Intercontainer Interfrigo SC (ICF)

v.

Balkenende Oosthuizen BV and MIC Operations BV

C-133/08

6 October 2009

Rome Convention on the law applicable to contractual obligations – Applicable law in the absence of choice – Charter-party – Connecting criteria – Separability

OPERATIVE PART:

1. The last sentence of Article 4(4) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, must be interpreted as meaning that the connecting criterion provided for in the second sentence of Article 4(4) applies to a charter-party, other than a single voyage charter-party, only when the main purpose of the contract is not merely to make available a means of transport, but the actual carriage of goods.

2. The second sentence of Article 4(1) of the Convention must be interpreted as meaning that a part of a contract may be governed by a law other than that applied to the rest of the contract only where the object of that part is independent.

Where the connecting criterion applied to a charter-party is that set out in Article 4(4) of the Convention, that criterion must be applied to the whole of the contract, unless the part of the contract relating to carriage is independent of the rest of the contract.

3. **Article 4(5) of the Convention must be construed as meaning that, where it is clear from the circumstances as a whole that the contract is more closely connected with a country other than that determined on the basis of one of the criteria set out in Article 4(2) to (4) of the Convention, it is for the court to disregard those criteria and apply the law of the country with which the contract is most closely connected.**

EXCERPT FROM THE REASONS:

1 This reference for a preliminary ruling concerns the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1) ('the Convention'). The reference relates to Article 4 of that convention on the applicable law in the absence of a choice by the parties.

2 That reference was made in the course of proceedings brought by Intercontainer Interfrigo (ICF) SC ('ICF'), a company established in Belgium, against Balkenende Oosthuizen BV ('Balkenende') and MIC Operations BV ('MIC'), two companies established in the Netherlands, seeking an order for the payment by those two companies of unpaid invoices which had been issued on the basis of a charter party entered into by the parties.

Intercontainer Interfrigo SC (ICF)

protiv

Balkenende Oosthuizen BV und MIC Operations BV

C-133/08

6. listopada 2009.

Rimska konvencija o pravu mjerodavnom za ugovorne obveze – mjerodavno pravo ako nema stranačkog izbora – brodarski ugovor – poveznice – odvojivost

IZREKA:

1. Zadnju rečenicu članka 4. stavka 4. Konvencije o pravu mjerodavnom za ugovorne obveze koja je otvorena za potpisivanje u Rimu 19. lipnja 1980. treba tumačiti na način da se poveznica iz druge rečenice članka 4. stavka 4. primjenjuje na brodarski ugovor koji nije brodarski ugovor za jedno putovanje samo ako glavni predmet ugovora nije tek puko stavljanje prijevoznog sredstva na raspolaganje, nego stvarni prijevoz robe.

2. Drugu rečenicu članka 4. stavka 1. Konvencije treba tumačiti na način da za dio ugovora može biti mjerodavno pravo različito od prava koje je mjerodavno za ostatak ugovora samo ako je predmet tog dijela ugovora neovisan.

Ako se na brodarski ugovor primjenjuje poveznica iz članka 4. stavka 4. Konvencije, taj se kriterij mora primjenjivati na cijeli ugovor, osim u slučaju da je dio ugovora koji se odnosi na prijevoz neovisan o ostatku ugovora.

3. **Članak 4. stavak 5. Konvencije treba tumačiti na način da ako je jasno iz sveukupnih okolnosti da je ugovor uže povezan s nekom drugom državom, a ne onom koja je određena na temelju jedne od poveznica iz članka 4. stavaka 2. do 4. Konvencije, na sudu je da zanemari te poveznice i da primijeni pravo države s kojom je ugovor u cjelini najuže povezan.**

IZ OBRAZLOŽENJA:

1 Zahtjev za prethodnim tumačenjem odnosi se na Konvenciju o pravu mjerodavnom za ugovorne obveze koja je otvorena za potpisivanje u Rimu 19. lipnja 1980. (SL 1980, L 266, str. 1., u daljnjem tekstu "Konvencija"). Zahtjev se odnosi na članak 4. Konvencije o pravu koje je mjerodavno ako stranke nisu izabrale mjerodavno pravo.

2 Ovaj zahtjev podnesen je u okviru sudskog spora koji vodi Intercontainer Interfrigo SC (u daljnjem tekstu: ICF), trgovačko društvo sa sjedištem u Belgiji, protiv Balkenende Oosthuizen BV (u daljnjem tekstu: Balkenende) i MIC Operations BV (u daljnjem tekstu: MIC), dvaju trgovačkih društava sa sjedištem u Nizozemskoj, radi naplate nepodmirenih računa izdanih na temelju brodarskog ugovora koji su stranke sklopile.

Legal context

3 Article 4 of the Convention, headed 'Applicable law in the absence of choice', provides:

'1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a severable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country.

2. Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.

3. Notwithstanding the provisions of paragraph 2 of this Article, to the extent that the subject matter of the contract is a right in immovable property or a right to use immovable property it shall be presumed that the contract is most closely connected with the country where the immovable property is situated.

4. A contract for the carriage of goods shall not be subject to the presumption in paragraph 2. In such a contract if the country in which, at the time the contract is concluded, the carrier has his principal place of business is also the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated, it shall be presumed that the contract is most closely connected with that country. In applying this paragraph single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods.

5. Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3 and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country.'

4 Article 10 of the Convention, headed 'Scope of the applicable law', provides:

'1. The law applicable to a contract by virtue of Articles 3 to 6 and 12 of this Convention shall govern in particular:

...

(d) the various ways of extinguishing obligations, and prescription and limitation of actions;

...'

5 Article 2 of the First Protocol of 19 December 1988 on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1989 L 48, p. 1) ('the First Protocol') provides:

Pravni okvir

3 Članak 4. Konvencije nosi naslov "Mjerodavno pravo kada ga stranke nisu izabrale" i u njemu je utvrđeno kako slijedi:

(1) Ako mjerodavno pravo za ugovor nije sporazumno određeno prema članku 3., za ugovor je mjerodavno pravo države s kojom je on najuže povezan. Ako se neki dio ugovora može odvojiti od ostatka ugovora i ako je taj dio ugovora uže povezan s nekom drugom državom, tada se na taj dio ugovora iznimno može primijeniti pravo te druge države.

