OPINION OF ADVOCATE GENERAL JACOBS

delivered on 19 September 2002 [1]

1. This case concerns the choice of forum in accordance with Article 5(1) of the Brussels Convention, [2] where an employee is engaged by Company A ostensibly to work in one Contracting State but the employment contract is immediately suspended to allow him to work for a related Company B in another Contracting State, with Company A agreeing to pay certain expenses for the duration of that second employment, and where proceedings are brought by the employee against Company A relating to the agreements between them.

2. The Landesarbeitsgericht München (Regional Labour Court, Munich) wishes to know in those circumstances

(i) what is the place 'where the employee habitually carries out his work' for the purposes of the provision in question, and

(ii) whether jurisdiction might vest in the courts of the second Contracting State on the ground that it was the place of performance of the obligation to pay the agreed expenses.

Factual background and proceedings

3. Ms Giulia Pugliese, whose family is from Rome, was engaged by Aeritalia Società Aerospaziale Italiana ('Aeritalia') — now part of the Finmeccanica SpA group ('Finmeccanica'), the defendant — to work at its establishment in Turin, Italy, from 17 January 1990.

4. It appears however that she never worked there. By two agreements with Eurofighter Jagdflugzeug GmbH ('Eurofighter', a consortium in which Aeritalia was and Finmeccanica now is a partner to the extent of some 20%) and a further agreement with Aeritalia, all three signed in

1 — Original language: English.

2 — 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, 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) and 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).

January 1990, her employment with Aeritalia was suspended 'as agreed' for a period of at least three years and she took up a post with Eurofighter in Munich, Germany, with effect from 1 February 1990. According to Ms Pugliese, that arrangement was in pursuance of an agreement under which the partners in Eurofighter make staff available to it.

5. In the agreement suspending Ms Pugliese's employment with Aeritalia, the latter company also undertook to pay her voluntary insurance contributions in Italy, to reimburse two return air fares per year from Munich to the airport nearest her home in Italy, and to credit her on her return with full seniority for the period worked abroad. Her duties with Eurofighter could be terminated because of a change in programme, the expiry of the agreed period or, for personal reasons, by mutual agreement between the three parties. However, if she should terminate the employment with Eurofighter unilaterally, Aeritalia would be under no obligation to reinstate her. Neither the contract of employment nor the agreement suspending it contained any choice of law or jurisdiction clause.

6. It appears that Aeritalia also undertook either to pay Ms Pugliese a rent allowance or to bear the cost of renting her accommodation in Munich for the duration of her assignment. It in fact rented a flat in Munich from 1 March 1990, which it made available to her.

7. Under the contract of employment with Eurofighter, that company was to pay Ms Pugliese's salary and certain other allowances. She was to pay tax and national insurance contributions in Germany, and the contract was to be subject to German law and the competent Munich courts. It also referred to a monthly rental allowance to be agreed 'between you and your parent company'.

8. Ms Pugliese worked for Eurofighter in Munich for longer than the agreed minimum three-year period. In November 1995, however, Finmeccanica informed her that the suspension of her contract would be terminated on 29 February 1996 and that she would be employed in Turin as from 1 March. She responded with a request to be employed in Rome, for personal and family reasons. Finmeccanica, unable to accede to that request, extended the suspension of her contract for three more months, after which it ceased to pay the rent on her accommodation in Munich. She then paid the rent herself.

9. Upon Ms Pugliese's insisting on her need to work in Rome rather than Turin, Finmeccanica agreed to extend the suspension several more times, finally until 30 June 1998, but did not pay her rent or reimburse any travel expenses after 1 June 1996.

10. When she did not report for work in Turin in July 1998, Finmeccanica first imposed disciplinary measures (two suspensions and a warning) then, by letter of 7 September 1998, terminated the employment relationship.

11. Ms Pugliese continued (and possibly still continues) to work for Eurofighter.

12. The failure of Ms Pugliese and Finmeccanica to agree on the details of her return has given rise to two sets of proceedings in the Munich courts, which Ms Pugliese considers to have jurisdiction.

13. First, she brought an action before the Arbeitsgericht (Labour Court) claiming reimbursement of her rent and travel expenses from 1 June 1996. That claim was lodged on 9 February 1998, but served on Finmeccanica on 4 September 1998. On 20 August 1998, it was extended to include a challenge to the disciplinary measures.

