JUDGMENT OF THE COURT (Grand Chamber)

6 October 2009

(Rome Convention on the law applicable to contractual obligations – Applicable law in the absence of choice – Charter-party – Connecting criteria – Separability)

In Case C-133/08,

REFERENCE for a preliminary ruling under the First Protocol of 19 December 1988 on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations from the Hoge Raad der Nederlanden (Netherlands), made by decision of 28 March 2008, received at the Court on 2 April 2008, in the proceedings

Intercontainer Interfrigo SC (ICF)

v

Balkenende Oosthuizen BV,

MIC Operations BV,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts, A. Ó Caoimh and J.-C. Bonichot, Presidents of Chambers, P. Kūris, E. Juhász, G. Arestis, L. Bay Larsen, P. Lindh and C. Toader (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Netherlands Government, by C. Wissels and Y. de Vries, acting as Agents,

– the Czech Government, by M. Smolek, acting as Agent,

– the Commission of the European Communities, by V. Joris and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 May 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1) ('the Convention'). The reference relates to Article 4 of that convention on the applicable law in the absence of a choice by the parties.

2 That reference was made in the course of proceedings brought by Intercontainer Interfrigo (ICF) SC ('ICF'), a company established in Belgium, against Balkenende Oosthuizen BV ('Balkenende') and MIC Operations BV ('MIC'), two companies established in the Netherlands, seeking an order for the payment by those two companies of unpaid invoices which had been issued on the basis of a charter party entered into by the parties.

Legal context

3 Article 4 of the Convention, headed 'Applicable law in the absence of choice', provides:

'1. To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a severable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country.

2. Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence, or, in the case of a body corporate or unincorporate, its central administration. However, if the contract is entered into in the course of that party's trade or profession, that country shall be the country in which the principal place of business is situated or, where under the terms of the contract the performance is to be effected through a place of business other than the principal place of business, the country in which that other place of business is situated.

3. Notwithstanding the provisions of paragraph 2 of this Article, to the extent that the subject matter of the contract is a right in immovable property or a right to use immovable property it shall be presumed that the contract is most closely connected with the country where the immovable property is situated.

4. A contract for the carriage of goods shall not be subject to the presumption in paragraph 2. In such a contract if the country in which, at the time the contract is concluded, the carrier has his principal place of business is also the country in which the

place of loading or the place of discharge or the principal place of business of the consignor is situated, it shall be presumed that the contract is most closely connected with that country. In applying this paragraph single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods.

5. Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3 and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country.'

4 Article 10 of the Convention, headed 'Scope of the applicable law', provides:

'1. The law applicable to a contract by virtue of Articles 3 to 6 and 12 of this Convention shall govern in particular:

…

(d) the various ways of extinguishing obligations, and prescription and limitation of actions;

…'

5 Article 2 of the First Protocol of 19 December 1988 on the interpretation by the Court of Justice of the European Communities of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1989 L 48, p. 1) ('the First Protocol') provides:

'Any of the courts referred to below may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning interpretation of the provisions contained in the instruments referred to in Article 1 if that court considers that a decision on the question is necessary to enable it to give judgment:

(a) …

– in the Netherlands:

de Hoge Raad,

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

6 In August 1998, in the context of a project for a train connection for freight traffic between Amsterdam (Netherlands) and Frankfurt am Main (Germany), ICF entered into a charter party with Balkenende and MIC. That contract provided, inter alia, that ICF was to make train wagons available to MIC and would ensure their transport via the rail network. MIC, which had hired out the acquired load capacity to third parties, was responsible for all operational aspects of the transport of the goods concerned.

7 The parties did not enter into any written contract; they did, however, give effect, during a limited period, to what had been agreed between them. Nevertheless, ICF sent to MIC a written draft contract, which contained a clause stating that Belgian law had been chosen as the law applicable. That draft was never signed by any of the parties to the agreement.

8 On 27 November and 22 December 1998, ICF sent invoices to MIC for the amounts of EUR 107 512.50 and EUR 67 100 respectively. Whereas the first of those amounts was not paid by MIC, the second was.

9 On 7 September 2001, ICF, for the first time, gave Balkenende and MIC notice to settle the invoice sent on 27 November 1998.

10 On 24 December 2002, ICF brought an action against Balkenende and MIS before the Rechtbank te Haarlem (Local Court, Haarlem) (Netherlands) seeking an order for payment of the sum corresponding to that invoice and the related value-added tax, in the total amount of EUR 119 255.