(2) Podložno odredbi stavka 5., smatra se da je ugovor najuže povezan s državom u kojoj u vrijeme njegova zaključenja stranka koja obavlja karakterističnu činidbu ima uobičajeno boravište ili, ako se radi o trgovačkom društvu, udruzi ili pravnoj osobi, glavnu upravu. Ako je pak ugovor sklopljen u obavljanju profesionalne djelatnosti te stranke, smatra se da je ugovor najuže povezan s državom u kojoj se nalazi glavni poslovni nastan ili drugi poslovni nastan, ako prema ugovoru navedenu radnju treba izvršiti putem tog poslovnog nastana, a ne glavnog poslovnog nastana.

(3) Bez obzira na stavak 2., ako je predmet ugovora stvarno pravo na nekretnini ili pravo korištenja nekretnine, smatra se da je ugovor najuže povezan s državom u kojoj se nekretnina nalazi.

(4) Predmnijeva iz stavka 2. ne vrijedi za ugovore o prijevozu robe. Ti se ugovori smatraju najuže povezanima s državom u kojoj prijevoznik u vrijeme sklapanja ugovora ima glavni poslovni nastan ako se u toj državi nalazi mjesto ukrcaja, iskrcaja ili glavni poslovni nastan naručitelja. Ugovorima o prijevozu robe smatraju se za primjenu ovog stavka, i brodarski ugovori za jedno putovanje, kao i drugi ugovori čiji je glavni predmet prijevoz robe.

(5) Ne primjenjuje se stavak 2., ako se karakteristična radnja ne može odrediti. Predmnjeve iz stavaka 2., 3. i 4. ne vrijede, ako iz svih okolnosti izlazi da je ugovor uže povezan s nekom drugom državom."

4 Člankom 10. Konvencije s naslovom "Polje primjene mjerodavnog prava za ugovor" određuje se kako slijedi:

"(1) Pravo koje je mjerodavno za ugovor prema člancima 3. do 6. i 12. ove Konvencije, osobito je mjerodavno za:

...

d) različite načine prestanka obveza, kao i zastaru i gubitak prava što nastaju protekom roka,

..."

5 Člankom 2. Prvog protokola o tumačenju Konvencije o pravu mjerodavnom za ugovorne obveze otvorene za potpis 19. lipnja 1980. u Rimu od strane Suda Europskih zajednica (SL 1989, L 48, str. 1) predviđeno je sljedeće:

'Any of the courts referred to below may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning interpretation of the provisions contained in the instruments referred to in Article 1 if that court considers that a decision on the question is necessary to enable it to give judgment:

(a) …

– in the Netherlands:

de Hoge Raad,

…'

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

6 In August 1998, in the context of a project for a train connection for freight traffic between Amsterdam (Netherlands) and Frankfurt am Main (Germany), ICF entered into a charter party with Balkenende and MIC. That contract provided, inter alia, that ICF was to make train wagons available to MIC and would ensure their transport via the rail network. MIC, which had hired out the acquired load capacity to third parties, was responsible for all operational aspects of the transport of the goods concerned.

7 The parties did not enter into any written contract; they did, however, give effect, during a limited period, to what had been agreed between them. Nevertheless, ICF sent to MIC a written draft contract, which contained a clause stating that Belgian law had been chosen as the law applicable. That draft was never signed by any of the parties to the agreement.

8 On 27 November and 22 December 1998, ICF sent invoices to MIC for the amounts of EUR 107 512.50 and EUR 67 100 respectively. Whereas the first of those amounts was not paid by MIC, the second was.

9 On 7 September 2001, ICF, for the first time, gave Balkenende and MIC notice to settle the invoice sent on 27 November 1998.

10 On 24 December 2002, ICF brought an action against Balkenende and MIS before the Rechtbank te Haarlem (Local Court, Haarlem) (Netherlands) seeking an order for payment of the sum corresponding to that invoice and the related value-added tax, in the total amount of EUR 119 255.

11 As is apparent from the order for reference, Balkenende and MIC submitted that the claim at issue in the main proceedings is time-barred under the law applicable to the contract binding them to ICF, in this case Netherlands law.

12 By contrast, according to ICF, that claim is not yet time-barred under Belgian law, which it claims is the law applicable to the contract. In that regard, ICF maintains that as the contract at issue in the main proceedings is not a contract of carriage, the law applicable must be ascertained not on the basis of Article 4(4) of the Convention, but on the basis of Article 4(2), according to which the law applicable to the contract is that of the country in which ICF's principal place of business is situated.

13 The Rechtbank te Haarlem upheld the objection of limitation raised by Balkenende and MIC. In accordance with Netherlands law, that court therefore held that the right to payment of the invoice on which ICF was relying was time-barred and declared its claim inadmissible. The Gerechtshof te Amsterdam (Netherlands) (Regional Court of Appeal, Amsterdam) (Netherlands) upheld that judgment.

"Sljedeći sudovi mogu Sudu podnijeti pitanje koje se pojavi pred njima u postupku koji je u tijeku i odnosi se na tumačenje pravila koja su sadržana u konvencijama iz članka 1. ako smatraju da im je potrebna odluka o tom pitanju u svrhu donošenja presude:

a) …

– u Nizozemskoj:

de Hoge Raad

…"

Predmet glavnog postupka i prethodna pitanja

6 U kolovozu 1998. godine ICF je s društvima Balkenende i MIC sklopio brodarski ugovor u okviru željezničkog projekta za prijevoz robe između Amsterdama (Nizozemska) i Frankfurta na Maini (Njemačka). Na temelju tog ugovora ICF je među ostalim bio dužan staviti MIC-u na raspolaganje vagone i omogućiti njihov prijevoz željeznicom. MIC je iznajmio raspoložive teretne kapacitete trećim stranama i bio odgovoran za sve operativne aspekte prijevoza dotične robe.

7 Strane nisu sklopile ugovor u pisanom obliku, ali su tijekom kraćeg razdoblja provodile ono što su dogovorile. ICF je, doduše, poslao MIC-u nacrt ugovora koji je sadržavao odredbu prema kojoj je mjerodavno pravo trebalo biti belgijsko pravo. Strane ugovora nikada nisu potpisale taj nacrt ugovora.

8 Dana 27. studenog i 22. prosinca 1998. ICF je poslao MIC-u račune u iznosu od 107.512,50 eura, odnosno 67.100 eura. MIC prvi račun nije platio, ali drugi jest.

9 Dana 7. rujna 2001. ICF je prvi put poslao opomenu Balkenendeu i MIC-u i zatražio da podmire račun poslan 27. studenog 1998.

10 Dana 24. prosinca 2002. ICF je podnio tužbu sudu *Rechtbank te Haarlem* (sud u Haarlemu) (Nizozemska) protiv tvrtki Balkenende i MIC radi naplate ukupnog iznosa računa, uvećano za pripadajući porez na dodanu vrijednost, a u ukupnom iznosu od 119.255 eura.

