JUDGMENT OF THE COURT
6 April 1995 *

In Case C-439/93,

REFERENCE to the Court, pursuant to 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 French Cour de Cassation for a preliminary ruling in the proceedings pending before that court between

Lloyd's Register of Shipping

and

Société Campenon Bernard

on the interpretation of Article 5(5) of the Convention of 27 September 1968, 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 — the amended version — p. 77),

* Language of the case: French.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, F. A. Schockweiler (Rapporteur), P. J. G. Kapteyn, C. Gulmann (Presidents of Chambers), C. N. Kakouris, J. C. Moitinho de Almeida, J. L. Murray, D. A. O. Edward and J.-P. Puissochet, Judges,

Advocate General: M. B. Elmer,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Lloyd's Register of Shipping, by Didier Le Prado and Luc Grellet, of the Paris Bar,

— Société Campenon Bernard, by André Moquet and Arnaud Lyon-Caen, of the Paris Bar,

— the French Government, by Catherine de Salins, Deputy Director of the Legal Affairs Directorate of the Ministry of Foreign Affairs and Nicolas Eybalin, Foreign Affairs Secretary of that Directorate, acting as Agents,

— the Greek Government, by Michail Apessos, Assistant Legal Adviser, and Vassileia Pelekou, Legal Agent, acting as Agents,

— the United Kingdom, by Lucinda Hudson, of the Treasury Solicitor's Department, acting as Agent, assisted by S. Lee, Barrister,

— the Commission of the European Communities, by Marie-José Jonczy, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations made on behalf of Lloyd's Register of Shipping, Société Campenon Bernard, represented by Elie Kleiman, of the Paris Bar, the Greek Government and the Commission of the European Communities at the hearing on 10 January 1995,

after hearing the Opinion of the Advocate General at the sitting on 21 February 1995,

gives the following

Judgment

1 By judgment of 26 October 1993, received at the Court on 10 November 1993, the French Cour de Cassation (Court of Cassation) referred to the Court for a preliminary ruling pursuant to 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 concerning the interpretation of Article 5(5) of that Convention, 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 — the amended version — p. 77, hereinafter the 'Convention').

2 The question arose in proceedings, which concerned the proper performance of a contract to test concrete reinforcing steel, between Campenon Bernard, a company governed by French law and established in Clichy (France), and Lloyd's Register of Shipping, an English registered charity, established in London.

3 At the end of November 1985, Campenon Bernard contacted the French branch of Lloyd's Register in order to arrange for the testing of concrete reinforcing steel which it was to use in the construction of a motorway in Kuwait. The object was to check that the concrete reinforcing steel complied with a United States technical standard which had been added to the tender specifications by the Kuwait Ministry of Public Works and, if so, to have a certificate of compliance issued.

4 Following negotiations, in a letter of 3 December 1985 Campenon Bernard placed the order with the French branch of Lloyd's Register. That letter specified that inspection would take place in Spain and would be carried out by the Spanish branch of Lloyd's Register. It also stated that payment would be effected in pesetas. On 9 December 1985 the French branch communicated its acceptance.

5 Although the Spanish branch of Lloyd's Register issued certificates of compliance, the Kuwait Ministry of Public Works refused to accept the concrete reinforcing steel on the ground that it did not comply with the United States technical standard.

6 On 2 February 1988 Campenon Bernard paid the invoice issued by the Spanish branch of Lloyd's Register, having been pressed to do so by the French branch, but without prejudice to its rights. Alleging that Lloyd's Register had wrongly stated that the steel complied with the United States technical standard, it then brought a claim for damages in the Tribunal de Commerce (Commercial Court), Paris, through the intermediary of the French branch.

7 Lloyd's Register pleaded that the French courts lacked jurisdiction.

8 The plea was rejected at first instance on the basis of domestic law. It was only on appeal that the plea was examined in the light of Article 5(1) and (5) of the Convention, pursuant to which:

'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;

...

5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated.'

9 In its judgment of 5 June 1991 the Cour d'Appel (Court of Appeal), Paris, held that the case concerned the operations of the French branch of Lloyd's Register within the meaning of Article 5(5) of the Convention and that consequently it had jurisdiction. It pointed out that Campenon Bernard had had dealings solely with the French branch, since it had negotiated and concluded the contract and subsequently demanded payment. It was not significant that the undertakings entered into had been performed in Spain. According to the Cour d'Appel, Article 5(5) of the Convention did not require that the undertakings entered into were to be performed in the Contracting State where the place of business was established. To allow such a restriction would render Article 5(5) redundant in relation to Article 5(1), which already gave jurisdiction to the courts for the place of performance of the obligation in question.

