JUDGMENT OF THE COURT (First Chamber)

26 May 2005 *

In Case C-77/04,

REFERENCE 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, from the Cour de Cassation (France), made by decision of 20 January 2004, received at the Court on 17 February 2004, in the proceedings

Groupement d'intérêt économique (GIE) Réunion européenne and Others,

v

Zurich España,

Société pyrénéenne de transit d'automobiles (Soptrans),

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric, J.N. Cunha Rodrigues (Rapporteur), M. Ilešič and E. Levits, Judges,

* Language of the case: French.

Advocate General: F.G. Jacobs,
Registrar: K.H. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 8 December 2004,

after considering the observations submitted on behalf of;

— Groupement d'intérêt économique (GIE) Réunion européenne and Others, by M. Levis, avocat,

— Zurich España, by P. Alfredo and G. Thouvenin, avocats,

— the French Government, by G. de Bergues and A. Bodard-Hermant, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, and P. Gentili, avvocato dello Stato,

— the Commission of the European Communities, by A.-M. Rouchaud-Joët, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 24 February 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6(2) and the provisions of Section 3 of Title II of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 299, p. 32), 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), 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 Portuguese Republic (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 Convention').

2 The reference was made in respect of proceedings in which the insurers of Société pyrénéenne de transit d'automobiles ('Soptrans') sought to join Zurich Seguros, now Zurich España ('Zurich'), as a third party for the purpose of apportionment between those insurance companies of indemnification payable by Soptrans to General Motors España ('GME').

Legal background

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

'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 Article 6(2), which appears in Section 2 of Title II of the Convention, entitled 'Special jurisdiction', is worded as follows:

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

...

2. as a third party in an action on a warranty or guarantee or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;

...'.

5 Articles 7 to 12a make up Section 3, 'Jurisdiction in matters relating to insurance', of Title II of the Convention.

6 Article 7 of the Convention states:

'In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to the provisions of Articles 4 and 5 point 5'.

7 Under Article 11 of the Convention:

'Without prejudice to the provisions of the third paragraph of Article 10, an insurer may bring proceedings only in the courts of the Contracting State in which the defendant is domiciled irrespective of whether he is the policy-holder, the insured or a beneficiary. ...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 The dispute in the main proceedings arises from damage sustained on 13 August 1990 in the car park on which Soptrans, a company established in France, stores new cars.

9 Soptrans is insured, in respect of the damage caused to those vehicles, by GIE Réunion européenne, Axa, successor in law to Union des assurances de Paris, Winterthur, successor in law to La Neuchâteloise, Le Continent and Assurances Mutuelles de France ('the insurers'), all of whom have their head office or a branch in France.

10 A number of damaged vehicles belonged to GME and were insured by Zurich, which is established in Spain. Following a settlement in the course of proceedings before a court in Saragossa (Spain) Soptrans undertook to pay ESP 120 000 000 as compensation to GME for damage sustained by the vehicles it owned.

11 In parallel with those proceedings, Soptrans sued the insurers before the Tribunal de grande instance de Perpignan (Regional Court, Perpignan) (France) seeking an order that they indemnify it in respect of the consequences of the action brought against it in the Spanish court.

12 The insurers, in turn, sought to join Zurich as a third party before the Tribunal de grande instance, on the basis of Article L. 121-4 of the French Insurance Code, which provides that, in cases of multiple insurance, the amount of indemnification to be paid to the insured is to be divided proportionately between the various insurers. Zurich contested the jurisdiction of the French court, claiming that the courts in Barcelona (Spain), where it has its head office, had jurisdiction.

13 By judgment of 2 February 1999, the Tribunal de grande instance de Perpignan held that the French courts had jurisdiction on the basis of Article 6(2) of the

Convention. Zurich appealed against that decision to the Cour d'appel de Montpellier (Court of Appeal, Montpellier) which took the view that in this case only the provisions of Section 3 of Title II of the Convention were applicable and declared that the French courts did not have jurisdiction to hear the third-party proceedings between the insurers and Zurich.

14 The insurers then appealed to the Cour de Cassation (French Court of Cassation), on the grounds that third-party proceedings based on multiple insurance were not within the scope of Article 11 of the Convention and that the existence of a connection between the original proceedings and the third-party proceedings was not one of the conditions for the application of Article 6(2) of the Convention.

15 Taking the view that, in those circumstances, the resolution of the dispute required an interpretation of the Convention, the Cour de Cassation decided to stay proceedings and to refer the following two questions to the Court for a preliminary ruling:

'1. Are third-party proceedings between insurers, based on alleged multiple insurance or co-insurance rather than on a re-insurance agreement, covered as matters relating to insurance by the provisions of Section 3 of Title II of the Brussels Convention ...?

2. Is Article 6(2) applicable when determining jurisdiction in the event of third-party proceedings between insurers and, if so, is such application contingent on there being a connection between the various claims within the meaning of Article 22 of the Convention or, at the very least, on evidence that there is sufficient connection between such claims to demonstrate that the choice of forum does not amount to an abuse?'