14. Second, following the termination of the contract by Finmeccanica on 7 September 1998, she brought a separate action before the same court challenging her dismissal.

15. Both actions were dismissed at first instance, on the ground that the Arbeitsgericht had no international jurisdiction, and Ms Pugliese appealed in both cases. The two appeals were heard by different chambers of the referring court. The chamber hearing the appeal in the first case has made the present request for a preliminary ruling, whereas the chamber hearing that in the second case dismissed it without making any such reference. However, it appears from what was said at the hearing that the second case is still in abeyance and a final ruling may depend on the interpretation given by the Court in the present case.

16. The questions on which the national court seeks a ruling are as follows:

'1. In a dispute between an Italian national and a company established under Ita-

lian law having its registered office in Italy arising from a contract of employment concluded between them which designates Turin as the place of work, is Munich the place where the employee habitually carries out his work under the second part of Article 5(1) of the Brussels Convention where, from the outset, the contract of employment is temporarily placed on non-active status at the request of the employee and, during that period, the employee carries out work, with the consent of the Italian employer, but on the basis of a separate contract of employment, for a company established under German law at its registered office in Munich, for the duration of which the Italian employer assumes the obligation to provide accommodation in Munich or to bear the costs of such accommodation and to bear the costs of two journeys home each year from Munich to the employee's native country?

2. If the first question is answered in the negative, may the employee, in a legal dispute with her Italian employer arising from the contract of employment, rely, with reference to the payment of rental costs and travel costs for the two journeys home each year, on the argument that the court having jurisdiction is that for the place of performance of the obligation in question, pursuant to the first part of Article 5(1) of the Brussels Convention?'

17. The Court has received written observations from Ms Pugliese, the German and United Kingdom Governments and the Commission; Ms Pugliese and the Commission presented oral submissions at the hearing.

Brussels Convention, background and case-law

18. The Brussels Convention applies in civil and commercial matters whatever the nature of the court or tribunal. Persons domiciled in a Contracting State, whatever their nationality, are in principle to be sued in the courts of that State, the only exceptions being those pursuant to the rules set out in Sections 2 to 6 of the title relating to jurisdiction. Of those provisions, Article 5 is relevant to the present case.

19. It provides, *inter alia*:

'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; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work...'

20. Until 1989, Article 5(1) did not contain any specific provision relating to contracts of employment; it referred simply to the place of performance of the obligation in question. The remainder of the paragraph was added by the Accession Convention of that year. [3]

21. The initial absence of a specific provision was not an oversight. The Jenard Report [4] explains that labour law provisions varied between Contracting States but that work was under way to introduce a degree of harmonisation. Disputes should as far as possible be brought before the courts of the State whose law governed the contract, and the drafting committee 'did not think that rules of jurisdiction should be laid down which might not coincide with those which may later be adopted for determining the applicable law'. It was therefore decided that the general rule should apply to employment contracts also.

22. On 6 October 1976, the Court delivered judgment in two cases relating to Article 5(1) as originally worded, *Tessili* [5] and *De Bloos* [6] (although neither concerned an employment contract). In *De Bloos* it held that the place of performance is to be determined for the obligation forming the basis of the legal proceedings. According to *Tessili*, that determination comprises two steps. First the court seised must determine in accordance with its own rules of conflict of laws what law is applicable to the legal relationship in question; then in accordance with the latter law it must define the place of performance of the obligation.

23. The rules for determining the law applicable to contracts, referred to in the Jenard Report, were embodied in the Rome Convention in 1980. [7] Under Article 6(2)(a) of that convention, an individual contract of employment is governed, in the absence of a choice expressed in the contract itself, by the law of the country in which the

3 — 29 May 1989, cited above in note 2. The addition also provides for cases where the employee does not habitually carry out work in any one country, when the employer may also be sued in the courts for the place where the business which engaged the employee is or was situated. That rule, which is also reflected in the other provisions cited below, is not in issue here.

4 — Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ 1979 C 59, p. 1, at p. 24.

5 — Case 12/76 *Tessili* [1976] ECR 1473; see in particular paragraph 13 of the judgment.

6 — Case 14/76 *De Bloos* [1976] ECR 1497; see in particular paragraph 15 of the judgment.

7 — Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980, OJ 1980 L 266, p. 1.

employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country, unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the law of that other country applies.

