



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-467/17  
Brigitte Schlömp v Landratsamt Schwäbisch Hall

## **In situations in which it is mandatory to have recourse to arbitration proceedings, a Swiss arbitration authority responsible for dealing with civil actions constitutes a court for the purposes of the Lugano II Convention**

*Thus, if that authority is seised first of such proceedings, the courts of States (other than Switzerland) bound by that convention must, of their own motion, stay subsequent proceedings which have the same cause of action*

Ms Brigitte Schlömp, who is domiciled in Switzerland, is the biological daughter of Ms H.S. who is in a hospice in Germany and who receives additional social assistance paid by the German authorities. Under German law, those authorities are required to claim the reimbursement of those benefits from the biological children of the recipient, subject to their ability to pay.

On 16 October 2015, by an application for arbitration lodged with a Swiss arbitration authority responsible for dealing with civil claims, the German authorities requested Ms Schlömp to reimburse a minimum of €5 000 for social assistance they had paid to her mother. Since the arbitration was unsuccessful, on 11 May 2016, the German authorities brought an action before the Kantonsgericht Schaffhausen (Cantonal Court, Schaffhausen, Switzerland) seeking an order for Ms Schlömp to pay the abovementioned sum.

In February 2016, that is after the abovementioned application for arbitration was lodged, but before proceedings were brought before the Kantonsgericht Schaffhausen, Ms Schlömp brought an action before the German courts seeking a declaration that she was not obliged to reimburse the German authorities for the benefits at issue.

Under the Lugano II Convention<sup>1</sup>, applicable to the dispute in the main proceedings, where proceedings involving the same cause of action and between the same parties are brought in the courts of different States bound by that convention, any court other than the court first seised must of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. In that context, the Amtsgericht Stuttgart (District Court, Stuttgart, Germany), hearing the action brought by Ms Schlömp, is unsure whether a Swiss arbitration authority is a court for the purposes of the convention, so that the institution of proceedings concerning maintenance obligations before the arbitration authority would oblige the Amtsgericht Stuttgart to stay the proceedings before it.

By today's judgment the Court observes, first of all, that, according to Article 62 of the convention, the word 'court' includes **any authorities** designated by a State bound by that convention as having jurisdiction in the matters falling within its scope. Furthermore, it is clear from the explanatory report on the convention<sup>2</sup> that that article takes a functional approach, according to which **an authority is classified as a court based on the functions it carries out** rather than on its formal classification under national law.

<sup>1</sup> Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007, which was approved on behalf of the Community by Council Decision 2009/430/EC of 27 November 2008 (OJ 2009 L 147, p. 1).

<sup>2</sup> Report drafted by Mr Fausto Pocar and approved by the Council (OJ 2009 C 319, p. 1).

Next, the Court finds that, as a general rule, under Swiss law the institution of a civil action must be preceded by arbitration proceedings, and the failure to comply with that obligation has the result that any subsequent legal proceedings will be rendered inadmissible. The arbitration proceedings (which are subject to the *audi alterem partem* principle) may result in the delivery of a binding judgment, a draft judgment which may become final if it is not challenged, the signing of an arbitration agreement, or the issue of authorisation to bring legal proceedings.

The Court also finds, first, that the arbitration authorities are subject to the guarantees laid down by Swiss law on the disqualification of magistrates of which those authorities are composed and, second, that the latter perform their duties in a wholly independent manner.

In those circumstances, the Court declares that, in carrying out the function conferred on them in civil matters, **the Swiss arbitration authorities may be classified as ‘courts’ for the purposes of the convention.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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