Coreck Maritime GmbH

v.

Handelsveem BV and Others

C-387/98

9 November 2000

Convention on Jurisdiction and the Enforcement of Judgments – prorogation of jurisdiction – Jurisdiction clause – Parties' consent – No need to formulate the clause so that the court having jurisdiction can be determined on its wording alone – Scope of the first paragraph of Article 17 – Clause entered into by at least one party domiciled in a Contracting State conferring jurisdiction on a court in a Contracting State – Jurisdiction clause in a bill of lading – Enforceability as against third party bearer

OPERATIVE PART:

The first paragraph of Article 17 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, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic and by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, must be interpreted as follows:

1. It does not require that a jurisdiction clause be formulated in such a way that the competent court can be determined on its wording alone. It is sufficient that the clause state the objective factors on the basis of which the parties have agreed to choose a court or the courts to which they wish to submit disputes which have arisen or which may arise between them. Those factors, which must be sufficiently precise to enable the court seised to ascertain whether it has jurisdiction, may, where appropriate, be determined by the particular circumstances of the case.

2. It applies only if, first, at least one of the parties to the original contract is domiciled in a Contracting State and, secondly, the parties agree to submit any disputes before a court or the courts of a Contracting State.

3. A jurisdiction clause agreed between a carrier and a shipper which appears in a bill of lading is enforceable against a third party bearer of the bill of lading if he succeeded to the rights and obligations of the shipper under the applicable national law when he acquired the bill of lading. If he did not, it must be ascertained whether he accepted that clause having regard to the requirements laid down in the first paragraph of Article 17 of the Convention, as amended.

EXCERPT FROM THE REASONS:

1 By judgment of 23 October 1998, lodged at the Court on 29 October 1998, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) referred for a preliminary rul-

Coreck Maritime GmbH

protiv

Handelsveem BV i drugih

C-387/98

9. studenoga 2000.

Konvencija o sudskoj nadležnosti i ovrsi sudskih odluka – sporazum o nadležnosti – klauzula o sudskoj nadležnosti – suglasnost stranaka – nepostojanje zahtjeva da se odredba formulira na način da se nadležni sud može odrediti već na temelju teksta odredbe – područje primjene članka 17. stavka 1. – odredba koju sklapa barem jedna stranka s prebivalištem u državi ugovornici kojom se zasniva nadležnost suda države ugovornice – klauzula o sudskoj nadležnosti u teretnici – ovršnost prema trećim osobama koji su imatelji teretnice

IZREKA:

Članak 17. stavak 1. Konvencije od 27. rujna 1968. o sudskoj nadležnosti i ovrsi sudskih odluka u građanskim i trgovačkim stvarima u inačici Konvencije od 9. listopada 1978. o pristupanju Kraljevine Danske, Irske i Ujedinjenog Kraljevstva Velike Britanije i Sjeverne Irske, Konvencije od 25. listopada 1982. o pristupanju Republike Grčke i Konvencije od 26. svibnja 1989. o pristupanju Kraljevine Španjolske i Portugalske Republike treba se tumačiti kako slijedi:

1. Tim se člankom ne traži da odredba o sudskoj nadležnosti bude formulirana tako da se već na temelju njezina teksta može odrediti koji je sud nadležan. Dovoljno je da su u odredbi navedeni objektivni kriteriji o kojima su se sporazumjele stranke kod određivanja suda ili sudova koji trebaju odlučivati o njihovim već nastalim ili budućim sporovima. Ti se kriteriji, koji moraju biti dovoljno precizni da sud pred kojim je pokrenut postupak može utvrditi je li nadležan, mogu eventualno odrediti uz pomoć posebnih okolnosti slučaja.

2. Taj se članak primjenjuje samo ako najmanje jedna stranka prvobitnog ugovora ima prebivalište na području neke države ugovornice i ako su stranke sporazumjele da će međusobne sporove rješavati pred sudom ili sudovima neke države ugovornice.

