

JUDGMENT OF THE COURT
7 March 1995 *

In Case C-68/93,

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 House of Lords for a preliminary ruling in the proceedings pending before that court between

Fiona Shevill,

Ixora Trading Inc.,

Chequepoint SARL,

Chequepoint International Ltd

and

Presse Alliance SA

* Language of the case: English.

on the interpretation of Article 5(3) of the abovementioned Convention of 27 September 1968 (*Journal Officiel* 1972, L 299, p. 32) 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 text — p. 77) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1),

THE COURT,

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

Advocate General: M. Darmon, and subsequently P. Léger,
Registrar: Lynn Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Miss Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Limited, by H. M. Boggis-Rolfe, Barrister, instructed by P. Carter-Ruck & Partners, Solicitors,
- Presse Alliance SA, by M. Tugendhat QC, instructed by D. J. Freeman & Co., Solicitors,
- the United Kingdom, by J. D. Colahan, of the Treasury Solicitor's Department, acting as Agent, and A. Briggs, Barrister,
- the Spanish Government, by A. J. Navarro González, Director General for Community Legal and Institutional Coordination at the Ministry of Foreign Affairs, and M. Bravo-Ferrer Delgado, State Attorney, acting as Agents,

- the French Government, by H. Renie, Deputy Principal Secretary of Foreign Affairs at the Ministry of Foreign Affairs, acting as Agent,

- the Commission of the European Communities, by N. Khan, of the Legal Service, acting as Agent,

having regard to the Report for the Hearing,

the Sixth Chamber of the Court having heard the oral observations of Miss Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Limited, represented by H. M. Boggis-Rolfe, Presse Alliance SA, represented by M. Tugendhat QC, the United Kingdom, represented by S. Braviner, of the Treasury Solicitor's Department, acting as Agent, and A. Briggs, Barrister, the German Government, represented by J. Pirrung, Ministerialrat at the Federal Ministry of Justice, acting as Agent, the Spanish Government, represented by M. Bravo-Ferrer Delgado, and the Commission, represented by N. Khan, at the hearing on 21 April 1994,

the Sixth Chamber having heard the Opinion of Advocate General Darmon at the sitting on 14 July 1994,

the Sixth Chamber of 5 October 1994 having decided to refer the case back to the Court,

having regard to the order of 10 October 1994 reopening the oral procedure,

after hearing the oral observations of Miss Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Limited, represented by H. M. Boggis-Rolfe, Presse Alliance SA, represented by M. Tugendhat QC, the United Kingdom, represented by S. Braviner and A. Briggs, the German Government, repre-

sent by M Klippstein, Richter, acting as Agent, the Spanish Government, represented by M. Bravo-Ferrer Delgado, and the Commission, represented by N. Khan, at the hearing on 22 November 1994,

after hearing the Opinion of Advocate General Léger at the sitting on 10 January 1995,

gives the following

Judgment

1 By order of 1 March 1993, received at the Court on 15 March 1993, the House of Lords 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 (*Journal Officiel* 1972, L 299, p. 32), 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 text — p. 77) and by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1), hereinafter ‘the Convention’, seven questions on the interpretation of Article 5(3) of the Convention.

2 Those questions were raised in proceedings brought by Miss Fiona Shevill, a United Kingdom national residing in North Yorkshire, England, Chequepoint SARL, Ixora Trading Inc. and Chequepoint International Limited against Presse Alliance SA, a company incorporated under French law whose registered office is in Paris, and seek to establish which courts have jurisdiction to hear an action for damages for harm caused by the publication of a defamatory newspaper article.

3 According to the documents before the Court, on 23 September 1989 Presse Alliance SA, which publishes the newspaper *France-Soir*, published an article about an operation which drug squad officers of the French police had carried out at one of the *bureaux de change* operated in Paris by Chequepoint SARL. That article, based on information provided by the agency France Presse, mentioned the company 'Chequepoint' and 'a young woman by the name of Fiona Shevill-Avril'.

4 Chequepoint SARL, a company incorporated under French law whose registered office is in Paris, has operated *bureaux de change* in France since 1988. It is not alleged to carry on business in England or Wales.

