

JUDGMENT OF THE COURT (Sixth Chamber)
27 June 1991 *

In Case C-351/89,

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 Court of Appeal, London, for a preliminary ruling in the proceedings pending before that court between

Overseas Union Insurance Limited,

Deutsche Ruck UK Reinsurance Limited, and

Pinac Top Insurance Company Limited,

and

New Hampshire Insurance Company,

on the interpretation of Articles 7 to 12a and Article 21 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 to that Convention and to the Protocol on its interpretation by the Court of Justice (amended version published in Official Journal 1978 L 304, p. 77),

* Language of the case: English.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber,¹ T. F. O'Higgins,¹²
C. N. Kakouris, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: W. Van Gerven,
Registrar: V. Di Bucci, Administrator,

after considering the written observations submitted on behalf of:

- Overseas Union Insurance Limited, Deutsche Ruck UK Reinsurance Limited and Pine Top Insurance Company Limited, by Peter Goldsmith QC and David Railton, Barrister-at-Law, instructed initially by Messrs Holman Fenwick & Willan, Solicitors, and subsequently, as regards Overseas Union Insurance Limited, by Messrs Stephenson Harwood, Solicitors,
- New Hampshire Insurance Company, by Jonathan Mance QC and Alan Newman QC, instructed by Messrs Hextall, Erskine & Co, Solicitors,
- the Government of the Federal Republic of Germany, by Christof Böhmer, Ministerialrat in the Federal Ministry of Justice, acting as Agent,
- the United Kingdom, by Rosemary Caudwell, of the Treasury Solicitor's Department, acting as Agent, and
- the Commission of the European Communities, by John Forman, Legal Adviser, and Adam Blomefield, a member of the Commission's Legal Department, acting as Agents,

having regard to the Report for the Hearing,

after hearing oral argument from Overseas Union Insurance Limited, Deutsche Ruck UK Reinsurance Limited, Pine Top Insurance Company Limited, New Hampshire Insurance Company and the Commission at the hearing on 5 February 1991,

after hearing the Opinion of the Advocate General at the sitting on 7 March 1991, gives the following

Judgment

- 1 By order dated 26 July 1989, which was received at the Court on 17 November 1989, the Court of Appeal, London, referred to the Court for a preliminary ruling pursuant to 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 number of questions on the interpretation of Articles 7 to 12a and Article 21 of that Convention.
- 2 The questions arose in proceedings between Overseas Union Insurance Limited (hereinafter referred to as 'OUI'), Deutsche Ruck UK Reinsurance Limited ('Deutsche Ruck') and Pine Top Insurance Company Limited ('Pine Top'), on the one hand, and New Hampshire Insurance Company ('New Hampshire'), on the other, relating to the obligations which may arise on the part of OUI, Pine Top and Deutsche Ruck on account of insurance contracts which they concluded with New Hampshire.
- 3 It appears from the documents before the Court that New Hampshire, a company incorporated in the State of New Hampshire, USA, is registered in England as an overseas company pursuant to the provisions of the Companies Act 1985 and in France as a foreign company, since it has several offices in that country. In 1979 it issued a policy of insurance covering certain costs relating to the repair or replacement of electrical appliances sold with the benefit of a five-year warranty by Société Française des Nouvelles Galeries Réunies, a company incorporated in France with its registered office in Paris.

- 4 In 1980 New Hampshire reinsured a proportion of its risk under that policy inter alia with OUI, a company incorporated in Singapore and registered in England as an overseas company, and with Deutsche Ruck and Pine Top, companies incorporated in England with their registered offices in London.

- 5 After raising a number of queries with Hew Hampshire concerning the management of the insurance account, OUI, Deutsche Ruck and Pine Top first ceased all payment of claims and then purported to avoid their respective insurance commitments on the grounds of non-disclosure, misrepresentation and breach of duty in both the placing and operation of the reinsurance policies.

- 6 On 4 June 1987 New Hampshire issued proceedings against Deutsche Ruck and Pine Top in the Tribunal de Commerce (Commercial Court) in Paris, claiming monies due under the reinsurance policies. On 9 February 1988 New Hampshire brought similar proceedings against OUI in the same court. Deutsche Ruck and Pine Top formally challenged the jurisdiction of the French court, whilst OUI made clear its intention to do likewise.

