steps taken by the parties prior to the issue of the wife's divorce proceedings in England and Wales (referred to for simplicity as England) and the husband's judicial separation proceedings in Ireland.

(iii) The wife's divorce petition was received in a sealed envelope, as part of the document exchange delivery, by the Family Law Court office in England at 7.53 am on the 7th September 2015. The envelope was opened and the petition was date stamped at latest by 10.30 am on the 7th September 2015. The petition was subsequently issued by the Family Court office on the 11th September, 2015. It was served on the husband on the 15th September, 2015.

(iv) The husband's judicial separation summons was brought to the Central Office of the High Court in Ireland at approximately 2.30 pm on the 7th September, and issued by the Central Office a short time thereafter. It was served on the wife on the 9th September, 2015.

5. It is agreed between the parties that the English divorce proceedings and Irish judicial separation proceedings are such that it is necessary to determine which is the court first seised for the purposes of the application of Article 19 of the Regulation.

6. In the Irish proceedings, motions were brought before the High Court by the husband and the wife seeking respectively declarations that the Irish High Court was first seised and that the English Family Law Court was first seised and consequential orders for the purposes of Article 19 of the Regulation.

7. On those motions the High Court (Abbott J.) decided in accordance with Article 16 of the Regulation that the Irish High Court was not the court first seised and that the English Family Law Court was first seised. Accordingly he refused the orders sought by the husband and made the order sought by the wife staying the Irish proceedings until such time as the jurisdiction of the English court was determined pursuant to Article 19 of the Regulation.

8. The husband has appealed that decision to this Court.

National Rules

9. These proceedings are required to be heard otherwise than in public before the courts of Ireland and the parties may not be identified in any published report or decision. Hence the parties are not being identified in this reference which requires publication.

10. Under the national procedural rules in both England and Ireland proceedings are commenced when, in the case of Ireland the summons and in the case of England the petition is issued by the court office or officer. There is no requirement that an initiating document is served prior to issue of proceedings. The summons or petition as issued is served on the respondent.

11. In each jurisdiction whilst proceedings are only considered as pending when commenced by the issue of the originating document, summons or petition, a court has jurisdiction to make an order in the intended proceedings prior to issue. This occurs in family law proceedings in urgent situations.

12. On the facts herein, as a matter of English law, the wife's divorce proceedings are considered to have commenced on the 11th September, 2015, and only to be pending before the English courts from that date. In Ireland the husband's judicial separation proceedings are considered to have commenced on the 7th September, 2015, and, as a matter of Irish law to have been pending

before the Irish courts from that date.

Regulation 2201/2003

13. **Articles** 16 and 19 of the Regulation are relevant and provide:

"Article 16

Seising of a Court

1. A court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent;

or

(b) If the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court."

"Article 19

Lis pendens and dependent actions

1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

2. Where proceedings relating to parental responsibility relating to the same child . . .

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised."

Submissions

14. The parties are in agreement that there is no judgment of the Court of Justice of the European Union which decides how Article 16.1(a) of the Regulation is to be interpreted. The parties are in agreement that Articles 16 and 19 of the Regulation must be given an autonomous meaning. However, they are in disagreement as to what that autonomous meaning should be.

15. Counsel for the husband submits that Article 16 must be construed in the context of Article 19. She submits that it is intended to provide certainty as to when proceedings may be considered as pending in accordance with differing domestic rules and that this is provided for by the alternative provisions in Article 16.1(a) and (b). Accordingly she submits that Article 16 by referring to "the time when the document instituting the proceedings . . . is lodged with the court" intends to refer to the time at which the lodgement of the originating document results in the proceedings being commenced and hence considered as pending in accordance with national rules. It is agreed that if such is the correct interpretation then in accordance with English and Irish national rules the relevant originating document must be issued by the court, thereby commencing the proceedings, prior to the court being deemed to be seised. Such an interpretation would result in the Irish courts being first seised on the facts herein.

16. Counsel for the wife submits that the true meaning of the time at which the document "is lodged with the court" is the time at which it is received by the court irrespective of whether such receipt immediately commences the proceedings. He submits that Article 16.1 (a) is not intended to refer to the moment in time at which the proceedings are issued, commenced or considered as "pending" in accordance with the national rules. He draws attention to the opening phrase that "A court shall be deemed to be seised". Such an interpretation would result in the English courts being first seised on the facts herein.

