JUDGMENT OF THE COURT (Third Chamber)
27 October 1998 *

In Case C-51/97,

REFERENCE to the Court by the Cour de Cassation (France), under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, for a preliminary ruling in the proceedings pending before that court between

Réunion Européenne SA and Others

and

Spliethoff's Bevrachtingskantoor BV,

and the Master of the vessel *Alblasgracht V002*,

on the interpretation of Articles 5(1) and (3) and 6 of the said Convention of 27 September 1968 (OJ 1975 L 204, p. 28), 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),

* Language of the case: French.

THE COURT (Third Chamber),

composed of: J.-P. Puissochet, President of the Chamber, J. C. Moitinho de Almeida (Rapporteur) and C. Gulmann, Judges,

Advocate General: G. Cosmas,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Spliethoff's Bevrachtingskantoor BV and the Master of the *Alblasgracht V002*, by D. Le Prado, of the Paris Bar,

— the French Government, by K. Rispal-Bellanger, Head of Sub-directorate in the Legal Directorate, Ministry of Foreign Affairs, and J.-M. Belorgey, Chargé de Mission in the same Directorate, acting as Agents,

— the German Government, by P. Gass, Ministerialdirigent in the Federal Justice Ministry, acting as Agent,

— the Commission of the European Communities, by J. L. Iglesias, Legal Adviser, acting as Agent, assisted by H. Lehman, of the Paris Bar,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 5 February 1998,

gives the following

Judgment

1 By judgment of 28 January 1997, received at the Court on 7 February 1997, the Cour de Cassation (Court of Cassation) referred to the Court for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters four questions on the interpretation of Articles 5(1) and (3) and 6 of that convention (OJ 1975 L 204, p. 28), 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).

2 Those questions arose in proceedings brought by nine insurance companies and, as lead insurer, the company Réunion Européenne (hereinafter 'the insurers'), which have been subrogated to the rights of the company Brambi Fruits (hereinafter 'Brambi'), whose registered office is in Rungis (France), against Spliethoff's Bevrachtingskantoor BV, whose registered office is in Amsterdam (Netherlands), and the Master of the vessel *Alblasgracht V002*, residing in the Netherlands, following the discovery of damage to a cargo of 5 199 cartons of pears delivered to Brambi, in the carriage of which the defendants were involved.

The Convention

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

'Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.'

4 The first paragraph of Article 3 provides:

'Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.'

5 According to Article 5 of the Convention,

'[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 ...

...

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;

...'

6 Article 6(1) of the Convention adds that where such a person is one of a number of defendants, he may also be sued in the courts for the place where any one of them is domiciled.

7 Finally, Article 22 provides:

'Where related actions are brought in the courts of different Contracting States, any court other than the court first seised may, while the actions are pending at first instance, stay its proceedings.'

The main proceedings

8 The goods at issue in the main proceedings were carried by sea, in eight refrigerated containers, from Melbourne (Australia) to Rotterdam (Netherlands) aboard the vessel *Alblasgracht V002* under a bearer bill of lading issued on 8 May 1992 in Sydney, Australia, by Refrigerated Container Carriers PTY Ltd (hereinafter 'RCC'), whose registered office is in Sydney, then by road under an international consignment note, to Rungis in France, where Brambi discovered the damage. The fruit had ripened prematurely owing to a breakdown in the cooling system.

9 The insurers paid compensation for the damage suffered by Brambi. Having been subrogated to that company's rights as a result of that payment, they brought proceedings to recoup their loss against RCC on whose headed paper the bill of lading had been issued for the sea voyage, against Spliethoff's Bevrachtingskantoor BV, which actually carried the goods by sea despite not being mentioned on the bill of lading, and, finally, against the Master of the vessel *Alblasgracht V002*, as representative of the owners and charterers of that vessel, before the Tribunal de Commerce (Commercial Court), Créteil, in whose jurisdiction Rungis is situated.

10 By judgment of 17 May 1994 the Tribunal de Commerce, Créteil, declared that it had jurisdiction as regards RCC, on the basis that the goods were to be delivered to Brambi in Rungis. However, it declined jurisdiction under Article 5(1) of the Convention as regards Spliethoff's Bevrachtingskantoor BV and the Master of the vessel *Alblasgracht V002*, taking the view that the operation did not constitute a through transport operation from Melbourne to Rungis since an international consignment note had been drawn up for the carriage of the goods from Rotterdam to Rungis. The Tribunal de Commerce, Créteil, therefore considered that it should decline jurisdiction in the proceedings brought by the insurers against Spliethoff's Bevrachtingskantoor BV and the Master of the vessel *Alblasgracht V002* in favour of the courts of Rotterdam, Rotterdam being the place of performance of the obligation within the meaning of Article 5(1) of the Convention, or those of Amsterdam or of Sydney pursuant to Article 6(1) of the Convention, according to which a person who is one of a number of defendants may be sued before the courts for the place where any one of them is domiciled.