11 As is apparent from the order for reference, Balkenende and MIC submitted that the claim at issue in the main proceedings is time-barred under the law applicable to the contract binding them to ICF, in this case Netherlands law.

12 By contrast, according to ICF, that claim is not yet time-barred under Belgian law, which it claims is the law applicable to the contract. In that regard, ICF maintains that as the contract at issue in the main proceedings is not a contract of carriage, the law applicable must be ascertained not on the basis of Article 4(4) of the Convention, but on the basis of Article 4(2), according to which the law applicable to the contract is that of the country in which ICF's principal place of business is situated.

13 The Rechtbank te Haarlem upheld the objection of limitation raised by Balkenende and MIC. In accordance with Netherlands law, that court therefore held that the right to payment of the invoice on which ICF was relying was time-barred and declared its claim inadmissible. The Gerechtshof te Amsterdam (Netherlands) (Regional Court of Appeal, Amsterdam) (Netherlands) upheld that judgment.

14 The courts hearing the merits of the case categorised the contract at issue as a contract for the carriage of goods and took the view that, even though ICF did not have the status of carrier, the main purpose of the contract was the carriage of goods.

15 However, those courts excluded the application of the connecting factor provided for in Article 4(4) of the Convention and held that the contract at issue in the main proceedings was more closely connected with the Kingdom of the Netherlands than with the Kingdom of Belgium, relying on a number of circumstances of the case, such as the other contracting parties' place of business, which is in the Netherlands, and the route taken by the train wagons between Amsterdam and Frankfurt am Main, the cities in which the goods were, respectively, loaded and unloaded.

16 It is apparent from the order for reference that those courts pointed out, in that regard, that, if that contract principally concerns the carriage of goods, Article 4(4) of the Convention is not applicable because, in the present case, there is no relevant connecting factor for the purposes of that provision. The contract is therefore governed, according to the principle set out in Article 4(1) of the Convention, by the law of the country with which it is most closely connected, in this case the Kingdom of the Netherlands.

17 According to those courts, if, as ICF maintains, the contract at issue in the main proceedings is not categorised as a contract of carriage, then Article 4(2) of the Convention is not applicable either since it is apparent from the circumstances of the present case that that contract is more closely connected with the Kingdom of the Netherlands and thus the derogating provision in the second sentence of Article 4(5) of the Convention must be applied.

18 In its appeal on a point of law, ICF relied not only on an error of law in the categorisation of that contract as a contract of carriage, but also on the possibility of the court's derogating from the general rule laid down in Article 4(2) of the Convention to apply Article 4(5) thereof. According to the applicant in the main proceedings, that possibility may be used only where it is apparent from all the circumstances that the place where the party who is to effect the performance which is characteristic of the contract is established has no genuine connecting value. That has not been established in the present case.

19 In view of those divergences on the interpretation of Article 4 of the Convention, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Must Article 4(4) of the … Convention … be construed as meaning that it relates only to voyage charter parties and that other forms of charter party fall outside the scope of that provision?

2. If [the first question] is answered in the affirmative, must Article 4(4) of the … Convention then be construed as meaning that, in so far as other forms of charter party also relate to the carriage of goods, the contract in question comes, so far as that carriage is concerned, within the scope of that provision and the applicable law is for the rest determined by Article 4(2) of the … Convention?

3. If [the second question] is answered in the affirmative, which of the two legal bases indicated should be used as the basis for examining a contention that the legal claims based on the contract are time-barred?

4. If the predominant aspect of the contract relates to the carriage of goods, should the division referred to in [the second question] not be taken into account and must then the law applicable to all constituent parts of the contract be determined pursuant to Article 4(4) of the … Convention?

5. Must the exception in the second clause of Article 4(5) of the … Convention be interpreted in such a way that the presumptions in Article 4(2) [to] (4) of the … Convention do not apply only if it is evident from the circumstances in their totality that the connecting criteria indicated therein do not have any genuine connecting value, or indeed if it is clear therefrom that there is a stronger connection with some other country?'

The questions referred for a preliminary ruling

Preliminary observations

The jurisdiction of the Court

20 The Court has jurisdiction to rule on references for a preliminary ruling concerning the Convention by virtue of the First Protocol, which entered into force on 1 August 2004.