17. Both parties referred to the consideration given by the Court of Justice at paras. 27 to 32 in case *A v. B* (Case C-489/14) *A. v. B.* 6th October, 2015 to Articles 16 and 19 of the Regulation:

"27 It should be noted at the outset that Article 19 of Regulation No 2201/2003 is expressed in very similar terms to those used in Article 27 of Regulation No 44/2001, which replaced Article 21 of the Brussels Convention, and establishes a mechanism for dealing with cases of *lis pendens* that is equivalent to that provided for by Article 27 of Regulation No 44/2001 and Article 21 of the Brussels Convention. Account must therefore be taken of the considerations of the Court in relation to those last two articles.

28 It is important to note in that regard that, as in the case of Article 27 of Regulation No 44/2001 and Article 21 of the Brussels Convention, the concept of 'established jurisdiction' in Article 19 of Regulation No 2201/2003 must be interpreted independently, by reference to the scheme and purpose of the act that contains it (see, to that effect, judgments in *Shearson Lehman Hutton*, C 89/91, EU:C:1993:15, paragraph 13, and *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C 1/13, EU:C:2014:109, paragraph 32).

29 As regards the purpose of the rules of *lis pendens* in Article 19 of Regulation No 2201/2003, it must be noted that those rules are intended to prevent parallel proceedings before the courts of different Member States and to avoid conflicts between decisions which might result therefrom (see judgment in *Purrucker*, C 296/10, EU:C:2010:665, paragraph 64). For that purpose, the EU legislature intended to put in place a mechanism which is clear and effective in order to resolve situations of *lis pendens* (see, by analogy, with regard to Regulation No 44/2001, judgment in *Cartier parfums-lunettes and Axa Corporate Solutions assurances*, C 1/13, EU:C:2014:109, paragraph 40).

30 As is clear from the words 'court first seised' and 'court second seised' in Article 19(1) and (3) of Regulation No 2201/2003, that mechanism is based on the chronological order in which the courts are seised.

31 In order to determine when a court is deemed to be seised and thereby establish which is the court first seised, it is necessary to refer to Article 16 of that regulation, entitled 'Seising of a Court'.

32 Pursuant to the terms of Article 16, a court is to be deemed to be seised, depending on the option chosen in the national law applicable, either at the time when the document instituting the proceedings or an equivalent document is lodged with the court, or, if that document has to be served before being lodged with the court, at the time when it is received by the competent authority. The court will, however, be deemed to be seised only if the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent (under the first option), or to have the document lodged with the court (under the second option)."

18. Counsel for the wife also relied upon the explanation given by Advocate General Jaaskinen in *Bianca Purucker v. Guillermo Valles Perez* (Case C-296/10) [2010] ECR I1163 of the departure from case law relating to the Brussels Convention of 27 September 1968 at para. 98:

"It is possible to take the view that procedural concepts such as that of 'court first seised' should be governed by national rules. However, in that regard, Regulation No 2201/2003 sought to create a common system transcending specific national characteristics. Accordingly, Article 16 of that regulation standardises, by defining its procedural and temporal characteristics, the concept of seising of a court. It lays down when and under what circumstances the seising of a court takes place, irrespective of the provisions of the applicable domestic rules in the Member States. The legislature seems to me to have departed from the case-law relating to the Brussels Convention of 27 September 1968 (43) by establishing a rule of European Union law which identifies the point at which a court is seised, by reference to the date on which the document instituting the proceedings is either lodged with the court or received by the authority responsible for service. (44) The choice between those two alternatives depends on the procedures concerning the seising of a court laid down by national law. "

The case law relating to the Brussels Convention of the 27th September, 1960 (in footnote 43) is a reference to *Siegfried Zelger v. Sebastiano Salintri* (Case C-129/83) [1984] ECR 2397, para. 16:

"Article 21 of the Convention must be interpreted as meaning that the court 'first seised' is the one before which the requirements for proceedings to become definitively pending are first fulfilled, such requirements to be determined in accordance with the national law of each of the courts concerned".