3. Odredba o sudskoj nadležnosti ugovorena između prijevoznika i otpremnika i unesena u teretnicu ima učinak prema trećem imatelju teretnice ako on preuzimanjem teretnice prema mjerodavnom nacionalnom pravu preuzima prava i obveze otpremnika. Ako to nije slučaj, potrebno je u pogledu pretpostavki iz članka 17. stavka 1. izmijenjene Konvencije provjeriti je li prihvatio tu odredbu.

IZ OBRAZLOŽENJA:

1 *Hoge Raad der Nederlanden* presudom od 23. listopada 1998., koju je Sud zaprimio 29. listopada 1998., a prema Protokolu od 3. lipnja 1971. o tumačenju Konvencije od 27.

ing 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 the Protocol) four questions on the interpretation of the first paragraph of Article 17 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, hereinafter the Convention).

2 Those questions were raised in proceedings relating to the validity of a jurisdiction clause in bills of lading between Coreck Maritime GmbH, a company incorporated according to German law established in Hamburg, Germany, the issuer of the bills of lading (hereinafter Coreck) on the one hand, and Handelsveem BV, the holder in due course of the bills of lading, V. Berg and Sons Ltd and Man Producten Rotterdam BV, the owners of the cargo under the bills of lading, and The People's Insurance Company of China, the insurer of that cargo (hereinafter referred to collectively as Handelsveem) on the other.

The Convention

3 The first and second paragraphs of Article 17 of the Convention provide:

If the parties, one or more of whom is domiciled in a Contracting State, have agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have exclusive jurisdiction. Such an agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing; or

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

Where such an agreement is concluded by parties, none of whom is domiciled in a Contracting State, the courts of other Contracting States shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.

The main proceedings

4 Consignments of groundnut kernels were transported from Qingdao in China to Rotterdam in the Netherlands in 1991 aboard a ship belonging to Sevryba, a company incorporated under Russian law established in Murmansk, Russia, pursuant to a contract of carriage concluded with the shipper by Coreck, the time charterer of the vessel.

5 Various bills of lading were issued by Coreck in respect of the carriage containing, inter alia, the following clauses:

3. Jurisdiction

rujna 1968. o sudskoj nadležnosti i ovrsi sudskih odluka u građanskim i trgovačkim stvarima od strane Suda (u daljnjem tekstu: "Protokol"), postavio je četiri pitanja o tumačenju članka 17. stavka 1. navedene Konvencije od 27. rujna 1968. (SL 1972, L 299, str. 32) u verziji Konvencije od 9. listopada 1978. o pristupanju Kraljevine Danske, Irske i Ujedinjenog Kraljevstva Velike Britanije i Sjeverne Irske (SL L 304, str. 1 i – izmijenjeni tekst – str. 77) te Konvencije od 25. listopada 1982. o pristupanju Republike Grčke (SL L 388, str. 1) i Konvencije od 26. svibnja 1989. o pristupanju Kraljevine Španjolske i Portugalske Republike (SL L 285, str. 1) (u daljnjem tekstu: Konvencija) radi donošenja prethodne odluke.

2 Ova su se pitanja pojavila u sudskom sporu o valjanosti odredbe kojom je ugovorena sudska nadležnost u teretnicama između Coreck Maritime GmbH, društva njemačkog prava sa sjedištem u Hamburgu (Njemačka) koje je izdalo teretnice (u daljnjem tekstu: Coreck) i Handelsveem BV – pravodobnog imatelja teretnica – V. Berg and Sons Ltd i Man Producten Rotterdam BV – vlasnika roba koje se prevoze s tim teretnicama – te The Peoples Insurance Company of China, osiguravatelja robe (u daljnjem tekstu zajednički: Handelsveem i drugi).

Konvencija

3 Člankom 17. stavcima 1. i 2. Konvencije, određeno je kako slijedi:

"Ako su se strane, od kojih barem jedna ima prebivalište u nekoj državi članici, sporazumjele da će sud ili sudovi neke države članice biti nadležni za sporove koji su nastali ili mogu nastati u vezi s određenim pravnim odnosom, nadležan će biti isključivo taj sud ili ti sudovi te države. Sporazum o nadležnosti mora se sklopiti

(a) u pisanom obliku ili usmeno s pisanom potvrdom,

(b) u obliku koji odgovara praksi koja se ustalila između stranaka; ili

(c) u međunarodnoj trgovini, u obliku koji odgovara običajima koji su strankama bili poznati ili su im morali biti poznati, a opće su poznati i redovito ih poštuju stranke ugovora ove vrste u grani o kojoj je riječ.

