JUDGMENT OF THE COURT (Sixth Chamber)
9 January 1997 *

In Case C-383/95,

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 Hoge Raad der Nederlanden for a preliminary ruling in the proceedings pending before that court between

Petrus Wilhelmus Rutten

and

Cross Medical Ltd,

on the interpretation of Article 5(1) of the abovementioned Convention of 27 September 1968 (OJ 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), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1),

* Language of the case: Dutch.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, C. N. Kakouris, H. Ragnemalm and R. Schintgen (Rapporteur), Judges,

Advocate General: F. G. Jacobs,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Mr Rutten, by P. Garretsen, of the Hague Bar,

— the German Government, by J. Pirrung, Ministerialrat, Federal Ministry of Justice, acting as Agent,

— the Commission of the European Communities, by P. van Nuffel, of its Legal Service, acting as Agent,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 24 October 1996,

gives the following

Judgment

1 By judgment of 1 December 1995, received at the Court on 7 December 1995, the Hoge Raad der Nederlanden (Netherlands Supreme Court) 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 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), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1) and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1), hereinafter 'the Convention', three questions on the interpretation of Article 5(1) of the Convention.

2 The questions were raised in proceedings between Mr Rutten, a Netherlands national residing in Hengelo, Netherlands, and Cross Medical Ltd, a company incorporated under English law whose registered office is in London, following termination of his contract of employment by his employer.

3 It appears from the documents in the main proceedings that Mr Rutten was engaged on 1 August 1989 by Cross Medical BV, a company incorporated under Netherlands law whose registered office is in the Netherlands and which is a subsidiary of Cross Medical Ltd.

4 On 31 May 1990 the contract of employment between the parties was terminated on account of the poor financial situation of Cross Medical BV and, with effect from 1 June 1990, Mr Rutten was employed by Cross Medical Ltd.

5 It is common ground that Mr Rutten carried out his duties on behalf of his two successive employers not only in the Netherlands, but also — for approximately one third of his working hours — in the United Kingdom, Belgium, Germany and the United States of America. He carried out his work from an office established in his home at Hengelo to which he returned after each business trip. Cross Medical Ltd paid his salary to him in pounds sterling.

6 Following his dismissal by Cross Medical Ltd on 1 October 1991, Mr Rutten brought an action against that company on 19 June 1992 before the Kantonrechter (Cantonal Court) Amsterdam claiming payment of arrears of salary and interest.

7 That court declared that it had jurisdiction to try the case, whereupon Cross Medical Ltd appealed against that judgment to the Rechtbank (District Court), Amsterdam, which set aside the judgment of the Kantonrechter.

8 Mr Rutten then appealed in cassation to the Hoge Raad der Nederlanden.

9 Since it was uncertain as to the interpretation of Article 5(1) of the Convention, the Hoge Raad submitted the following three questions to the Court of Justice for a preliminary ruling:

'1. Where, in the performance of an employment contract, an employee carries out his work in more than one country, what are the criteria according to which he should be regarded as *habitually* carrying out his work in one of those countries, within the meaning of Article 5(1) of the Brussels Convention?

2. Is the fact that he spends most of his working time in one of those countries, or the fact that he spends more of his working time in another country or countries, decisive or significant in that regard?

3. Is the fact that the employee resides in one of those countries and maintains there an office where he prepares or administers his work outside that country, and to which he returns after every trip which he makes in connection with his work, significant in that regard?'

10 The three questions, which should be considered together, essentially seek a ruling on the interpretation of 'place ... where the employee habitually carries out his work' within the meaning of Article 5(1), second sentence, of the Convention, where a contract of employment is performed in more than one Contracting State.

11 In order to answer those questions, it should first be observed that, as an exception to the general rule laid down in the first paragraph of Article 2 of the Convention, namely that the courts of the Contracting State in which the defendant has his domicile have jurisdiction, Article 5(1) of the Convention provides that:

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

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question; in matters relating to individual contracts of employment, this place is that where the employee habitually carries out his work, or if the employee does not habitually carry out his work in any one country, the employer may also be sued in the courts for the place where the business which engaged the employee was or is now situated.'

12 It is settled law (see, in particular, Case C-125/92 *Mulox IBC* v *Hendrick Geels* [1993] ECR I-4075, paragraph 10) that, in principle, the Court of Justice will interpret the terms of the Brussels Convention autonomously so as to ensure that it is fully effective, having regard to the objectives of Article 220 of the EEC Treaty, for the implementation of which it was adopted.

13 That autonomous interpretation alone is capable of ensuring uniform application of the Convention, the objectives of which include unification of the rules on jurisdiction of the Contracting States, so as to avoid as far as possible the multiplication of the bases of jurisdiction in relation to one and the same legal relationship and to reinforce the legal protection available to persons established in the Community by, at the same time, allowing the plaintiff easily to identify the court before which he may bring an action and the defendant reasonably to foresee the Court before which he may be sued (*Mulox IBC*, paragraph 11).

14 Moreover, in *Mulox IBC* the Court has already interpreted Article 5(1) of the Brussels Convention, in the version prior to its amendment by the Convention of 26 May 1989, cited above (hereinafter 'the San Sebastian Convention').

15 In *Mulox IBC* the Court held that Article 5(1) had to be interpreted as meaning that in relation to contracts of employment the place of performance of the relevant obligation, for the purposes of that provision, refers to the place where the employee actually performs the work covered by the contract with his employer and that where the employee performs his work in more than one Contracting State, that place refers to the place where or from which the employee principally discharges his obligations towards his employer (paragraphs 20 and 26).