Request for expedited procedure

19. The court requests the expedited procedure under Article 105 of the Rules of Procedure for this preliminary reference. The parties' marriage has irretrievably broken down after many years. The court has been informed, by counsel for the wife, that the continuing uncertainty and temporary living arrangements pending resolution of the divorce or judicial separation proceedings place a significant psychological burden on the parties and is intolerable from her perspective.

20. The English High Court has been informed of the appeal in Ireland and is not taking further steps in the divorce proceedings pending determination of this appeal on the issue as to which court is first seised within the meaning of Article 19 of the Regulation. The parties are unable to continue with their proceedings in either jurisdiction to resolve their future until the preliminary reference is determined.

21. The court respectfully suggests that the issue of interpretation being referred is a very net issue and one which is suitable for determination by the expedited procedure. The court in this reference is briefly stating its views on the answer to be given to the question referred in accordance with the recommendations of the CJEU to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2012/C 338/01).

Court of Appeal's proposed answer

22. The court considers that a definitive interpretation by the CJEU is necessary by reason of the absence of any prior ruling by the CJEU on the meaning of "is lodged with the court" for the purpose of Article 16; the interrelationship between Articles 16 and 19 of the Regulation; the concept of *lis pendens* and purpose of Article 19 having regard to judgments concerning Article 27 of Regulation No 44/2001 and Article 21 of the Brussels Convention.

23. The court recognises that purpose of Article 19 is to "prevent parallel proceedings before the courts of different Member States and to avoid conflicts between decisions which might result therefrom" (see judgment in *A. v. B.*, C-489/14, para 29). Further the words "court first seised" and "court second seised" in Article 19 is based on the chronological order in which the courts are seised.

24. Whilst a concept of *lis pendens* evokes a pending proceeding before the court of each Member State, nevertheless in determining for the purposes of Article 19 which is the "court first seised" it must be the court which is first "deemed to be seised" in accordance with Article 16. Accordingly it appears to this court, that Article 16 intends to provide a clear and effective mechanism by which a national court may be **deemed to be seised** [emphasis added] for the purposes of Regulation 2201/2003 at a time and in circumstances which may be objectively determined by reference to what has been done by the applicant, and not by the national court, and is independent of any national rule which determines when and in what circumstances the proceeding commences or is considered to be pending in accordance with national rules. Such an approach permits an independent and uniform interpretation throughout the European Union which is not dependent on national rules or procedures and accords with the principles established by the CJEU (see *Mercredi v. Chaffe* (Case C-497/10 PPU) [2010] ECR I14309, para. 25).

25. This court has not had the opportunity of considering the other language versions of Article 16 of the Regulation. Its consideration is confined to the English language version.

26. The court considers that the answer proposed by it is consistent with the view taken by Advocate General Jaaskinen in *Purucker* at para. 98 referred to above.

27. An interpretation of Article 16.1(a) as only requiring proof of actual receipt by the court of the originating document even if such receipt does not of itself immediately commence or result in the issue of proceedings also appears consistent with the provisions of Article 16.1(b) in fixing the time "when it is received by the authority . . ." as distinct from the time of service. The time in both (a)

and (b) is being fixed by reference to steps which may be taken by the applicant and is not dependant on subsequent time taken by a court office or service authority.

28. It also appears implicit in Article 16.1(a) that the document which actually leads to the institution of the proceedings must be received by the court. Accordingly, whilst the time is fixed at the time of receipt of the document by the court, an applicant would also have to establish that the document received was the document which subsequently instituted the proceedings and, of course, that the applicant had not subsequently failed to take the steps he was required to take to have the service effected on the respondent.

29. This court would therefore propose as an answer to the question referred:

The "time when the document instituting the proceedings . . . is lodged with the court" in Article 16.1(a) of Regulation 2201/2003 is to be interpreted as meaning the time at which the document instituting the proceedings is received by the court, even if such receipt does not of itself immediately commence the proceedings in accordance with national law, provided that it is the document by which the proceedings are subsequently commenced and the applicant has not subsequently failed to take the steps he was required to take to have the service effected on the respondent.