Ako sporazum sklapaju strane od kojih nijedna nema prebivalište u nekoj državi članici, sudovi drugih država članica nisu nadležni za njihove sporove, osim ako se izabrani sud ili sudovi pravomoćno odbiju oglasiti nadležnima."

Glavni postupak

4 Više pošiljki kikirikija prevezeno je 1991. godine brodom u vlasništvu društva Sevryba, trgovačkog društva ruskog prava sa sjedištem u Murmansku (Rusija) od mjesta Qingdao (Kina) do Rotterdama (Nizozemska). To je učinjeno na temelju ugovora o prijevozu koji je Coreck kao privremeni zakupac broda sklopio s otpremnikom.

5 Za taj je prijevoz Coreck izdao više teretnica koje su među ostalim sadržavale sljedeće odredbe:

"3. Sudska nadležnost

Any dispute arising under this Bill of Lading shall be decided in the country where the carrier has his principal place of business and the law of such country shall apply except as provided elsewhere herein.

17. Identity of Carrier

The Contract evidenced by this Bill of Lading is between the Merchant and the Owner of the vessel named herein (or substitute) and it is therefore agreed that the said Shipowner only shall be liable for any damage or loss due to any breach or non-performance of any obligation arising out of the contract of carriage, whether or not relating to the vessel's seaworthiness. If, despite the foregoing, it is adjudged that any other is the Carrier and/or bailee of the goods shipped hereunder, all limitations of, and exonerations from, liability provided for by law or by this Bill of Lading shall be available to such other.

It is further understood and agreed that as the Line, Company or Agents who has [sic] executed this Bill of Lading for and on behalf of the Master is not a principal in the transaction, said Line, Company or Agents shall not be under any liability arising out of the contract of carriage, nor as Carrier or bailee of the goods.

6 The following words appeared on the face of the bills of lading:

"Coreck" Maritime G.m.b.H. Hamburg.

7 By a document of 5 March 1993, Handelsveem summoned Sevryba and Coreck, under Article 5(1) of the Convention, to appear before the Rechtbank (District Court) in Rotterdam – being the court for the area where the port of discharge designated in the bills of lading was situated – for an order for payment of compensation for the damage alleged sustained by the cargo during transportation.

8 Coreck, relying on the jurisdiction clause in the bills of lading, claimed that that court did not have jurisdiction. In a judgment of 24 February 1995 the Rechtbank in Rotterdam held the clause to be inapplicable and declared that it did have jurisdiction on the ground that, in order for such a clause to be valid, it must be possible to ascertain the court having jurisdiction without difficulty, which was not the case here. On appeal by Coreck, the Gerechtshof (Regional Court of Appeal) in The Hague, in a judgment of 22 April 1997, upheld the decision given at first instance.

9 Coreck appealed to the Hoge Raad der Nederlanden, which decided to stay the proceedings and refer the following four questions to the Court for a preliminary ruling:

1. Must the first sentence of Article 17 of the Brussels Convention (in particular, the words "have agreed"), read in conjunction with the case-law of the Court of Justice according to which "the purpose of Article 17 is to ensure that the [consent of the] parties … to such a clause, which derogates from the ordinary jurisdiction rules laid down in Articles 2, 5 and 6 of the Convention, … is clearly and precisely demonstrated", be interpreted as meaning:

(a) that, in order for a clause vesting jurisdiction in a given court, as provided for in that article, to be valid as between the parties, it is necessary in each case for that clause to be formulated in such a way that its wording alone makes it quite clear, or at least easy to ascertain, (even) for persons other than the parties – and in particular to the court concerned – which court is to have jurisdiction to settle disputes arising from the legal relationship in the context of which that clause is stipulated; or

O sporovima iz ove teretnice odlučivat će se u zemlji u kojoj prijevoznik ima glavno sjedište, a primjenjivat će se pravo te zemlje ako u ovim uvjetima nije ugovoreno drukčije.