11 Kako proizlazi iz odluke o podnošenju prethodnog pitanja, Balkenende i MIC pozvali su se na zastaru predmetne tražbine iz glavnog postupka i ustvrdili da je prema mjerodavnom pravu koje se primjenjuje na ugovor između njih i ICF-a, u ovom predmetu nizozemskom pravu, nastupila zastara predmetne tražbine.

12 S druge strane, ICF tvrdi da navedena tražbina nije zastarjela, jer prema belgijskom pravu koje je mjerodavno za ugovor, zastara još nije nastupila. Tu ICF ukazuje na to da se mjerodavno pravo, budući da se sporni ugovor iz glavnog postupka ne odnosi na prijevoz, ne određuje na temelju članka 4. stavka 4. Konvencije, nego na temelju odredbe iz članka 4. stavka 2., prema kojoj je mjerodavno pravo koje se primjenjuje na ugovor pravo države u kojoj se nalazi glavno sjedište ICF-a.

13 Sud *Rechtbank te Haarlem* prihvatio je prigovor zastare koji su istaknuli Balkenende i MIC. Primijenio je nizozemsko pravo i zaključio da je nastupila zastara zahtjeva za naplatom računa ICF-a te proglasio njihov zahtjev nedopuštenim. Sud *Gerechtshof te Amsterdam* (Nizozemska) (drugostupanjski sud u Amsterdamu) potvrdio je ovu presudu.

14 The courts hearing the merits of the case categorised the contract at issue as a contract for the carriage of goods and took the view that, even though ICF did not have the status of carrier, the main purpose of the contract was the carriage of goods.

15 However, those courts excluded the application of the connecting factor provided for in Article 4(4) of the Convention and held that the contract at issue in the main proceedings was more closely connected with the Kingdom of the Netherlands than with the Kingdom of Belgium, relying on a number of circumstances of the case, such as the other contracting parties' place of business, which is in the Netherlands, and the route taken by the train wagons between Amsterdam and Frankfurt am Main, the cities in which the goods were, respectively, loaded and unloaded.

16 It is apparent from the order for reference that those courts pointed out, in that regard, that, if that contract principally concerns the carriage of goods, Article 4(4) of the Convention is not applicable because, in the present case, there is no relevant connecting factor for the purposes of that provision. The contract is therefore governed, according to the principle set out in Article 4(1) of the Convention, by the law of the country with which it is most closely connected, in this case the Kingdom of the Netherlands.

17 According to those courts, if, as ICF maintains, the contract at issue in the main proceedings is not categorised as a contract of carriage, then Article 4(2) of the Convention is not applicable either since it is apparent from the circumstances of the present case that that contract is more closely connected with the Kingdom of the Netherlands and thus the derogating provision in the second sentence of Article 4(5) of the Convention must be applied.

18 In its appeal on a point of law, ICF relied not only on an error of law in the categorisation of that contract as a contract of carriage, but also on the possibility of the court's derogating from the general rule laid down in Article 4(2) of the Convention to apply Article 4(5) thereof. According to the applicant in the main proceedings, that possibility may be used only where it is apparent from all the circumstances that the place where the party who is to effect the performance which is characteristic of the contract is established has no genuine connecting value. That has not been established in the present case.

19 In view of those divergences on the interpretation of Article 4 of the Convention, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Must Article 4(4) of the … Convention … be construed as meaning that it relates only to voyage charter parties and that other forms of charter party fall outside the scope of that provision?

2. If [the first question] is answered in the affirmative, must Article 4(4) of the … Convention then be construed as meaning that, in so far as other forms of charter party also relate to the carriage of goods, the contract in question comes, so far as that carriage is concerned, within the scope of that provision and the applicable law is for the rest determined by Article 4(2) of the … Convention?

3. If [the second question] is answered in the affirmative, which of the two legal bases indicated should be used as the basis for examining a contention that the legal claims based on the contract are time-barred?

4. If the predominant aspect of the contract relates to the carriage of goods, should the division referred to in [the second question] not be taken into account and must then the

14 Sudovi koji su se bavili činjeničnim stanjem kvalificirali su dotični ugovor kao ugovor o prijevozu robe, jer je glavni predmet ugovora, iako ICF nije imao status prijevoznika, bio prijevoz robe.

15 Ti su sudovi međutim isključili primjenu poveznice predviđene člankom 4. stavkom 4. Konvencije i zastupali su stajalište da je predmetni ugovor iz glavnog postupka uže povezan s Kraljevinom Nizozemskom nego s Kraljevinom Belgijom, pri čemu su se oslonili na niz činjenica iz predmeta, kao što je sjedište ugovornih partnera u Nizozemskoj i ruta vagona između Amsterdama i Frankfurta na Majni, gradova u kojima je roba utovarena, odnosno istovarena.

16 Iz odluke o prethodnom pitanju proizlazi da su ti sudovi konstatirali da se ne primjenjuje članak 4. stavak 4. Konvencije, iako se ugovor uglavnom odnosi na prijevoz robe, budući da u ovom predmetu ne postoji relevantna poveznica za potrebe te odredbe. Na ugovor se stoga prema načelu iz članka 4. stavka 4. Konvencije primjenjuje pravo države s kojom postoji najuža povezanost, a to je u ovom slučaju Nizozemska.

17 Ako, kako tvrdi ICF, kod spornog ugovora iz glavnog postupka predmet ugovora nije prijevoz robe, ti sudovi smatraju da u tom slučaju nije primjenjiv članak 4. stavak 2. Konvencije, jer iz okolnosti ovog predmeta proizlazi da kod ugovora postoji uža veza s Kraljevinom Nizozemskom, tako da se mora primjenjivati iznimka iz druge rečenice članka 4. stavka 5. Konvencije.

18 ICF se u svojoj žalbi pozvao ne samo na pravnu pogrešku u kvalifikaciji dotičnog ugovora kao ugovora o prijevozu roba, nego i na mogućnost da sud odstupi od općeg pravila iz članka 4. stavka 2. i umjesto toga primijeni članak 4. stavak 5. Konvencije. ICF smatra da se ta mogućnost može iskoristiti samo ako iz sveukupnih okolnosti proizlazi da poslovni nastan stranke koja treba pružiti određenu uslugu nema stvarnu vrijednost poveznice. To u ovom predmetu nije utvrđeno.

