

**European Court of Justice, 30 November 1976, Bier v Mines de Potasse**



**LITIGATION – JURISDICTION**

**Place of harmful event**

- [Place where harmful event occurred in article 5 \(3\) must be established in such a way as to acknowledge that the plaintiff has an option to commence proceedings either at the place where the damage occurred or the place of the event giving rise to it](#)

As regards this, it is well to point out that the place of the event giving rise to the damage no less than the place where the damage occurred can, depending on the case, constitute a significant connecting factor from the point of view of jurisdiction.

Taking into account the close connexion between the component parts of every sort of liability, it does not appear appropriate to opt for one of the two connecting factors mentioned to the exclusion of the other, since each of them can, depending on the circumstances, be particularly helpful from the point of view of the evidence and of the conduct of the proceedings.

Thus the meaning of the expression 'place where the harmful event occurred' in article 5 (3) must be established in such a way as to acknowledge that the plaintiff has an option to commence proceedings either at the place where the damage occurred or the place of the event giving rise to it.

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**European Court of Justice, 30 November 1976**

(Kutscher, Donner, Pescatore, Mertens de Wilmars, Sorensen, Mackenzie Stuart, O'Keefe)

In case 21/76

Reference to the court pursuant to article 1 of 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 Gerechtshof (appeal court) of The Hague for a preliminary ruling in the action pending before that court between

Handelskwekerij g. J. Bier b.v., of Nieuwerkerk aan den IJssel (the Netherlands ), and the Reinwater foundation, having its registered office at Amsterdam,

And

Mines de potasse d'alsace s.a., having its registered office at Mulhouse,

**Subject of the case**

On the interpretation of the meaning of 'the place where the harmful event occurred' in article 5 (3) of the convention of 27 September 1968,

**Grounds**

1 By judgment of 27 February 1976, which reached the court registry on the following 2 march, the Gerechtshof (appeal court) of The Hague has referred a question, pursuant to the protocol on 3 June 1971 on the interpretation of the convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (hereinafter called 'the convention'), on the interpretation of article 5 (3) of the said convention.

2 It appears from the judgment making the reference that at the present stage the main action, which has come before the Gerechtshof by way of appeal, concerns the jurisdiction of the court of first instance at Rotterdam, and in general, of the Netherlands courts, to entertain an action brought by an undertaking engaged in horticulture, established within the area for which the court before which the action was first brought has jurisdiction, and by the Reinwater foundation, which exists to promote the improvement of the quality of the water in the Rhine basin, against mines de potasse d'alsace, established at Mulhouse (France), concerning the pollution of the waters of the Rhine by the discharge of saline waste from the operations of the defendant into that inland waterway.

3 It appears from the file that as regards irrigation the horticultural business of the first-named appellant depends mainly on the waters of the Rhine, the high salt content of which, according to the said appellant, causes damage to its plantations and obliges it to take expensive measures in order to limit that damage.

4 The appellants consider that the excessive salinization of the Rhine is due principally to the massive discharges carried out by mines de potasse d'alsace and they declare that it is for that reason that they have chosen to bring an action for the purposes of establishing the liability of that undertaking.

5 By judgment delivered on 12 may 1975, the court at Rotterdam held that it had no jurisdiction to entertain the action, taking the view that under article 5 ( 3 ) of the convention the claim did not come within its jurisdiction but under that of the French court for the area in which the discharge at issue took place.

6 Bier and Reinwater brought an appeal against that judgment before the Gerechtshof, The Hague, which subsequently referred the following question to the court:

'Are the words "the place where the harmful event occurred", appearing in the text of article 5(3) of the convention on jurisdiction and the enforcement of judgments in civil and commercial matters, concluded at Brussels on 27 September 1968, to be understood as meaning "the place where the damage occurred (the place where the damage took place or became apparent)" or rather "the place where the event having the damage as its sequel occurred (the place where the act was or was not performed)"?'

