

JUDGMENT OF THE COURT
17 June 1992 *

In Case C-26/91,

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 (OJ 1978 L 304, p. 36) by the French Cour de Cassation for a preliminary ruling in the proceedings pending before that court between

Jakob Handte & Co. GmbH

and

Traitements Mécano-chimiques des Surfaces SA (TMCS)

on the interpretation of Article 5(1) of the Convention of 27 September 1968,

THE COURT,

composed of: O. Due, President, F. A. Schockweiler (President of Chamber), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, M. Diez de Velasco and M. Zuleeg, Judges,

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

after considering the written observations submitted on behalf of:

— Jakob Handte & Co. GmbH, by J. P. Desaché, of the Paris Bar,

* Language of the case: French.

- the Government of the Federal Republic of Germany, by C. Böhmer, Ministerialrat in the Federal Ministry of Justice, acting as Agent,
- the Commission of the European Communities, by X. Lewis, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the Commission at the hearing on 25 February 1992,

after hearing the Opinion of the Advocate General at the sitting on 8 April 1992,

gives the following

Judgment

- 1 By judgment of 8 January 1991, received at the Court on 25 January 1991, the French Cour de Cassation (Court of Cassation) 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), 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) (hereinafter 'the Convention'), a question concerning the interpretation of Article 5(1) of the Convention.
- 2 The question has arisen in proceedings between Jakob Handte & Co. GmbH, whose registered office is at Tuttlingen (Federal Republic of Germany) (hereinafter 'Handte Germany'), and Traitements Mécano-chimiques des Surfaces, a limited liability company whose registered office is at Bonneville (France) (hereinafter 'TMCS').

- 3 It appears from the documents submitted to the Court that in 1984 and 1985 TMCS purchased from Bula et Fils (hereinafter 'Bula'), which is a limited liability company governed by Swiss law, two metal-polishing machines to which TMCS had a suction system fitted that was manufactured by Handte Germany but sold and installed by Société Handte France S.à r. l. (hereinafter 'Handte France'), whose registered office is at Strasbourg (France).
- 4 In 1987 TMCS instituted proceedings against Bula, Handte Germany and Handte France in the Tribunal de Grande Instance (Regional Court), Bonneville (France), seeking compensation for damage incurred by reason of the fact that the equipment manufactured and sold did not comply with rules on hygiene and safety at work and was unsuitable for its intended purpose.
- 5 By judgment of 4 May 1988, that court ruled that it had no jurisdiction *ratione loci* to entertain the action against Bula but that it did have jurisdiction under Article 5(1) of the Convention to rule on the claim against Handte Germany and Handte France.
- 6 By judgment of 20 March 1989, the Cour d'Appel (Court of Appeal), Chambéry (France), dismissed Handte Germany's appeal on the ground that the action brought by TMCS against that company was an action to establish the manufacturer's liability for defects in the goods sold, that such a direct action by a sub-buyer against the manufacturer related to a contractual matter under both French law and the Convention and that the lower court was accordingly right in finding that it had jurisdiction under Article 5(1) of the Convention as the court for the place of performance of the obligation.
- 7 Handte Germany considered that Article 5(1) of the Convention was not applicable where there was a chain of contracts and appealed on a point of law against the judgment of the Cour d'Appel, Chambéry.

8 The French Cour de Cassation found that the dispute raised a problem concerning interpretation of the Convention and accordingly decided to stay proceedings until the Court of Justice has given a preliminary ruling on the following question:

‘Does Article 5(1) of the Convention, which provides for special jurisdiction in matters relating to a contract, apply to an action between a sub-buyer of goods and the manufacturer, who is not the seller, relating to defects in those goods or to their unsuitability for their intended purpose?’

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed below only in so far as is necessary for the reasoning of the Court.

10 In replying to the question from the national court, it should first be observed that the Court has consistently held that the phrase ‘matters relating to a contract’ in Article 5(1) of the Convention is to be interpreted independently, having regard primarily to the objectives and general scheme of the Convention, in order to ensure that it is applied uniformly in all the Contracting States (see the judgment in Case 34/82 *Martin Peters Bauunternehmung v Zuid Nederlandse Aannemers Vereniging* [1983] ECR 987, paragraphs 9 and 10, and the judgment in Case 9/87 *Arcado v Haviland* [1988] ECR 1539, paragraphs 10 and 11). The phrase should not therefore be taken as referring to how the legal relationship in question before the national court is classified by the relevant national law.