21 Furthermore, under Article 2(a) of the First Protocol, the Hoge Raad der Nederlanden may request the Court to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the provisions of the Convention.

The system introduced by the Convention

22 As the Advocate General pointed out in paragraphs 33 to 35 of his Opinion, it is apparent from the preamble to the Convention that it was concluded in order to continue, in the field of private international law, the work of unification of law set in motion by the adoption of the Brussels Convention of 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32).

23 It is also apparent from that preamble that the objective of the Convention is to establish uniform rules concerning the law applicable to contractual obligations, no matter where the judgment is delivered. As is apparent from the Report on the Convention on the law applicable to contractual obligations by Mario Giuliano, Professor, University of Milan, and Paul Lagarde, Professor, University of Paris I (OJ 1980 C 282, p. 1) ('the Giuliano and Lagarde report'), the Convention was born of a

wish to eliminate the inconveniences arising from the diversity of the conflict-of-law rules in the area of contracts. The function of the Convention is to raise the level of legal certainty by fortifying confidence in the stability of legal relationships and the protection of rights acquired over the whole field of private law.

24 As regards the criteria laid down by the Convention to establish the law applicable, it must be pointed out that the uniform rules set out in Title II of the Convention enshrine the principle that priority is given to the intention of the parties, to whom Article 3 of the Convention grants freedom of choice as to the law to be applied.

25 In the absence of a choice by the parties as to the law applicable to the contract, Article 4 of the Convention provides for connecting criteria on the basis of which the court must determine that law. Those criteria apply to all categories of contracts.

26 Article 4 of the Convention is based on the general principle, which is enshrined in Article 4(1), that in order to establish a contract's connection with a national law, it is necessary to ascertain the country with which that contract is 'most closely connected'.

27 As is apparent from the Giuliano and Lagarde report, the flexibility of that general principle is modified by the 'presumptions' in Article 4(2) to (4) of the Convention. In particular, Article 4(2) sets out a presumption of a general nature, which consists in applying as the connecting criterion the place of residence of the party to the contract who effects the performance characteristic of that contract, whereas Article 4(3) and (4) establish special connecting criteria as regards contracts the subject matter of which is a right in immoveable property and contracts of carriage respectively. Article 4(5) of the Convention contains an exception clause which makes it possible to disregard those presumptions.

The first question and the first part of the second question, relating to the application of Article 4(4) of the Convention to charter-parties

Observations submitted to the Court

28 According to the Netherlands Government, Article 4(4) of the Convention covers not only single voyage charter-parties, but also all other contracts the main purpose of which is the carriage of goods. It is apparent from the Giuliano and Lagarde report that that provision is intended to make it clear that charter-parties may be considered to be contracts for the carriage of goods in so far as that is their substance. That category thus covers short-term charter-parties, in which a means of transport along with its crew is made available to a charterer for a certain period of time for the purpose of carriage.

29 By contrast, the Czech Government suggests following a teleological interpretation according to which the last sentence of Article 4(4) of the Convention is intended to extend the scope of Article 4(4) to certain categories of contracts connected with the carriage of goods although those contracts cannot be categorised as contracts of

carriage. For a charter-party to be covered by the last sentence of Article 4(4), its main purpose must be the carriage of goods. It follows that the expression 'main purpose' must be understood not as the direct purpose of the contract in respect of which the contractual relationship in question was entered into, but as the purpose which, to be achieved, needs to be assisted by that relationship.

30 The Commission of the European Communities submits that the last sentence of Article 4(4) of the Convention has a 'restrictive scope'. The connecting criterion set out in that sentence concerns only certain categories of charter-parties, namely those by which a means of transport is made available by a carrier on a single occasion and those entered into by a carrier and a consignor which relate exclusively to the carriage of goods. Even though it is undeniable that the contract at issue in the main proceedings, which provides for means of transport to be made available and transported via the rail network, necessarily involves the carriage of goods, such factors are not sufficient to categorise it as a contract for the carriage of goods for the purposes of applying Article 4(4) of the Convention. Contractual relationships with various consignors and obligations relating to the actual carriage of the goods, including loading and unloading, appear to have been entered into between MIC and 'third parties' to which MIC had hired out the load capacity in the train wagons chartered.