11 The Cour d'Appel (Court of Appeal), Paris, confirmed, by judgment of 16 November 1994, that the Tribunal de Commerce, Créteil, lacked international jurisdiction as regards Spliethoff's Bevrachtingskantoor BV and the Master of the vessel *Alblasgracht V002*, whereupon the insurers appealed to the Cour de Cassation, claiming that it had not been established that Brambi had concluded an agreement with those defendants and that the Cour d'Appel could not therefore apply Article 5(1) of the Convention to them. According to the insurers, the Cour d'Appel should have applied Article 5(3) of the Convention concerning jurisdiction in matters relating to tort, delict or quasi-delict.

12 In the alternative, the insurers claimed that the dispute was indivisible since RCC, as well as both Spliethoff's Bevrachtingskantoor BV and the Master of the vessel *Alblasgracht V002*, had been involved in the same transport operation. The Tribunal de Commerce, Créteil, having accepted jurisdiction for the proceedings against RCC, should have done so for the proceedings against the other two defendants.

13 Considering that the decision to be given depended on an interpretation of the Convention, the Cour de Cassation stayed proceedings pending a ruling from the Court of Justice on the following questions:

'1. Is an action by which the consignee of goods found to be damaged on completion of a transport operation by sea and then by land, or by which his insurer who has been subrogated to his rights after compensating him, seeks redress for the damage suffered, relying on the bill of lading covering the maritime transport, not against the person who issued that document on his headed paper but against the person whom the plaintiff considered to be the actual maritime carrier, based on the contract of transport and does it, for that or any other reason, fall within the scope of matters relating to contract within the meaning of Article 5(1) of the Convention?

2. If the foregoing question is answered in the negative, is the matter one relating to tort, delict or quasi-delict within the meaning of Article 5(3) of the Convention or is it appropriate to have recourse to the principle laid down in Article 2 of the Convention that the courts of the State in whose territory the defendant is domiciled have jurisdiction?

3. In the event that the matter is to be regarded as one relating to tort, delict or quasi-delict, may the place where the consignee, after completion of the maritime transport operation and then the final overland transport operation, merely discovered that the goods delivered to him were damaged, constitute — and if so under what conditions — the place of occurrence of the damage which, according to the judgment of the Court of Justice of 30 November 1976 in Case 21/76 *Bier* v *Mines de Potasse d'Alsace* [1976] ECR 1735, may be the place "where the harmful event occurred" within the meaning of Article 5(3) of the Convention?'

4. May a defendant domiciled in the territory of a Contracting State be brought, in another Contracting State, before the court hearing an action against a co-defendant not domiciled in the territory of any Contracting State, on the ground that the dispute is indivisible, rather than merely displaying a connection?

The first and second questions

14 According to Spliethoff's Bevrachtingskantoor BV and the Master of the *Alblasgracht V002*, the dispute is a matter relating to a contract within the meaning of Article 5(1) of the Convention since the action against them is based on the bill of lading, the document containing the transport contract.

15 It must be pointed out that, according to settled case-law (Case 34/82 *Peters* v *ZNAV* [1983] ECR 987, paragraphs 9 and 10, Case 9/87 *Arcado* v *Haviland* [1988] ECR 1539, paragraphs 10 and 11, and Case C-26/91 *Handte* v *Traitements Mécano-Chimiques des Surfaces* [1992] ECR I-3967, paragraph 10), the phrase 'matter relating to a contract' in Article 5(1) of the Convention is to be interpreted independently, having regard primarily to the objectives and general scheme of the Convention, in order to ensure that it is applied uniformly in all the Contracting States; that phrase cannot therefore be taken to refer to how the legal relationship in question before the national court is classified by the relevant national law.

16 It is also settled case-law that, under the system of the Convention, the general principle is that the courts of the Contracting State in which the defendant is domiciled are to have jurisdiction and that it is only by way of derogation from that principle that the Convention provides for cases, which are exhaustively listed, in which the defendant may or must, depending on the case, be sued in the courts of another Contracting State. Consequently, the rules of jurisdiction which derogate

from that general principle cannot give rise to an interpretation going beyond the cases envisaged by the Convention (see, in particular, Case C-269/95 *Benincasa* v *Dentalkit* [1997] ECR I-3767, paragraph 13).