7 Article 5 of the convention 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'.

8 That provision must be interpreted in the context of the scheme of conferment of jurisdiction which forms the subject-matter of title ii of the convention.

9 That scheme is based on a general rule, laid down by article 2, that the courts of the state in which the defendant is domiciled shall have jurisdiction.

10 However, article 5 makes provision in a number of cases for a special jurisdiction, which the plaintiff may opt to choose.

11 This freedom of choice was introduced having regard to the existence, in certain clearly defined situations, of a particularly close connecting factor between a dispute and the court which may be called upon to hear it, with a view to the efficacious conduct of the proceedings.

12 Thus in matters of tort, delict or quasi-delict article 5 (3) allows the plaintiff to bring his case before the courts for 'the place where the harmful event occurred'.

13 In the context of the convention, the meaning of that expression is unclear when the place of the event which is at the origin of the damage is situated in a state other than the one in which the place where the damage occurred is situated, as is the case inter alia with atmospheric or water pollution beyond the frontiers of a state.

14 The form of words 'place where the harmful event occurred', used in all the language versions of the convention, leaves open the question whether, in the situation described, it is necessary, in determining jurisdiction, to choose as the connecting factor the place of the event giving rise to the damage, or the place where the damage occurred, or to accept that the plaintiff has an option between the one and the other of those two connecting factors.

15 As regards this, it is well to point out that the place of the event giving rise to the damage no less than the place where the damage occurred can, depending on the case, constitute a significant connecting factor from the point of view of jurisdiction.

16 Liability in tort, delict or quasi-delict can only arise provided that a causal connexion can be established between the damage and the event in which that damage originates.

17 Taking into account the close connexion between the component parts of every sort of liability, it does not appear appropriate to opt for one of the two connecting factors mentioned to the exclusion of the other, since each of them can, depending on the circumstances, be particularly helpful from the point of view of the evidence and of the conduct of the proceedings.

18 To exclude one option appears all the more undesirable in that, by its comprehensive form of words, article 5 (3) of the convention covers a wide diversity of kinds of liability.

19 Thus the meaning of the expression 'place where the harmful event occurred' in article 5 (3) must be estab-

lished in such a way as to acknowledge that the plaintiff has an option to commence proceedings either at the place where the damage occurred or the place of the event giving rise to it.

20 This conclusion is supported by the consideration, first, 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.

21 Secondly, a decision in favour only of the place where the damage occurred would, in cases where the place of the event giving rise to the damage does not coincide with the domicile of the person liable, have the effect of excluding a helpful connecting factor with the jurisdiction of a court particularly near to the cause of the damage.

22 Moreover, it appears from a comparison of the national legislative provisions and national case-law on the distribution of jurisdiction - both as regards internal relationships, as between courts for different areas, and in international relationships - that, albeit by differing legal techniques, a place is found for both of the two connecting factors here considered and that in several states they are accepted concurrently.

23 In these circumstances, the interpretation stated above has the advantage of avoiding any upheaval in the solutions worked out in the various national systems of law, since it looks to unification, in conformity with article 5 (3) of the convention, by way of a systematization of solutions which, as to their principle, have already been established in most of the states concerned.

24 Thus it should be answered that where the place of the happening of the event which may give rise to liability in tort, delict or quasidelict 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.

25 The result is 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.

#### **Decision on costs**

##### **Costs**

26 The costs incurred by the government of the French republic, the government of the kingdom of the Netherlands and the commission of the European communities, which have submitted observations to the court, are not recoverable.

27 As these proceedings are, so far as the parties to the main action are concerned, a step in the action pending before the Gerechtshof, The Hague, the decision on costs is a matter for that court.

#### **Operative part**

On those grounds  
The court

In answer to the question referred to it by the Gerechtshof, The Hague, by judgment of 27 February 1976, hereby rules:

Where the place of the happening of the event which may give rise to liability in tort, delict or quasidelict 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 of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, 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.

The result is 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.