The questions referred for a preliminary ruling

The first question

16 Section 3 of Title II of the Convention concerns the rules of special jurisdiction in matters relating to insurance.

17 According to settled case-law, it is apparent from a consideration of the provisions of Section 3 in the light of the documents leading to their enactment that, in affording the insured a wider range of jurisdiction than that available to the insurer and in excluding any possibility of a clause conferring jurisdiction for the benefit of the insurer, they reflect an underlying concern to protect the insured, who in most cases is faced with a predetermined contract the clauses of which are no longer negotiable and is the weaker party economically (Case 201/82 *Gerling and Others* v *Amministrazione del Tesoro dello Stato* [1983] ECR 2503, paragraph 17 and Case C-412/98 *Group Josi* [2000] ECR I-5925, paragraph 64).

18 That role of protecting the party deemed to be economically weaker and less experienced in legal matters implies, however, that the application of the rules of special jurisdiction laid down to that end by the Convention should not be extended to persons for whom such protection is not justified (*Group Josi*, paragraph 65).

19 In this case, as is clear from the file submitted to the Court, the insurers sought to bring Zurich before the Tribunal de grande instance de Perpignan on the basis of

Article L. 121-4 of the French Insurance Code, which permits an insurer who is a defendant in proceedings brought by an insured to join any other insurers as third parties where there is a situation of multiple insurance, in order to obtain their contribution to indemnifying the insured party.

20 In those circumstances no special protection is justified since the parties concerned are professionals in the insurance sector, none of whom may be presumed to be in a weaker position than the others.

21 As the Advocate General rightly pointed out in paragraph 17 of his Opinion, support can be found for that view in particular in Articles 8, 10 and 12 of the Convention, which clearly contemplate proceedings brought by a policy-holder, insured or injured party, and in Article 11, which refers to proceedings brought against a policy-holder, insured, or beneficiary.

22 The authors of the Convention took as their premiss that the provisions of Section 3 of Title II were applicable only to relations characterised by an imbalance between the parties and established for that reason a body of rules on special jurisdiction which favours the party regarded as economically weaker and less experienced in legal matters. Moreover, Article 12(5) of the Convention excludes from that protective body of rules insurance contracts in which the insured enjoys considerable economic power.

23 It is therefore consistent with the letter, spirit and purpose of the provisions in question to hold that they are not applicable to relations between insurers in the context of third-party proceedings.

24 The answer to the first question is therefore that third-party proceedings between insurers based on multiple insurance are not subject to the provisions of Section 3 of Title II of the Convention.

The second question

25 Under Article 6(2) of the Convention, in the case of third-party proceedings, a person may be joined as a third party in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case.

26 In the case before the national court, the insurers sought to join Zurich as a third party before the court in which Soptrans was seeking an order that the insurers indemnify it for all the consequences of the action brought against it by GMS.

27 The claims brought by Soptrans and by the insurers before the Tribunal de grande instance de Perpignan must therefore be regarded respectively as original proceedings and third-party proceedings within the meaning of Article 6(2) of the Convention.

28 That classification is borne out by the Jenard Report on the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1979 C 59, p. 27), according to which an action within the meaning of Article 6

(2) is defined as 'brought against a third party by the defendant in an action for the purpose of being indemnified against the consequences of that action'.

29 The applicability, in this case, of Article 6(2) of the Convention remains however subject to compliance with the condition requiring that the third-party proceedings should not have been instituted with the sole object of removing the party sued from the jurisdiction of the court which would be competent in the case.

30 As both the Commission and the Advocate General, in paragraphs 32 and 33 of his Opinion, have emphasised, the existence of a connection between the two sets of proceedings before the French courts is inherent in the very concept of third-party proceedings.

31 There is an inherent relation between an action brought against an insurer seeking indemnification for the consequences of an insured event and proceedings whereby that insurer seeks contribution from another insurer considered to have provided cover for the same event.

32 It is for the national court seised of the original claim to verify the existence of such a connection, in the sense that it must satisfy itself that the third-party proceedings do not seek to remove the defendant from the jurisdiction of the court which would be competent in the case.

33 It follows that Article 6(2) of the Convention does not require the existence of any connection other than that which is sufficient to establish that the choice of forum does not amount to an abuse.

34 It should be added in that respect that, with regard to third party proceedings, Article 6(2) merely determines which court has jurisdiction and is not concerned with conditions for admissibility properly so-called. As regards procedural rules, reference must be made to the national rules applicable by the national court (Case C-365/88 *Hagen* [1990] ECR I-1845, paragraphs 18 and 19).

35 However, the application of national procedural rules may not impair the effectiveness of the Convention. A court may not apply conditions of admissibility laid down by national law which would have the effect of restricting the application of the rules of jurisdiction laid down in the Convention (*Hagen*, paragraph 20).

36 In the light of the foregoing considerations, the answer to the second question must be that Article 6(2) of the Convention is applicable to third-party proceedings between insurers based on multiple insurance, in so far as there is a sufficient connection between the original proceedings and the third-party proceedings to support the conclusion that the choice of forum does not amount to an abuse.

Costs

37 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Third-party proceedings between insurers based on multiple insurance are not subject to the provisions of Section 3 of Title II 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, 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 Portuguese Republic 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.**

2. **Article 6(2) of the Convention is applicable to third-party proceedings between insurers based on multiple insurance, in so far as there is a sufficient connection between the original proceedings and the third-party proceedings to support the conclusion that the choice of forum does not amount to an abuse.**

[Signatures]