

cases in which they would have been regarded as void under the national

law in force at the time when the contract was entered into.

In Case 25/79,

REFERENCE to the Court under the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention signed at Brussels on 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Cour de Cassation [Court of Cassation] of France (Social Chamber) for a preliminary ruling in the action pending before that court between

SANICENTRAL GMBH, Saarbrücken (Federal Republic of Germany),

and

RENÉ COLLIN, residing at Still (France),

on the application of Articles 17 and 54 of the Convention of 27 September 1968,

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart and G. Bosco, Judges,

Advocate General: F. Capotorti
Acting Registrar: S. Neri, Legal Secretary

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

René Collin, a French worker, residing at Still (Bas-Rhin), was engaged by Sanicentral GmbH, Saarbrücken, under a written contract dated 27 October 1971, to work in the Federal Republic of Germany, independently of any establishment. The contract was broken on 8 December 1971 and on 27 November 1973 Collin brought an action against his former employer before the Tribunal d'Instance, Molsheim (Bas-Rhin), sitting as an industrial conciliation board, claiming payment of supplementary wages and various allowances.

The company submitted that territorially the court had no jurisdiction, arguing that Collin's contract of employment included a clause conferring on the local German court jurisdiction over any disputes which might arise between the parties. The Tribunal d'Instance, Molsheim, found for the company on the ground that Article 14 of the Code Civil [Civil Code] and Article R 517-1 of the Code du Travail [Labour Code], as brought up to date by the decree of 12 September 1974, were applicable to the case; consequently the court decided that

“any clause conferring territorial jurisdiction is void, and that if the work is performed independently of any establishment, the court having jurisdiction, in the absence of an industrial conciliation board, is the one in whose district the worker is resident” and it accordingly declared that it had jurisdiction.

The company brought an appeal before the Cour d'Appel [Court of Appeal], Colmar (Haut-Rhin), maintaining that the Tribunal d'Instance, Molsheim, was in error in relying on Article 14 of the Code Civil and Article 517-1 of the Code du Travail because, on the one hand, the first paragraph of Article 17 of the Brussels Convention recognizes the validity of a clause conferring jurisdiction, and, on the other hand, as the summons to attend the Tribunal d'Instance, Molsheim, was prior to the decree of 12 September 1974 it could not, by virtue of the rule of the non-retroactivity of laws, be governed by that decree. The Cour d'Appel, Colmar, rejected the first submission on the ground that the Brussels Convention, signed on 27 September 1968, came into force in France only on 1 January 1973, that is to say, after the conclusion of Collin's contract of employment and that thus the provisions of the Convention “cannot govern a contract of employment entered into prior to its entry into force”. The Cour d'Appel, Colmar, also rejected the second submission on the ground that “it is established case-law that procedural laws apply to actions pending and that the position is the same with regard to laws on jurisdiction”.

The company then appealed to the Cour de Cassation (Social Chamber), which by judgment of 10 January 1979 asked the Court of Justice:

“Whether, in application of Article 54 of the Brussels Convention, Article 17 of that Convention must be interpreted to mean that, when proceedings have been commenced after 1 February 1973, clauses conferring jurisdiction inserted into a contract of employment concluded before 1 February 1973 which would have been regarded as void by the internal legislation in force at that time must henceforward be deemed to be valid, regardless of the date of the agreements between the parties and of the date of the performance of the work in question.”

The judgment containing the reference was lodged at the Court Registry on 12 February 1979.

Only the Commission submitted written observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

In accordance with Article 20 of the Statute of the Court of Justice of the EEC written observations were submitted by the Commission of the European Communities, represented for these purposes by its Legal Adviser, Mr Leleux, acting as Agent.

II — Observations of the Commission submitted under Article 20 of the Protocol on the Statute of the Court of Justice

The Commission, in recalling the facts, remarks that “both Article 14 of the

Code Civil and the criterion of the residence of the plaintiff as set out in the Code du Travail are clauses excluding jurisdiction which are prohibited by Article 3 of the Brussels Convention”, and that the Cour d’Appel, Colmar, refused “the immediate application of the Convention” whilst it accepted it for Article 517-1 of the Code du Travail, although both provisions are of a procedural nature.

As regards the legal position the Commission makes a preliminary observation in which it takes the view that it is “desirable to enlarge the scope of the question in the light of the context as shown by the documents in the file” and therefore to consider the existence of jurisdiction in the light of the Brussels Convention as a whole and not only of Article 17 thereof.