Dated 18th March 2016

Appendix 2

ORDER OF THE COURT (Sixth Chamber)

22 June 2016 (*)

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — No reasonable doubt — Jurisdiction in matrimonial matters — Regulation (EC) No 2201/2003 — Article 16(1)(a) — Determination of the time when a court is seised — Concept of 'the time when the document instituting the proceedings or an equivalent document is lodged with the court')

In Case C-173/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (Ireland), made by decision of 18 March 2016, received at the Court on 29 March 2016, in the proceedings

M. H.

v

M. H.,

THE COURT (Sixth Chamber),

composed of A. Arabadjiev, President of the Chamber, C.G. Fernlund (Rapporteur) and S. Rodin, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 99 of the Rules of Procedure of the Court, makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Article 16(1)(a) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

2 The request has been made in proceedings between M. H. and M. H. concerning the breakdown of the family relationship.

Legal context/ EU legislation

3 Article 16 of Regulation No 2201/2003, headed 'Seising of a Court', provides, in paragraph 1 thereof, as follows:

'A court shall be deemed to be seised:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent; or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the applicant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.'

4 Article 19(1) and (3) of that regulation provides as follows:

'1. Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different Member States, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.

...

3. Where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court.

In that case, the party who brought the relevant action before the court second seised may bring that action before the court first seised.'

Irish law

5 According to the procedural rules applicable in Ireland, as set out by the referring court, proceedings are initiated when the summons is issued by the registry of the court concerned. Service of the summons is not required prior to proceedings being initiated. Once issued, the summons is served on the respondent.

6 Although proceedings are not considered to be pending until they have been initiated following the issue of the summons, the court concerned has jurisdiction to make an order in the proceedings in question prior to issue of the summons. That occurs in family law proceedings in urgent situations.

Law of England and Wales

7 According to the order for reference, the procedural rules applicable in England and Wales are similar to those applicable in Ireland, as set out in paragraphs 5 and 6 above. However, instead of a summons, the document initiating proceedings is a petition. The dispute in the main proceedings and the question referred for a preliminary ruling

8 Mr M. H., the appellant in the main proceedings, and Mrs M. H., the respondent in the main proceedings, were married on 26 June 1982.

9 The respondent in the main proceedings filed a divorce petition which was received by the registry of the Family Law Court in England at 7.53 on 7 September 2015. That petition was date stamped at the latest by 10.30 the same day. The petition was subsequently issued by the Family Law Court registry on 11 September 2015. It was served on the appellant in the main proceedings on 15 September 2015.

10 The appellant in the main proceedings lodged a judicial separation summons at the registry of the High Court (Ireland) at approximately 14.30 on 7 September 2015, which was issued shortly afterwards the same day. The summons was served on the respondent in the main proceedings on 9 September 2015.

11 The divorce proceedings initiated by the respondent in the main proceedings before the Family Law Court in England are considered to date from 11 September 2015 and to have been pending before that court since that date. The judicial separation proceedings initiated by the appellant in the main proceedings before the High Court in Ireland are considered to date from 7 September 2015 and to have been pending before that court since that date.

12 In the proceedings initiated in Ireland, the parties to the main proceedings have brought applications before the High Court seeking, respectively, a declaration that the first court seised for the purposes of the application of Article 19 of Regulation No 2201/2003 was, in the submission of the appellant in the main proceedings, that court, and, in the submission of the respondent in the main proceedings, the Family Law Court in England.

13 The High Court ruled on those applications, holding, on the basis of Article 16 of Regulation No 2201/2003, that the Family Law Court in England was the first court seised.

14 The appellant in the main proceedings lodged an appeal against that decision before the referring court.

15 In those circumstances, the Court of Appeal (Ireland) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Is "the time when the document instituting the proceedings ... are lodged with the court" in Article 16(1)(a) of Regulation 2201/2003 to be interpreted as meaning:-

(i) the time at which the document instituting the proceedings is received by the court even if such receipt does not of itself immediately commence the proceedings in accordance with national law; or

(ii) the time at which, following receipt of the document instituting the proceedings by the court, the proceedings are commenced in accordance with national law?'

16 The referring court has requested the Court of Justice to apply the expedited procedure to the present case pursuant to Article 105 of the Court's Rules of Procedure.

Consideration of the question referred

17 Pursuant to Article 99 of its Rules of Procedure, where the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

18 It is appropriate to apply that provision in the present case.

19 Having regard to the fact that the present case has been settled by the adoption of an order under Article 99 of the Rules of Procedure, there is no need to rule on the request for application of the expedited procedure.