24. The Giuliano-Lagarde Report [8] makes it clear that a concern in the drafting of that provision was to secure 'more adequate protection for the party who from the socio-economic point of view is regarded as the weaker in the contractual relationship'.

25. In *Ivenel* [9] in 1982 the Court enunciated the principle that, for contracts of employment, the connection between the court seised and the dispute before it is determined by the obligation characterising the contract, which is normally the obligation to carry out work. In arriving at that principle, it referred to the Rome Convention, to the Jenard and Giuliano-Lagarde Reports and to internal evidence that the Brussels Convention was concerned with protecting the weaker party to a contractual relationship. It stressed also that all claims arising out of a contract of employment should fall within the jurisdiction of the same court.

26. And in *Shenavai* [10] in 1987, it observed that such contracts have certain particularities on account of which the courts for the place where that characteristic obligation is to be performed are considered best suited to resolving disputes, but that where no such particularities exist (*Shenavai* concerned an architect's claim for fees) regard is to be had solely to the contractual obligation whose performance is sought in the proceedings. The particularities referred to were that employment contracts 'create a lasting bond which brings the worker to some extent within the organisational framework of the business of the undertaking or employer, and they are linked to the place where the activities are pursued, which determines the application of mandatory rules and collective agreements'.

27. *Ivenel* and *Shenavai* were confirmed in 1989 in *Six Constructions*, [11] a case which was pending before the Court at a time when further developments were being finalised in the various conventions in this field.

28. In 1988, the Lugano Convention [12] extended the principles of the Brussels

8 — Report on the Convention on the law applicable to contractual obligations, OJ 1980 C 282, p. 1, at p. 25.

9 — Case 133/81 *Ivenel* [1982] ECR 1891; see in particular paragraphs 12 to 19 of the judgment.

10 — Case 266/85 *Shenavai* [1987] ECR 239; see in particular paragraphs 16 and 17 of the judgment.

11 — Case 32/88 *Six Constructions* [1989] ECR 341; see in particular paragraph 10 of the judgment.

12 — Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, OJ 1988 L 319, p. 9.

Convention to certain European States outside the Community, and for the first time added a specific provision to cover the place of performance of individual contracts of employment: '... this place is that where the employee habitually carries out his work...'. The Jenard-Möller Report on that Convention [13] shows that there was a concern to draft a provision in line with the Court's case-law, in particular *Ivenel* and *Shenavai*, and to protect the weaker party.

29. The same concern underlay the 1989 amendment to the Brussels Convention, as appears from the Cruz-Desantes-Jenard Report. [14]

30. Since 1989, the Court has delivered several more judgments in the field of employment contracts and in the most recent of these, *Weber*, [15] it summarised the present situation as follows:

'First of all,... as regards this type of contract, the place of performance of the obligation upon which the claim is based, as referred to in Article 5(1) of the Brussels Convention, must be determined not by reference to the applicable national law in accordance with the conflict rules of the court before which the matter is brought, as is the case for most other contracts..., but by reference to uniform criteria which it is for the Court to lay down on the basis of the scheme and objectives of the Brussels Convention... [16]

Secondly,... the rule on special jurisdiction in Article 5(1)... is justified by the existence of a particularly close relationship between a dispute and the court best placed, in order to ensure the proper administration of justice and effective organisation of the proceedings, to take cognisance of the matter, and... the courts for the place in which the employee is to carry out the agreed work are best suited to resolving disputes to which the contract of employment might give rise... [17]

Thirdly, in matters relating to contracts of employment, interpretation of Article 5(1)... must take account of the concern to afford proper protection to the employee as the weaker of the contracting parties from the social point of view. Such protection is best

13 — OJ 1990 C 189, p. 57, at pp. 72-73.

14 — Report on the Convention on the accession of the Kingdom of Spain and the Portuguese Republic to the [Brussels Convention], OJ 1990 C 189, p. 35, at paragraph 23.

15 — Judgment of 27 February 2002 in Case C-37/00 *Weber*, paragraphs 38 to 41.

16 — The Court referred to *Tessili* and to Case C-125/92 *Mulox IBC* [1993] ECR I-4075, paragraphs 10, 11 and 16 of the judgment, Case C-383/95 *Rutten* [1997] ECR I-57, paragraphs 12 and 13, and Case C-440/97 *GIE Groupe Concorde* [1999] ECR I-6307, paragraph 14.