The Court's reply

31 By its first question and by the first part of its second question, the national court in essence asks the Court whether Article 4(4) of the Convention applies to charter-parties other than single voyage charter-parties and asks the Court to state the factors which allow a charter-party to be categorised as a contract of carriage for the purposes of applying that provision to the contract at issue in the main proceedings.

32 In that regard, it must be noted, as a preliminary point, that, pursuant to the second sentence of Article 4(4) of the Convention, a contract for the carriage of goods is governed by the law of the country in which, at the time the contract is concluded, the carrier has his principal place of business if the place of loading or the place of discharge or the principal place of business of the consignor is situated in that same country. The last sentence of Article 4(4) of the Convention provides that, in applying that paragraph, 'single voyage charter-parties and other contracts the main purpose of which is the carriage of goods shall be treated as contracts for the carriage of goods'.

33 It is apparent from the wording of that provision that the Convention equates with contracts of carriage not only single voyage charter-parties but also other contracts, in so far as the main purpose of those contracts is the carriage of goods.

34 Therefore, one of the aims of that provision is to extend the scope of the rule of private international law laid down in the second sentence of Article 4(4) of the Convention to contracts the main purpose of which is the carriage of goods, even if they are classified as charter-parties under national law. In order to ascertain that purpose, it

is necessary to take into consideration the objective of the contractual relationship and, consequently, all the obligations of the party who effects the performance which is characteristic of the contract.

35 In a charter-party, the owner, who effects such a performance, undertakes as a matter of course to make a means of transport available to the charterer. However, it is conceivable that the owner's obligations relate not merely to making available the means of transport but also to the carriage of goods proper. In such circumstances, the contract in question comes within the scope of Article 4(4) of the Convention where its main purpose is the carriage of goods.

36 It must, however, be pointed out that the presumption set out in the second sentence of Article 4(4) of the Convention applies only when the owner – assuming that he is regarded as the carrier – has his principal place of business, at the time the contract is concluded, in the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated.

37 On the basis of those considerations, the answer to the first question and the first part of the second question is that the last sentence of Article 4(4) of the Convention must be interpreted as meaning that the connecting criterion provided for in the second sentence of Article 4(4) applies to a charter-party, other than a single voyage charter-party, only when the main purpose of the contract is not merely to make available a means of transport, but the actual carriage of goods.

The second part of the second question and the third and fourth questions, relating to the possibility of the Court's dividing the contract into a number of parts for the purpose of determining the law applicable

Observations submitted to the Court

38 The Netherlands Government considers that the severance of the contract is possible, under the second sentence of Article 4(1) of the Convention, only by way of exception where a part of the contract is severable and has a closer connection with a country other than that with which the other parts of the contract are connected and where that severance is not likely to disrupt the relations between the applicable provisions. According to that government if the contract at issue in the main proceedings in the present case does not concern mainly the carriage of goods it is completely excluded from the scope of Article 4(4) of the Convention. By contrast, if that contract concerns mainly the carriage of goods it comes entirely within the scope of Article 4(4). Therefore, it cannot be accepted that Article 4(4) is applicable only to the aspects of the contract relating to the carriage of goods and that, as for the rest, the same contract may be governed by the law determined pursuant to Article 4(2) of the Convention.

39 The Czech Government maintains that the second sentence of Article 4(1) of the Convention should be applied by way of exception, in so far as the application of a separate law to certain parts of a contract, even though they are severable from the rest, undermines the principles of legal certainty and of 'the protection of legitimate expectations'. Therefore, as is apparent from the Giuliano and Lagarde report, the possible severance of the various parts of a contract has to meet requirements of overall consistency.

40 The Commission states that the severance of contract provided for in Article 4(1) of the Convention is not an obligation but a possibility which the court before which a case has been brought has available to it and which can be used only where a contract comprises various parts which are independent and separable. As the subject-matter of the case in the main proceedings is a complex agreement in which the relationship between the chartering and the carriage of goods is itself at issue, severance appears, according to the Commission, to be an artificial approach. If it were a question of a contract coming within the scope of Article 4(4) of the Convention there would be no need to sever it because there would be no need to make possible ancillary aspects connected with carriage subject to legislation other than that which applies to the main purpose of the contract. In particular, the right to a consideration for the performance of the contract and the fact of being time-barred are connected so closely with the principal contract that it is not possible to separate them without infringing the principle of legal certainty.