17. Identitet prijevoznika

Ugovor sadržan u ovoj teretnici sklapa se između trgovca i vlasnika broda navedenog u ovoj teretnici (ili njegova zastupnika), stoga se ugovara da samo navedeni vlasnik broda odgovara za štetu ili gubitak zbog povrede ili neispunjenja obveze iz ugovora o prijevozu, neovisno o tome je li isto povezano s plovidbenošću broda. Ako se neovisno o gore navedenom donese sudska odluka da je netko treći prijevoznik i/ili depozitar robe koja se otprema u skladu s ovim uvjetima, na tu treću osobu primjenjuju se sva ograničenja i oslobođenja od odgovornosti u skladu sa zakonom ili ovom teretnicom.

Nadalje se na temelju sporazuma polazi od toga da brodarsko poduzeće, društvo ili agencija koja je izvršila ovu teretnicu u ime naručitelja, budući da nije glavni sudionik posla, ne podliježe odgovornosti iz ugovora o prijevozu i to ni kao prijevoznik robe ni kao njezin depozitar."

6 Na prednjoj strani teretnica otisnuto je kako slijedi:

"Coreck" Maritime G.m.b.H. Hamburg

7 Tužbom od 5. ožujka 1993. Handelsveem i drugi podigli su prema članku 5. stavku 1. Konvencije tužbu pred sudom *Rechtbank Rotterdam* kao sudom luke istovara navedene u teretnici protiv društava Sevryba i Coreck radi plaćanja naknade štete i kamata zbog oštećenja koja su navodno nastala na robi tijekom prijevoza.

8 Coreck se pozvao na odredbu o sudskoj nadležnosti iz teretnice i istaknuo da sud pred kojim je pokrenut postupak nije nadležan. Presudom od 24. veljače 1995. *Rechtbank Rotterdam* odbio je primijeniti tu odredbu i oglasio se nadležnim, jer je navodno takva odredba valjana samo onda kada se nadležni sud može jednostavno odrediti što ovdje navodno nije slučaj. Na žalbu Corecka *Gerechtshof Den Haag* presudom od 22. travnja 1997. potvrdio je prvostupanjsku odluku.

9 *Hoge Raad der Nederlanden*, kojemu je Coreck podnio pravni lijek, obustavio je postupak i Sudu postavio sljedeća četiri pitanja radi donošenja prethodne odluke:

1. Proizlazi li iz prve rečenice članka 17. Konvencije o sudskoj nadležnosti i ovrsi sudskih odluka (posebno iz formulacije "su se … sporazumjele") u vezi s praksom Suda prema kojoj se ovim člankom "treba zajamčiti da sporazum između stranaka koji kod sporazuma o sudskoj nadležnosti odstupa od općih odredbi o nadležnosti iz članaka 2., 5. i 6. Konvencije, … jasno dođe do izražaja",

a) da je za valjanost sporazuma stranaka o sudskoj nadležnosti u smislu ove odredbe u svakom slučaju potrebno taj sporazum formulirati tako da i za osobe koje nisu stranke – posebice i za sud – već iz teksta odredbe bude bez daljnjega jasno ili da se barem može jednostavno ustanoviti koji je sud nadležan za odlučivanje o sporovima koji proizađu iz pravnog odnosa u okviru kojeg je sporazum sklopljen, ili

(b) that – generally or now, in consequence of or in connection with the progressive relaxation of the rules in Article 17 of the Brussels Convention, together with the case-law of the Court of Justice concerning the circumstances in which such a clause is to be regarded as having been validly concluded – in order for such a clause to be valid, it is enough that the parties themselves clearly know, on the basis (inter alia) of the (other) circumstances of the case, which court is to have jurisdiction to settle such disputes?

2. Does Article 17 of the Brussels Convention also govern the validity, as against a third party holding a bill of lading, of a clause which specifies as the forum having jurisdiction to settle disputes "under this Bill of Lading" the courts of the place where the carrier has his "principal place of business" and which is laid down in a bill of lading also containing an "identity of carrier" clause, that bill of lading being issued for the purposes of the carriage of goods, where (a) the shipper and one of the possible carriers are not established in a Contracting State and (b) the second possible carrier is indeed established in a Contracting State but it is not certain whether his "principal place of business" is situated in that State or in a State which is not a party to the Convention?

