

JUDGMENT OF THE COURT (Sixth Chamber)

11 January 1990 *

In Case C-220/88

REFERENCE 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 by the French Cour de cassation in the proceedings pending before that court between

- (1) **Dumez France**, formerly Dumez Bâtiment, *société anonyme*, whose registered office is at Nanterre, France,
- (2) **Tracoba**, *société à responsabilité limitée*, whose registered office is in Paris, France, whose rights are now held by Oth Infrastructure, of the same address,

and

- (1) **Hessische Landesbank (Helaba)**, whose registered office is in Frankfurt am Main, Federal Republic of Germany,
- (2) **Salvatorplatz-Grundstücksgesellschaft mbH & Co. oHG Saarland**, whose registered office is in Munich, Federal Republic of Germany, formerly Gebrüder Röchling Bank,
- (3) **Lübecker Hypothekenbank**, whose registered office is in Lübeck, Federal Republic of Germany,

on the interpretation of Article 5(3) of the Convention of 27 September 1968,

* Language of the case: French.

THE COURT (Sixth Chamber)

composed of: C. N. Kakouris and F. A. Schockweiler (Presidents of Chambers),
T. Koopmans, G. F. Mancini and M. Díez de Velasco, Judges,

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Dumez France and Tracoba, the plaintiffs in the main proceedings, by Jean-Denys
Barbey, of the Paris Bar,

Hessische Landesbank, defendant in the main proceedings, by Michel Wolfer, of
the Paris Bar,

Salvatorplatz-Grundstücksgesellschaft mbH & Co. oHG Saarland, defendant in
the main proceedings, by Richard Neuer, of the Paris Bar,

the Government of the Federal Republic of Germany, by Dr Christof Böhmer,
Ministerialrat im Bundesministerium der Justiz, in the written procedure only,

the Government of the French Republic, by Edwige Belliard, sous-directeur,
direction des affaires juridiques, ministère des Affaires étrangères, assisted by
Claude Chavance, attaché principal d'administration centrale, direction des affaires
juridiques, in the same Ministry, in the written procedure only,

the United Kingdom, by J. A. Gensmantel, Treasury Solicitor's Department,
Queen Anne's Chambers, assisted by M. C. L. Carpenter of the Lord Chancellor's
Department, in the written procedure only,

the Commission of the European Communities by Georgios Kremlis, a member of
its Legal Department, assisted by Giorgio Cherubini, an Italian official working in
the Commission under the scheme for exchanges with national officials,

having regard to the Report for the Hearing and further to the hearing on 14 June 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 23 November 1989,

gives the following

Judgment

- 1 By judgment of 21 June 1988, which was received at the Court on 4 August 1988, the French Cour de 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 (hereinafter referred to as 'the Convention') a question on the interpretation of Article 5(3) of the Convention.
- 2 That question was raised in proceedings to establish quasi-delictual liability brought before the French courts by the French companies Sceper and Tracoba, whose rights are now held by the companies Dumez France and Oth Infrastructure (hereinafter referred to as 'Dumez and Oth'), against Hessische Landesbank, Salvatorplatz-Grundstücksgesellschaft mbH & Co. oHG Saarland, and Lübecker Hypothekenbank, whose registered offices are in the Federal Republic of Germany (hereinafter referred to as 'the German banks').
- 3 Dumez and Oth seek compensation for the damage which they claim to have suffered owing to the insolvency of their subsidiaries established in the Federal Republic of Germany, which was brought about by the suspension of a property-development project in the Federal Republic of Germany for a German prime contractor, allegedly because of the cancellation by the German banks of the loans granted to the prime contractor.

- 4 By judgment of 14 May 1985 the tribunal de commerce (Commercial Court), Paris, upheld the objection of lack of jurisdiction raised by the German banks, on the ground that the initial damage was suffered by the subsidiaries of Dumez and Oth in the Federal Republic of Germany and that the French parent companies sustained a financial loss thereafter only indirectly.
- 5 By judgment of 13 December 1985, the cour d'appel, Paris, confirmed that judgment, taking the view that the financial repercussions which Dumez and Oth claimed to have experienced at their head offices in France were not of such a kind as to affect the location of the damage suffered initially by the subsidiaries in the Federal Republic of Germany.
- 6 In support of their appeal in cassation against that judgment, Dumez and Oth claimed that the decision of the Court in Case 21/76 *G. J. Bier BV v Mines de potasse d'Alsace SA* [1976] ECR 1735, according to which the expression 'place where the harmful event occurred' used in Article 5(3) of the Convention covered both the place where the damage occurred and the place of the event giving rise to the damage, with the result that the defendant may be sued, at the option of the plaintiff, in the courts for either of those places, was also applicable to cases of indirect damage. In those circumstances, the place where the harmful event occurred was, according to Dumez and Oth, for a victim who has sustained damage as a consequence of the loss suffered by the initial victim, the place where his interests were adversely affected; the plaintiffs in this case being French companies, the place of the financial loss which they suffered following the insolvency of their subsidiaries in the Federal Republic of Germany was therefore the registered offices of Dumez and Oth in France.
- 7 Considering that the dispute raised a problem of interpretation of Community law, the French Cour de cassation stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Is the rule on jurisdiction which allows the plaintiff, under Article 5(3) of the Convention, to choose between the court for the place of the event giving rise to damage and the court for the place where that damage occurs to be extended to cases in which the damage alleged is merely the consequence of the harm suffered by persons who were the immediate victims of damage occurring at a different place, which would enable the indirect victim to bring proceedings before the court of the State in which he is domiciled?'