10 Lloyd's Register applied for review *inter alia* on the ground that Article 5(5) had been infringed. In its view, a dispute arises out of the operations of a branch, agency or other establishment within the meaning of that provision only in so far as the undertakings entered into by that place of business are to be performed in the Contracting State where it is established.

11 In the circumstances, by judgment of 26 October 1993 the Cour de Cassation asked the Court whether,

'in the light of the first paragraph of Article 5 of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, the expression "dispute arising out of the operations of a branch ..." in Article 5(5) of the Convention necessarily presupposes that the undertakings in question entered into by the branch in the name of its parent body are to be performed in the Contracting State where the branch is established.'

12 Lloyd's Register contends that in its judgment in Case 33/78 *Somafer* v *Saar Ferngas* [1978] ECR 2183, at paragraph 13, the Court held that the rule set out in Article 5(5) applies to actions relating to undertakings which have been entered into by that establishment in the name of the parent body, provided that they are to be performed in the Contracting State of the ancillary establishment.

13 According to Lloyd's Register, such a requirement as to place is in accordance with the interests of the proper administration of justice which underlie the provision. It is aimed at enabling an action that has its origin in the actual activities of a branch to be heard by the courts for the place in which it is situated on practical and evidential grounds.

14 Moreover, it states, since an ancillary establishment may not confine itself to transmitting orders to its parent body but must also take part in their performance, and in that connection the range of activity of an ancillary establishment is naturally confined to the territory of the Contracting State in which it has been set up, jurisdiction under Article 5(5) is justified only where the undertakings in question entered into by the ancillary establishment in the name of its parent body are to be performed on the territory of the Contracting State in which it is situated.

15 That argument cannot be accepted.

16 First, the actual wording of Article 5(5) of the Convention in no way requires that the undertakings negotiated by a branch should be performed in the Contracting State in which it is established in order for them to form part of its operations.

17 Secondly, the interpretation put forward by the appellant in the main proceedings would render Article 5(5) almost wholly redundant. Since Article 5(1) already allows the plaintiff to bring an action in contract in the courts for the place of performance of the obligation in question, Article 5(5) would duplicate that provision if it applied solely to undertakings entered into by a branch which were to be performed in the Contracting State in which the branch was established. At the very most it would create a second head of special jurisdiction where, within the Contracting State of the branch, the place of performance of the obligation in question was situated in a judicial area other than that of the branch.

18 Thirdly, it should be noted that an ancillary establishment is a place of business which has the appearance of permanency such as the extension of a parent body, has a management and is equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, whose seat is in another Contracting State, do not have to deal directly with such parent body (see *Somafer*, cited above, at paragraph 12).

19 A branch, agency or other ancillary establishment within the meaning of Article 5(5) is therefore an entity capable of being the principal, or even exclusive, interlocutor for third parties in the negotiation of contracts.

20 There does not necessarily have to be a close link between the entity with which a customer conducts negotiations and places an order and the place where the order will be performed. Accordingly, undertakings may form part of the operations of an ancillary establishment within the meaning of Article 5(5) of the Convention even though they are to be performed outside the Contracting State where it is situated, possibly by another ancillary establishment.

21 That interpretation is, moreover, in conformity with the objective of the special rules of jurisdiction. As the Jenard Report (OJ 1979 C 59, at p. 22) makes clear, those rules allow the plaintiff to sue the defendant in courts other than those of his domicile because there is a specially close connecting factor between the dispute and the court with jurisdiction to resolve it.

22 In the light of the foregoing considerations, the answer to the question referred by the Cour de Cassation must be that the expression 'dispute arising out of the operations of a branch, agency or other establishment' in Article 5(5) of the Convention does not presuppose that the undertakings in question entered into by the branch in the name of its parent body are to be performed in the Contracting State in which the branch is established.

Costs

23 The costs incurred by the French and Greek Governments, the United Kingdom 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 questions referred to it by the Cour de Cassation of the French Republic by judgment of 26 October 1993, hereby rules:

The expression 'dispute arising out of the operations of a branch, agency or other establishment' in Article 5(5) 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, does not presuppose that the undertakings in question entered into by the branch in the name of its parent body are to be performed in the Contracting State in which the branch is established.

Rodríguez Iglesias Schockweiler Kapteyn

Gulmann Kakouris Moitinho de Almeida

Murray Edward Puissochet

Delivered in open court in Luxembourg on 6 April 1995.

R. Grass
Registrar

G. C. Rodríguez Iglesias
President