3. If the answer to Question 2 is in the affirmative:

(a) Does the fact that the jurisdiction clause contained in the bill of lading must be regarded as valid as between the carrier and the shipper mean that it is also binding on any third party holding the bill of lading, or is that the position only as regards a third party who, upon acquiring the bill of lading, succeeds by virtue of the applicable national law to the shipper's rights and obligations?

(b) Assuming that the jurisdiction clause contained in the bill of lading must be regarded as valid as between the carrier and the shipper, does the answer to the question whether it is also binding on a third party holding the bill of lading also possibly depend to some extent on the contents of the bill of lading and/or the particular circumstances of the case, such as the particular state of knowledge of the third party concerned or the fact that the latter has a long-standing business relationship with the carrier and, if so, can the third party be deemed to be aware of the particular circumstances of the case if the contents of the bill of lading do not make it sufficiently clear to him that the clause in question is valid?

4. If the answer to Question 3(a) is as just suggested, which national law governs the decision as to whether the third party, upon acquiring the bill of lading, succeeded to the shipper's rights and obligations, and what is the position if the national law in question has not hitherto provided, either in its legislation or in its case-law, an answer to the question whether the third party, upon acquiring the bill of lading, succeeds to the shipper's rights and obligations?

The first question

10 As regards the first question, the national court essentially asks whether the words have agreed in the first sentence of the first paragraph of Article 17 of the Convention must be interpreted as meaning that the jurisdiction clause must be formulated in such a way that it is possible to identify the court having jurisdiction on its wording alone.

11 Handelsveem considers that that question must be answered in the affirmative, given the particular need for legal certainty where the choice of forum is concerned. The Italian and Netherlands Governments for their part emphasise how important it is that the court

b) da je – oduvijek ili pak sada kao rezultat postupnog ublažavanja odredbi članka 17. Konvencije, odnosno sudske prakse Suda glede okolnosti pod kojima se takav sporazum treba smatrati valjanim – dostatno za valjanost ako je strankama samima (među ostalim) na temelju (širih) okolnosti slučaja jasno koji je sud nadležan za odlučivanje o tim sporovima?

2. Uređuje li se člankom 17. Konvencije, i s obzirom na treće imatelje teretnica, valjanost sporazuma kojim se kao nadležni sud za sporove "iz ove teretnice" ("*under this bill of lading*") navodi sud mjesta na kojem prijevoznik ima svoje glavno poslovno sjedište (*principal place of business*) i koji je ugrađen u teretnicu, a koji sadrži i takozvanu odredbu o identitetu prijevoznika (*identity-of-carrier-clause*) i koji je izdan za potrebe prijevoza kod kojih:

a) pošiljatelj i jedan od mogućih prijevoznika nemaju poslovni nastan u jednoj od država ugovornica dok

b) drugi mogući prijevoznik ima, doduše, poslovni nastan u jednoj od država ugovornica, ali nije jasno nalazi li se njegovo glavno poslovno sjedište u toj državi ili u nekoj drugoj državi koja nije država ugovornica?

3. Ako je odgovor na drugo pitanje potvrdan:

a) Znači li okolnost da se odredba o sudskoj nadležnosti u teretnici između prijevoznika i pošiljatelja treba smatrati valjanom i da je ta odredba valjana i u odnosu na svakog trećeg imatelja teretnice ili je to samo slučaj kod trećeg imatelja teretnice koji je prema mjerodavnom nacionalnom pravu postao pravni sljednik pošiljatelja?

b) Mogu li onda – pod pretpostavkom da se sporazum o sudskoj nadležnosti između prijevoznika i pošiljatelja koji je ugrađen u teretnicu treba smatrati valjanim – za potrebe odgovora na pitanje je li sporazum valjan u odnosu na trećeg imatelja teretnice osim sadržaja teretnice određenu ulogu imati i posebne okolnosti slučaja kao što je posebno poznavanje dotičnog trećeg nositelja teretnice ili njegov dugotrajan odnos s prijevoznikom, a ako da, može li se od trećeg imatelja teretnice tražiti da se, ako mu iz sadržaja teretnice nije potpuno jasno pitanje valjanosti sporazuma, informira o posebnim okolnostima slučaja?