16 As justification for that interpretation, the Court stated, first (paragraph 17), that the rule on special jurisdiction in Article 5(1) of the Brussels Convention was justified by the existence of a particularly close relationship between a dispute and the court which could most conveniently be called on to take cognizance of the matter (Case 133/81 *Ivenel* v *Schwab* [1982] ECR 1891 and Case C-266/85 *Shenavai* v *Kreischer* [1987] ECR 239), and that the courts for the place in which the employee is to carry out the agreed work were best suited to resolving the disputes to which the contract of employment could give rise (*Shenavai* and Case 32/88 *Six Constructions* v *Humbert* [1989] ECR 341).

17 It considered, secondly (*Mulox IBC*, paragraphs 18 and 19), that, in regard to contracts of employment, interpretation of Article 5(1) of the Brussels Convention had to take account of the concern to afford proper protection to the employee as the party to the contract who was the weaker from the social point of view (*Ivenel* and *Six Constructions*) and that such protection was best assured if disputes relating to a contract of employment fell within the jurisdiction of the courts of the place where the employee discharged his obligations towards his employer, since that was the place where it was least expensive for the employee to commence, or defend himself in, court proceedings.

18 The Court stated, thirdly (*Mulox IBC*, paragraphs 21 and 23), that where the work was performed in more than one Contracting State, it was important to avoid any multiplication of courts having jurisdiction in order to preclude the risk of irreconcilable decisions and to facilitate the recognition and enforcement of judgments in States other than those in which they were delivered (see also, to that effect, the judgment in Case C-220/88 *Dumez France and Tracoba* [1990] ECR I-49, paragraph 18) and that, consequently, Article 5(1) of the Brussels Convention could not be interpreted as conferring concurrent jurisdiction on the courts of each Contracting State in whose territory the employee performed part of his work.

19 That case-law is also relevant for the purposes of interpreting Article 5(1) of the Convention as amended by the San Sebastian Convention, which is the version applicable in the main proceedings.

20 As the Court observed in Case C-288/92 *Custom Made Commercial* v *Stava Metallbau* [1994] ECR I-2913, paragraph 25, it had already interpreted the Convention as establishing the rule of special jurisdiction relating to contracts of employment, which the San Sebastian Convention inserted in Article 5(1) of the Brussels Convention. In that regard, it is clear from the report by Almeida Cruz, Desantes Real and Jenard on the San Sebastian Convention (OJ 1990 C 189, pp. 35, 44 and 45) that the new version of Article 5(1) of the Convention takes into account not only

the wording of Article 5(1) of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters signed at Lugano on 16 September 1988 (OJ 1988 L 319, p. 9), which was itself based on the interpretation which the Court adopted in *Ivenel* and *Shenavai*, but also of the need to afford proper protection to the employee, as stated by the Court in *Six Constructions*.

21 Consequently, not only did the amendment by the San Sebastian Convention to the wording of Article 5(1) of the Brussels Convention leave the rationale and purpose of that provision unaffected, but, moreover, the new wording of that provision following the entry into force of the San Sebastian Convention was intended in fact to support the interpretation given by the Court to that article in regard to contracts of employment.

22 It follows that in order to determine the meaning of the words 'place ... where the employee habitually carries out his work' for the purposes of Article 5(1) of the Convention, as amended by the San Sebastian Convention, in a case where, as in the main proceedings, the employee carries out his work in more than one Contracting State, the Court's previous case-law must be taken into account when determining the place with which the dispute has the most significant link, while taking due account of the concern to afford proper protection to the employee as the weaker party to the contract.

23 Having regard to the requirements set out in the previous paragraph, where a contract of employment is performed in several Contracting States, Article 5(1) of the Convention, as amended by the San Sebastian Convention, must be understood to refer to the place where the employee has established the effective centre of his working activities and where, or from which, he in fact performs the essential part of his duties *vis-à-vis* his employer.

24 That is the place where it is least expensive for the employee to commence proceedings against his employer or to defend himself in such proceedings. The courts for that place are also best placed and, therefore, the most appropriate to resolve the dispute relating to the contract of employment.

25 When identifying that place in the particular case, which is a matter for the national court in the light of the facts before it, the fact that the employee carried out almost two-thirds of his work in one Contracting State — the remainder of his work being performed in several other States — and that he has an office in that Contracting State where he organized his work for his employer and to which he returned after each business trip abroad, as was the case in the main proceedings, is relevant.

26 In a situation such as that at issue in the main proceedings, that is the place where the employee established the effective centre of his activities under the contract of employment concluded with his employer. That place must, therefore, be deemed, for the purposes of the application of Article 5(1) of the Convention, as amended by the San Sebastian Convention, to be the place where the employee habitually carries out his work.

27 Accordingly, Article 5(1) of the Convention, as amended by the San Sebastian Convention, must be interpreted as meaning that where, in the performance of a contract of employment an employee carries out his work in several Contracting States, the place where he habitually carries out his work, within the meaning of that provision, is the place where he has established the effective centre of his working activities. When identifying that place, it is necessary to take into account the fact that the employee spends most of his working time in one of the Contracting States in which he has an office where he organizes his work for his employer and to which he returns after each business trip abroad.

Costs

28 The costs incurred by the German Government 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Hoge Raad der Nederlanden, by judgment of 1 December 1995, hereby rules:

Article 5(1) 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 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, must be interpreted as meaning that where, in the performance of a contract of employment, an employee carries out his work in several Contracting States, the place where he habitually carries out his work, within the meaning of that provision, is the place where he has established the effective centre of his working activities. When identifying that place, it is necessary to take into account the fact that the employee spends most of his working time in one of the Contracting States in which he has an office where he

organizes his activities for his employer and to which he returns after each business trip abroad.

Mancini Murray Kakouris

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 9 January 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber