JUDGMENT OF THE COURT (Sixth Chamber)

27 February 2002 *

In Case C-37/00,

REFERENCE to the Court 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 by the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Herbert Weber

and

Universal Ogden Services Ltd,

on the interpretation of Article 5(1) of the abovementioned Convention of 27 September 1968 (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 version — 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: Dutch.

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, N. Colneric, J.-P. Puissochet, R. Schintgen (Rapporteur) and V. Skouris, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Mr Weber, by E. van Staden ten Brink, advocaat,

— Universal Ogden Services Ltd, by C.J.J.C. van Nispen and S.J. Schaafsma, advocaten,

— the Netherlands Government, by M.A. Fierstra, acting as Agent,

— the United Kingdom Government, by G. Amodeo, acting as Agent, and K. Smith, Barrister,

— the Commission of the European Communities, by J.L. Iglesias Buhigues and W. Neirinck, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 October 2001,

gives the following

Judgment

1 By judgment of 4 February 2000, received at the Court on 10 February 2000, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) 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 (OJ 1978 L 304, p. 36) three questions on the interpretation of Article 5(1) of that convention, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1 and — amended version — 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) (hereinafter 'the Brussels Convention').

2 Those questions were raised in proceedings between Mr Weber, a German national residing in Krefeld (Germany), and his employer Universal Ogden Services Ltd (hereinafter 'UOS'), a company incorporated under Scottish law and established in Aberdeen (United Kingdom), following the termination of Mr Weber's contract of employment by UOS.

Relevant law

The Brussels Convention

3 The rules on jurisdiction laid down by the Brussels Convention are to be found in Title II thereof, which contains Articles 2 to 24.

4 The first paragraph of Article 2 of the Brussels Convention, which forms part of Section 1, entitled 'General provisions', of Title II, states:

'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.'

5 The first paragraph of Article 3 of the Brussels Convention, which appears in the same section, 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.'

6 In Sections 2 to 6 of Title II, the Brussels Convention lays down rules on special or exclusive jurisdiction.

7 Thus, under Article 5, which appears in Section 2, entitled 'Special jurisdiction', of Title II of the Brussels 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; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, the employer may also be sued in the courts for the place where the business which engaged the employee was or is now situated;

...'.

Applicable international law

8 The Convention on the Continental Shelf, concluded in Geneva on 29 April 1958 (hereinafter 'the Geneva Convention') came into force on 10 June 1964 and was ratified by the Kingdom of the Netherlands on 18 February 1996. The United Nations Convention on the Law of the Sea, signed in Montego Bay on 10 December 1982, on the other hand, was not ratified by the Kingdom of the Netherlands until 28 June 1996 and consequently was not applicable in that State at the material time.

The relevant national provisions

9 In the Netherlands, the Wet arbeid mijnbouw Noordzee (Law relating to Employment in Extraction Industries in the North Sea, hereinafter 'the WAMN') of 2 November 1992 entered into force on 1 February 1993.

10 Article 1(a) of the WAMN provides that, for the purposes of that law, the 'continental shelf' has the same meaning as in the Mijnwet continentaal plat (Law on Mining on the Continental Shelf) of 23 September 1965, that is to say that part of the seabed and substratum situated below the North Sea outside the territorial waters over which the Kingdom of the Netherlands exercises sovereign rights, in particular under the Geneva Convention (hereinafter 'the Netherlands continental shelf').

11 Under Article 1(b) of the WAMN the term 'mining installation' means, for the purposes of that law, an installation positioned on or above the Netherlands continental shelf for the purposes of prospecting or extracting minerals, or a group of installations of which at least one fits that description.

12 It is clear from the explanatory notes to Article 1 of the WAMN that that definition of mining installation also includes drilling vessels and all mineral prospecting or extracting installations situated outside territorial waters, whether they be fixed or (immobilised) floating installations.

13 Article 1(c) of the WAMN provides that, for the purposes of that law, 'employee' means:

'1. a person who works on or from a mining installation under a contract of employment;

2. a person, other than a person referred to in subparagraph 1, engaged under a contract of employment for a period of at least 30 days to carry out charting or mineral prospecting or mining work on or from a ship situated within territorial waters or above the continental shelf under the North Sea outside territorial waters'.

14 Article 2 of the WAMN is worded as follows:

'Employees' contracts of employment are governed by the Netherlands law of employment contracts and any rules of private international law relating thereto. For the purposes of applying rules of private international law, work carried out by an employee is deemed to have been carried out in the territory of the Netherlands.'

