JUDGMENT OF THE COURT

5 October 1999 *

In Case C-420/97,

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 Hof van Cassatie, Belgium, for a preliminary ruling in the proceedings pending before that court between

Leathertex Divisione Sintetici SpA

and

Bodetex BVBA

on the interpretation of Articles 2 and 5(1) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended text — p. 77),

* Language of the case: Dutch.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), J.C. Moitinho de Almeida (Rapporteur), C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet and R. Schintgen, Judges,

Advocate General: P. Léger,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Leathertex Divisione Sintetici SpA, by S. Beele and F. Busschaert, of the Courtrai Bar,

— Bodetex BVBA, by D. van Poucke and B. Demeulenaere, of the Ghent Bar,

— the German Government, by R. Wagner, Regierungsdirektor in the Federal Ministry of Justice, acting as Agent,

— the Italian Government, by Professor U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, and O. Fiumara, Avvocato dello Stato,

— the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, and M. Hoskins, Barrister,

— the Commission of the European Communities, by J.L. Iglesias Buhigues, Legal Adviser, and P. van Nuffel, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Italian Government, represented by O. Fiumara, of the United Kingdom Government, represented by L. Persey QC, and of the Commission, represented by J.L. Iglesias Buhigues and P. van Nuffel, at the hearing on 15 December 1998,

after hearing the Opinion of the Advocate General at the sitting on 16 March 1999,

gives the following

Judgment

1 By judgment of 4 December 1997, received at the Court on 11 December 1997, the Hof van Cassatie (Court of Cassation) 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 (hereinafter 'the Protocol') a question on the interpretation of Articles 2 and 5(1) of that Convention (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended text — p. 77, hereinafter 'the Convention').

2 That question was raised in proceedings between Leathertex Divisione Sintetici SpA (hereinafter 'Leathertex'), whose registered office is in Montemurlo, Italy,

and Bodetex BVBA (hereinafter 'Bodetex'), whose registered office is in Rekkem-Menen, Belgium, concerning the payment of arrears of commission and of compensation in lieu of notice, which Bodetex, the commercial agent of Leathertex in the Belgian and Netherlands markets, is claiming from Leathertex.

The Convention

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 The first paragraph of Article 3 provides:

'Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.'

5 Article 5 provides:

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

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;

...'

6 Article 6(1) adds that where such a person is one of a number of defendants, he may be sued in the courts for the place where any one of them is domiciled.

7 Finally, the first paragraph of Article 22 provides:

'Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.'

The main proceedings

8 For a number of years Bodetex acted as commercial agent for Leathertex in the Belgian and Netherlands markets under a long-term arrangement. It received 5% commission by way of remuneration.

9 After asking Leathertex to no avail during 1987 for payment of commission which it considered to be owing to it, Bodetex regarded its commercial agency agreement as terminated and, by letter of 9 March 1988, took formal note of the termination and demanded from Leathertex payment of arrears of commission and compensation in lieu of notice.

10 Since Leathertex did not reply to that letter, on 2 November 1988 Bodetex sued it for payment in the Rechtbank van Koophandel (Commercial Court), Courtrai.

11 By judgment of 1 October 1991, the Rechtbank van Koophandel found that two separate obligations formed the basis of the action. It held that the first, namely the obligation to give a reasonable period of notice on termination of a commercial agency agreement and, in the event of failure to give such notice, to pay compensation in lieu, was to be performed in Belgium, whereas the second, namely the obligation to pay commission, was to be performed in Italy under the principle that debts are payable where the debtor is resident. The Rechtbank van Koophandel accordingly found that it had jurisdiction in respect of the obligation to pay compensation in lieu of notice, by virtue of Article 5(1) of the Convention, and then declared that it had jurisdiction over the whole proceedings given the connection between that obligation and the obligation to pay commission. It ordered Leathertex to pay Bodetex arrears of commission and compensation in lieu of notice.

12 Leathertex appealed against that judgment to the Hof van Beroep (Court of Appeal), Ghent, which, by judgment of 29 October 1993, confirmed that the Rechtbank van Koophandel had jurisdiction to hear the action brought by

Bodetex. The Hof van Beroep held that two separate obligations arising from the agency agreement formed the basis of the action, that the obligation to pay commission could not be regarded as the principal obligation and that the two obligations had to be regarded as equal in rank, so that there was nothing to prevent Bodetex from bringing its action before the courts for the place of performance of either of those two obligations. It therefore ruled that the Rechtbank van Koophandel had jurisdiction to hear the main proceedings as the court for the place where the obligation to give a reasonable period of notice was to be performed.