20 The referring court asks, in essence, whether Article 16(1)(a) of Regulation No 2201/2003 must be interpreted as meaning that 'the time when the document instituting the proceedings or an equivalent document is lodged with the court', within the meaning of that provision, is the time when that document is lodged with the court concerned, even if under national law the lodging of that document does not of itself immediately initiate the proceedings.

21 The Court has recently ruled, in the judgment of 6 October 2015 in A (C-489/14, EU:C:2015:654), on the question of *lis pendens* between two sets of proceedings, one being divorce proceedings and the other proceedings for judicial separation, before two courts in different Member States.

22 As regards the purpose of the rules of *lis pendens* in Article 19 of Regulation No 2201/2003, the Court noted that those rules are intended to prevent parallel proceedings before the courts of different Member States and to avoid conflicts between decisions which might result therefrom. For that purpose, the EU legislature intended to put in place a mechanism which is clear and effective in order to resolve situations of *lis pendens* (see judgment of 6 October 2015 in A, C-489/14, EU:C:2015:654, paragraph 29).

23 As is apparent from the words 'court first seised' and 'court second seised' in Article 19(1) and (3) of Regulation No 2201/2003, that mechanism is based on the chronological order in which the courts concerned have been seised.

24 In order to determine when a court is deemed to be seised and thereby establish which is the court first seised, it is necessary to refer to Article 16 of that regulation, entitled 'Seising of a Court'.

25 The Court has held, in paragraph 30 of the order of 16 July 2015 in P (C-507/14, not published, EU:C:2015:512), that that article contains an autonomous definition of the time when a court is deemed to be seised. The EU legislature adopted a uniform concept of the time when a court is seised, which is determined by the performance of a single act, namely, depending on the procedural system under consideration, the lodging of the document instituting the proceedings or the service of that document, but which nevertheless takes into consideration whether the second act was in fact subsequently performed. Thus, pursuant to Article 16(1)(a) of Regulation No 2201/2003, the time when the court is seised is the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent (order of 16 July 2015 in P, C-507/14, not published, EU:C:2015:512, paragraph 32).

26 The Court stated that, for the court to be deemed seised, Article 16(1)(a) of Regulation No 2201/2003 requires the satisfaction not of two conditions, namely that the document instituting the proceedings or an equivalent document must have been lodged and service thereof must have been effected on the respondent, but merely of one — that of lodging the document instituting proceedings or an equivalent document. Pursuant to that provision, the lodging of the document of itself renders the court seised, provided that the applicant has not subsequently failed to take the steps he was required to take to have service effected on the respondent (order of 16 July 2015 in P, C-507/14, not published, EU:C:2015:512, paragraph 37).

27 The Court observed, in respect of that condition, that its objective is to ensure protection against abuse of process. Thus, for the purposes of checking compliance with that condition, account would not be taken of delays caused by the judicial system applicable, but only of any failure of the applicant to act diligently (order of 16 July 2015 in P, C-507/14, not published, EU:C:2015:512, paragraph 34).

28 It is apparent from the foregoing considerations that, as the referring court has stated, once it has been established which of the two options in Article 16(1)(a) and (b) of Regulation No 2201/2003 applies, in accordance with the choice made by the Member State concerned, the time when a court was seised may be objectively established solely on the basis of the time, as provided for in the case of the first option under Article 16(1)(a), when the document instituting the proceedings or an equivalent document was lodged with that court, irrespective of any national procedural rule intended to determine when and in what circumstances proceedings are initiated or are considered to be pending, provided that the applicant has not subsequently failed to comply with the condition relating to service of that document on the respondent.

29 Consequently, the answer to the question referred is that Article 16(1)(a) of Regulation No 2201/2003 must be interpreted to the effect that the 'time when the document instituting the proceedings or an equivalent document is lodged with the court', within the meaning of that provision, is the time when that document is lodged with the court concerned, even if under national law lodging that document does not in itself immediately initiate proceedings.

Costs

30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds, the Court (Sixth Chamber) hereby rules:

Article 16(1)(a) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted to the effect that the 'time when the document instituting the proceedings or an equivalent document is lodged with the court', within the meaning of that provision, is the time when that document is lodged with the court concerned, even if under national law lodging that document does not of itself immediately initiate proceedings.

[Signatures]

Language of the case: English.