15 Article 10(1) of the WAMN provides:

'Subject to Articles 98(2) and 126 of the Code of Civil Procedure, the Kantonrechter te Alkmaar shall have jurisdiction in disputes concerning employees' contracts of employment and concerning the application of this Law.'

16 The explanatory notes to Article 10 of the WAMN stipulate that that provision does not derogate from the rules laid down in the Brussels Convention.

The main proceedings and the questions referred

17 It is apparent from the case-file in the main proceedings that, from July 1987 to 30 December 1993, Mr Weber was employed by UOS as a cook.

18 The national court observes that, until 21 September 1993, part of Mr Weber's work for UOS was carried out on board mining vessels or on mining installations covered by the WAMN and stationed over the Netherlands continental shelf.

19 According to the national court, precisely when, during the period between the commencement of his employment relationship with UOS in July 1987 and 21 September 1993, Mr Weber worked in the Netherlands continental shelf area has not been established; nor have the exact dates on which he worked on mining installations or vessels covered by the WAMN.

20 Mr Weber in fact alleges that, during that period, he worked principally in the Netherlands continental shelf area on mining installations and ships flying the Dutch flag. UOS, however, disputes the accuracy of that assertion.

21 On the other hand, it is common ground that, from 21 September to 30 December 1993, Mr Weber worked as a cook on board a floating crane deployed in Danish territorial waters for the construction of a bridge over the Great Belt (Denmark).

22 On 29 June 1994 Mr Weber brought an action against UOS before the Kantonrechter (Cantonal Court) te Alkmaar (Netherlands), in accordance with Article 10(1) of the WAMN, alleging that the company had terminated his employment unlawfully.

23 That court dismissed, on the basis of Netherlands law, a plea of lack of jurisdiction raised by UOS and held part of Mr Weber's action to be well founded.

24 UOS thereupon brought an appeal before the Rechtbank (District Court) te Alkmaar (Netherlands). That court found, again on the sole basis of Netherlands law, that the Kantonrechter had erred in finding that it had jurisdiction to hear Mr Weber's case. The Rechtbank te Alkmaar ruled, in substance, that no account could be taken of Mr Weber's employment before 1 February 1993, the date on which the WAMN entered into force, and that the three months he spent working in Danish territorial waters should be given more weight than the time he spent working in the Netherlands continental shelf area.

25 On 7 January 1998 Mr Weber appealed against that decision before the Hoge Raad der Nederlanden, which ruled that the Rechtbank te Alkmaar had erred in law in failing to consider of its own motion whether the rules of the Brussels Convention conferred jurisdiction on the Netherlands courts. In this connection, the Hoge Raad raises two questions: whether, for the purposes of applying Article 5(1) of the Brussels Convention, the work done by Mr Weber in the Netherlands continental shelf area is to be regarded as having been carried out in

the Netherlands (and, thus, within the territory of a Contracting State) and whether Mr Weber had, since taking up employment with UOS in July 1987, 'habitually' worked in the Netherlands, within the meaning of Article 5(1).

26 Taking the view that, in the circumstances, resolution of the dispute called for interpretation of the Brussels Convention, the Hoge Raad der Nederlanden decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must work carried out on the Netherlands section of the continental shelf under the North Sea by an employee as defined in the WAMN be regarded as or treated as equivalent to work carried out in the Netherlands for the purposes of the application of Article 5(1) of the Brussels Convention?

2. If so, in order to answer the question whether the employee must be regarded as having carried out his work "habitually" in the Netherlands, must account be taken of the entire period of his employment or is only his most recent period of employment relevant?

3. In answering Question 2 must a distinction be drawn between the period before the WAMN entered into force — when Netherlands law had not yet designated a court with territorial jurisdiction to deal with a case such as the present — and the period after the WAMN entered into force?'

The first question

27 In order to answer the first question it must first be remembered that, according to settled case-law, Article 5(1) of the Brussels Convention is not applicable to contracts of employment performed entirely outside the territory of the Contracting States, since the employee carries out all his work in non-contracting countries (Case 32/88 *Six Constructions* [1989] ECR 341, paragraph 22).

28 Article 5(1) applies only where the individual contract of employment under which the employee carries out his work has a connection with the territory of at least one Contracting State.

29 Secondly, Article 29 of the Vienna Convention on the Law of Treaties of 23 May 1969 states that 'unless a different intention appears from the treaty or is otherwise established, a treaty is binding on each party in respect of its entire territory'.