5 Fiona Shevill was temporarily employed for three months in the summer of 1989 by Chequepoint SARL in Paris. She returned to England on 26 September 1989.

6 Ixora Trading Inc., which is not a company incorporated under the law of England and Wales, has since 1974 operated *bureaux de change* in England under the name 'Chequepoint'.

7 Chequepoint International Ltd, a holding company incorporated under Belgian law whose registered office is in Brussels, controls Chequepoint SARL and Ixora Trading Inc.

8 Miss Shevill, Chequepoint SARL, Ixora Trading Inc. and Chequepoint International Ltd considered that the abovementioned article was defamatory in that it suggested that they were part of a drug-trafficking network for which they had laundered money. On 17 October 1989 they issued a writ in the High Court of England and Wales claiming damages for libel from Presse Alliance SA in respect of the copies of *France-Soir* distributed in France and the other European countries including those sold in England and Wales. The plaintiffs subsequently amended their pleadings, deleting all references to the copies sold outside England

and Wales. Since under English law there is a presumption of damage in libel cases, the plaintiffs did not have to adduce evidence of damage arising from the publication of the article in question.

9 It is common ground that *France-Soir* is mainly distributed in France and that the newspaper has a very small circulation in the United Kingdom, effected through independent distributors. It is estimated that more than 237 000 copies of the issue of *France-Soir* in question were sold in France and approximately 15 500 copies distributed in the other European countries, of which 230 were sold in England and Wales (5 in Yorkshire).

10 On 23 November 1989 *France-Soir* published an apology stating that it had not intended to allege that either the owners of Chequepoint *bureaux de change* or Miss Shevill had been involved in drug trafficking or money laundering.

11 On 7 December 1989 Presse Alliance SA issued a summons disputing the jurisdiction of the High Court of England and Wales on the ground that no harmful event within the meaning of Article 5(3) of the Convention had occurred in England.

12 That application to strike out was dismissed by order of 10 April 1990. The appeal brought against that decision was dismissed by order of 14 May 1990.

13 On 12 March 1991 the Court of Appeal dismissed the appeal brought by Presse Alliance SA against that decision and stayed the action brought by Chequepoint International Limited.

14 Presse Alliance SA appealed against that decision to the House of Lords pursuant to leave to appeal granted by the latter.

15 Presse Alliance SA argued essentially that under Article 2 of the Convention the French courts had jurisdiction in this dispute and that the English courts did not have jurisdiction under Article 5(3) of the Convention since the ‘place where the harmful event occurred’ within the meaning of that provision was in France and no harmful event had occurred in England.

16 Considering that the proceedings raised problems of interpretation of the Convention, the House of Lords by order of 1 March 1993 decided to stay the proceedings pending a preliminary ruling by the Court of Justice on the following questions:

‘1. In a case of libel by a newspaper article, do the words “the place where the harmful event occurred” in Article 5(3) of the Convention mean:

(a) the place where the newspaper was printed and put into circulation;

or

(b) the place or places where the newspaper was read by particular individuals;

or

(c) the place or places where the plaintiff has a significant reputation?

2. If and so far as the answer to the first question is (b), is “the harmful event” dependent upon there being a reader or readers who knew (or knew of) the plaintiff and understood those words to refer to him?

3. If and in so far as harm is suffered in more than one country (because copies of the newspaper were distributed in at least one Member State other than the Member State where it was printed and put into circulation), does a separate harmful event or harmful events take place in each Member State where the newspaper was distributed, in respect of which such Member State has separate jurisdiction under Article 5(3), and if so, how harmful must the event be, or what proportion of the total harm must it represent?

4. Does the phrase “harmful event” include an event actionable under national law without proof of damage, where there is no evidence of actual damage or harm?

5. In deciding under Article 5(3) whether (or where) a “harmful event” has occurred is the local court expected to answer the question otherwise than by reference to its own rules and, if so, by reference to which other rules or substantive law, procedure or evidence?

6. If, in a defamation case, the local court concludes that there has been an actionable publication (or communication) of material, as a result of which at least some damage to reputation would be presumed, is it relevant to the acceptance of jurisdiction that other Member States might come to a different

conclusion in respect of similar material published within their respective jurisdictions?

