JUDGMENT OF THE COURT
13 July 1995 *

In Case C-341/93,

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 Vestre Landsret (Denmark) for a preliminary ruling in the proceedings pending before that court between

Danværn Production A/S

and

Schuhfabriken Otterbeck GmbH & Co.,

on the interpretation of Articles 6(3) and 22 of the said 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 and — as amended — p. 77) and the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1 and — as amended — OJ 1983 C 97, p. 1),

* Language of the case: Danish.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, F. A. Schockweiler, C. Gulmann and P. Jann (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, J. L. Murray, D. A. O. Edward (Rapporteur), J.-P. Puissochet, G. Hirsch and L. Sevón, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the German Government, by Christof Böhmer, Ministerialrat in the Federal Ministry of Justice, acting as Agent,

— the United Kingdom, by John D. Colahan, of the Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities, by Anders Christian Jessen and Pieter van Nuffel, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 17 May 1995,

gives the following

Judgment

1 By decision of 30 June 1993, received at the Court Registry on 5 July 1993, the Vestre Landsret (Western Regional Court), Denmark, 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 and — as amended — p. 77) and the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1 and — as amended — OJ 1983 C 97, p. 1) (hereinafter 'the Convention'), two questions on the interpretation of Articles 6(3) and 22 of the Convention.

2 Those questions were raised in proceedings between Schuhfabriken Otterbeck GmbH&Co. ('Otterbeck'), the plaintiff in the main proceedings, established in Germany, and Danværn Production A/S ('Danværn'), the defendant in the main proceedings, established in Denmark.

3 Under an agency contract of 10 August 1979, Otterbeck appointed Danværn as its exclusive agent in Denmark for sales of its range of safety shoes.

4 By letter of 22 March 1990, Otterbeck terminated the agency contract with immediate effect, on the ground that Danværn had acted in gross bad faith by dismissing a certain employee.

5 On 11 September 1990 Otterbeck brought proceedings against Danværn in the Byret (District Court), Brønderslev, seeking payment of DKR 223 173.39 with interest, in respect of safety shoes delivered in January and February 1990.

6 Before the Byret, Danværn admitted that it owed the amount claimed, but, asserting that it had its own claims against Otterbeck, including a claim for loss and damage resulting from the wrongful termination of the agency contract, submitted that Otterbeck's claim should be dismissed and that a separate judgment should be entered against Otterbeck ordering it to pay DKR 737 018.34.

7 By judgment of 26 March 1991 the Byret dismissed Danværn's claim as inadmissible, both in so far as it sought a separate judgment and in so far as it pleaded a set-off as a defence, on the basis that there was not the necessary degree of connection between Otterbeck's and Danværn's claims as required by Article 6(3) of the Convention, which provides:

'A person domiciled in a Contracting State may also be sued:

...

3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending.'

8 Danværn appealed against that judgment to the Vestre Landsret, where it abandoned its application for a separate judgment and sought only to set off the sum of DKR 223 173.39 with interest, which was equivalent to the amount of Otterbeck's original claim.

9 The Vestre Landsret considered that the proceedings raised a question of interpretation of the Convention.

10 It therefore stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'1. Does Article 6(3) cover counterclaims for set-offs?

2. Is the expression in Article 6(3) "... arising from the same contract or facts on which the original claim was based ..." to be treated as more restrictive than the expression "actions [which] are ... related" in the third paragraph of Article 22 of the Convention?'

Question 1

11 By its first question the national court asks whether Article 6(3) of the Convention applies to the situation where a defendant, who is being sued in a court which has jurisdiction over him, pleads in reply a claim which he allegedly has against the plaintiff.

12 The national laws of the Contracting States generally distinguish between two situations. One is where the defendant pleads, as a defence, the existence of a claim he allegedly has against the plaintiff, which would have the effect of wholly or partially extinguishing the plaintiff's claim. The other is where the defendant, by a separate claim made in the context of the same proceedings, seeks a judgment or decree ordering the plaintiff to pay him a debt. In the latter case, the separate claim can be made for an amount exceeding that claimed by the plaintiff, and it can be proceeded with even if the plaintiff's claim is dismissed.

13 Procedurally, a defence is an integral part of the action initiated by the plaintiff and therefore does not involve the plaintiff being 'sued' in the court in which his action is pending, within the meaning of Article 6(3) of the Convention. The defences which may be raised and the conditions under which they may be raised are determined by national law.

14 Article 6(3) of the Convention is not intended to deal with that situation.

15 By contrast, a claim by the defendant for a separate judgment or decree against the plaintiff presupposes that the court in which the plaintiff has brought proceedings also has jurisdiction to hear such an application.

16 Article 6(3) is specifically intended to establish the conditions under which a court has jurisdiction to hear a claim which would involve a separate judgment or decree.

17 While the Danish version of Article 6(3) uses the word 'modfordringer', a general term which can cover both situations referred to in paragraph 12 above, the legal terminology of other Contracting States expressly recognizes the distinction between those two situations. French law distinguishes between 'demande reconventionelle' and 'moyens de défense au fond', English law between 'counterclaim' and 'set-off as a defence', German law between 'Widerklage' and 'Prozeßaufrechnung', and Italian law between 'domanda riconvenzionale' and 'eccezione di compensazione'. The relevant language versions of Article 6(3) expressly adopt the terms 'demande reconventionelle', 'counterclaim', 'Widerklage' and 'domanda riconvenzionale'.

18 The answer to the national court's first question must therefore be that Article 6(3) of the Convention applies only to claims by defendants which seek the pronouncement of a separate judgment or decree. It does not apply to the situation where a defendant raises, as a pure defence, a claim which he allegedly has against the plaintiff. The defences which may be raised and the conditions under which they may be raised are governed by national law.

Question 2

19 The decision making the reference indicates that Question 2 need only be answered if Article 6(3) of the Convention applies to the situation where a defendant raises as a defence a claim which he allegedly has against the plaintiff. In the light of the answer to Question 1, there is therefore no need to answer Question 2.

Costs

20 The costs incurred by the German Government, the United Kingdom 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 questions referred to it by the Vestre Landsret by decision of 30 June 1993, hereby rules:

Article 6(3) 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 and by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, applies only to claims by defendants which seek the pronouncement of a separate judgment or decree. It does not apply to the situation where a defendant raises, as a pure defence, a claim which he allegedly has against the plaintiff. The defences which may be raised and the conditions under which they may be raised are governed by national law.

Rodríguez Iglesias Schockweiler Gulmann

Jann Mancini Moitinho de Almeida

Murray Edward Puissochet

Hirsch Sevón

Delivered in open court in Luxembourg on 13 July 1995.

R. Grass
Registrar

G. C. Rodríguez Iglesias
President