13 Leathertex appealed on a point of law to the Hof van Cassatie. It submitted, first, that the Hof van Beroep had misconstrued Article 5(1) of the Convention in holding that it had jurisdiction to deal with the head of claim concerning payment of the arrears of commission when the obligation to pay that commission was to be performed in Italy. According to Leathertex, if a court is unable to identify the principal obligation and the ancillary obligations from among the various obligations forming the basis of an action, it is competent to rule only on the obligations for which the place of performance is located, in accordance with its own conflict rules, in its jurisdiction. Leathertex maintained, secondly, that the Hof van Beroep had misinterpreted Article 22 of the Convention in holding that it had jurisdiction to hear the whole of the dispute, since that provision can apply only where related actions have been brought in the courts of two or more Contracting States.

14 In its order for reference, the Hof van Cassatie states first of all that Article 22 of the Convention was not applied in the judgment under appeal and rejects on this ground Leathertex's plea based on the misinterpretation of that provision.

15 So far as concerns the alleged infringement of Article 5(1) of the Convention, the Hof van Cassatie notes that, in Case 266/85 *Shenavai* v *Kreischer* [1987] ECR 239, at paragraph 19, the Court held that, in the particular case of a dispute concerned with a number of obligations arising under the same contract and forming the basis of the proceedings brought by the plaintiff, the court before which the matter is brought should, when determining whether it has jurisdiction,

be guided by the maxim *accessorium sequitur principale* so that, where a number of obligations are at issue, it will be the principal obligation which will determine its jurisdiction.

16 The Hof van Cassatie states that, in the present case, it is common ground that the obligation to pay commission cannot be regarded as the principal obligation in the context of the action brought by Bodetex, that the Belgian courts have jurisdiction to rule on the obligation to pay compensation in lieu of notice since that obligation is contractual in nature and is to be performed in Belgium, and that the two abovementioned obligations are of equal rank.

17 The Hof van Cassatie inquires whether it is possible to disapply the general rule set out in Article 2 of the Convention in the case of a dispute concerning various obligations arising under the same agency agreement where none of the obligations is subordinate to the others and only one, having regard to its place of performance, supports the jurisdiction of the court before which the matter has been brought.

18 In those circumstances, the Hof van Cassatie decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Are Articles 5(1) and 2 of the Brussels Convention, in the version applicable to the present case, to be interpreted as meaning that a composite claim founded on different obligations arising from the same contract may be brought before the same court, even though, according to the jurisdictional rules of the State in which the proceedings are brought, one of the contractual obligations on which the claim is based is to be performed in that State and the other is to be performed in another EC Member State, having regard to the fact that the court before which the proceedings are brought decides, on the basis of the claim brought before it, that neither of the two obligations forming the subject-matter of the claim is subordinate to the other and that they are of equal rank?'

Consideration of the question submitted

19 By its question, the national court is essentially asking whether, on a proper construction of Articles 2 and 5(1) of the Convention, the same court has jurisdiction to hear the whole of an action founded on two obligations of equal rank arising from the same contract even though, according to the conflict rules of the State where that court is situated, one of those obligations is to be performed in that State and the other in another Contracting State.

20 The United Kingdom Government submits that, of the two obligations upon which the main action is founded, the obligation to pay commission forms its principal basis. According to the order for reference, the sole reason why Bodetex regarded the contract as having been terminated without notice was the failure to pay the disputed commission. So compensation in lieu of notice is to be paid only if it is established that the disputed commission is in fact due. The United Kingdom Government therefore proposes that the question referred for a preliminary ruling should be reformulated and the answer given that, in a situation such as that in the main proceedings, the contractual obligation which forms the principal basis of the legal proceedings and upon which jurisdiction may be founded under Article 5(1) of the Convention is the obligation to pay commission.

21 As to that, in view of the allocation of jurisdiction under the preliminary ruling procedure provided for by the Protocol, it is for the national court to assess the relative importance of the contractual obligations at issue in the main proceedings and for the Court of Justice to interpret the Convention in the light of the findings made by the national court.