4. Ako se na pitanje 3a treba odgovoriti onako kako je na kraju navedeno, prema kojem se pravu onda treba odlučiti je li treći imatelj teretnice po primitku istoga pravni sljednik pošiljatelja i što mora vrijediti ako se u dotičnom nacionalnom pravu ni u propisima ni u sudskoj praksi ne daje odgovor na pitanje je li treći imatelj teretnice po primitku istoga pravni sljednik pošiljatelja?

O prvom pitanju

10 Svojim prvim pitanjem nacionalni sud želi znati treba li se izraz "su se … sporazumjele" iz prve rečenice članka 17. stavka 1. Konvencije tumačiti tako da se odredba o sudskoj nadležnosti mora formulirati na način da se nadležni sud može odrediti već na temelju teksta odredbe.

11 Prema shvaćanju Handelsveema i drugih, na to se pitanje treba dati potvrdan odgovor, jer kod izbora nadležnog suda postoji posebna potreba za pravnom sigurnosti. Nizozemska i talijanska vlada istaknule su kako je važno da sud koji su stranke izabrale bude

chosen by the parties be identified clearly and precisely, so that the court seised can determine whether it is has jurisdiction.

12 On the other hand, Coreck, the United Kingdom Government and the Commission argue that it is sufficient that the court having jurisdiction be identifiable from the wording of the clause considered in the light of the actual circumstances of the individual case.

13 The Court has held that, by making the validity of a jurisdiction clause subject to the existence of an agreement between the parties, Article 17 of the Convention imposes on the court before which the matter is brought the duty of examining first whether the clause conferring jurisdiction upon it was in fact the subject of consensus between the parties, which must be clearly and precisely demonstrated, and that the purpose of the requirements as to form imposed by Article 17 is to ensure that consensus between the parties is in fact established (Case 24/76 Estasis Salotti v RÜWA [1976] ECR 1831, paragraph 7, Case 25/76 Segoura v Bonakdarian [1976] ECR 1851, paragraph 6, and Case C-106/95 MSG v Gravières Rhénanes [1997] ECR 1-911, paragraph 15).

14 However, if the purpose of Article 17 of the Convention is to protect the wishes of the parties concerned, it must be construed in a manner consistent with those wishes where they are established. Article 17 is based on a recognition of the independent will of the parties to a contract in deciding which courts are to have jurisdiction to settle disputes falling within the scope of the Convention, other than those which are expressly excluded pursuant to the fourth paragraph of Article 17 (Case 23/78 Meeth v Glacetal [1978] ECR 2133, paragraph 5).

15 It follows that the words have agreed in the first sentence of the first paragraph of Article 17 of the Convention cannot be interpreted as meaning that it is necessary for a jurisdiction clause to be formulated in such a way that the competent court can be determined on its wording alone. It is sufficient that the clause state the objective factors on the basis of which the parties have agreed to choose a court or the courts to which they wish to submit disputes which have arisen or which may arise between them. Those factors, which must be sufficiently precise to enable the court seised to ascertain whether it has jurisdiction, may, where appropriate, be determined by the particular circumstances of the case.

The second question

16 By its second question, the national court asks about the conditions of application of the first paragraph of Article 17 of the Convention. It essentially asks whether that provision applies if the jurisdiction clause designates the court for the area where one of the parties to the original contract has its principal place of business but it is not proven that that place of business is situated in a Contracting State.

17 As the wording of the first sentence of the first paragraph of Article 17 of the Convention itself makes clear, that provision only applies where the twofold condition is satisfied that, first, at least one of the parties to the contract is domiciled in a Contracting State and, secondly, the jurisdiction clause designates a court or the courts of a Contracting State. So, that rule, which owes its existence to the fact that the Convention is intended to facilitate the mutual recognition and enforcement of judicial decisions, lays down a requirement as to precision which the jurisdiction clause must satisfy.

jasno i nedvojbeno naveden, čime se sudu pred kojim se pokreće postupak mora omogućiti da ustanovi je li nadležan.