19 S obzirom na razlike u tumačenju članka 4. Konvencije, sud *Hoge Raad der Nederlanden* donio je odluku o prekidu postupka i podnošenju sljedećih pitanja za prethodno tumačenje:

1. Treba li članak 4. stavak 4. Konvencije tumačiti na način da se ta odredba odnosi samo na brodarske ugovore za samo jedno putovanje i da su sve druge vrste brodarskih ugovora isključene?

2. Ako je odgovor na prvo pitanje potvrdan: treba li članak 4. stavak 4. Konvencije tumačiti na način da, u slučaju kada je i kod drugih vrsta brodarskih ugovora predmet ugovora prijevoz roba, dotični ugovor, što se tiče prijevoza, spada u područje primjene te odredbe i da se mjerodavno pravo određuje prema članku 4. stavku 2. Konvencije?

3. Ako je odgovor na drugo pitanje potvrdan: prema kojem se od tih dvaju pravnih poredaka treba ocijeniti prigovor zastare zahtjeva iz ugovora?

4. Ako je težište ugovora na prijevozu robe, treba li se u tom slučaju zanemariti podjela opisana u drugom pitanju i određuje li se u tom slučaju pravo mjerodavno za sve sastavne dijelove ugovora prema članku 4. stavku 4. Konvencije?

5. Treba li iznimku iz druge rečenice članka 4. stavka 5. Konvencije tumačiti na način da predmnjeve iz članka 4. stavaka 2., 3. i 4. ne vrijede samo ako iz sveukupnih okolnosti

law applicable to all constituent parts of the contract be determined pursuant to Article 4(4) of the … Convention?

5. Must the exception in the second clause of Article 4(5) of the … Convention be interpreted in such a way that the presumptions in Article 4(2) [to] (4) of the … Convention do not apply only if it is evident from the circumstances in their totality that the connecting criteria indicated therein do not have any genuine connecting value, or indeed if it is clear therefrom that there is a stronger connection with some other country?'

The questions referred for a preliminary ruling

Preliminary observations

[20-21]

The system introduced by the Convention

22 As the Advocate General pointed out in paragraphs 33 to 35 of his Opinion, it is apparent from the preamble to the Convention that it was concluded in order to continue, in the field of private international law, the work of unification of law set in motion by the adoption of the Brussels Convention of 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32).

23 It is also apparent from that preamble that the objective of the Convention is to establish uniform rules concerning the law applicable to contractual obligations, no matter where the judgment is delivered. As is apparent from the Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor, University of Paris I (OJ 1980 C 282, p. 1) ('the Giuliano and Lagarde report'), the Convention was born of a wish to eliminate the inconveniences arising from the diversity of the conflict-of-law rules in the area of contracts. The function of the Convention is to raise the level of legal certainty by fortifying confidence in the stability of legal relationships and the protection of rights acquired over the whole field of private law.

24 As regards the criteria laid down by the Convention to establish the law applicable, it must be pointed out that the uniform rules set out in Title II of the Convention enshrine the principle that priority is given to the intention of the parties, to whom Article 3 of the Convention grants freedom of choice as to the law to be applied.

25 In the absence of a choice by the parties as to the law applicable to the contract, Article 4 of the Convention provides for connecting criteria on the basis of which the court must determine that law. Those criteria apply to all categories of contracts.

26 Article 4 of the Convention is based on the general principle, which is enshrined in Article 4(1), that in order to establish a contract's connection with a national law, it is necessary to ascertain the country with which that contract is 'most closely connected'.

27 As is apparent from the Giuliano and Lagarde report, the flexibility of that general principle is modified by the 'presumptions' in Article 4(2) to (4) of the Convention. In particular, Article 4(2) sets out a presumption of a general nature, which consists in applying as the connecting criterion the place of residence of the party to the contract who effects the performance characteristic of that contract, whereas Article 4(3) and (4) establish special connecting criteria as regards contracts the subject matter of which is a right in

proizlazi da poveznice iz tih odredbi nemaju stvarnu poveznu vrijednost ili već i onda ako proizlazi da postoji uža veza s nekom drugom državom?

O pitanjima iz zahtjeva za prethodnim tumačenjem

Prethodne napomene

[20-21]

O sustavu koji se temelji na Konvenciji

22 Kako je iznio nezavisni odvjetnik u točkama 33. do 35. svog mišljenja, iz preambule Konvencije proizlazi da je ona sklopljena kako bi se na području međunarodnog privatnog prava nastavilo pravno ujednačavanje koje je započelo Konvencijom iz Bruxellesa iz 1968. o sudskoj nadležnosti i ovrsi sudskih odluka u građanskim i trgovačkim stvarima (SL 1972, L 299, str. 32).

23 Iz navedene je preambule također razvidno da je cilj Konvencije da se donesu jedinstvena pravila za određivanje prava mjerodavnog za ugovorne obveze neovisno o tome gdje se treba donijeti presuda. Kao što proizlazi iz izvještaja o Konvenciji o pravu mjerodavnom za ugovorne odnose koji su izradili Mario Giuliano, profesor na Sveučilištu u Milanu, i Paul Lagarde, profesor na Sveučilištu u Parizu I (SL. 1980, C 282, str. 1, u daljnjem tekstu: izvještaj Giuliano/Lagarde), Konvencija je rezultat želje da se uklone nedostaci koji proizlaze iz različitih kolizijskih pravila u području ugovornog prava. Svrha je Konvencije povećati razinu pravne sigurnosti kroz jačanje povjerenja u stabilnost pravnih odnosa i zaštitu stečenih prava u području sveukupnog privatnog prava.

24 Što se tiče kriterija koji se utvrđuju Konvencijom za potrebe određivanja mjerodavnog prava, može se konstatirati da se jedinstvenim pravilima iz Glave II Konvencije utvrđuje načelo prema kojem prednost ima volja stranaka kojima je člankom 3. Konvencije zajamčena sloboda izbora mjerodavnog prava.

25 Ako stranke ne izaberu mjerodavno pravo za ugovor, člankom 4. Konvencije predviđaju se poveznice temeljem kojih sudac mora odrediti mjerodavno pravo. Te poveznice odnose se na sve kategorije ugovora.

26 Članak 4. Konvencije počiva na općem načelu, utvrđenom njegovim stavkom 1., prema kojem za potrebe utvrđivanja kojem pravu pripada neki ugovor treba utvrditi s kojom je državom taj ugovor "najuže povezan".

