Court of Justice of the European Communities
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Judgment in Case C-133/08
Intercontainer Interfrigo (ICF) v Balkenende Oosthuizen BV & Mic Operations BV

Press and Information

THE COURT OF JUSTICE INTERPRETS THE EUROPEAN CONVENTION ON THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS FOR THE FIRST TIME

The Court specifies the criteria according to which the law applicable to a charter-party is determined

In 1998, in the context of a project for a train connection for freight traffic between Amsterdam (Netherlands) and Frankfurt am Main (Germany), the Belgian company Intercontainer Interfrigo (ICF) entered into a charter party with the Netherlands companies Balkenende and Mic Operations BV (MIC). ICF was to make train wagons available to MIC and would ensure their transport via the rail network. MIC, which had hired out the acquired load capacity to third parties, was responsible for all operational aspects of the transport. The draft contract stating that Belgian law was the law applicable to the contract was not signed by any of the parties.

In 2002, ICF brought an action against MIC before a Netherlands court seeking payment of an invoice from 1998. The Netherlands court held that the contract should be categorised as a contract for the carriage of goods, that it was more closely connected with the Netherlands than with Belgium and that, consequently, the right to payment of the invoice was time-barred (which was not the case under Belgian law).

The Hoge Raad der Nederlanden (Supreme Court of the Netherlands), before which the case is now pending, referred a number of questions to the Court of Justice relating to the interpretation of the law applicable to contractual obligations[1] and, in particular on the applicable law in the absence of a choice by the parties.

The Court points out, first, that the Convention was concluded in order to continue, in the field of private international law, the work of unification of law set in motion by the Convention on jurisdiction and the enforcement of judgments[2]. It seeks to eliminate the inconveniences arising from the diversity of the conflict-of-law rules applied in the various States in the area of contracts and establish uniform rules concerning the law applicable to contractual obligations, irrespective of where the judgment is to be delivered.

Under the Convention, the **parties are free to choose the law applicable** to the contract that they are concluding, but, in the absence of a choice, **connecting criteria are provided for** which apply to all categories of contract and are based on ascertaining the **country with which that contract is 'most closely connected'**. That general principle is limited by **presumptions** (such as the place of residence of the party to the contract who effects the performance characteristic of that contract) or **special connecting criteria** (for example in respect of contracts for immoveable property or contracts of carriage).

[1] Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1).
[2] Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32).

More specifically as regards the carriage of goods, the law which applies is that of the country in which the carrier has his principal place of business if the place of loading or the place of discharge or the principal place of business of the consignor is situated in that country.

The Court also points out that under the Convention other contracts the main purpose of which is the carriage of goods are also to be treated as contracts for the carriage of goods, but, in such circumstances, the law of the country in which the carrier has his principal place of business applies only when the owner/carrier has his principal place of business, at the time the contract is concluded, in the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated.

The Court thus declares that **the law of the country in which the carrier has his principal place of business applies to a charter-party** only when the **main purpose of the contract** is not merely to make available a means of transport, but **the actual carriage of goods**.

The court must always determine the applicable law on the basis of the presumptions provided by the Convention, but where it is clear from the circumstances as a whole that the contract is more closely connected with a country other than that determined on the basis of the presumptions, the court may disregard them and apply **the law of the country with which the contract is most closely connected**.

The Court points out that under the Convention[3] the law applicable to a contract governs in particular the prescription of obligations. Lastly, it holds that – for the purposes of determining the law applicable – the court may separate a contract into a number of parts; a part of a contract may, by way of exception, be governed by a law other than that which applies to the rest of the contract, but only where the object of that part is independent.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of Community law or the validity of a Community act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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[3] Article 10(1)(d).