17 — The Court referred to *Mulox IBC*, cited above, paragraph 17 of the judgment, and *Rutten*, cited above, paragraph 16.

assured if disputes relating to a contract of employment fall within the jurisdiction of the courts of the place where the employee discharges his obligations towards his employer, since that is the place where it is least expensive for the employee to commence or defend court proceedings... [18]

It follows... that, as regards contracts of employment, the place of performance of the relevant obligation, for the purposes of [Article 5(1)], is the place where the employee actually performs the work covered by the contract with his employer ...' [19]

31. In *Six Constructions*, *Mulox IBC*, *Rutten* and *Weber*, the employee had been required to work in more than one jurisdiction. In *Mulox IBC* and *Rutten*, the Court held that in such cases the place of performance should be that where or from which the employee principally discharges his obligations towards his employer, or where he has established the centre of his working activities.

32. In both those cases, the employee had a fixed working base which could provide an objective criterion. *Weber* was more difficult, in that no such base appeared to exist. The Court therefore elaborated on its previous rulings, by holding that:

'... where an employee performs the obligations arising under his contract of employment in several Contracting States the place where he habitually works, within the meaning of [Article 5(1)], is the place where, or from which, taking account of all the circumstances of the case, he in fact performs the essential part of his duties *vis-à-vis* his employer.

In the case of a contract of employment under which an employee performs for his employer the same activities in more than one Contracting State, it is necessary, in principle, to take account of the whole of the duration of the employment relationship in order to identify the place where the employee habitually works, within the meaning of Article 5(1).

Failing other criteria, that will be the place where the employee has worked the longest.

It will only be otherwise if, in light of the facts of the case, the subject-matter of the

18 — The Court referred to *Mulox IBC*, paragraphs 18 and 19 of the judgment, and *Rutten*, paragraph 17.

19 — The Court referred to *Mulox IBC*, paragraph 20 of the judgment, *Rutten*, paragraph 15, and *GIE Groupe Concorde*, paragraph 14.

dispute is more closely connected with a different place of work, which would, in that case, be the relevant place for the purposes of applying Article 5(1)...

...'

33. Mention may also be made of the 'posted workers' directive', [20] which applies to certain workers posted by their employers to work for another undertaking, or for an establishment or undertaking owned by the group, in another Member State. Article 6 gives jurisdiction over disputes concerning certain guaranteed terms and conditions to the courts of the Member State in which a worker is posted. It was to be transposed into national law by 16 December 1999.

34. Finally it may be noted that, since 1 March 2002, the Brussels Convention has been replaced by Council Regulation No 44/2001, [21] which contains a section on jurisdiction over individual contracts of employment separate from the general provisions relating to contracts. Under Article 19(2)(a), an employer domiciled in a Member State may be sued, in another Member State, 'in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so'.

35. Recital 13 in the preamble to that regulation specifies that in relation to, *inter alia*, employment, 'the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules provide for'.

Analysis

Preliminary remarks

36. This novel situation is not envisaged in the Brussels Convention, nor can it be resolved by simple reference to the existing case-law.

37. Ms Pugliese had two contracts of employment, one with Aeritalia/Finmeccanica and the other with Eurofighter,

20 — Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ 1997 L 18, p. 1.

21 — Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 12, p. 1; the Convention however still applies in cases involving Denmark.

which were formally distinct but perhaps objectively linked. The only work she performed under either contract was for Eurofighter in Munich. The contract with Aeritalia/ Finmeccanica also specified a — different — place of work, but the obligation to perform that work was suspended, practically from the outset and at least until 30 June 1998. The only 'active' obligations connected with that contract during that period were those on the employer to pay or reimburse certain sums.

38. The circumstances of this case are clearly very specific. None the less, it appears that arrangements of a similar kind may be common between undertakings related in the same way as Aeritalia/ Finmeccanica and Eurofighter. It will therefore be helpful when considering the interpretation to be given to look also beyond those specific facts on which the national court must base its own decision, and it should be borne in mind that the question of jurisdiction with regard to a dispute over the termination of the contract of employment with Finmeccanica must also be determined in separate proceedings.

Provisions not directly applicable

39. A number of instruments, although they have been discussed in the proceedings and although they form part of the legal background, are not directly relevant.