17 It follows, as the Court held in paragraph 15 of *Handte*, cited above, that the phrase 'matters relating to contract', as used in Article 5(1) of the Convention, is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards the other.

18 In this case, it is clear from the findings of the national courts at first instance and on appeal that the bearer bill of lading issued by RCC covers the carriage of the goods by sea to Rotterdam, the port of discharge and delivery, that it specifies Brambi as the person to whom the arrival of the goods must be notified and that it indicates that the goods are to be carried aboard the *Alblasgracht V002*.

19 It must therefore be held that that bill of lading discloses no contractual relationship freely entered into between Brambi on the one hand and, on the other, Splieethoff's Bevrachtingskantoor BV and the Master of the *Alblasgracht V002*, who, according to the insurers, were the actual maritime carriers of the goods.

20 In those circumstances, the action brought against the latter by the insurers cannot be a matter relating to a contract within the meaning of Article 5(1) of the Convention.

21 It is next necessary to determine whether such an action is concerned with a matter relating to tort, delict or quasi-delict within the meaning of Article 5(3) of the Convention.

22 In its judgment in Case 189/87 *Kalfelis* v *Schröder* [1988] ECR 5565, paragraph 18, the Court defined the concept of matters relating to tort, delict or quasi-delict within the meaning of Article 5(3) of the Convention as an independent concept covering all actions which seek to establish the liability of a defendant and which are not related to a 'contract' within the meaning of Article 5(1).

23 That is the position in the main proceedings. Where insurers who have been subrogated to the rights of the consignee of goods which, on completion of a sea voyage followed by overland transport, are found to be damaged claim compensation for the loss, relying on the bill of lading for the sea voyage, from the persons whom they regard as actually having carried the goods by sea, the purpose of their action is to establish the carriers' liability and does not, as is clear from paragraphs 18 to 20 of this judgment, fall within the scope of 'matters relating to a contract' within the meaning of Article 5(1) of the Convention.

24 In those circumstances, it must be held that such an action is a matter relating to tort, delict or quasi-delict within the meaning of Article 5(3) of the Convention and that, therefore, the general principle that the courts of the State in which the defendant is domiciled are to have jurisdiction, laid down in the first paragraph of Article 2 of the Convention, is inapplicable.

25 The jurisdiction in matters relating to tort, delict or quasi-delict of the courts for the place where the harmful event occurred is one of the 'special jurisdictions' listed in Articles 5 and 6 of the Convention, which constitute exceptions to the general principle laid down in the first paragraph of Article 2.

26 The answer to the first two questions must therefore be that an action by which the consignee of goods found to be damaged on completion of a transport operation by sea and then by land, or by which his insurer who has been subrogated to his rights after compensating him, seeks redress for the damage suffered, relying on the bill of lading covering the maritime transport, not against the person who issued

that document on his headed paper but against the person whom the plaintiff considered to be the actual maritime carrier, falls within the scope not of matters relating to a contract within the meaning of Article 5(1) of the Convention but of matters relating to tort, delict or quasi-delict within the meaning of Article 5(3) of the Convention.

The third question

27 It must borne in mind at the outset that, as the Court has held on several occasions (see the judgments in Case 21/76 *Bier* v *Mines de Potasse d'Alsace*, cited above, paragraph 11, Case C-220/88 *Dumez France and Tracoba* [1990] ECR I-49, paragraph 17, Case C-68/93 *Shevill and Others* v *Presse Alliance* [1995] ECR I-415, paragraph 19, and Case C-364/93 *Marinari* v *Lloyds Bank and Another* [1995] ECR I-2719, paragraph 10), the rule of special jurisdiction in Article 5(3) of the Convention, the choice of which is a matter for the plaintiff, is based on the existence of a particularly close connecting factor between the dispute and courts other than those of the State of the defendant's domicile which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings.

28 It must next be observed that in the judgments cited above in *Mines de Potasse d'Alsace*, paragraphs 24 and 25, and *Shevill and Others*, paragraph 20, the Court held that, where the place of the happening of the event which may give rise to liability in tort, delict or quasi-delict and the place where that event results in damage are not identical, the expression 'place where the harmful event occurred' in Article 5(3) of the Convention must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the plaintiff, in the courts for either of those places.