The Commission recalls that “the authors of the Convention, legal theory and case-law are at one” in agreeing that the Brussels Convention covers disputes regarding contracts of employment and takes the view that “Article 54 could not be clearer and gives no grounds for doubt”: the Convention lays down rules of jurisdiction which must be observed in proceedings instituted after 1 February 1973, the date of its entry into force. It is therefore of little importance whether the action originates in obligations entered into by the parties before or after 1 February 1973.

The Commission refers to the case-law of the French Cour de Cassation (judgment of 24 October 1977, *Gaz. Pal.* 1978, 1-3 January, p. 6) at which the Full Court rejected a submission with regard to national public policy which had been put forward to preclude the application of the Convention by the Social Chamber; consequently it is

possible to institute proceedings against a defendant outside his domicile only if the Convention itself provides a ground of jurisdiction making it possible to derogate from the general rule with regard to the defendant's national court as expressed in Articles 2 and 3 of the said Convention.

In any case, recourse to Article 14 of the Code Civil — on which both the Tribunal d'Instance, Molsheim, and the Cour d'Appel, Colmar, relied — is expressly prohibited by Article 3 of the Convention; and the court should have checked "whether a ground of jurisdiction is to be found in the Convention itself". The only possibility which might be envisaged would be subparagraph 1. of Article 5, but the Commission maintains that "it cannot be seen from the material in the file that any part of the contractual obligations had been or was to be performed in France" and that consequently that article could not be applied.

As regards the application of Article 17 of the Brussels Convention, the Commission maintains that "there can be no possible justification for excluding that article from the application of Article 54 or adding a supplementary condition to the latter provision". And as the Cour de Cassation, in its aforesaid judgment of 24 October 1977, recognized that the authority of the Convention is superior to that of national law, "it is not possible to object in a lawsuit concerning international legal relationships covered by the Convention that a clause conferring jurisdiction is void in national law". The Commission emphasizes that French courts have already applied Article 17 of the Convention to decide that French courts had no jurisdiction (Conseil de

Prud'hommes, Vannes, 19 December 1975, Rec. Dalloz-Sirey 1976, p. 202; Cour d'Appel, Aix en Provence, 10 May 1974, Rec. Dalloz-Sirey 1974, p. 760 — Gaz. Palais 1974, p. 671). In the latter case the French court rejected the argument that the contract of employment was concluded before 1 February 1973, "stating that the action was indeed subject to the rules of the Convention under Article 54, since the action had been commenced after 1 February 1973".

In conclusion the Commission suggests that the following reply should be given to the question raised:

"The Brussels Convention of 27 September 1968 is applicable in its entirety to all legal proceedings instituted after it entered into force, that is to say, on 1 February 1973. After that date a defendant domiciled in a contracting State may be summoned before the courts of another State only if the Convention expressly so provides.

Article 17 is applicable, like the other provisions of the Convention, to proceedings referred to in Article 54. Consequently contractual clauses conferring jurisdiction determine jurisdiction exclusively, subject only to the exceptions expressly set out in Article 17 itself. Since there is no exception concerning actions relating to contracts of employment, such clauses, even when they are prohibited by a procedural provision under national law, are fully valid in actions concerning international legal relationships falling within the sphere of application of the Convention."

III — Oral procedure

the oral procedure by its Legal Adviser, Mr Leleux, presented oral argument.

At the sitting on 2 October 1979 the Commission of the European Communities, represented for the purposes of

The Advocate General delivered his opinion at the sitting on 24 October 1979.

Decision

- 1 By a judgment dated 10 January 1979, received at the Court Registry on 12 February 1979, the French Cour de Cassation (Social Chamber) referred to the Court of Justice 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 (hereinafter referred to as "the Convention") a question relating to the interpretation of Articles 17 and 54 of the said Convention which, in accordance with Article 62 thereof, entered into force on 1 February 1973.

This question is raised in the course of an action, concerned with the breach — on 8 December 1971 — of a contract of employment containing a clause conferring jurisdiction upon a German court, between a French worker, resident in France, and a German company which had engaged him to work in the Federal Republic of Germany, independently of any establishment.

This contract of employment was concluded on 27 October 1971 and the court proceedings were commenced on 27 November 1973.

