JUDGMENT OF THE COURT (Fifth Chamber)

10 April 2003 *

In Case C-437/00,

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 Landesarbeitsgericht München (Germany) for a preliminary ruling in the proceedings pending before that court between

Giulia Pugliese

and

Finmeccanica SpA, Alenia Aerospazio Division,

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

* Language of the case: German.

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),

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward acting as President of the Fifth Chamber, A. La Pergola, P. Jann (Rapporteur), S. von Bahr and A. Rosas, Judges,

Advocate General: F.G. Jacobs,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Ms Pugliese, by T. Simons, Rechtsanwalt,

— the German Government, by R. Wagner, acting as Agent,

— the United Kingdom Government, by G. Amodeo, acting as Agent, and A. Robertson, Barrister,

— the Commission of the European Communities, by A.-M. Rouchaud and W. Bogensberger, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Pugliese and the Commission at the hearing on 13 June 2002,

after hearing the Opinion of the Advocate General at the sitting on 19 September 2002,

gives the following

Judgment

1 By order of 11 February 2000, received at the Court on 27 November 2000, the Landesarbeitsgericht München (Regional Labour Court, Munich) 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) two 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), ('the Convention').

2 Those questions have been raised in proceedings between Ms Pugliese, an Italian national domiciled in Rome, and Finmeccanica SpA, a company incorporated under Italian law, and its Alenia Aerospazio division ('Finmeccanica'), established in Rome, concerning the reimbursement of certain expenses and the application of certain disciplinary measures under the contract of employment concluded between the parties.

Legal framework

3 Article 5(1) of the Convention provides:

'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'.

Dispute in the main proceedings and the questions referred for preliminary ruling

4 On 5 January 1990 Ms Pugliese and Aeritalia Aerospaziale Italiana SpA ('Aeritalia'), a company incorporated under Italian law, concluded a contract of employment under which Ms Pugliese was engaged from 17 January 1990 to work for Aeritalia at its establishment in Turin (Italy).

5 On 17 January 1990 Ms Pugliese asked Aeritalia to suspend her employment under the 'regime di aspettativa' (arrangements for suspension of employment), owing to her transfer to a post with Eurofighter Jagdfluzeug GmbH ('Eurofighter'), a company incorporated under German law established in Munich (Germany), in which Aeritalia held some 21% of the shares.

6 By letter of 18 January 1990 Aeritalia acceded to that request with effect from 1 February 1990. It undertook, *inter alia*, to pay Ms Pugliese's voluntary insurance contributions in Italy and to credit her on her return to the company with full seniority for the period worked at Eurofighter. Aeritalia also undertook to reimburse certain travel costs and to pay Ms Pugliese a rent allowance or her rental costs during her work with Eurofighter.

7 On 12 and 31 January 1990, Ms Pugliese and Eurofighter concluded a contract of employment under which she was engaged from 1 February 1990. From that date she worked in Munich.

8 In 1990 Aeritalia was acquired by Finmeccanica. In 1995 Finmeccanica informed Ms Pugliese that the suspension of her contract would be terminated on 29 February 1996. Following repeated demands by Ms Pugliese, Finmeccanica agreed to extend her secondment to Eurofighter until 30 June 1998. However, it refused to continue to reimburse her travel and accommodation costs after 1 June 1996.

9 As Ms Pugliese did not comply with Finmeccanica's request to report on 1 July 1998 to its premises in Turin to resume her employment, disciplinary measures were applied to her.

10 On 9 February 1998, Ms Pugliese brought an action before the Arbeitsgericht München (Labour Court, Munich) against Finmeccanica for the reimbursement of her rental costs from 1 June 1996 and her travel costs from the second half of 1996. She subsequently amended her claim in order also to contest the disciplinary measures taken against her.

11 By judgment of 19 April 1999 the Arbeitsgericht München dismissed the action on the ground that it lacked jurisdiction.