27 Kako proizlazi iz izvještaja Giuliano/Lagarde, fleksibilnost ovog općeg načela ublažena je "predmnjevama" koje su predviđene člankom 4. stavkom 2. do 4. Konvencije. Posebno se u članku 4. stavku 2. navodi predmnijeva općeg karaktera koja se sastoji u tome da se kao poveznica primjenjuje uobičajeno boravište ugovorne strane koja izvršava karakterističnu činidbu, dok se člankom 4. stavcima 3. i 4. utvrđuju posebne poveznice u pogledu ugovora čiji je predmet stvarno pravo na nekretnini, odnosno prijevoz robe. Čla-

immoveable property and contracts of carriage respectively. Article 4(5) of the Convention contains an exception clause which makes it possible to disregard those presumptions.

The first question and the first part of the second question, relating to the application of Article 4(4) of the Convention to charter-parties

[28-30]

The Court's reply

31 By its first question and by the first part of its second question, the national court in essence asks the Court whether Article 4(4) of the Convention applies to charter-parties other than single voyage charter-parties and asks the Court to state the factors which allow a charter-party to be categorised as a contract of carriage for the purposes of applying that provision to the contract at issue in the main proceedings.

32 In that regard, it must be noted, as a preliminary point, that, pursuant to the second sentence of Article 4(4) of the Convention, a contract for the carriage of goods is governed by the law of the country in which, at the time the contract is concluded, the carrier has his principal place of business if the place of loading or the place of discharge or the principal place of business of the consignor is situated in that same country. The last sentence of Article 4(4) of the Convention provides that, in applying that paragraph, 'single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods'.

33 It is apparent from the wording of that provision that the Convention equates with contracts of carriage not only single voyage charter-parties but also other contracts, in so far as the main purpose of those contracts is the carriage of goods.

34 Therefore, one of the aims of that provision is to extend the scope of the rule of private international law laid down in the second sentence of Article 4(4) of the Convention to contracts the main purpose of which is the carriage of goods, even if they are classified as charter-parties under national law. In order to ascertain that purpose, it is necessary to take into consideration the objective of the contractual relationship and, consequently, all the obligations of the party who effects the performance which is characteristic of the contract.

35 In a charter-party, the owner, who effects such a performance, undertakes as a matter of course to make a means of transport available to the charterer. However, it is conceivable that the owner's obligations relate not merely to making available the means of transport but also to the carriage of goods proper. In such circumstances, the contract in question comes within the scope of Article 4(4) of the Convention where its main purpose is the carriage of goods.

36 It must, however, be pointed out that the presumption set out in the second sentence of Article 4(4) of the Convention applies only when the owner – assuming that he is regarded as the carrier – has his principal place of business, at the time the contract is concluded, in the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated.

nak 4. stavak 5. Konvencije sadrži odredbu o iznimci koja dopušta da se zanemare te predmnjeve.

O prvom pitanju i prvom dijelu drugog pitanja: primjena članka 4. stavka 4. Konvencije na brodarske ugovore

[28-30]

Odgovor suda

31 Prvim pitanjem i prvim dijelom drugog pitanja nacionalni sud u osnovi pita Sud EZ-a primjenjuje li se članak 4. stavak 4. Konvencije i na brodarske ugovore koji se ne odnose samo na jedno putovanje i traži od Suda da navede čimbenike koji omogućuju da se brodarski ugovor kvalificira kao ugovor o prijevozu za potrebe primjene ove odredbe na ugovor o kojem je riječ u glavnom postupku.

32 Ovdje je potrebno napomenuti da je za ugovor o prijevozu prema drugoj rečenici članka 4. stavka 4. Konvencije mjerodavno pravo one države u kojoj je prijevoznik u trenutku sklapanja ugovora imao svoj glavni poslovni nastan, ako se u toj državi nalazi i mjesto utovara ili mjesto istovara ili glavni poslovni nastan pošiljatelja. Prema članku 4. stavku 4. zadnjoj rečenici Konvencije "kao ugovori za prijevoz roba … za potrebe primjene ovog stavka smatraju se i brodarski ugovori za samo jedno putovanje i ostali ugovori čiji je osnovni predmet prijevoz roba".

33 Iz teksta te odredbe proizlazi da Konvencija s ugovorima o prijevozu izjednačava ne samo brodarske ugovore za samo jedno putovanje, nego i ostale ugovore ako je njihov osnovni predmet ugovora prijevoz roba.

34 Stoga je jedna od svrha te odredbe da se proširi opseg primjene kolizijskog pravila iz druge rečenice članka 4. stavka 4. Konvencije na ugovore čiji je osnovni predmet prijevoz robe, čak i ako su prema nacionalnom pravu kvalificirani kao brodarski ugovori. Radi utvrđivanja predmeta ugovora, potrebno je uzeti u obzir svrhu ugovora te time i sveukupne obveze stranaka koje ispunjavaju karakterističnu činidbu.

35 Kod brodarskog ugovora vlasnik koji izvršava takvu činidbu preuzima obvezu staviti prijevozno sredstvo na raspolaganje najmoprimcu. Međutim, nije isključeno da se obveze vlasnika ne odnose samo na puko stavljanje prijevoznog sredstva na raspolaganje, nego i na sami prijevoz robe. U tom se slučaju na dotični ugovor primjenjuje članak 4. stavak 4. Konvencije, ako je prijevoz robe osnovni predmet ugovora.

36 Potrebno je, doduše, istaknuti da predmnijeva iz druge rečenice članka 4. stavka 4. Konvencije vrijedi samo ako vlasnik koji se smatra prijevoznikom u trenutku sklapanja ugovora ima glavni poslovni nastan u državi u kojoj se nalazi mjesto utovara, odnosno mjesto istovara ili glavni poslovni nastan pošiljatelja.

37 On the basis of those considerations, the answer to the first question and the first part of the second question is that the last sentence of Article 4(4) of the Convention must be interpreted as meaning that the connecting criterion provided for in the second sentence of Article 4(4) applies to a charter-party, other than a single voyage charter-party, only when the main purpose of the contract is not merely to make available a means of transport, but the actual carriage of goods.

The second part of the second question and the third and fourth questions, relating to the possibility of the Court's dividing the contract into a number of parts for the purpose of determining the law applicable

[38-40]

The Court's reply

41 By the second part of its second question and the third and fourth questions, the national court in essence asks in which circumstances it is possible, under the second sentence of Article 4(1) of the Convention, to apply different national laws to the same contractual relationship, in particular as regards the limitation of the rights under a contract such as that at issue in the main proceedings. The Hoge Raad der Nederlanden asks, inter alia, whether, if the connecting criterion provided for in Article 4(4) of the Convention applies to a charter-party, that criterion relates only to the part of the contract concerning the carriage of goods.