- 7 On 6 April 1988, OUI, Deutsche Ruck and Pine Top brought an action against New Hampshire in the Commercial Court of the Queen's Bench Division of the High Court of Justice in which they sought a declaration that they had lawfully avoided their obligations under the reinsurance policies. On 9 September 1988 the Commercial Court granted a stay of the proceedings pursuant to the second paragraph of Article 21 of the Convention until such time as the French court gave a decision on the question of its jurisdiction in the proceedings pending before it.

- 8 OUI, Deutsche Ruck and Pine Top appealed that order to the Court of Appeal. Taking the view that the dispute raised a question concerning the interpretation of the Convention, that court stayed the proceedings and submitted the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 21 of the Convention apply:

(a) irrespective of the domicile of the parties to the two sets of proceedings?

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(b) only if the defendant in the proceedings before the court second seised is domiciled in a Contracting State, irrespective of the domicile of any other party?

or

(c) if at least one, and if so which, of the parties to the two sets of proceedings is domiciled in a Contracting State?

(2) Under Article 21, paragraph 2, of the Convention, where the jurisdiction of the court first seised is contested, is the court second seised obliged in all circumstances to stay its proceedings as an alternative to declining jurisdiction?

(3) (a) If the court second seised is not so obliged, is it (i) required or (ii) permitted for the purpose of deciding whether to stay its proceedings to examine whether the court first seised has jurisdiction?

(b) If so, under what circumstances and to what extent may the second-seised court examine the jurisdiction of the first-seised court?

(4) If the answer to questions 3(a) and (b) indicate that the court second seised is required, or, if not required, is permitted, in circumstances which do, or may, include the present to examine whether the court first seised has jurisdiction, do the provisions of Title II Section 3 of the Convention apply as between an

insurer (reassured) and a reinsurer under a contract of quota share re-insurance?’

- 9 In its order the Court of Appeal makes it clear that it is common ground between the parties that the French court was in each case the court first seised and that the proceedings before the courts of the two Contracting States involve in each case the same cause of action between the same parties within the meaning of Article 21 of the Convention, as interpreted by the Court of Justice in the judgment of 8 December 1987 in Case 144/86 *Gubisch Maschinenfabrik v Palumbo* [1987] ECR 4861.
- 10 Reference is made to the Report for the Hearing for a fuller account of the legal and factual background to the main proceedings, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

- 11 In its first question the national court essentially seeks to establish whether Article 21 of the Convention applies irrespective of the domicile of the parties to the two sets of proceedings.
- 12 In order to answer that question it should be recalled that Article 21 of the Convention provides that:

‘Where proceedings involving the same cause of action and between the same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court.

A court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.’

- 13 Thus, the wording of Article 21, unlike the wording of other provisions of the Convention, makes no reference to the domicile of the parties to the proceedings. Moreover, Article 21 does not draw any distinction between the various heads of jurisdiction provided for in the Convention. In particular, it does not provide for any derogation to cover a case where, in accordance with the provisions of Article 4 of the Convention, a court of a Contracting State exercises its jurisdiction by virtue of the law of that State over a defendant who is not domiciled in a Contracting State.
- 14 Consequently, it appears from the wording of Article 21 that it must be applied both where the jurisdiction of the court is determined by the Convention itself and where it is derived from the legislation of a Contracting State in accordance with Article 4 of the Convention.
- 15 The interpretation suggested by the wording is borne out by an examination of the aims of the Convention. In the judgment of 11 January 1990 in Case C-220/88 *Dumez France and Tracoba v Hessische Landesbank and Others* [1990] ECR I-49, the Court held that essentially the aim of the Convention was to promote the recognition and enforcement of judgments in States other than those in which they were delivered and that it was therefore indispensable to limit the risk of irreconcilable decisions, which is a reason for withholding recognition or an order for enforcement by virtue of Article 27(3) of the Convention.
- 16 With regard in particular to Article 21, the Court observed in the judgment in *Gubisch*, cited above, that that provision, together with Article 22 on related actions, is contained in Section 8 of Title II of the Convention, which is intended, in the interests of the proper administration of justice within the Community, to prevent parallel proceedings before the courts of different Contracting States and to avoid conflicts between decisions which might result therefrom. Those rules are therefore designed to preclude, in so far as possible and from the outset, the possibility of a situation arising such as that referred to in Article 27(3), that is to say the non-recognition of a judgment on account of its irreconcilability with a judgment given in proceedings between the same parties in the State in which recognition is sought. It follows that, in order to achieve those aims, Article 21 must be interpreted broadly so as to cover, in principle, all situations of *lis pendens* before courts in Contracting States, irrespective of the parties' domicile.