12 On appeal by Ms Pugliese the Landesarbeitsgericht München, taking the view that the dispute raised an issue of the interpretation of the Convention, decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

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

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

The first question

13 It should be noted at the outset that the case which the national court has to decide concerns an employee who successively concluded two contracts of employment with two different employers, the first employer being fully

informed of the conclusion of the second contract and having agreed to the suspension of the first contract. The national court seeks to determine whether, as a German court, it has jurisdiction to resolve a dispute between the employee and the first employer, where the employee has carried out her work for the second employer in Germany, while the contract concluded with the first employer fixed the place of work in Italy.

14 In this context the national court asks, essentially, whether the second part of Article 5(1) of the Convention must be interpreted as meaning that in a dispute between an employee and a first employer, in respect of which the employee's obligations are suspended, the place where the employee performs her obligations to the second employer may be regarded as the place where she habitually carries out her work under her contract with the first employer.

15 In order to answer that question it is important, first of all, to consider the Court's case-law on the interpretation of Article 5(1) of the Convention when the dispute concerns an individual contract of employment.

16 First, it is clear from that case-law that, with regard to 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 Convention, must be determined by reference to uniform criteria which it is for the Court to lay down on the basis of the scheme and objectives of the 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-37/00 *Weber* [2002] ECR I-2013, paragraph 38). The Court has stressed that such an autonomous interpretation alone is capable of ensuring uniform application of the Convention, the objectives of which include unification of the rules on jurisdiction of the Contracting States, so

as to avoid as far as possible the multiplication of the bases of jurisdiction in relation to one and the same legal relationship and to reinforce the legal protection available to persons established in the Community by, at the same time, allowing the plaintiff easily to identify the court before which he may bring an action and the defendant reasonably to foresee the court before which he may be sued (*Mulox IBC*, cited above, paragraph 11; *Rutten*, cited above, paragraph 13).

17 Second, the Court takes the view that the rule on special jurisdiction in Article 5(1) of the 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*, paragraph 17; *Rutten*, paragraph 16; and *Weber*, cited above, paragraph 39).

18 Third, in matters relating to contracts of employment, the interpretation of Article 5(1) of the 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, as that is the place where it is least expensive for the employee to commence or defend court proceedings (*Mulox IBC*, paragraphs 18 and 19; *Rutten*, paragraph 17; and *Weber*, paragraph 40).

19 From this the Court infers that Article 5(1) of the Convention must be interpreted as meaning that in matters relating to 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 *Weber*, paragraph 41). In the case where the employee performs the obligations arising under his contract of employment in several Contracting States, the place where he habitually carries out his work, 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 (*Mulox IBC*, paragraph 26; *Rutten*, paragraph 23; and *Weber*, paragraph 58).

20 The present case differs from those which gave rise to the judgments in *Mulox IBC*, *Rutten* and *Weber* in that, during the period relevant to the dispute in the main proceedings, Ms Pugliese's work was undertaken in one place. However, that place is not the place determined by the contract of employment concluded with the defendant employer in the dispute in the main proceedings, but another place determined by a different contract of employment concluded with a separate employer.

21 As is acknowledged in all the observations submitted to the Court, the question whether the place where an employee performs his obligations *vis-à-vis* an employer can be treated as the place where he habitually carries out his work for purposes of the application of Article 5(1) of the Convention, in a dispute concerning another contract of employment, depends on the extent to which those two contracts are connected.

22 The conditions which that connection must satisfy must be determined with regard to the objectives of Article 5(1) of the Convention, as defined by the case-law cited in paragraphs 16 to 19 of this judgment. If that case-law cannot be fully transposed to the present case, it remains relevant, however, in so far as it emphasises that Article 5(1) of the Convention must be so interpreted to avoid a multiplicity of courts with jurisdiction, enable the defendant to reasonably

predict before which courts he may be sued and to ensure adequate protection to the employee as the weaker contracting party.