40. First, the Rome Convention is not applicable *ratione temporis*. Under Article 17, it applies only to contracts made after the date on which it entered into force, namely, for both Italy and Germany, 1 April 1991 and thus after the conclusion of Ms Pugliese's contracts of employment. Moreover, the two conventions address different problems and will not always lead to the same result, desirable though it is that they should do so whenever possible.

41. Second, the posted workers directive is also inapplicable because it could not have been relied on directly before 16 December 1999 and does not appear to have been transposed into German (or Italian) law before that date. Moreover, as the national court and the Commission have pointed out, it is doubtful whether Ms Pugliese's situation would come within the scope of the directive at all, since it does not seem to meet the criteria laid down in Article 1(3): Ms Pugliese was not working under the direction of Aeritalia/ Finmeccanica, Eurofighter was not 'owned' by Aeritalia/ Finmeccanica, and Aeritalia/ Finmeccanica was not a temporary employment undertaking or placement agency.

42. Furthermore, although I have referred above to the Lugano Convention and to Regulation No 44/2001, it is clear that their provisions do not apply as such to, respectively, cases where only Contracting States to the Brussels Convention are involved and proceedings instituted before 1 March 2002.

43. However, even though they may have no direct bearing on the particular facts of the case in the main proceedings, all those instruments form part of the same legal context as the Brussels Convention and might have been relevant in slightly different circumstances. They all, moreover, underscore the concern that jurisdiction (and applicable law) should preferably be linked to the place where the employee carries out his work, a concern which is consistently based both on practical considerations and on the need to protect the employee as the weaker party in the contractual relationship.

Nature of the contract

44. Does the dispute concern 'matters relating to an individual contract of employment'?

45. The matters it concerns arise out of the contract of employment between Ms Pugliese and Aeritalia/ Finmeccanica and out of the agreements temporarily suspending the employee's obligation to work under that contract but maintaining and/or imposing certain obligations on the employer.

46. In their observations, both the United Kingdom and the Commission consider the possibility that, while that suspension prevailed, the bond between Ms Pugliese and Aeritalia/ Finmeccanica may have been something other than a contract of employment.

47. That possibility cannot be dismissed out of hand. The employee's obligation to carry out work for the employer, temporarily absent in the present case, is clearly the most characteristic (and may be regarded as a defining) feature of a contract of employment, and the Court has viewed it in that light. Other particularities to which the Court has referred are less apparent. The employee's inclusion within the employer's organisational framework is limited, and the resulting bond is weak. When no work is to be performed, there is little scope for the application of mandatory rules or collective agreements. It is also arguable that the obligations which Ms Pugliese wishes to have enforced — the payment of accommodation and travel expenses — derive from an agreement

quite separate from the original contract of employment.

48. None the less, I consider that the agreements between Ms Pugliese and Aeritalia/ Finmeccanica formed a whole which had, and never lost, the nature of a contract of employment.

49. The original agreement was undeniably a contract of employment and, as the United Kingdom points out, the employer sought to enforce it as such. The agreement suspending it appears in fact to embody an impermanent amendment of the terms of that contract and should thus be regarded as forming part of it. Many of its effects were suspended but those which remained — payment of insurance contributions and recognition of seniority — are typical obligations of an employer towards an employee. The suspending agreement included at least some of the terms on which active employment was to be resumed. The Court has not seen the terms governing payment of rent, but reimbursement of expenses attendant on relocation is also typical of an employment relationship and the obligation appears to be an integral part of the same context.

50. The employee's obligation to perform work under a contract of employment may be suspended for a variety of reasons. The suspension may be imposed by law, as in the case of maternity leave or where the employee is required to carry out some form of military or civil service. Or the employee may be freed for an agreed period to pursue study or some other activity, an arrangement which may benefit both parties. In most if not all of such cases the subsisting relationship will remain one of employment, albeit in a reduced or attenuated form.

51. It is of course not impossible to conceive of situations in which no such relationship subsists. The 'suspension' might be such purely in form but amount in fact to a termination, with no practical possibility for the employee to return to work and no real residual obligations on either side. The subsisting obligations might be wholly unrelated to the field of employment. Or the suspension and its terms might wholly replace the employment relationship with one of a different kind, as in an arrangement whereby an employee becomes an independent outside contractor providing his services on a different basis. [22]

22 — In this latter type of situation, the considerations expressed by the Court in *Shenavai*, which relate to the distinction between contracts of employment and contracts for work on a self-employed basis, are likely to be relevant.

