JUDGMENT OF THE COURT (Second Chamber)

10 June 2004 *

In Case C-168/02

REFERENCE to the Court 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 by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between

Rudolf Kronhofer

and

Marianne Maier,

Christian Möller,

Wirich Hofius,

Zeki Karan,

* Language of the case: German.

on the interpretation of Article 5(3) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of Accession of 9 October 1978 of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and amended text p. 77), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Republic of Portugal (OJ 1989 L 285, p. 1), and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1),

THE COURT (Second Chamber),

composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen and N. Colneric, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Mr Kronhofer, by M. Brandauer, Rechtsanwalt,

— Ms Maier, by M. Scherbantie, Rechtsanwältin,

— Mr Karan, by C. Ender, Rechtsanwalt,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the German Government, by R. Wagner, acting as Agent,

— the United Kingdom Government, by K. Manji, acting as Agent, and T. Ward, Barrister,

— the Commission of the European Communities, by A.-M. Rouchaud and W. Bogensberger, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Kronhofer, represented by M. Brandauer and R. Bickel, Rechtsanwälte, of Mr Karan, represented by C. Ender, and of the Commission, represented by A.-M. Rouchaud and W. Bogensberger, at the hearing on 20 November 2003,

after hearing the Opinion of the Advocate General at the sitting on 15 January 2004,

gives the following

Judgment

1 By order of 9 April 2002, received at the Court on 6 May 2002, the Oberster Gerichtshof (Supreme Court) 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 a question on the interpretation of Article 5(3) of that Convention (OJ 1972 L 299, p. 32), as amended by the Convention of Accession of 9 October 1978 of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and amended text p. 77), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Republic of Portugal (OJ 1989 L 285, p. 1), and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1) (hereinafter 'the Convention').

2 That question was raised in proceedings brought by Mr Kronhofer, domiciled in Austria, against Ms Maier, Mr Möller, Mr Hofius and Mr Karan (hereinafter 'the defendants in the main proceedings'), each domiciled in Germany, in which Mr Kronhofer seeks to recover damages for financial loss which he claims to have suffered as a result of the wrongful conduct of the defendants in the main proceedings as directors or investment consultants of the company Protectas Vermögensverwaltungs GmbH (hereinafter 'Protectas'), which also has its registered office in Germany.

Legal framework

3 The first paragraph of Article 2 of the Convention states:

'Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.'

4 Under Article 5(3) of the Convention:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

...

(3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred.'

The main proceedings and the question referred

5 Mr Kronhofer brought proceedings against the defendants in the main proceedings before the Landesgericht Feldkirch (Feldkirch Regional Court) (Austria), seeking to recover damages for financial loss which he claims to have suffered as a result of their wrongful conduct.

6 The defendants in the main proceedings persuaded him, by telephone, to enter into a call option contract relating to shares. However, they failed to warn him of the risks involved in the transaction. As a result, Mr Kronhofer transferred a total amount of USD 82 500 in November and December 1997 to an investment account with Protectas in Germany which was then used to subscribe for highly speculative call options on the London Stock Exchange. The transaction in question resulted in the loss of part of the sum transferred and Mr Kronhofer was repaid only part of the capital invested by him.

7 The jurisdiction of the Landesgericht Feldkirch was founded on Article 5(3) of the Convention as the court for the place where the harmful event occurred, in this case Mr Kronhofer's domicile.

8 When that action was dismissed, Mr Kronhofer appealed to the Oberlandesgericht Innsbruck (Innsbruck Higher Regional Court) (Austria), which declined jurisdiction on the ground that the court of domicile was not 'the place where the harmful event occurred', as neither the place where the event which resulted in damage occurred nor the place where the resulting damage was sustained was in Austria.

9 An application for review on a point of law was brought before the Oberster Gerichtshof, which took the view that the Court of Justice had not yet ruled on the question whether the expression 'the place where the harmful event occurred' is to be so widely interpreted that, in cases of purely financial damage affecting part of the victim's assets invested in another Member State, it also encompasses the place of the victim's domicile and thus the place where his assets are concentrated.

10 As it considered that a decision on the interpretation of the Convention was necessary to enable it to give judgment, the Oberster Gerichtshof decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the expression "place where the harmful event occurred" contained in Article 5(3) of the Convention ... to be construed in such a way that, in the case of purely financial damage arising on the investment of part of the injured party's assets, it also encompasses in any event the place where the injured party is domiciled if the investment was made in another Member State of the Community?'