7. In deciding whether it has jurisdiction under Article 5(3) of the Convention, what standard of proof should a court require of the plaintiff that the conditions of Article 5(3) are satisfied:

(a) generally;

and

(b) in relation to matters which (if the court takes jurisdiction) will not be re-examined at the trial of the action?’

The first, second, third and sixth questions

- ¹⁷ The national court’s first, second, third and sixth questions, which should be considered together, essentially seek guidance from the Court as to the interpretation of the concept ‘the place where the harmful event occurred’ used in Article 5(3) of the Convention, with a view to establishing which courts have jurisdiction to hear an action for damages for harm caused to the victim following distribution of a defamatory newspaper article in several Contracting States.

18 In order to answer those questions, reference should first be made to Article 5(3) of the Convention, which, by way of derogation from the general principle in the first paragraph of Article 2 of the Convention that the courts of the Contracting State of the defendant's domicile have jurisdiction, provides:

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

[...]

(3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;

[...]

19 It is settled case-law (see Case 21/76 *Bier v Mines de Potasse d'Alsace* [1976] ECR 1735, paragraph 11, and Case C-220/88 *Dumez France and Tracoba v Hessische Landesbank (Helaba) and Others* [1990] ECR I-49, paragraph 17) that that rule of special jurisdiction, the choice of which is a matter for the plaintiff, is based on the existence of a particularly close connecting factor between the dispute and courts other than those of the State of the defendant's domicile which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings.

20 It must also be emphasized that in *Mines de Potasse d'Alsace* the Court held (at paragraphs 24 and 25) that, where the place of the happening of the event which may give rise to liability in tort, delict or quasi-delict and the place where that

event results in damage are not identical, the expression 'place where the harmful event occurred' in Article 5(3) of the Convention must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the plaintiff, either in the courts for the place where the damage occurred or in the courts for the place of the event which gives rise to and is at the origin of that damage.

21 In that judgment, the Court stated (at paragraphs 15 and 17) that the place of the event giving rise to the damage no less than the place where the damage occurred could constitute a significant connecting factor from the point of view of jurisdiction, since each of them could, depending on the circumstances, be particularly helpful in relation to the evidence and the conduct of the proceedings.

22 The Court added (at paragraph 20) that to decide in favour only of the place of the event giving rise to the damage would, in an appreciable number of cases, cause confusion between the heads of jurisdiction laid down by Articles 2 and 5(3) of the Convention, so that the latter provision would, to that extent, lose its effectiveness.

23 Those observations, made in relation to physical or pecuniary loss or damage, must equally apply, for the same reasons, in the case of loss or damage other than physical or pecuniary, in particular injury to the reputation and good name of a natural or legal person due to a defamatory publication.

24 In the case of a libel by a newspaper article distributed in several Contracting States, the place of the event giving rise to the damage, within the meaning of those judgments, can only be the place where the publisher of the newspaper in question

is established, since that is the place where the harmful event originated and from which the libel was issued and put into circulation.

25 The court of the place where the publisher of the defamatory publication is established must therefore have jurisdiction to hear the action for damages for all the harm caused by the unlawful act.

26 However, that forum will generally coincide with the head of jurisdiction set out in the first paragraph of Article 2 of the Convention.

27 As the Court held in *Mines de Potasse d'Alsace*, the plaintiff must consequently have the option to bring proceedings also in the place where the damage occurred, since otherwise Article 5(3) of the Convention would be rendered meaningless.

28 The place where the damage occurred is the place where the event giving rise to the damage, entailing tortious, delictual or quasi-delictual liability, produced its harmful effects upon the victim.

29 In the case of an international libel through the press, the injury caused by a defamatory publication to the honour, reputation and good name of a natural or legal person occurs in the places where the publication is distributed, when the victim is known in those places.

30 It follows that the courts of each Contracting State in which the defamatory publication was distributed and in which the victim claims to have suffered injury to his reputation have jurisdiction to rule on the injury caused in that State to the victim's reputation.

31 In accordance with the requirement of the sound administration of justice, the basis of the rule of special jurisdiction in Article 5(3), the courts of each Contracting State in which the defamatory publication was distributed and in which the victim claims to have suffered injury to his reputation are territorially the best placed to assess the libel committed in that State and to determine the extent of the corresponding damage.

32 Although there are admittedly disadvantages to having different courts ruling on various aspects of the same dispute, the plaintiff always has the option of bringing his entire claim before the courts either of the defendant's domicile or of the place where the publisher of the defamatory publication is established.

33 In light of the foregoing, the answer to the first, second, third and sixth questions referred by the House of Lords must be that, on a proper construction of the expression 'place where the harmful event occurred' in Article 5(3) of the Convention, the victim of a libel by a newspaper article distributed in several Contracting States may bring an action for damages against the publisher either before the courts of the Contracting State of the place where the publisher of the defamatory publication is established, which have jurisdiction to award damages for all the harm caused by the defamation, or before the courts of each Contracting State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the State of the court seised.

The fourth, fifth and seventh questions

- 34 The national court's fourth, fifth and seventh questions, which should be considered together, essentially ask whether, in determining whether it has jurisdiction *qua* court of the place where the damage occurred pursuant to Article 5(3) of the Convention as interpreted by the Court, it is required to follow specific rules different from those laid down by its national law in relation to the criteria for assessing whether the event in question is harmful and in relation to the evidence required of the existence and extent of the harm alleged by the victim of the defamation.
- 35 In order to reply to those questions, it must first be noted that the object of the Convention is not to unify the rules of substantive law and of procedure of the different Contracting States, but to determine which court has jurisdiction in disputes relating to civil and commercial matters in relations between the Contracting States and to facilitate the enforcement of judgments (see Case C-365/88 *Hagen v Zeehaghe* [1990] ECR I-1845, paragraph 17).
- 36 Moreover, the Court has consistently held that, as regards procedural rules, reference must be made to the national rules applicable by the national court, provided that the application of those rules does not impair the effectiveness of the Convention (paragraphs 19 and 20 of the same judgment).
- 37 In the area of non-contractual liability, the context in which the questions referred have arisen, the sole object of the Convention is to determine which court or courts have jurisdiction to hear the dispute by reference to the place or places where an event considered harmful occurred.

- 38 It does not, however, specify the circumstances in which the event giving rise to the harm may be considered to be harmful to the victim, or the evidence which the plaintiff must adduce before the court seised to enable it to rule on the merits of the case.
- 39 Those questions must therefore be settled solely by the national court seised, applying the substantive law determined by its national conflict of laws rules, provided that the effectiveness of the Convention is not thereby impaired.
- 40 The fact that under the national law applicable to the main proceedings damage is presumed in libel actions, so that the plaintiff does not have to adduce evidence of the existence and extent of that damage, does not therefore preclude the application of Article 5(3) of the Convention in determining which courts have territorial jurisdiction to hear the action for damages for harm caused by an international libel through the press.
- 41 The answer to the referring court must accordingly be that the criteria for assessing whether the event in question is harmful and the evidence required of the existence and extent of the harm alleged by the victim of the defamation are not governed by the Convention but by the substantive law determined by the national conflict of laws rules of the court seised, provided that the effectiveness of the Convention is not thereby impaired.

Costs

- 42 The costs incurred by the United Kingdom, the German, Spanish and French Governments 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 House of Lords, by order of 1 March 1993, hereby rules:

1. On a proper construction of the expression 'place where the harmful event occurred' in Article 5(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, the victim of a libel by a newspaper article distributed in several Contracting States may bring an action for damages against the publisher either before the courts of the Contracting State of the place where the publisher of the defamatory publication is established, which have jurisdiction to award damages for all the harm caused by the defamation, or before the courts of each Contracting State in which the publication was distributed and where the victim claims to have suffered injury to his reputation, which have jurisdiction to rule solely in respect of the harm caused in the State of the court seised.

2. The criteria for assessing whether the event in question is harmful and the evidence required of the existence and extent of the harm alleged by the victim of the defamation are not governed by the Convention but by the substantive law determined by the national conflict of laws rules of the court seised, provided that the effectiveness of the Convention is not thereby impaired.

Rodríguez Iglesias

Schockweiler

Kapteyn

Gulmann

Mancini

Kakouris

Moitinho de Almeida

Murray

Edward

Puissochet

Hirsch

Delivered in open court in Luxembourg on 7 March 1995.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President