52. However, where obligations typical of an employment contract subsist, where provision is made for reviving the characteristic obligation to perform work in that context and where no other relationship has displaced or overridden the original bond between the employer and the employee — all criteria which appear to be met in the present case — then I do not consider that suspension of even the most characteristic of the obligations of a contract of employment can change the nature of that contract.

53. In that regard, the fact that during the suspension the employee is bound by another contract of employment with another employer is of no consequence. It is not uncommon for an employee to work under several contracts of employment concurrently and there is no inherent reason why the existence of one should change the nature of another. However, in circumstances such as those of the present case, the relationship between the two contracts will be decisive for the determination of 'the place where the employee habitually carries out his work'.

Relationship between the contract and the place of work

54. If jurisdiction is to be based on the place where the employee habitually carries out his work, how can that criterion be applied when the only work carried out by the employee is performed in a place determined by a different contract with a different employer?

55. All those who have submitted observations in this case agree that the answer depends on the extent to which the two contracts are connected. If they are sufficiently linked, then the place where the employee habitually carries out his work will be the same for both. If the link is insufficient, then jurisdiction over a dispute arising out of one contract cannot be determined by the place where the employee habitually carries out work under the other.

56. There is disagreement however as to how the dividing line is to be drawn between those two situations, and that in essence is the point on which the national court seeks guidance in its first question. The German Government considers that in principle jurisdiction must be determined independently for each contract and only a very close link indeed (for example, where one company is a wholly-owned subsidiary of the other) can justify taking the place of work under one contract as a criterion in relation to the other. Ms Pugliese, the United Kingdom Government and the Commission on the other hand all favour, though to differing degrees and on differing grounds, the view that the connection in

the present case is sufficient for Munich to be treated as the relevant place of work.

57. The reasons underlying the development of the ground of jurisdiction in issue are important here. One consideration is that in a high proportion of cases the law governing the contract will be that of the State in which the work is performed and such disputes as arise will be connected with the place of work. The courts for that place will thus be objectively best placed to resolve them. The fact that the employee will by definition be habitually present there (and the employer likely to be either present or represented) is another practical consideration but one which also deals specifically with the concern, stressed consistently by both the Court and the convention drafters, to afford protection to the weaker party, the employee, by allowing him to bring or defend proceedings in the courts where it will generally be least burdensome for him to do so.

58. As I have had occasion to remark,[23] that concern cannot go as far as to allow the employee a discretion in choosing his forum or to imply that the forum should be determined on the basis of what is most convenient for him — regardless, for example, of where he carries out his work — since such an approach would run counter to the need to have uniform criteria ensuring legal certainty and to avoid any multiplicity of jurisdiction.

59. However, it is a concern which is fundamental to the rule under consideration and, unless there are good reasons for discounting it in a particular case, it should always be among the leading considerations in the interpretation and application of that rule.

60. Consequently, I find the German Government's approach too strict. The criterion of relatedness which it suggests tips the scales very firmly away from the place where the employee carries out his work, whereas they should be tipped rather towards it. Such a demanding criterion would in many cases of this sort rule out all possibility for the employee to avail himself of the intended protection despite the existence of uncontestable objective links between the place of work and the contract in relation to which the dispute arose.

61. The Commission suggests a test first adumbrated by the national court: are the two contracts so closely related that one would not have been concluded in the absence of the other? That certainly

23 — In my Opinion in *Weber*, cited above in note 15.

appears to be a useful indicator. If such a condition is met, the conclusion must surely be that the place where the work is carried out can serve as a basis for jurisdiction over disputes arising out of either contract. But again it might be too severe if viewed as a necessary condition. In the present case, Aeritalia might have offered Ms Pugliese a post and she might have accepted even if the Eurofighter post had not been available (or she had not wanted it) or, conversely, she might have been taken on by Eurofighter even if Aeritalia had not served as an intermediary. Yet neither of those possibilities affects the relationship between the contracts as they were actually signed.

62. It is not easy to formulate a single precise test which will always clearly distinguish between contracts so closely related that a single place of work will be valid for both and those whose relationship is more distant and for each of which the place of work must therefore be determined separately. I doubt, moreover, whether it is necessary or desirable to do so.