The question referred

11 By its question, the national court is essentially asking whether Article 5(3) of the Convention should be interpreted as meaning that the expression 'place where the harmful event occurred' may cover the place where the claimant is domiciled and where 'his assets are concentrated' by reason only of the fact that the claimant has suffered financial damage there resulting in the loss of part of his assets which arose and was incurred in another Contracting State.

12 It should be noted at the outset that the system of common rules of conferment of jurisdiction laid down in Title II of the Convention is based on the general rule, set out in the first paragraph of Article 2, that persons domiciled in a Contracting State are to be sued in the courts of that State, irrespective of the nationality of the parties.

13 It is only by way of derogation from that fundamental principle attributing jurisdiction to the courts of the defendant's domicile that Section 2 of Title II of the Convention makes provision for certain special jurisdictional rules, such as that laid down in Article 5(3) of the Convention.

14 Those special jurisdictional rules must be restrictively interpreted and cannot give rise to an interpretation going beyond the cases expressly envisaged by the Convention (see Case 189/87 *Kalfelis* [1988] ECR 5565, paragraph 19, and Case C-433/01 *Blijdenstein* [2004] ECR I-981, paragraph 25).

15 According to settled case-law, the rule laid down in Article 5(3) of the Convention is based on the existence of a particularly close connecting factor between a dispute and courts other than those for the place where the defendant is domiciled, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (see, inter alia, Case 21/76 *Bier* ('*Mines de Potasse d'Alsace*') [1976] ECR 1735, paragraph 11, and Case C-167/00 *Henkel* [2002] ECR I-8111, paragraph 46).

16 The Court has also held that where the place in which the event which may give rise to liability in tort, delict or quasi-delict occurs and the place where that event results in damage are not identical, the expression 'place where the harmful event occurred'

in Article 5(3) of the Convention must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the claimant, in the courts for either of those places (see, inter alia, *Mines de potasse d'Alsace*, paragraphs 24 and 25, and Case C-18/02 *DFDS Torline* [2004] ECR I-1417, paragraph 40).

17 It is clear from the order for reference that the Oberster Gerichtshof takes the view that, in the case in the main proceedings, the place where the damage occurred and the place of the event giving rise to it were both in Germany. The distinguishing feature of this case lies in the fact that the financial damage allegedly suffered by the claimant in another Contracting State is said to have affected the whole of his assets simultaneously.

18 As the Advocate General rightly noted at point 46 of his Opinion, there is nothing in such a situation to justify conferring jurisdiction to the courts of a Contracting State other than that on whose territory the event which resulted in the damage occurred and the damage was sustained, that is to say all of the elements which give rise to liability. To confer jurisdiction in that way would not meet any objective need as regards evidence or the conduct of the proceedings.

19 As the Court has held, the term 'place where the harmful event occurred' cannot be construed so extensively as to encompass any place where the adverse consequences can be felt of an event which has already caused damage actually arising elsewhere (see Case C-364/93 *Marinari* [1995] ECR I-2719, paragraph 14).

20 In a situation such as that in the main proceedings, such an interpretation would mean that the determination of the court having jurisdiction would depend on matters that were uncertain, such as the place where the victim's 'assets are concentrated' and would thus run counter to the strengthening of the legal protection of persons established in the Community which, by enabling the claimant to identify easily the court in which he may sue and the defendant reasonably to foresee in which court he may be sued, is one of the objectives of the Convention (see Case C-256/00 *Besix* [2002] ECR I-1699, paragraphs 25 and 26, and *DFDS Torline*, paragraph 36). Furthermore, it would be liable in most cases to give jurisdiction to the courts of the place in which the claimant was domiciled. As the Court found at paragraph 14 of this judgment, the Convention does not favour that solution except in cases where it expressly so provides.

21 In view of the foregoing considerations, the answer to the question referred must be that Article 5(3) of the Convention must be interpreted as meaning that the expression 'place where the harmful event occurred' does not refer to the place where the claimant is domiciled or where 'his assets are concentrated' by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Contracting State.

Costs

22 The costs incurred by the Austrian, German and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Oberster Gerichtshof by order of 9 April 2002, hereby rules:

Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of Accession of 9 October 1978 of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the accession of the Hellenic Republic, by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Republic of Portugal, and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden must be interpreted as meaning that the expression 'place where the harmful event occurred' does not refer to the place where the claimant is domiciled or where 'his assets are concentrated' by reason only of the fact that he has suffered financial damage there resulting from the loss of part of his assets which arose and was incurred in another Contracting State.

Timmermans Puissochet Cunha Rodrigues

Schintgen Colneric

Delivered in open court in Luxembourg on 10 June 2004.

Registrar

R. Grass

President of the Second Chamber

C.W.A. Timmermans