- 2 In view of these facts the Cour de Cassation asks whether the clause conferring jurisdiction is effective in the case of contracts of employment concluded prior to the Convention or whether "in so far as they concern the protection of employed workers those provisions relate to the very substance of agreements and must be given effect only in relation to subsequent contracts". The Cour de Cassation accordingly framed the following question:

“Whether, in application of Article 54 of the Brussels Convention, Article 17 of that Convention must be interpreted to mean that, when proceedings have been commenced after 1 February 1973, clauses conferring jurisdiction inserted into a contract of employment concluded before 1 February 1973 which would have been regarded as void by the internal legislation in force at that time must henceforward be deemed to be valid, regardless of the date of the agreements between the parties and the date of the performance of the work in question.”

- 3 It follows from this questions that the Cour de Cassation rightly accepts that employment law comes within the substantive field of application of the Convention and that litigation arising out of a contract of employment concluded after 1 February 1973 is subject to the Convention and particularly to Article 17 thereof relating to prorogation of jurisdiction.
- 4 In view of the fact that the contract of employment was broken off on 8 December 1971 and that the judicial proceedings were not commenced until 27 November 1973, that is, after the Convention had come into force, the Cour de Cassation is concerned as to the meaning of Article 54 of the Convention which provides that “the provisions of this Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force” and asks whether the clause in the contract of employment conferring jurisdiction, which could have been regarded under French legislation prior to 1 February 1973 as being void, recovers its validity at the date of the entry into force of the Convention.
- 5 It is appropriate to answer this point by stating, on the one hand, that the Convention does not affect rules of substantive law and, on the other hand, that, as the Convention seeks to determine the jurisdiction of the courts of the contracting States in the intra-Community legal order in regard to matters of civil jurisdiction, the national procedural laws applicable to the cases concerned are set aside in the matters governed by the Convention in favour of the provisions thereof.
- 6 By its nature a clause in writing conferring jurisdiction and occurring in a contract of employment is a choice of jurisdiction; such a choice has no legal effect for so long as no judicial proceedings have been commenced and only becomes of consequence at the date when judicial proceedings are set in motion.

That is therefore the relevant date for the purposes of an appreciation of the scope of such a clause in relation to the legal rules applying at that time.

The judicial proceedings were instituted on 27 November 1973 and the Convention thus applies in pursuance of Article 54 thereof.

The effect of that article indeed is that the only essential for the rules of the Convention to be applicable to litigation relating to legal relationships created before the date of the coming into force of the Convention is that the judicial proceedings should have been instituted subsequently to that date, which is the position in the present instance.

- 7 Consequently the answer to the question raised by the French Cour de Cassation (Social Chamber) must be that Articles 17 and 54 of the Convention must be interpreted to mean that, in judicial proceedings instituted after the coming into force of the Convention, clauses conferring jurisdiction included in contracts of employment concluded prior to that date must be considered valid even in cases in which they would have been regarded as void under the national law in force at the time when the contract was entered into.

Costs

- 8 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

On those grounds,

THE COURT,

in answer to the question referred to it by the Cour de Cassation (Social Chamber) by a judgment of 10 January 1979, hereby rules:

Articles 17 and 54 of the Convention of Brussels of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted to mean that, in judicial proceedings instituted after the coming into force of the Convention, clauses conferring jurisdiction included in contracts of employment concluded prior to that date must be considered valid even in cases in which they would have been regarded as void under the national law in force at the time when the contract was entered into.

Kutscher

O'Keeffe

Touffait

Mertens de Wilmars

Pescatore

Mackenzie Stuart

Bosco

Delivered in open court in Luxembourg on 13 November 1979.

A. Van Houtte

H. Kutscher

Registrar

President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
DELIVERED ON 24 OCTOBER 1979 ¹

*Mr President,
Members of the Court,*

1. The preliminary proceedings of which my opinion of today forms part raise two interesting problems of the interpretation of the Convention of Brussels of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. First, one has the opportunity

of clarifying whether clauses conferring jurisdiction which the parties to a contract of employment have agreed upon are in every case effective in accordance with Article 17 of the Convention, notwithstanding the contrary provisions of some statutory legislation in regard to the exclusion of the jurisdiction of the national courts dealing with labour relations. If that issue falls to be resolved in the affirm-

¹ — Translated from the Italian.