29 In *Marinari*, cited above, paragraph 13, the Court made it clear that the choice thus available to the plaintiff cannot however be extended beyond the particular circumstances which justify it, since otherwise the general principle laid down in the first

paragraph of Article 2 of the Convention that the courts of the Contracting State where the defendant is domiciled are to have jurisdiction would be negated, with the result that, in cases other than those expressly provided for, jurisdiction would be attributed to the courts of the plaintiff's domicile, a solution which the Convention does not favour since, in the second paragraph of Article 3, it excludes application of national provisions which make such jurisdiction available for proceedings against defendants domiciled in the territory of a Contracting State.

30 The Court went on to infer, in paragraph 14 of that judgment, that whilst it has thus been recognised that the term 'place where the harmful event occurred' within the meaning of Article 5(3) of the Convention may cover both the place where the damage occurred and the place of the event giving rise to it, that term cannot be construed so extensively as to encompass any place where the adverse consequences can be felt of an event which has already caused damage actually arising elsewhere.

31 For the same reasons, in *Dumez France and Tracoba*, cited above, the Court held that the rule on jurisdiction laid down in Article 5(3) of the Convention cannot be interpreted as permitting a plaintiff pleading damage which he claims to be the consequence of the harm suffered by other persons who were direct victims of the harmful act to bring proceedings against the perpetrator of that act in the courts of the place in which he himself ascertained the damage to his assets.

32 It follows that a consignee of goods who, on completion of a transport operation by sea and then by land, finds that the goods delivered to him are damaged may bring proceedings against the person whom he regards as the actual maritime carrier either before the courts for the place where the damage occurred or the courts for the place of the event giving rise to it.

33 As the Advocate General emphasises in points 54 to 56 of his Opinion, in an international transport operation of the kind at issue in the main proceedings the place where the event giving rise to the damage occurred may be difficult or indeed

impossible to determine. In such circumstances, it will be for the consignee of the damaged goods to bring the actual maritime carrier before the courts for the place where the damage occurred. It must be pointed out in that regard that, in an international transport operation of the kind at issue in the main proceedings, the place where the damage occurred cannot be either the place of final delivery, which, as the Commission rightly pointed out, can be changed in mid-voyage, or the place where the damage was ascertained.

34 To allow the consignee to bring the actual maritime carrier before the courts for the place of final delivery or before those for the place where the damage was ascertained would in most cases mean attributing jurisdiction to the courts for the place of the plaintiff's domicile, whereas the authors of the Convention demonstrated their opposition to such attribution of jurisdiction otherwise than in the cases for which it expressly provides (see, to that effect, *Dumez France and Tracoba*, cited above, paragraphs 16 and 19, and Case C-89/91 *Shearson Lehman Hutton* v *TVB* [1993] ECR I-139, paragraph 17). Furthermore, such an interpretation of the Convention would make the determination of the competent court depend on uncertain factors, which would be incompatible with the objective of the Convention which is to provide for a clear and certain attribution of jurisdiction (see, to that effect, *Marinari*, paragraph 19, and *Handte*, paragraph 19, both cited above).

35 In those circumstances, the place where the damage arose in the case of an international transport operation of the kind at issue in the main proceedings can only be the place where the actual maritime carrier was to deliver the goods.

36 That place meets the requirements of foreseeability and certainty imposed by the Convention and displays a particularly close connecting factor with the dispute in the main proceedings, so that the attribution of jurisdiction to the courts for that place is justified by reasons relating to the sound administration of justice and the efficacious conduct of proceedings.

37 The answer to be given to the third question must therefore be that the place where the consignee of the goods, on completion of a transport operation by sea and then by land, merely discovered the existence of the damage to the goods delivered to him cannot serve to determine the 'place where the harmful event occurred' within the meaning of Article 5(3) of the Convention, as interpreted by the Court.

The fourth question

38 It must be noted at the outset that the Convention does not use the term 'indivisible' in relation to disputes but only the term 'related', in Article 22.

39 As the Court made clear in Case 150/80 *Elefanten Schuh* v *Jacqmain* [1981] ECR 1671, paragraph 19, Article 22 of the Convention is intended to establish how related actions which have been brought before courts of different Contracting States are to be dealt with. It does not confer jurisdiction; in particular, it does not accord jurisdiction to a court of a Contracting State to try an action which is related to another action of which that court is seised pursuant to the rules of the Convention.

40 In that judgment the Court held that Article 22 of the Convention applies only where related actions are brought before courts of two or more Contracting States.

41 It is clear from the documents before the Court in this case that separate actions have not been brought before the courts of different Contracting States, so that, in any event, the conditions for the application of Article 22 are not met.

42 It must next be borne in mind that, under Article 3 of the Convention, persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of Title II.

43 Those rules include, in Article 6(1) of the Convention, the rule that a person may also be sued, 'where he is one of a number of defendants, in the courts for the place where any one of them is domiciled'.

44 As is clear from the very wording of Article 6(1), it applies only if the proceedings in question are brought before the courts for the place where one of the defendants is domiciled.

45 That is not the case here.

46 It must be observed that the objective of legal certainty pursued by the Convention would not be attained if the fact that a court in a Contracting State had accepted jurisdiction as regards one of the defendants not domiciled in a Contracting State made it possible to bring another defendant, domiciled in a Contracting State, before that same court in cases other than those envisaged by the Convention, thereby depriving him of the benefit of the protective rules laid down by it.

47 In any event, the exception provided for in Article 6(1) of the Convention, derogating from the principle that the courts of the State in which the defendant is domiciled are to have jurisdiction, must be construed in such a way that there is no possibility of the very existence of that principle being called in question, in particular by allowing a plaintiff to make a claim against a number of defendants with the sole purpose of ousting the jurisdiction of the courts of the State where one of those defendants is domiciled (*Kalfelis*, cited above, paragraphs 8 and 9).

48 Accordingly, after pointing out that the purpose of Article 6(1) of the Convention, and of Article 22, is to ensure that judgments which are incompatible with each other are not given in the Contracting States, the Court held in *Kalfelis* that, for Article 6(1) of the Convention to apply there must exist between the various actions brought by the same plaintiff against different defendants a connection of such a kind that it is expedient to determine the actions together in order to avoid the risk of irreconcilable judgments resulting from separate proceedings.

49 In that connection, the Court also held in *Kalfelis* that a court which has jurisdiction under Article 5(3) of the Convention over an action in so far as it is based on tort or delict does not have jurisdiction over that action in so far as it is not so based.

50 It follows that two claims in one action for compensation, directed against different defendants and based in one instance on contractual liability and in the other on liability in tort or delict cannot be regarded as connected.

51 Finally, as the Court held in paragraph 20 of *Kalfelis*, whilst it is true that disadvantages arise from different aspects of the same dispute being adjudicated upon by different courts, it must be pointed out, on the one hand, that a plaintiff is always entitled to bring his action in its entirety before the courts for the domicile of the defendant and, on the other, that Article 22 of the Convention allows the first court seised, in certain circumstances, to hear the case in its entirety provided that there is a connection between the actions brought before the different courts.

52 The answer to the fourth question must therefore be that Article 6(1) of the Convention must be interpreted as meaning that a defendant domiciled in a Contracting State cannot be sued in another Contracting State before a court seised of an action

against a co-defendant not domiciled in a Contracting State on the ground that the dispute is indivisible rather than merely displaying a connection.

Costs

53 The costs incurred by the French and German Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber)

in answer to the questions referred to it by the Cour de Cassation by judment of 28 January 1997, hereby rules:

1) An action by which the consignee of goods found to be damaged on completion of a transport operation by sea and then by land, or by which his insurer who has been subrogated to his rights after compensating him, seeks redress for the damage suffered, relying on the bill of lading covering the maritime transport, not against the person who issued that document on his headed paper but against the person whom the plaintiff considered to be the actual maritime carrier, falls within the scope not of matters relating to a contract within the meaning of Article 5(1) of the Convention of 27 September 1968

on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, but of matters relating to tort, delict or quasi-delict within the meaning of Article 5(3) of that Convention.

2) **The place where the consignee of the goods, on completion of a transport operation by sea and then by land, merely discovered the existence of the damage to the goods delivered to him cannot serve to determine the 'place where the harmful event occurred' within the meaning of Article 5(3) of the Convention of 28 September 1968, as interpreted by the Court.**

3) **Article 6(1) of the Convention of 27 September 1968 must be interpreted as meaning that a defendant domiciled in a Contracting State cannot be sued in another Contracting State before a court seised of an action against a co-defendant not domiciled in a Contracting State on the ground that the dispute is indivisible rather than merely displaying a connection.**

Puissochet Moitinho de Almeida Gulmann

Delivered in open court in Luxembourg on 27 October 1998.

R. Grass J.-P. Puissochet

Registrar President of the Third Chamber