23 The first two objectives require that, when an employee is connected to two different employers, the first employer can be sued before the courts of the place where the employee carries out his work for the second employer only when, at the time of the conclusion of the second contract of employment, the first employer itself has an interest in the employee's performance of the service for the second employer in a place decided on by the latter.

24 The third objective requires that the existence of that interest does not have to be strictly verified according to formal and exclusive criteria, but must be determined in an overall manner taking into consideration all the facts of the case. The relevant factors may include:

— the fact that the conclusion of the second contract was envisaged when the first was being concluded,

— the fact that the first contract was amended on account of the conclusion of the second contract,

— the fact that there is an organisational or economic link between the two employers,

— the fact that there is an agreement between the two employers providing a framework for the coexistence of the two contracts,

— the fact that the first employer retains management powers in respect of the employee,

— the fact that the first employer is able to decide the duration of the employee's work for the second employer.

25 It is for the national court to determine, in the light of those or other relevant factors, whether the circumstances of the case in the main proceedings point to an interest on the first employer's part in the performance of the service in Germany by Ms Pugliese under her contract of employment with the second employer.

26 The answer to the first question must therefore be that Article 5(1) of the Convention is to be interpreted as meaning that, in a dispute between an employee and a first employer, the place where the employee performs his obligations to a second employer can be regarded as the place where he habitually carries out his work when the first employer, with respect to whom the employee's contractual obligations are suspended, has, at the time of the conclusion of the second contract of employment, an interest in the performance of the service by the employee to the second employer in a place decided on by the latter. The existence of such an interest must be determined on a comprehensive basis, taking into consideration all the circumstances of the case.

The second question

27 By this question the national court seeks to ascertain whether, if it does not have jurisdiction as the court for the place where the employee habitually carries out his work, it may base its jurisdiction on some other factor. It asks, essentially, whether the first part of Article 5(1) of the Brussels Convention must be interpreted as meaning that, in matters relating to individual contracts of employment, the place of performance of an obligation other than that of carrying out work, such as the employer's obligation to pay rental costs in another country and travel costs to the country of origin can be used to found its jurisdiction.

28 That question need be answered only to the extent to which, following an overall assessment of the circumstances of the case in the main proceedings, the national court cannot establish that the first employer has an interest in the performance of the service in Germany by Ms Pugliese under the second contract of employment with Eurofighter.

29 It is clear from the Court's case-law cited in paragraph 19 of this judgment that in a dispute which is based on a contract of employment, the only obligation to be taken into account for the application of Article 5(1) of the Convention is the obligation on the employee to carry out the work agreed with his employer.

30 The answer to the second question must therefore be that Article 5(1) of the Convention is to be interpreted as meaning that, in matters relating to contracts

of employment, the place where the employee carries out his work is the only place of performance of an obligation which can be taken into consideration in order to determine which court has jurisdiction.

Costs

31 The costs incurred by the German and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. As 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 (Fifth Chamber),

in answer to the questions referred to it by the Landesarbeitsgericht München by order of 11 February 2000, hereby rules:

1. 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, must be interpreted as meaning that, in a dispute between an employee and a first employer, the place where the employee performs his obligations to a second employer can be regarded as the place where he habitually carries out his work when the first employer, with respect to whom the employee's contractual obligations are suspended, has, at the time of the conclusion of the second contract of employment, an interest in the performance of the service by the employee to the second employer in a place decided on by the latter. The existence of such an interest must be determined on a comprehensive basis, taking into consideration all the circumstances of the case.

2. Article 5(1) of the Brussels Convention must be interpreted as meaning that, in matters relating to contracts of employment, the place where the employee carries out his work is the only place of performance of an obligation which can be taken into consideration in order to determine which court has jurisdiction.

Edward La Pergola Jann

von Bahr Rosas

Delivered in open court in Luxembourg on 10 April 2003.

R. Grass M. Wathelet

Registrar President of the Fifth Chamber