JUDGMENT OF THE COURT
19 September 1995 *

In Case C-364/93,

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 Corte Suprema di Cassazione for a preliminary ruling in the proceedings pending before that court between

Antonio Marinari

and

Lloyds Bank plc

and

Zubaidi Trading Company

on the interpretation of Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the accession 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 —

* Language of the case: Italian.

p. 77) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, F. A. Schockweiler, P. J. G. Kapteyn and P. Jann (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida (Rapporteur), J.-P. Puissochet, G. Hirsch, H. Ragnemalm and L. Sevón, Judges,

Advocate General: P. Léger,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Antonio Marinari, the plaintiff in the main proceedings, by Francesco Vassalli, Antonio Piras and Maurizio Bonistalli, of the Pisa Bar, Francesco Olivieri, of the Florence Bar, and Laurent Mosar, of the Luxembourg Bar,

— Lloyds Bank plc, the defendant in the main proceedings, by Cosimo Rucellai and Enrico Adriano Raffaelli, of the Milan Bar,

— Zubaidi Trading Company, party joined in the main proceedings, by Professor Sergio Spadari, of the Rome Bar,

— the German Government, by Professor Christof Böhmer, Ministerialrat in the Federal Ministry of Justice, acting as Agent,

— the United Kingdom, by S. Lucinda Hudson, of the Treasury Solicitor's Department, acing as Agent, and T. A. G. Beazley, Barrister,

— the Commission of the European Communities, by Pieter Van Nuffel, of its Legal Service, acting as Agent, and Alberto dal Ferro, of the Vicenza Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiff, the defendant and the intervener in the main proceedings and the Commission of the European Communities at the hearing on 15 June 1994 and, following the order of 25 January 1995 reopening the oral procedure, at the hearing on 3 May 1995,

after hearing the Opinion of Advocate General Darmon at the sitting on 21 December 1994 and the Opinion of Advocate General Léger at the sitting on 18 May 1995,

gives the following

Judgment

1 By order of 21 January 1993, received at the Court on 26 July 1993, the Corte Suprema di Cassazione (Supreme 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 (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the accession 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) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1, hereinafter 'the Convention') a question on the interpretation of Article 5(3) of the Convention.

2 That question was raised in the course of proceedings between Mr Marinari, who is domiciled in Italy, and Lloyds Bank, whose registered office is in London.

3 In April 1987, Mr Marinari lodged with a Manchester branch of Lloyds Bank a bundle of promissory notes with a face value of US $752 500 000, issued by the Negros Oriental province of the Republic of the Philippines in favour of Zubaidi Trading Company of Beirut. The bank staff, after opening the envelope, refused to return the promissory notes and advised the police of their existence, stating them to be of dubious origin, which led to Mr Marinari's arrest and sequestration of the promissory notes.

4 Having been released by the English authorities, Mr Marinari sued Lloyds Bank in the Tribunale di Pisa, seeking compensation for the damage caused by the conduct of its staff. The documents forwarded by the national court show that Mr Marinari is claiming not only payment of the face value of the promissory notes but also compensation for the damage he claims to have suffered as a result of his arrest, breach of several contracts and damage to his reputation. Lloyds Bank objected that the Italian court lacked jurisdiction on the ground that the damage constituting the basis of jurisdiction *ratione loci* had occurred in England. Mr Marinari, supported by Zubaidi Trading Company, applied to the Corte Suprema di Cassazione for a prior ruling on the question of jurisdiction.

5 In its order for reference, the Corte Suprema di Cassazione raises the issue of the jurisdiction of the Italian courts in relation to Article 5(3) of the Convention, as interpreted by the Court of Justice.

6 It observes that, in Case 21/76 *Bier* v *Mines de Potasse d'Alsace* [1976] ECR 1735, the Court considered that the term 'place where the harmful event occurred' was to be understood as intended to cover both the place where the damage occurred and the place of the event giving rise to it, and that Mr Marinari contends that the expression 'damage occurred' relates not only to the physical result but also to damage in the legal sense, such as a decrease in a person's assets.

7 It also notes that in Case C-220/88 *Dumez France and Tracoba* v *Hessische Landesbank* [1990] ECR I-49, the Court held that account should not be taken, for the purpose of determining jurisdiction under Article 5(3) of the Convention, of indirect financial damage. The national court, in those circumstances, questions whether that also applies where the harmful effects alleged by the plaintiff are direct, not indirect.

8 In those circumstances, it decided to stay the proceedings pending a preliminary ruling on the following question:

'In applying the jurisdiction rule laid down in Article 5(3) of the Brussels Convention of 27 September 1968, as interpreted in the judgment of the Court of Justice of the European Communities of 30 November 1976 in Case 21/76 *Handelskwekerij G. J. Bier BV* v *Mines de Potasse d'Alsace SA* [1976] ECR 1735, is the expression "place where the harmful event occurred" to be taken to mean only the place in which physical harm was caused to persons or things, or also the place in which the damage to the plaintiff's assets occurred?'

9 By way of derogation from the general principle laid down in the first paragraph of Article 2 of the Convention that the courts of the State

where the defendant is domiciled are to have jurisdiction, Article 5 provides:

'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;

... .'