11 Secondly, it should be noted that, according to the preamble to the Convention, one of its objectives is to ‘strengthen in the Community the legal protection of persons therein established’.

12 In that connection, the expert report prepared at the time when the Convention was drawn up (OJ 1979 C 59, p. 1) states that:

‘... the purpose of the Convention is ..., by establishing common rules of jurisdiction, to achieve, ... in the field which it was required to cover, a genuine legal systematization which will ensure the greatest possible degree of legal certainty. To this end, the rules of jurisdiction codified in Title II determine which State’s courts are most appropriate to assume jurisdiction, taking into account all relevant matters ...’.

- 13 The Convention achieves that objective by laying down a number of jurisdictional rules which determine the cases, exhaustively listed in Sections 2 to 6 of Title II of the Convention, in which a defendant domiciled or established in a Contracting State may, under a rule of special jurisdiction, or must, under a rule of exclusive jurisdiction or prorogation of jurisdiction, be sued before a court of another Contracting State.
- 14 The rules on special and exclusive jurisdiction and those relating to prorogation of jurisdiction thus derogate from the general principle, set out in the first paragraph of Article 2 of the Convention, that the courts of the Contracting State in which the defendant is domiciled are to have jurisdiction. That jurisdictional rule is a general principle because it makes it easier, in principle, for a defendant to defend himself. Consequently, the jurisdictional rules which derogate from that general principle must not lead to an interpretation going beyond the situations envisaged by the Convention.
- 15 It follows that the phrase ‘matters relating to a contract’, as used in Article 5(1) of the Convention, is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another.
- 16 Where a sub-buyer of goods purchased from an intermediate seller brings an action against the manufacturer for damages on the ground that the goods are not in conformity, it must be observed that there is no contractual relationship

between the sub-buyer and the manufacturer because the latter has not undertaken any contractual obligation towards the former.

- 17 Furthermore, particularly where there is a chain of international contracts, the parties' contractual obligations may vary from contract to contract, so that the contractual rights which the sub-buyer can enforce against his immediate seller will not necessarily be the same as those which the manufacturer will have accepted in his relationship with the first buyer.
- 18 The objective of strengthening legal protection of persons established in the Community, which is one of the objectives which the Convention is designed to achieve, also requires that the jurisdictional rules which derogate from the general principle of the Convention should be interpreted in such a way as to enable a normally well-informed defendant reasonably to predict before which courts, other than those of the State in which he is domiciled, he may be sued.
- 19 However, in a situation such as that with which the main proceedings are concerned, the application of the special jurisdictional rule laid down by Article 5(1) of the Convention to an action brought by a sub-buyer of goods against the manufacturer is not foreseeable by the latter and is therefore incompatible with the principle of legal certainty.
- 20 Apart from the fact that the manufacturer has no contractual relationship with the sub-buyer and undertakes no contractual obligation towards that buyer, whose identity and domicile may, quite reasonably, be unknown to him, it appears that in the great majority of Contracting States the liability of a manufacturer towards a sub-buyer for defects in the goods sold is not regarded as being of a contractual nature.

- 21 It follows that the answer to the question submitted by the national court must be that Article 5(1) of the Convention is to be understood as meaning that it does not apply to an action between a sub-buyer of goods and the manufacturer, who is not the seller, relating to defects in those goods or to their unsuitability for their intended purpose.

Costs

- 22 The costs incurred by the Government of the Federal Republic of Germany and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the French Cour de Cassation by judgment of 8 January 1991, hereby rules:

Article 5(1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is to be understood as meaning that it does not apply to an action between a sub-buyer of goods and the manufacturer, who is not the seller, relating to defects in those goods or to their unsuitability for their intended purpose.

Due

Schockweiler

Mancini

Kakouris

Moitinho de Almeida

Diez de Velasco

Zuleeg

Delivered in open court in Luxembourg on 17 June 1992.

J. G. Giraud

O. Due

Registrar

President