63. I would favour rather a more global approach, weighing up all the factors militating for or against a close connection between the contracts whilst bearing in mind the strong protective aim of the rule in issue. The point to be decided, although necessarily formulated in general terms, is whether the work performed by the employee is carried out 'for' or in the interest of the employer in the contract in relation to which the dispute arises, and a variety of factors must be taken into account when deciding it.

64. The criteria suggested by the German Government and the Commission undoubtedly have their place among those factors. But even if they are not satisfied, others may come into play. At the hearing, counsel for Ms Pugliese suggested a number which are in my view also relevant. To what extent was the second contract concluded with the participation of the first employer or, conversely, independently by the employee? To what extent do the contracts cross-refer to each other? Is there an arrangement between the two employers providing a framework for the coexistence of the two contracts? Is there an organic or economic relationship between the employers and if so, how close is it? Does the second contract of employment provide for a period of work sufficiently long to create a 'habitual' place of work?

65. Other factors might include whether the conclusion of the second contract was contemplated when the first was signed, whether there are any continuing rights and obligations between the employee and the first employer, whether the employee has a right to resume employment with that first employer and, if so, on what conditions.

66. Assessing the known facts of the present case on the basis of all those factors, it seems to me that the national court would be fully justified in concluding that the connection between the two contracts was sufficiently close that the work carried out by Ms Pugliese for Eurofighter under the second contract was also performed for Aeritalia/ Finmeccanica or in its interest in the context of the first contract and that the place where she habitually carried out that work may serve as a basis for jurisdiction, under Article 5(1) of the Brussels Convention, over disputes arising in relation to that first contract. Such a conclusion would also be fully in agreement with the criteria set out in *Weber*, taking account of the place where the employee worked the longest in performing the essential part of her duties *vis-à-vis* the employer, in the context of the whole duration of the employment relationship with that employer.

67. It would apply moreover not only to Ms Pugliese's principal claims for reimbursement of expenses, which are themselves objectively linked to her place of work in Munich, but also to the aspects of her action — and indeed of her second action relating to the termination of the contract — which display objective links with Turin. As the Court stressed in *Ivenel*,[24] the protective aim of the provision in question implies, *inter alia*, that the same court must have jurisdiction over all matters arising out of the same contract of employment.

Place of performance of the obligation to pay expenses

68. The considerations above answer the national court's first question in such a way as to render examination of its second question unnecessary.

69. However, it may be pointed out that, as is clear from the Court's case-law, the place of the employee's work is the only place of performance which can determine jurisdiction where contracts of employment are concerned. Thus, the place of performance of the obligation to pay expenses could be relevant only if the relationship between Ms Pugliese and Aeritalia/ Finmeccanica were found not to be one of employment. In that case, and on the assumption that the place of performance as determined in accordance with *Tessili* was indeed Munich, the result would be the same, as regards Ms Pugliese's principal claims, as that which I have reached above in my analysis of the first question.

24 — At paragraphs 18 and 19 of the judgment.

Conclusion

70. I am therefore of the opinion that the Court should give the following answer to the Landesarbeitsgericht München:

(1) Where an employee is engaged by Company A to work in one Contracting State but the contract of employment is suspended to allow him to work for Company B in another Contracting State, and where a dispute arises between the employee and Company A relating to the contract between them, the place where the employee habitually carries out his work for Company B may found jurisdiction under Article 5(1) of the Brussels Convention when there is a sufficiently close connection between the two contracts for that work to be regarded as carried out also for or in the interest of Company A. The existence and closeness of that link are to be assessed in the light of all the circumstances including, as appropriate, factors such as the following:

—whether the second contract of employment provides for a period of work sufficiently long to create a habitual place of work;

—whether one contract would have been concluded in the absence of the other;

—whether the conclusion of the second contract was contemplated when the first was signed;

—whether the second contract was concluded with the participation of the first employer or, conversely, independently by the employee;

—whether the contracts refer to each other;

—whether there is an organic or economic relationship between the employers;

—whether there is an arrangement between the two employers providing a framework for the coexistence of the two contracts;

—whether there are any continuing rights and obligations between the employee and the first employer;

—whether the employee has a right to resume employment with the first employer and, if so, on what conditions.

(2) When applying Article 5(1) of the Brussels Convention to matters arising out of an individual contract of employment, the place of performance of obligations other than the obligation to carry out work is not relevant.