10 As the Court has held on several occasions (in *Mines de Potasse d'Alsace*, cited above, paragraph 11, *Dumez France and Tracoba*, cited above, paragraph 17, and Case C-68/93 *Shevill and Others* v *Presse Alliance* [1995] ECR I-415, paragraph 19), that rule of special jurisdiction, the choice of which is a matter for the plaintiff, is based on the existence of a particularly close connecting factor between the dispute and courts other than those of the State of the defendant's domicile which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings.

11 In *Mines de Potasse d'Alsace* (paragraphs 24 and 25) and *Shevill* (paragraph 20), the Court held that where the place of the happening of the event which may give rise to liability in tort, delict or quasi-delict 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 plaintiff, in the courts for either of those places.

12 In those two judgments, the Court considered that the place of the event giving rise to the damage no less than the place where the damage occurred could constitute a significant connecting factor from the point of view of jurisdiction. It added that to decide in favour only of the place of the event giving rise to the damage would, in an appreciable number of cases, cause confusion between the heads of jurisdiction laid down by Articles 2 and 5(3) of the Convention, so that the latter provision would, to that extent, lose its effectiveness.

13 The choice thus available to the plaintiff cannot however be extended beyond the particular circumstances which justify it. Such extension would negate the general principle laid down in the first paragraph of Article 2 of the Convention that the courts of the Contracting State where the defendant is domiciled are to have jurisdiction. It would lead, in cases other than those expressly provided for, to recognition of the jurisdiction of the courts of the plaintiff's domicile, a solution which the Convention does not favour since, in the second paragraph of Article 3, it excludes application of national provisions which make such jurisdiction available for proceedings against defendants domiciled in the territory of a Contracting State.

14 Whilst it has thus been recognized that the term 'place where the harmful event occurred' within the meaning of Article 5(3) of the Convention may cover both the place where the damage occurred and the place of the event giving rise to it, that term 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.

15 Consequently, that term cannot be construed as including the place where, as in the present case, the victim claims to have suffered financial damage following upon initial damage arising and suffered by him in another Contracting State.

16 The German Government submits, however, that, in interpreting Article 5(3) of the Convention, the Court should take account of the applicable national law on non-contractual civil liability. Thus, where, under that law, an actual adverse effect on goods or rights is a precondition for liability (as, for instance, under paragraph 823(1) of the Bürgerliches Gesetzbuch — the German Civil Code), the 'place where the harmful event occurred' means both the place of that adverse effect and the place of the event giving rise to it. On the other hand, it considers that where national law does not make redress conditional upon an actual adverse effect upon property or a right (as, for instance, under Article 1382 of the French Civil Code and Article 2043 of the Italian Civil Code), the victim may choose between the place of the event giving rise to the damage and the place where he suffered financial damage.

17 The German Government also considers that that interpretation would not be such as to lead to a multiplication of courts enjoying jurisdiction. Nor would it lead systematically to the result that the court for the place where the financial damage was suffered would be the same as the court of the plaintiff's domicile. Moreover, it would not enable the victim, by moving his assets, to determine the competent court, since account would be taken of the location of his assets when the obligation of reparation arose. Finally, that interpretation has the advantage of not according preference to the laws of certain States at the expense of others.

18 It must, however, be noted that the Convention did not intend to link the rules on territorial jurisdiction with national provisions concerning the conditions under which non-contractual civil liability is incurred. Those conditions do not

necessarily have any bearing on the solutions adopted by the Member States regarding the territorial jurisdiction of their courts, such jurisdiction being founded on other considerations.

19 There is no basis for interpreting Article 5(3) of the Convention by reference to the applicable rules on non-contractual civil liability, as proposed by the German Government. That interpretation is also incompatible with the objective of the Convention, which is to provide for a clear and certain attribution of jurisdiction (see Case 241/83 *Rösler* v *Rottwinkel* [1985] ECR 99, paragraph 23, and Case C-26/91 *Handte* v *Traitments Mécano-Chimiques des Surfaces* [1992] ECR II-3967, paragraph 19). The delimitation of jurisdiction would then depend on uncertain factors such as the place where the victim's assets suffered subsequent damage and the applicable rules on civil liability.

20 Finally, as regards the argument as to the relevance of the location of the assets when the obligation to redress the damage arose, the proposed interpretation might confer jurisdiction on a court which had no connection at all with the subject-matter of the dispute, whereas it is that connection which justifies the special jurisdiction provided for in Article 5(3) of the Convention. Indeed, the expenses and losses of profit incurred as a result of the initial harmful event might be incurred elsewhere so that, as far as the efficiency of proof is concerned, that court would be entirely inappropriate.

21 The answer to the national court's question should therefore be that the term 'place where the harmful event occurred' in Article 5(3) of the Convention of

27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters does not, on a proper interpretation, cover the place where the victim claims to have suffered financial damage following upon initial damage arising and suffered by him in another Contracting State.

Costs

22 The costs incurred by the United Kingdom, the German Government and the Commission of the European Communities, 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 Italian Corte Suprema di Cassazione by order of 21 January 1993, hereby rules:

The term 'place where the harmful event occurred' in Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters does not, on a proper interpretation,

cover the place where the victim claims to have suffered financial damage following upon initial damage arising and suffered by him in another Contracting State.

Rodríguez Iglesias Schockweiler Kapteyn Jann

Mancini Kakouris Moitinho de Almeida Puissochet

Hirsch Ragnemalm Sevón

Delivered in open court in Luxembourg on 19 September 1995.

R. Grass
Registrar

G. C. Rodríguez Iglesias
President