30 Those are the factors which determine whether or not work carried out in the Netherlands continental shelf area, such as the work in point in the main proceedings, is, for the purposes of applying Article 5(1) of the Brussels Convention, to be regarded as being carried out in the territory of the Netherlands, and thus in the territory of a Contracting State.

31 In the absence of any provision in the Brussels Convention governing that aspect of its scope or any other indication as to the answer to be given to this question, reference must be made to the principles of public international law relating to

the legal regime applicable to the continental shelf and, in particular, the Geneva Convention, which applied to the Netherlands at the material time.

32 Under Article 2 of the Geneva Convention, the coastal State exercises over the continental shelf sovereign rights for the purposes of exploring it and exploiting its natural resources. Those rights are exclusive and do not depend on any express proclamation.

33 Under Article 5 of the same convention, 'the coastal State is entitled to construct and maintain or operate on the continental shelf installations and other devices necessary for its exploration and the exploitation of its natural resources'. Article 5 further provides that those installations and devices are 'under the jurisdiction of the coastal State'.

34 Furthermore, the International Court of Justice has ruled that the rights of the coastal State in respect of the area of continental shelf constituting a natural prolongation of its land territory under the sea exist *ipso facto* and *ab initio* by virtue of the State's sovereignty over the land and by extension of that sovereignty in the form of the exercise of sovereign rights for the purposes of the exploration of the seabed and the exploitation of its natural resources (judgment of 20 February 1969 in the so-called *North Sea Continental Shelf* cases, Reports, 1969, p. 3, paragraph 19).

35 Moreover, it is in conformity with those principles of public international law that Article 10(1) of the WAMN provides that the courts of the Netherlands have jurisdiction in disputes concerning the contracts of employment of employees who work on or from mining installations positioned on or above the Netherlands continental shelf area for the purposes of prospecting and/or exploiting its natural resources.

36 It follows that the answer to the first question must be that work carried out by an employee on fixed or floating installations positioned on or above the part of the continental shelf adjacent to a Contracting State, in the context of the prospecting and/or exploitation of its natural resources, is to be regarded as work carried out in the territory of that State for the purposes of applying Article 5(1) of the Brussels Convention.

The second question

37 In order to answer the second question it is necessary to recall, at the outset, the case-law of the Court of Justice on the interpretation of Article 5(1) of the Brussels Convention where the dispute concerns an individual contract of employment.

38 First of all, it is clear from that case-law that, 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 (settled case-law since Case 12/76 *Tessili* [1976] ECR 1473), 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 (see, *inter alia*, Case C-125/92 *Mulox IBC* [1993] ECR I-4075, paragraphs 10, 11 and 16, Case C-383/95 *Rutten* [1997] ECR I-57, paragraphs 12 and 13, and Case C-440/97 *GIE Groupe Concorde and Others* [1999] ECR I-6307, paragraph 14).

39 Secondly, the Court takes the view that the rule on special jurisdiction in Article 5(1) of the Brussels Convention 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 that 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 (see, *inter alia*, *Mulox IBC*, cited above, paragraph 17, and *Rutten*, cited above, paragraph 16).

40 Thirdly, in matters relating to contracts of employment, interpretation of Article 5(1) of the Brussels Convention 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 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 (see, *inter alia*, *Mulox IBC*, paragraphs 18 and 19, and *Rutten*, paragraph 17).

41 It follows that Article 5(1) of the Brussels Convention must be interpreted as meaning that, as regards contracts of employment, the place of performance of the relevant obligation, for the purposes of that provision, is the place where the employee actually performs the work covered by the contract with his employer (*Mulox IBC*, paragraph 20, *Rutten*, paragraph 15, and *GIE Groupe Concorde*, paragraph 14).

42 The Court has also held that, where work is performed in more than one Contracting State, it is important to avoid any multiplication of courts having jurisdiction in order to preclude the risk of irreconcilable decisions and to facilitate the recognition and enforcement of judgments in States other than those in which they were delivered and that, consequently, Article 5(1) of the Brussels Convention cannot be interpreted as conferring concurrent jurisdiction on the courts of each Contracting State in whose territory the employee performs part of his work (*Mulox IBC*, paragraphs 21 and 23, and *Rutten*, paragraph 18).