22 Moreover, to alter the substance of the question referred for a preliminary ruling would be incompatible with the Court's function under the Protocol and with its duty to ensure that the Governments of the Member States and the parties concerned are given the opportunity to submit observations pursuant to Article 5 of the Protocol and Article 20 of the EC Statute of the Court, bearing in mind

that, under Article 20, only the order of the referring court is notified to the interested parties (see, in relation to the procedure under Article 177 of the EC Treaty (now Article 234 EC), Case C-352/95 *Pytheron International* v *Bourdon* [1997] ECR I-1729, paragraph 14, and Case C-235/95 *AGS Assedic* v *Dumon and Froment* [1998] ECR I-4531, paragraph 26).

23 The question referred for a preliminary ruling must therefore be answered on the basis that, as stated in the order for reference, the two contractual obligations on which the action is founded are of equal rank.

24 Leathertex, the German Government and the United Kingdom Government, in an alternative submission, submit that a court of a Contracting State does not have jurisdiction under Article 5(1) of the Convention to hear the whole of an action founded on several obligations of equal rank arising from the same contract when the place of performance of one or a number of those obligations is in another Member State.

25 In their view, Article 5(1) of the Convention must be interpreted strictly. Where the two obligations which form the basis of an action are regarded as equal in rank by the court before which the action has been brought, jurisdiction to deal with each of them should lie with the court of the place where each is to be performed and any resultant fragmenting of jurisdiction should be accepted. Such an interpretation of Article 5(1) of the Convention is, they argue, consistent with the rationale for that provision, which is to guarantee to each party in matters relating to a contract that claims will be considered by the courts for the place where the obligation in dispute is to be performed.

26 Bodetex maintains, first, that the agreement giving rise to the two obligations at issue in the main proceedings is analogous to a commercial representative's contract of employment. Thus, when Article 5(1) of the Convention is applied in the case of an action founded on different obligations resulting from the same

agency agreement, it is appropriate, as in the case of contracts of employment, to take account of the obligation which characterises that contract, namely, in the present case, the obligation to find new customers and to distribute Leathertex's products, in particular in Belgium. In a number of Contracting States, case-law and academic legal writing have extended that solution to concession agreements, with which commercial agency agreements likewise have similarities.

27 Bodetex argues, second, that the obligation to pay commission is linked to the obligation to pay compensation in lieu of notice. Both result from the agency agreement. In addition, failure to perform the obligation to pay commission was the reason why the agreement was terminated, thereby giving rise to the obligation to pay compensation in lieu of notice. That link provides the justification for the court with jurisdiction to rule on the obligation to pay compensation in lieu of notice to have jurisdiction to rule on the obligation to pay commission as well.

28 According to Bodetex, such an interpretation of Article 5(1) of the Convention allows proceedings to be conducted effectively while avoiding a fragmenting of jurisdiction.

29 Finally, the Commission submits that, where a plaintiff brings two claims based on two obligations of equal rank, a court which has jurisdiction to hear one of the claims under Article 5(1) of the Convention also has jurisdiction to hear the other claim if there is such a close relationship between the claims that it is advantageous to hear and decide them at the same time in order to avoid the possibility of irreconcilable decisions if the cases were decided separately.

30 According to the Commission, such a solution corresponds most closely to the scheme of the Convention. First, it is comparable, *mutatis mutandis*, with the solution for which Article 6(1) of the Convention provides where there are a

number of defendants. Second, it is called for by Article 22 of the Convention. In a dispute such as that before the national court, if the plaintiff decided, in accordance with Article 5(1) of the Convention, to bring the action for payment of compensation in one Contracting State and that for payment of the arrears of commission in another Contracting State, Article 22 of the Convention would apply because of the relation between the two actions. Article 5(1) of the Convention should therefore be interpreted in such a way as to avoid in advance situations to which Article 22 of the Convention would be applicable.

31 It should be noted first of all that, in paragraphs 8, 9 and 10 of the judgment in Case 14/76 *De Bloos* v *Bouyer* [1976] ECR 1497, after observing that the Convention was intended to determine the international jurisdiction of the courts of the Contracting States, to facilitate the recognition of judgments and to introduce an expeditious procedure for securing their enforcement, the Court held that those objectives implied the need to avoid, so far as possible, creating a situation in which a number of courts had jurisdiction in respect of one and the same contract and that Article 5(1) of the Convention could not therefore be interpreted as referring to any obligation whatsoever arising under the contract in question. The Court concluded, in paragraphs 11 and 13 of the same judgment, that, for the purposes of determining the place of performance within the meaning of Article 5(1), the obligation to be taken into account was that which corresponded to the contractual right on which the plaintiff's action was based. It stated in paragraph 14 that, in a case where the plaintiff asserted the right to be paid damages or sought dissolution of the contract on the ground of the wrongful conduct of the other party, that obligation was still that which arose under the contract and the non-performance of which was relied upon to support such claims.