The Court's reply

41 By the second part of its second question and the third and fourth questions, the national court in essence asks in which circumstances it is possible, under the second sentence of Article 4(1) of the Convention, to apply different national laws to the same contractual relationship, in particular as regards the limitation of the rights under a contract such as that at issue in the main proceedings. The Hoge Raad der Nederlanden asks, inter alia, whether, if the connecting criterion provided for in Article 4(4) of the Convention applies to a charter-party, that criterion relates only to the part of the contract concerning the carriage of goods.

42 In that regard, it must be borne in mind that, under the second sentence of Article 4(1) of the Convention, a part of the contract may, by way of exception, be made subject to a law other than that applied to the rest of the contract, where it has a closer connection with a country other than that with which the other parts of the contract are connected.

43 It is apparent from the wording of that provision that the rule providing for the severance of a contract is of an exceptional nature. In that regard, the Giuliano and Lagarde report states that the words 'by way of exception' in the last sentence of Article 4(1) 'are … to be interpreted in the sense that the court must have recourse to severance as seldom as possible'.

44 In order to ascertain the conditions in which the court may sever the contract, it is necessary to consider that the objective of the Convention, as was stated in the preliminary observations in paragraphs 22 to 23 of this judgment, is to raise the level of legal certainty by fortifying confidence in the stability of the relationships between the parties to the contract. Such an objective cannot be attained if the system for determining the applicable law is unclear and that law cannot be predicted with some degree of certainty.

45 As the Advocate General pointed out in paragraphs 83 and 84 of his Opinion, the possibility of separating a contract into a number of parts in order to make it subject to a number of laws runs counter to the objectives of the Convention and must be allowed only where there are a number of parts to the contract who may be regarded as independent of each other.

46 Consequently, in order to determine whether a part of a contract may be made subject to a different law it is necessary to ascertain whether the object of that part is independent in relation to the purpose of the rest of the contract.

47 If that is the case, each part of a contract must be made subject to one single law. In particular, therefore, the rules relating to the prescription of a right must fall under the same legal system as that applied to the corresponding obligation. In that regard, it must be borne in mind that, under Article 10(1)(d) of the Convention, the law applicable to a contract governs in particular the prescription of obligations.

48 In the light of those considerations, the answer to the second part of the second question and the third and fourth questions is that the second sentence of Article 4(1) of the Convention must be interpreted as meaning that a part of a contract may be governed by a law other than that applied to the rest of the contract only where the object of that part is independent.

49 Where the connecting criterion applied to a charter-party is that set out in Article 4(4) of the Convention, that criterion must be applied to the whole of the contract, unless the part of the contract relating to carriage is independent of the rest of the contract.

The fifth question, relating to the application of the second clause of Article 4(5) of the Convention

Observations submitted to the Court

50 According to the Netherlands Government, the second clause of Article 4(5) of the Convention provides for a derogation from the criteria laid down in Article 4(2) to (4) thereof. Consequently, a connection categorised as 'slight' with a country other than those identified on the basis of Article 4(2) to (4) is insufficient to justify a derogation from those criteria, which could otherwise no longer be considered to be the main

connecting criteria. It follows that the derogation provided for in Article 4(5) of the Convention may only be applied if it is apparent from all the circumstances that those criteria have no genuine connecting value and that the contract is predominantly connected with another country.

51 According to the Czech Government, Article 4(5) of the Convention is not a lex specialis in relation to Article 4(2) to (4), but constitutes a separate provision, which relates to a situation in which it is very apparent from all the circumstances of the case and of the overall contractual relationship that the contract is much more closely connected with a country other than that identified by applying the other connecting criteria.

52 By contrast, the Commission argues that Article 4(5) of the Convention must be interpreted strictly, to the effect that other factors may be taken into account only where the criteria provided for in Article 4(2) to (4) have no genuine connecting value. The existence of those presumptions calls for considerable importance to be attributed to them. Other connecting factors may, consequently, be taken into consideration only if, by way of exception, those criteria do not operate efficiently.

The Court's reply

53 By its fifth question, the national court asks whether the exception in the second clause of Article 4(5) of the Convention must be interpreted in such a way that the presumptions in Article 4(2) to (4) of the Convention do not apply only if it is evident from the circumstances in their totality that the connecting criteria indicated therein do not have any genuine connecting value, or whether the court must also refrain from applying them if it is clear from those circumstances that there is a stronger connection with some other country.

54 As was pointed out in the preliminary observations in paragraphs 24 to 26 of this judgment, Article 4 of the Convention, which sets out the connecting criteria applicable to contractual obligations in the absence of a choice by the parties of the law applicable to the contract, lays down, in Article 4(1), the general principle that the contract is to be governed by the law of the country with which it is most closely connected.

55 In order to ensure a high level of legal certainty in contractual relationships, Article 4(2) to (4) of the Convention provides for a set of criteria on the basis of which it is possible to presume which country the contract is most closely connected with. Those criteria operate like presumptions in the sense that the court before which a case has been brought must take them into consideration in determining the law applicable to the contract.

56 Under the first clause of Article 4(5) of the Convention, the connecting criterion of the place of residence of the party effecting the performance which is characteristic of the contract may be disregarded if that place of residence cannot be determined.

Under the second clause of Article 4(5), all the 'presumptions' may be disregarded 'if it appears from the circumstances as a whole that the contract is more closely connected with another country'.

57 In that regard, it is necessary to establish the function and objective of the second clause of Article 4(5) of the Convention.

58 It is apparent from the Giuliano and Lagarde report that the draftsmen of the Convention considered it essential 'to provide for the possibility of applying a law other than those referred to in the presumptions in paragraphs 2, 3 and 4 whenever all the circumstances show the contract to be more closely connected with another country'. It is also apparent from that report that Article 4(5) of the Convention leaves the court 'a margin of discretion as to whether a set of circumstances exists in each specific case justifying the non-application of the presumptions in paragraphs 2, 3 and 4' and that such a provision constitutes 'the inevitable counterpart of a general conflict rule intended to apply to almost all types of contract'.

59 It thus follows from the Giuliano and Lagarde report that the objective of Article 4(5) of the Convention is to counterbalance the set of presumptions stemming from the same article by reconciling the requirements of legal certainty, which are satisfied by Article 4(2) to (4), with the necessity of providing for a certain flexibility in determining the law which is actually most closely connected with the contract in question.

60 Since the primary objective of Article 4 of the Convention is to have applied to the contract the law of the country with which it is most closely connected, Article 4(5) must be interpreted as allowing the court before which a case has been brought to apply, in all cases, the criterion which serves to establish the existence of such connections, by disregarding the 'presumptions' if they do not identify the country with which the contract is most closely connected.

61 It therefore falls to be ascertained whether those presumptions may be disregarded only where they do not have any genuine connecting value or where the court finds that the contract is more closely connected with another country.

62 As is apparent from the wording and the objective of Article 4 of the Convention, the court must always determine the applicable law on the basis of those presumptions, which satisfy the general requirement of foreseeability of the law and thus of legal certainty in contractual relationships.

63 However, where it is clear from the circumstances as a whole that the contract is more closely connected with a country other than that identified on the basis of the presumptions set out in Article 4(2) to (4) of the Convention, it is for that court to refrain from applying Article 4(2) to (4).

64 In the light of those considerations, the answer to the fifth question must be that Article 4(5) of the Convention must be construed as meaning that, where it is clear from the circumstances as a whole that the contract is more closely connected with a country other than that determined on the basis of one of the criteria set out in Article 4(2) to (4) of the Convention, it is for the court to disregard those criteria and apply the law of the country with which the contract is most closely connected.

Costs

65 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **The last sentence of Article 4(4) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, must be interpreted as meaning that the connecting criterion provided for in the second sentence of Article 4(4) applies to a charter-party, other than a single voyage charter-party, only when the main purpose of the contract is not merely to make available a means of transport, but the actual carriage of goods.**

2. **The second sentence of Article 4(1) of the Convention must be interpreted as meaning that a part of a contract may be governed by a law other than that applied to the rest of the contract only where the object of that part is independent.**

Where the connecting criterion applied to a charter-party is that set out in Article 4(4) of the Convention, that criterion must be applied to the whole of the contract, unless the part of the contract relating to carriage is independent of the rest of the contract.

3. **Article 4(5) of the Convention must be construed as meaning that, where it is clear from the circumstances as a whole that the contract is more closely connected with a country other than that determined on the basis of one of the criteria set out in Article 4(2) to (4) of the Convention, it is for the court to disregard those criteria and apply the law of the country with which the contract is most closely connected.**

[Signatures]

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* Language of the case: Dutch.