- 8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 9 In order to answer the question submitted, it must first be borne in mind that, in the terms of Article 5 of the Convention,

‘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’.
- 10 It must then be pointed out that, in its judgment in *Mines de potasse d’Alsace*, cited above, the Court ruled 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’ which appears 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 the damage, with the result 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.
- 11 Dumez and Oth observe that in that judgment the Court interpreted Article 5(3) of the Convention without drawing any distinction between direct and indirect victims of damage. In their view, it follows that where an indirect victim claims to have suffered personal damage the court of competent jurisdiction is the court for the place where the victim sustained that damage.
- 12 It must first be stated in that connection that the judgment in *Mines de potasse d’Alsace* related to a situation in which the damage—to crops in the Netherlands—occurred at some distance from the event giving rise to the damage—the discharge of saline waste into the Rhine by an undertaking established in France—but by the direct effect of the causal agent, namely the saline waste which had moved physically from one place to another.

- 13 By contrast, in the present case, the damage allegedly suffered by Dumez and Oth through cancellation, by the German banks, of the loans granted for financing the works originated and produced its direct consequences in the same Member State, namely the one in which the lending banks, the prime contractor and the subsidiaries of Dumez and Oth, which were responsible for the building work, were all established. The harm alleged by the parent companies, Dumez and Oth, is merely the indirect consequence of the financial losses initially suffered by their subsidiaries following cancellation of the loans and the subsequent suspension of the works.
- 14 It follows that, in a case such as this, the damage alleged is no more than the indirect consequence of the harm initially suffered by other legal persons who were the direct victims of damage which occurred at a place different from that where the indirect victim subsequently suffered harm.
- 15 It is therefore necessary to consider whether the expression 'place where the damage occurred' as used in the judgment in *Mines de potasse d'Alsace* may be interpreted as referring to the place where the indirect victims of the damage ascertain the repercussions on their own assets.
- 16 In that connection the Convention, in establishing the system for the attribution of jurisdiction, adopted the general rule that the courts of the State of the defendant's domicile would have jurisdiction (Title II, Article 2). Moreover, the hostility of the Convention towards the attribution of jurisdiction to the courts of the plaintiff's domicile was demonstrated by the fact that the second paragraph of Article 3 precluded the application of national provisions attributing jurisdiction to such courts for proceedings against defendants domiciled in the territory of a Contracting State.
- 17 It is only by way of exception to the general rule whereby jurisdiction is attributed to the courts of the State of the defendant's domicile that Title II, Section 2, attributes special jurisdiction in certain cases, including the case envisaged by Article 5(3) of the Convention. As the Court has already held (*Mines de potasse d'Alsace*, paragraphs 10 and 11), those cases of special jurisdiction, the choice of which is a matter for the plaintiff, are 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.

- 18 In order to meet that objective, which is of fundamental importance in a convention which has essentially to promote the recognition and enforcement of judgments in States other than those in which they were delivered, it is necessary to avoid the multiplication of courts of competent jurisdiction which would heighten the risk of irreconcilable decisions, this being the reason for which recognition or an order for enforcement is withheld by virtue of Article 27(3) of the Convention.
- 19 Furthermore, that objective militates against any interpretation of the Convention which, otherwise than in the cases expressly provided for, might lead to recognition of the jurisdiction of the courts of the plaintiff's domicile and would enable a plaintiff to determine the competent court by his choice of domicile.
- 20 It follows from the foregoing considerations that although, by virtue of a previous judgment of the Court (in *Mines de potasse d'Alsace*, cited above), the expression 'place where the harmful event occurred' contained in Article 5(3) of the Convention may refer to the place where the damage occurred, the latter concept can be understood only as indicating the place where the event giving rise to the damage, and entailing tortious, delictual or quasi-delictual liability, directly produced its harmful effects upon the person who is the immediate victim of that event.
- 21 Moreover, whilst the place where the initial damage manifested itself is usually closely related to the other components of the liability, in most cases the domicile of the indirect victim is not so related.
- 22 It must therefore be stated in reply to the question submitted by the national court that the rule on jurisdiction laid down in Article 5(3) of the Convention cannot be interpreted as permitting a plaintiff pleading damage which he claims to be the consequence of the harm suffered by other persons who were direct victims of the harmful act to bring proceedings against the perpetrator of that act in the courts of the place in which he himself ascertained the damage to his assets.

Costs

- 23 The costs incurred by the Government of the Federal Republic of Germany, the Government of the French Republic and the United Kingdom, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, 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 (Sixth Chamber),

in reply to the question submitted to it by judgment of the French Cour de cassation of 21 June 1988, hereby rules:

The rule on jurisdiction laid down in Article 5(3) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters cannot be interpreted as permitting a plaintiff pleading damage which he claims to be the consequence of the harm suffered by other persons who were direct victims of the harmful act to bring proceedings against the perpetrator of that act in the courts of the place in which he himself ascertained the damage to his assets.

Kakouris

Schockweiler

Koopmans

Mancini

Díez de Velasco

Delivered in open court in Luxembourg on 11 January 1990.

J.-G. Giraud

C. N. Kakouris

Registrar

President of the Sixth Chamber