43 As a result, the Court held, at paragraphs 25 and 26 of its judgment in *Mulox IBC*, that, in such a case, the place of performance of the obligation characterising the contract of employment, within the meaning of Article 5(1) of the Brussels Convention, is the place where or from which the employee principally discharges his obligations towards his employer. It further held that it was necessary to take account of the fact that the work entrusted to the employee was carried out from an office in a Contracting State, where the employee in question had established his residence, from which he worked for his employer and to which he returned after each business trip to another country.

44 In *Rutten* the Court held, in similar circumstances, that the place where an employee habitually carries out his work, within the meaning of Article 5(1) of the Brussels Convention, is the place where he has established the effective centre of his working activities and that, when identifying that place, it is necessary to take into account the fact that the employee spends most of his working time in one of the Contracting States in which he has an office where he organises his work for his employer and to which he returns after each business trip abroad.

45 As regards identifying the place where an employee habitually works, as referred to in Article 5(1), it is appropriate, in a case such as that in the main proceedings, to remember that the factual background of the dispute between Mr Weber and his employer has not yet been fully and clearly established before the national courts.

46 Thus, whilst it is common ground that, from 21 September to 30 December 1993, Mr Weber worked as a cook on board a floating crane in Danish territorial waters, as to the rest, the case-file shows only that he was employed by UOS in the Netherlands continental shelf area on mining vessels or installations within the meaning of the WAMN for at least part of the period from July 1987 to 21 September 1993. In particular, the parties to the main proceedings disagree as to the exact dates within that period on which Mr Weber worked in the area. Nor does the case-file reveal whether, during that same period, Mr Weber worked for

UOS in another place or, if he did, the country or countries concerned and the duration of his work there. The observations of the Rechtbank te Alkmaar indicate only that between 1 February and 21 September 1993 Mr Weber spent 79 days working in the Netherlands continental shelf area, without clearly establishing whether, during the remaining 144 days, he worked elsewhere or took leave.

47 Despite that uncertainty, it is common ground that, during his period of employment with UOS, Mr Weber was engaged in at least two different Contracting States.

48 Furthermore, unlike the employees in *Mulox IBC* and *Rutten*, Mr Weber did not have an office in a Contracting State that constituted the effective centre of his working activities or from which he performed the essential part of his duties *vis-à-vis* his employer.

49 The Court's case-law cannot, therefore, be applied in its entirety to the present case. Nevertheless, it remains relevant to the extent that it means that, where a contract of employment is performed in several Contracting States, Article 5(1) of the Brussels Convention must — in view of the need to establish the place with which the dispute has the most significant link, so that it is possible to identify the courts best placed to decide the case in order to afford proper protection to the employee as the weaker party to the contract and to avoid multiplication of the courts having jurisdiction — be understood as referring to the place where or from which the employee actually performs the essential part of his duties *vis-à-vis* his employer. That is the place where it is least expensive for the employee to commence proceedings against his employer or to defend such proceedings and where the courts best suited to resolving disputes relating to the contract of employment are situated (see *Rutten*, paragraphs 22 to 24).

50 That being so, in a case such as that in the main proceedings, the relevant criterion for establishing an employee's habitual place of work, for the purposes of Article 5(1) of the Brussels Convention, is, in principle, the place where he spends most of his working time engaged on his employer's business.

51 In a case such as that in the main proceedings, in which the employee continuously performed the same job for his employer, namely that of cook, throughout the entire period of employment in question, any qualitative criteria relating to the nature and importance of work done in various places within the Contracting States are irrelevant.

52 The logical implication of the temporal criterion mentioned in paragraph 50 of the present judgment, which is based on the relative duration of periods of time spent working in the various Contracting States in question, is that all of an employee's term of employment must be taken into account in establishing the place where he carries out the most significant part of his work and where, in such a case, his contractual relationship with his employer is centred.

53 It would only be if, taking account of the facts of the present case, the subject-matter of the dispute were more closely connected with a different place of work that the principle set out in the preceding paragraph would fail to apply.

54 For example, weight will be given to the most recent period of work where the employee, after having worked for a certain time in one place, then takes up his work activities on a permanent basis in a different place, since the clear intention of the parties is for the latter place to become a new habitual place of work within the meaning of Article 5(1) of the Brussels Convention.

55 On the other hand, in the event that the criteria mentioned in paragraphs 50 to 54 of the present judgment do not enable the national courts to establish the habitual place of work for the purposes of applying Article 5(1) of the Brussels Convention, either because there are two or more places of work of equal importance or because none of the various places where the employee carries on his work activity has a sufficiently permanent and close connection with the work done to be regarded as the main link for the purposes of determining the courts with jurisdiction, it is necessary, as is clear from paragraphs 42 and 49 of the present judgment, to avoid a multiplication of the courts having jurisdiction over a single legal relationship. Article 5(1) of the Brussels Convention cannot, therefore, be interpreted as conferring concurrent jurisdiction on the courts of each Contracting State in whose territory the employee carries on some of his work.

56 In this connection it must be borne in mind that, as is clear from the report of Mr Jenard on the Brussels Convention (OJ 1979 C 59, p. 1, at p. 22), the rules on special jurisdiction merely give the applicant an additional option without, however, affecting the general principle set out in the first paragraph of Article 2 of the convention that persons domiciled in the territory of a Contracting State may be sued in the courts of that State regardless of the nationality of the parties. Furthermore, the last part of Article 5(1) of the convention provides that, if the employee does not habitually carry out his work in any one country, the employer may 'also' be sued in the courts for the place where the business which engaged the employee was or is now situated.

57 Consequently, in the situation mentioned in paragraph 55 of the present judgment, an employee will have the choice of bringing his action against his employer either before the courts for the place where the business which engaged him is situated, in accordance with the last part of Article 5(1) of the Brussels Convention, or before the courts of the Contracting State on whose territory the employer is domiciled, in accordance with the first paragraph of Article 2 of the convention, assuming those two forums are not one and the same.

58 In light of all of the foregoing considerations, the answer to the second question must be that Article 5(1) of the Brussels Convention must be interpreted as meaning 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 that provision, 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 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) of the Brussels Convention.

In the event that the criteria laid down by the Court of Justice do not enable the national court to identify the habitual place of work, as referred to in Article 5(1) of the Brussels Convention, the employee will have the choice of suing his employer either in the courts for the place where the business which engaged him is situated, or in the courts of the Contracting State in whose territory the employer is domiciled.

The third question

59 For this question, it is appropriate first to observe that the object of the Brussels Convention is to determine the jurisdiction of the courts of the Contracting States in the intra-Community legal order in civil and commercial matters with the result that national procedural laws are set aside in matters governed by the convention in favour of the provisions thereof (see Case 25/79 *Sanicentral* [1979] ECR 3423, paragraph 5).

60 Next, it is appropriate to recall that it is settled case-law that the terms used in Article 5(1) of the Brussels Convention must, in matters relating to employment contracts, be interpreted autonomously so as to ensure the full effectiveness and uniform application in all the Contracting States of this convention, whose objectives include unification of the rules on jurisdiction of the Contracting States (see, *inter alia*, *Mulox IBC*, cited above, paragraphs 10 and 16, and *Rutten*, cited above, paragraphs 12 and 13).

61 It follows that national law has no bearing on the application of Article 5(1) of the Brussels Convention and so the date of entry into force of the WAMN has no bearing upon the effect of the provision.

62 That being so, the answer to the third question must be that national law applicable to the main dispute has no bearing on the interpretation of the concept of the place where an employee habitually works, within the meaning of Article 5(1) of the convention, to which the second question relates.

Costs

63 The costs incurred by the Netherlands and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 (Sixth Chamber),

in answer to the questions referred to it by the Hoge Raad der Nederlanden by judgment of 4 February 2000, hereby rules:

1. **Work carried out by an employee on fixed or floating installations positioned on or above the part of the continental shelf adjacent to a Contracting State, in the context of the prospecting and/or exploitation of its natural resources, is to be regarded as work carried out in the territory of that State for the purposes of applying 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, the Convention of 25 October 1982 on the Accession of the Hellenic Republic and the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic.

2. Article 5(1) of that convention must be interpreted as meaning 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 that provision, 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 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) of the convention.

In the event that the criteria laid down by the Court of Justice do not enable the national court to identify the habitual place of work, as referred to in Article 5(1) of the convention, the employee will have the choice of suing his employer either in the courts for the place where the business which engaged him is situated, or in the courts of the Contracting State in whose territory the employer is domiciled.

3. **National law applicable to the main dispute has no bearing on the interpretation of the concept of the place where an employee habitually works, within the meaning of Article 5(1) of the convention, to which the second question relates.**

Macken Colneric Puissochet

Schintgen Skouris

Delivered in open court in Luxembourg on 27 February 2002.

R. Grass F. Macken

Registrar President of the Sixth Chamber