42 In that regard, it must be borne in mind that, under the second sentence of Article 4(1) of the Convention, a part of the contract may, by way of exception, be made subject to a law other than that applied to the rest of the contract, where it has a closer connection with a country other than that with which the other parts of the contract are connected.

43 It is apparent from the wording of that provision that the rule providing for the severance of a contract is of an exceptional nature. In that regard, the Giuliano and Lagarde report states that the words 'by way of exception' in the last sentence of Article 4(1) 'are … to be interpreted in the sense that the court must have recourse to severance as seldom as possible'.

44 In order to ascertain the conditions in which the court may sever the contract, it is necessary to consider that the objective of the Convention, as was stated in the preliminary observations in paragraphs 22 to 23 of this judgment, is to raise the level of legal certainty by fortifying confidence in the stability of the relationships between the parties to the contract. Such an objective cannot be attained if the system for determining the applicable law is unclear and that law cannot be predicted with some degree of certainty.

45 As the Advocate General pointed out in paragraphs 83 and 84 of his Opinion, the possibility of separating a contract into a number of parts in order to make it subject to a number of laws runs counter to the objectives of the Convention and must be allowed only where there are a number of parts to the contract who may be regarded as independent of each other.

46 Consequently, in order to determine whether a part of a contract may be made subject to a different law it is necessary to ascertain whether the object of that part is independent in relation to the purpose of the rest of the contract.

37 Na temelju ovih razmatranja, odgovor na prvo pitanje i na prvi dio drugog odgovora jest da članak 4. stavak 4. zadnju rečenicu Konvencije treba tumačiti na način da se poveznica predviđena člankom 4. stavkom 4. rečenicom 2. odnosi na brodarski ugovor koji nije ugovor samo za jedno putovanje jedino u slučaju kada osnovni predmet ugovora nije puko stavljanje prijevoznog sredstva na raspolaganje, nego stvarni prijevoz robe.

O drugom dijelu drugog pitanja i trećem i četvrtom pitanju, u vezi s mogućnosti da Sud podijeli ugovor na više dijelova za potrebe određivanja mjerodavnog prava

[38-40]

Odgovor Suda

41 Drugim dijelom drugog pitanja i trećim i četvrtim pitanjem nacionalni sud u osnovi želi znati pod kojim je okolnostima moguće prema drugoj rečenici članka 4. stavka 1. Konvencije na jedan te isti ugovorni odnos primijeniti različita nacionalna prava, posebno u pogledu zastare prava po ugovoru kakav je ugovor o kojem je riječ u glavnom postupku. Sud *Hoge Raad der Nederlanden* osobito želi znati odnosi li se, u slučaju kada se na brodarski ugovor primjenjuje poveznica predviđena člankom 4. stavkom 4. Konvencije, ta poveznica samo na onaj dio ugovora koji se tiče prijevoza robe.

42 U tom je pogledu potrebno imati na umu da prema drugoj rečenici članka 4. stavka 1. Konvencije za dio ugovora iznimno može biti mjerodavno neko drugo pravo, a ne ono koje je mjerodavno za ostatak ugovora, ako je taj dio uže povezan s nekom drugom državom, a ne s onom s kojom je povezan ostatak ugovora.

43 Iz teksta te odredbe proizlazi da pravilo koje predviđa podjelu ugovora ima izniman karakter. U tom pogledu izvještaj Giuliano/Lagarde ukazuje na to da se riječ "iznimno" u članku 4. stavku 1. zadnjoj rečenici "treba tumačiti tako da sud treba što rjeđe pribjeći podjeli ugovora".

44 Kod utvrđivanja pretpostavki pod kojima sud može provesti podjelu ugovora potrebno je uzeti u obzir cilj Konvencije koji se, kako je navedeno u prethodnim napomenama pod točkama 22. i 23. ove presude, sastoji u tome da se poveća razina pravne sigurnosti kroz jačanje povjerenja u stabilnost odnosa između ugovornih strana. Takav se cilj ne može ostvariti ako sustav za utvrđivanje mjerodavnog prava nije jasan i ako se mjerodavno pravo ne može predvidjeti s određenim stupnjem sigurnosti.

45 Kako je iznio nezavisni odvjetnik u točkama 83. i 84. svog mišljenja, mogućnost razdvajanja ugovora na više dijelova kako bi podlijegali različitim pravima u suprotnosti je s ciljevima Konvencije i smije se dopustiti samo onda kada ugovor obuhvaća više dijelova koji se mogu promatrati međusobno neovisno.

46 Stoga je za potrebe utvrđivanja treba li se jedan dio ugovora podvrgnuti nekom drugom pravu potrebno utvrditi je li predmet tog dijela autonoman u odnosu na ostatak ugovora.

47 If that is the case, each part of a contract must be made subject to one single law. In particular, therefore, the rules relating to the prescription of a right must fall under the same legal system as that applied to the corresponding obligation. In that regard, it must be borne in mind that, under Article 10(1)(d) of the Convention, the law applicable to a contract governs in particular the prescription of obligations.

48 In the light of those considerations, the answer to the second part of the second question and the third and fourth questions is that the second sentence of Article 4(1) of the Convention must be interpreted as meaning that a part of a contract may be governed by a law other than that applied to the rest of the contract only where the object of that part is independent.

49 Where the connecting criterion applied to a charter-party is that set out in Article 4(4) of the Convention, that criterion must be applied to the whole of the contract, unless the part of the contract relating to carriage is independent of the rest of the contract.

The fifth question, relating to the application of the second clause of Article 4(5) of the Convention

[50-52]

The Court's reply

53 By its fifth question, the national court asks whether the exception in the second clause of Article 4(5) of the Convention must be interpreted in such a way that the presumptions in Article 4(2) to (4) of the Convention do not apply only if it is evident from the circumstances in their totality that the connecting criteria indicated therein do not have any genuine connecting value, or whether the court must also refrain from applying them if it is clear from those circumstances that there is a stronger connection with some other country.

54 As was pointed out in the preliminary observations in paragraphs 24 to 26 of this judgment, Article 4 of the Convention, which sets out the connecting criteria applicable to contractual obligations in the absence of a choice by the parties of the law applicable to the contract, lays down, in Article 4(1), the general principle that the contract is to be governed by the law of the country with which it is most closely connected.

55 In order to ensure a high level of legal certainty in contractual relationships, Article 4(2) to (4) of the Convention provides for a set of criteria on the basis of which it is possible to presume which country the contract is most closely connected with. Those criteria operate like presumptions in the sense that the court before which a case has been brought must take them into consideration in determining the law applicable to the contract.