32 This interpretation was corroborated by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, which amended certain language versions of Article 5(1) of the Convention in order to specify that the obligation whose place of performance determines which court has jurisdiction in matters relating to a contract is the obligation which forms the basis of the claim (in the English version 'the obligation in question').

33 Also, the Court has held on several occasions that the place of performance of the obligation in question is to be determined by the law governing that obligation according to the conflict rules of the court seised (Case 12/76 *Tessili* v *Dunlop* [1976] ECR 1473, paragraph 13, Case C-288/92 *Custom Made Commercial* v *Stawa Metallbau* [1994] ECR I-2913, paragraph 26, and Case C-440/97 *Groupe Concorde and Others* v *The Master of the Vessel* Suhadiwarno Panjan *and Others* [1999] ECR I-6307, paragraph 32).

34 In the present case, the Belgian courts have held, in accordance with the case-law cited above, that the obligation to pay compensation in lieu of notice was to be performed in Belgium while the obligation to pay commission was to be performed in Italy.

35 Furthermore, it is apparent from the order for reference and the file forwarded by the national court that the contract at issue in the main proceedings, under which the claims for payment of commission and of compensation in lieu of notice have been brought, does not constitute a contract of employment.

36 When the specific features of a contract of employment do not exist, it is neither necessary nor appropriate to identify the obligation which characterises the contract and to centralise at its place of performance all jurisdiction, based on place of performance, over disputes concerning all the obligations under the contract (*Shenavai*, cited above, paragraph 17).

37 Therefore, the obligation which characterises the agency agreement is not to be taken into account in the main proceedings in order to determine jurisdiction based on place of performance.

38 Nor can the court which has jurisdiction to hear the claim for payment of compensation in lieu of notice found its jurisdiction in respect of the claim for

payment of commission on any relation between those two claims. As the Court has made clear, Article 22 of the Convention is intended to establish how related actions which have been brought before courts of different Contracting 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 (see Case 150/80 *Elefanten Schuh* v *Jacqmain* [1981] ECR 1671, paragraph 19, and Case C-51/97 *Réunion Européenne and Others* v *Spliethoff's Bevrachtingskantor and Another* [1998] ECR I-6511, paragraph 39).

39 Finally, when a dispute relates to a number of obligations of equal rank arising from the same contract, the court before which the matter is brought cannot, when determining whether it has jurisdiction, be guided by the maxim *accessorium sequitur principale* referred to by the Court in paragraph 19 of the judgment in *Shenavai*, cited above.

40 The same court does not therefore have jurisdiction to hear the whole of an action founded on two obligations of equal rank arising from the same contract when, according to the conflict rules of the State where that court is situated, one of those obligations is to be performed in that State and the other in another Contracting State.

41 It should be remembered that, while there are disadvantages in having different courts ruling on different aspects of the same dispute, the plaintiff always has the option, under Article 2 of the Convention, of bringing his entire claim before the courts for the place where the defendant is domiciled.

42 The answer to be given to the question referred for a preliminary ruling must therefore be that, on a proper construction of Article 5(1) of the Convention, the same court does not have jurisdiction to hear the whole of an action founded on two obligations of equal rank arising from the same contract when, according to the conflict rules of the State where that court is situated, one of those obligations is to be performed in that State and the other in another Contracting State.

Costs

43 The costs incurred by the German, Italian 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Hof van Cassatie by judgment of 4 December 1997, hereby rules:

On a proper construction of Article 5(1) 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 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, the same court does not have jurisdiction to hear the whole of an action founded on two obligations of equal rank arising from the same contract when, according to the conflict rules of the State where that court is

situated, one of those obligations is to be performed in that State and the other in another Contracting State.

Rodríguez Iglesias Kapteyn Puissochet

Hirsch Jann

Moitinho de Almeida Gulmann Murray

Edward Ragnemalm

Sevón Wathelet Schintgen

Delivered in open court in Luxembourg on 5 October 1999.

R. Grass G.C. Rodríguez Iglesias

Registrar President