17 In view of that conclusion, it is necessary to reject the argument of the appellants in the main proceedings to the effect that the very existence of Article 27(3) of the Convention shows that Articles 21 and 22 cannot prevent irreconcilable judgments from being given in certain cases in different Contracting States. The fact that the Convention makes provision for cases in which such situations might nevertheless arise cannot constitute an argument against an interpretation of Articles 21 and 22, which, according to the case-law of the Court (see the judgment in *Dumez France and Tracoba*, cited above), have the specific aim of precluding or limiting the risk of irreconcilable judgments and non-recognition.

18 The answer to the first question submitted by the national court must therefore be that Article 21 of the Convention must be interpreted as applying irrespective of the domicile of the parties to the two sets of proceedings.

The second and third questions

19 By its second and third questions, the national court essentially seeks to establish whether Article 21 of the Convention must be interpreted as meaning that, if it does not decline jurisdiction, the court second seised may only stay its proceedings, or whether Article 21 permits or requires it to examine whether the court first seised has jurisdiction and, if so, to what extent.

20 In that connection, it must be observed in the first place that nothing in the documents before the Court suggests that the main proceedings fall within an exclusive head of jurisdiction laid down in the Convention, in particular in Article 16 thereof. The Court's ruling does not, therefore, have to cover cases in which the court second seised has such exclusive jurisdiction.

21 In the case of a dispute over which it is not claimed that the court second seised has exclusive jurisdiction, the only exception to the obligation imposed by Article 21 of the Convention on that court to decline jurisdiction is where it stays

proceedings, an option which it may exercise only if the jurisdiction of the court first seised is contested.

- 22 It appears from the report of the committee of experts which drafted the Convention (Official Journal 1979 C 59, p. 1) that that rule was introduced so that the parties would not have to institute new proceedings if, for example, the court first seised of the matter were to decline jurisdiction. However, the objective of the provision, which is to avoid negative conflicts of jurisdiction, may be achieved without the court second seised examining the jurisdiction of another court.
- 23 Moreover, it should be noted that in no case is the court second seised in a better position than the court first seised to determine whether the latter has jurisdiction. Either the jurisdiction of the court first seised is determined directly by the rules of the Convention, which are common to both courts and may be interpreted and applied with the same authority by each of them, or it is derived, by virtue of Article 4 of the Convention, from the law of the State of the court first seised, in which case that court is undeniably better placed to rule on the question of its own jurisdiction.
- 24 Moreover, the cases in which a court in a Contracting State may review the jurisdiction of a court in another Contracting State are set out exhaustively in Article 28 and the second paragraph of Article 34 of the Convention. Those cases are limited to the stage of recognition or enforcement and relate only to certain rules of special or exclusive jurisdiction having a mandatory or public-policy nature. It follows that, apart from those limited exceptions, the Convention does not authorize the jurisdiction of a court to be reviewed by a court in another Contracting State.
- 25 It therefore appears both from the wording of Article 21 and from the scheme of the Convention that the only other possibility available, as an alternative solution, to the court second seised, which should normally decline jurisdiction, is to stay the proceedings if the jurisdiction of the court first seised is contested. However, it cannot itself examine the jurisdiction of the court first seised.

26 The answer to the second and third questions submitted by the national court must therefore be that, without prejudice to the case where the court second seised has exclusive jurisdiction under the Convention and in particular under Article 16 thereof, Article 21 of the Convention must be interpreted as meaning that, where the jurisdiction of the court first seised is contested, the court second seised may, if it does not decline jurisdiction, only stay the proceedings and may not itself examine the jurisdiction of the court first seised.

27 In view of the answers given to the first three questions, the fourth question is redundant.

Costs

28 The costs incurred by the Federal Republic of Germany, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 reply to the questions submitted to it by the Court of Appeal, London, by order of 26 July 1989, hereby rules:

- (1) Article 21 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as applying irrespective of the domicile of the parties to the two sets of proceedings;

- (2) Without prejudice to the case where the court second seised has exclusive jurisdiction under the Convention and in particular under Article 16 thereof, Article 21 of the Convention must be interpreted as meaning that, where the jurisdiction of the court first seised is contested, the court second seised may, if it does not decline jurisdiction, only stay the proceedings and may not itself examine the jurisdiction of the court first seised.

Mancini

O'Higgins

Kakouris

Schockweiler

Kapteyn

Delivered in open court in Luxembourg on 27 June 1991.

J.-G. Giraud

G. F. Mancini

Registrar

President of the Sixth Chamber