56 Under the first clause of Artičle 4(5) of the Convention, the connecting criterion of the place of residence of the party effecting the performance which is characteristic of the contract may be disregarded if that place of residence cannot be determined. Under the second clause of Article 4(5), all the 'presumptions' may be disregarded 'if it appears from the circumstances as a whole that the contract is more closely connected with another country'.

57 In that regard, it is necessary to establish the function and objective of the second clause of Article 4(5) of the Convention.

47 Ako je to slučaj, svaki se dio ugovora mora podvrgnuti jednom jedinom pravu. Stoga posebice odredbe o zastari nekog prava moraju potpadati pod isti pravni poredak koji se odnosi na dotičnu obvezu. U tom je pogledu potrebno uzeti u obzir da se pravo mjerodavno za ugovor prema članku 10. stavku 1. lit. (d) Konvencije posebno odnosi na zastaru tražbine.

48 Na temelju ovih razmatranja, odgovor na drugi dio drugog pitanja te na treće i četvrto pitanje jest da članak 4. stavak 1. rečenicu 2. Konvencije treba tumačiti tako da se dio ugovora može podvrgnuti nekom drugom pravu različitom od onoga koje je mjerodavno za ostatak ugovora samo ako je predmet tog dijela ugovora autonoman.

49 Ako se na brodarski ugovor primjenjuje poveznica predviđena člankom 4. stavkom 4. Konvencije, ta se poveznica mora primijeniti na cijeli ugovor, osim u slučaju da je dio ugovora koji se odnosi na prijevoz autonoman u odnosu na ostatak ugovora.

O petom pitanju, u vezi s primjenom druge odredbe članka 4. stavka 5. Konvencije

[50-52]

Odgovor Suda

53 U petom pitanju nacionalni sud pita treba li iznimku iz druge rečenice članka 4. stavka 5. Konvencije tumačiti tako da se predmnjeve koje proizlaze iz članka 4. stavka 2. do 4. ne primjenjuju samo ako je iz sveukupnih okolnosti očito da ondje navedene poveznice nemaju stvarnu poveznu vrijednost ili na način da ih sud ne smije primijeniti ni u slučaju kada je iz tih okolnosti jasno da postoji uža veza s nekom drugom državom.

54 Kako je izneseno u preliminarnim napomenama pod točkama 24. do 26. ove presude, člankom 4. Konvencije, u kojem su definirane poveznice koje vrijede za ugovorne obvezne odnose u slučaju kada stranke nisu izabrale mjerodavno pravo, utvrđeno je opće načelo da ugovor podliježe pravu države s kojom je najuže povezan.

55 Kako bi se osigurala visoka razina pravne sigurnosti u ugovornim odnosima, u članku 4. Konvencije u stavcima 2. do 4. utvrđen je niz kriterija na temelju kojih se može predmnijevati s kojom je državom ugovor najuže povezan. Ti kriteriji funkcioniraju kao predmnijeve u smislu da ih sud koji se bavi tim predmetom mora uzeti u obzir kod određivanja prava mjerodavnog za ugovor.

56 Prema prvoj rečenici članka 4. stavka 5. Konvencije, poveznica mjesta uobičajenog boravišta stranke koja ispunjava karakterističnu činidbu ne može se primijeniti ako se to mjesto ne može utvrditi. Prema drugoj rečenici članka 4. stavka 5., sve se "predmnjeve" mogu zanemariti "ako iz sveukupnih okolnosti proizlazi da je ugovor uže povezan s nekom drugom državom".

57 U tom pogledu potrebno je utvrditi funkciju i svrhu druge rečenice članka 4. stavka 5. Konvencije.

58 Prema izvještaju Giuliano/Lagarde, autori Konvencije smatrali su "bitnim da se u svim slučajevima u kojim iz sveukupnih okolnosti proizlazi da je ugovor uže povezan s nekom drugom državom predvidi mogućnost primjene nekog drugog prava, a ne onog na koje ukazuju predmnjeve iz stavaka 2., 3. i 4.". Isto tako, iz izvještaja proizlazi da se člankom 4. stavkom 5. Konvencije sudu ostavlja "određena diskrecijska sloboda kod procjene postoje li sveukupne okolnosti koje u određenom slučaju opravdavaju zanemariva-

58 It is apparent from the Giuliano and Lagarde report that the draftsmen of the Convention considered it essential 'to provide for the possibility of applying a law other than those referred to in the presumptions in paragraphs 2, 3 and 4 whenever all the circumstances show the contract to be more closely connected with another country'. It is also apparent from that report that Article 4(5) of the Convention leaves the court 'a margin of discretion as to whether a set of circumstances exists in each specific case justifying the non-application of the presumptions in paragraphs 2, 3 and 4' and that such a provision constitutes 'the inevitable counterpart of a general conflict rule intended to apply to almost all types of contract'.

59 It thus follows from the Giuliano and Lagarde report that the objective of Article 4(5) of the Convention is to counterbalance the set of presumptions stemming from the same article by reconciling the requirements of legal certainty, which are satisfied by Article 4(2) to (4), with the necessity of providing for a certain flexibility in determining the law which is actually most closely connected with the contract in question.

60 Since the primary objective of Article 4 of the Convention is to have applied to the contract the law of the country with which it is most closely connected, Article 4(5) must be interpreted as allowing the court before which a case has been brought to apply, in all cases, the criterion which serves to establish the existence of such connections, by disregarding the 'presumptions' if they do not identify the country with which the contract is most closely connected.

61 It therefore falls to be ascertained whether those presumptions may be disregarded only where they do not have any genuine connecting value or where the court finds that the contract is more closely connected with another country.

62 As is apparent from the wording and the objective of Article 4 of the Convention, the court must always determine the applicable law on the basis of those presumptions, which satisfy the general requirement of foreseeability of the law and thus of legal certainty in contractual relationships.

63 However, where it is clear from the circumstances as a whole that the contract is more closely connected with a country other than that identified on the basis of the presumptions set out in Article 4(2) to (4) of the Convention, it is for that court to refrain from applying Article 4(2) to (4).

64 In the light of those considerations, the answer to the fifth question must be that Article 4(5) of the Convention must be construed as meaning that, where it is clear from the circumstances as a whole that the contract is more closely connected with a country other than that determined on the basis of one of the criteria set out in Article 4(2) to (4) of the Convention, it is for the court to disregard those criteria and apply the law of the country with which the contract is most closely connected.

nje predmnjeva iz stavaka 2., 3. i 4.", i da takva odredba predstavlja "bitno protupravilo u odnosu na opće kolizijsko pravilo općeg karaktera koje se treba primjenjivati na skoro sve vrste ugovora".

59 Stoga iz izvještaja Giuliano/Lagarde proizlazi da je cilj članka 4. stavka 5. Konvencije da se stvori protuteža sustavu predmnijeva koji proizlazi iz tog članka na način da se zahtjevi pravne sigurnosti koji dolaze do izražaja u članku 4. stavcima 2. do 4. usklađuju s potrebom osiguranja određene fleksibilnosti kod određivanja prava koje je stvarno najuže povezano s dotičnim pitanjem.

60 Budući da je osnovni cilj članka 4. Konvencije da se na ugovor primijeni pravo one države s kojom je on najuže povezan, članak 4. stavak 5. mora se tumačiti na način da dopušta sudu kojem je podnesen predmet da u svim slučajevima primijeni kriterij koji omogućava da se utvrdi postojanje takvih poveznica, pri čemu se "predmnjeve" ne primjenjuju ako ne upućuju na državu s kojom je ugovor najuže povezan.

61 Stoga je potrebno utvrditi mogu li se te predmnjeve zanemariti samo ako nemaju stvarnu poveznu vrijednost ili i onda kada sud ustanovi da je ugovor uže povezan s nekom drugom državom.

62 Kako proizlazi iz teksta i cilja članka 4. Konvencije, sud uvijek mora odrediti mjerodavno pravo na temelju navedenih predmnijeva koje uvažavaju opći zahtjev da postoji predvidivost prava te pravna sigurnost u ugovornim odnosima.

63 Ako međutim jasno proizlazi iz sveukupnih okolnosti da je ugovor uže povezan s nekom drugom državom, a ne onom na koju upućuju predmnjeve navedene u članku 4. stavcima 2. do 4. Konvencije, na sudu je da odustane od primjene članka 4. stavaka 2. do 4.

64 S obzirom na ova razmatranja, odgovor na peto pitanje jest da se članak 4. stavak 5. Konvencije treba tumačiti na način da je na sudu, ako jasno proizlazi iz sveukupnih okolnosti da je ugovor uže povezan s nekom drugom državom, a ne s onom koja se određuje na temelju jednog od kriterija koji su predviđeni člankom 4. stavcima 2. do 4., da te kriterije zanemari i da primijeni pravo zemlje s kojom je ugovor najuže povezan.

Wood Floor Solutions Andreas Domberger GmbH

v.

Silva Trade SA

C-19/09

11 March 2010

Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters – Regulation (EC) No 44/2001 – Special jurisdiction – Article 5(1)(a) and (b), second indent – Provision of services – Commercial agency contract – Performance in several Member States

OPERATIVE PART:

1. The second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that provision is applicable in the case where services are provided in several Member States.

2. The second indent of Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that where services are provided in several Member States, the court which has jurisdiction to hear and determine all the claims arising from the contract is the court in whose jurisdiction the place of the main provision of services is situated. For a commercial agency contract, that place is the place of the main provision of services by the agent, as it appears from the provisions of the contract or, in the absence of such provisions, the actual performance of that contract or, where it cannot be established on that basis, the place where the agent is domiciled.

EXCERPT FROM THE REASONS:

1 This reference for a preliminary ruling concerns the interpretation of the rule of special jurisdiction for contracts for the provision of services laid down in the second indent of Article 5(1)(b) of 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 regulation').

2 The reference has been made in the course of proceedings between Wood Floor Solutions Andreas Domberger GmbH ('Wood Floor'), established at Amstetten (Austria), and Silva Trade SA ('Silva Trade'), established at Wasserbillig (Luxembourg), relating to a claim for compensation for the termination of a commercial agency contract performed in several Member States.

Legal background

3 According to recital 1 in the preamble to the regulation:

'The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. In order

Wood Floor Solutions Andreas Domberger GmbH

protiv

Silva Trade SA

C-19/09

11. ožujka 2010.

Nadležnost i priznanje i ovrha sudskih odluka u građanskim i trgovačkim stvarima – Uredba (EZ) br. 44/2001 – posebna nadležnost – članak 5. stavak 1. podstavak a. i b. druga alineja – pružanje usluga – ugovor o trgovačkom zastupanju – ispunjenje ugovora u više država članica

IZREKA:

1. Članak 5. stavak 1. podstavak b. drugu alineju Uredbe Vijeća (EZ) br. 44/2001 od 22. prosinca 2000. o nadležnosti i priznanju i ovrsi sudskih odluka u građanskim i trgovačkim stvarima treba tumačiti tako da se ta odredba primjenjuje ako se usluge pružaju u više država članica.

2. Članak 5. stavak. 1. podstavak b. drugu alineju Uredbe br. 44/2001 treba tumačiti tako da je u slučaju pružanja usluga u više država članica, za odlučivanje o tužbama iz ugovora nadležan sud na čijem se području nalazi mjesto gdje se pretežno pružaju usluge. Kod ugovora o trgovačkom zastupanju to je mjesto u kojem trgovački zastupnik uglavnom pruža svoje usluge kao što to proizlazi iz ugovornih odredaba ili, ako ne postoje takve odredbe, iz njegova stvarnog obavljanja rada; ako se to mjesto ne može utvrditi tako, onda se mjestom pružanja usluga smatra prebivalište trgovačkog zastupnika.

IZ OBRAZLOŽENJA:

1 Ovaj se prethodni postupak odnosi na tumačenje pravila posebne nadležnosti suda za ugovore o pružanju usluga iz članka 5. stavka 1. podstavka b. druge alineje Uredbe (EZ) br. 44/2001 Vijeća od 22. prosinca 2000. o nadležnosti i priznanju i ovrsi sudskih odluka u građanskim i trgovačkim stvarima (Sl.2001, L 12, str. 1, u daljnjem tekstu: Uredba).

2 Zahtjev za prethodnim tumačenjem postavljen je u okviru spora između društva Wood Floor Solutions Andreas Domberger GmbH (u daljnjem tekstu: Wood Floor) sa sjedištem u Amstettenu (Austrija) i društva Silva Trade SA (u daljnjem tekstu: Silva Trade) sa sjedištem u Wasserbilligu (Luksemburg), radi naknade štete nastale zbog otkazivanja ugovora o trgovačkom zastupanju koji je bio ispunjen u više država članica.

Pravni okvir

3 Prva uvodna izjava Uredbe glasi:

"Zajednica je postavila za svoj cilj održavanje i razvoj prostora slobode, sigurnosti i pravde, na kojem je osigurano slobodno kretanje osoba. Za postupnu uspostavu takva po-