12 S druge strane, prema shvaćanju društva Coreck, vlade Ujedinjenog Kraljevstva i Komisije, dovoljno je ako se nadležni sud može odrediti na temelju teksta odredbe uz uvažavanje konkretnih okolnosti slučaja.

13 Sud je ustanovio da se člankom 17. Konvencije radi učinkovitosti odredbe o sudskoj nadležnosti zahtijeva "sporazum" između stranaka i da sud koji razmatra to pitanje stoga u prvom redu mora provjeriti je li odredba kojom se zasniva njegova nadležnost doista bila predmet sporazuma između stranaka koji je jasno i nedvojbeno došao do izražaja; formalni zahtjevi iz članka 17. trebali bi zajamčiti da sporazum između stranaka doista stoji (usporedi posebice presude od 14. prosinca 1976. u predmetu 24/76, *Estasis Salotti*, [1976] ECR 1831, točka 7., i od 20. veljače 1997. u predmetu C-106/95, *MSG*, [1997] ECR I-911, točka 15.).

14 Ako se člankom 17. Konvencije treba štititi volja sudionika, onda taj članak treba tumačiti tako da se, ako je utvrđena, ta volja poštuje. Članak 17. počiva naime na priznanju stranačke autonomije na području sporazuma o sudskoj nadležnosti za odlučivanje o sporovima koji spadaju u područje primjene Konvencije i koji nisu izrijekom izuzeti od takvih sporazuma prema članku 17. stavku 4. (presuda Suda od 9. studenoga 1978. u predmetu 23/78, *Meeth*, [1978] ECR 2133, točka 5.).

15 Izraz "su se … sporazumjele" iz prve rečenice članka 17. stavka 1. Konvencije ne može se stoga tumačiti tako da odredba o sudskoj nadležnosti mora biti formulirana na način da se nadležni sud može odrediti već na temelju teksta odredbe. Dovoljno je ako su u odredbi navedeni objektivni kriteriji oko kojih su se stranke sporazumjele kod određivanja suda odnosno sudova koji trebaju odlučivati o već nastalim ili budućim sporovima. Ti se kriteriji, koji moraju biti precizni u mjeri koja omogućuje sudu pred kojim se pokreće postupak da utvrdi je li nadležan, mogu po potrebi pobliže odrediti uz pomoć posebnih okolnosti pojedinog slučaja.

O drugom pitanju

16 Drugo pitanje nacionalnog suda odnosi se na pretpostavke za primjenu članka 17. stavka 1. Konvencije. Sud želi znati treba li se ta odredba primijeniti ako je u odredbi o sudskoj nadležnosti kao nadležni sud naveden sud u mjestu u kojem jedna od stranaka prvobitnog ugovora ima svoje glavno poslovno sjedište, ali nije utvrđeno nalazi li se to sjedište na području neke države ugovornice.

17 Već prema tekstu prve rečenice članka 17. stavka 1. Konvencije ta se odredba primjenjuje samo pod objema pretpostavkama, tj. da najmanje jedna od ugovornih stranaka ima prebivalište na području neke države ugovornice i da se u odredbi o sudskoj nadležnosti kao nadležni sud navodi sud ili sudovi neke države ugovornice. Ovo pravilo, koje se opravdava time da se Konvencijom treba olakšati međusobno priznanje i ovrha sudskih odluka, time sadrži zahtjev preciznosti kojemu odredba o sudskoj nadležnosti mora udovoljiti.

18 In relation to the first condition, the first paragraph of Article 53 of the Convention provides that the seat of a company is to be treated as its domicile for the purposes of the Convention. Under that provision, the court seised must, in order to determine that seat, apply its rules of private international law. Consequently, the criteria for identifying the seat of a legal person and particularly for determining the significance of the principal place of business in that process must be established by the national law which is applicable under the conflict of laws rules of the court seised.

19 As to the second condition, Article 17 of the Convention does not apply to clauses designating a court in a third country. A court situated in a Contracting State must, if it is seised notwithstanding such a jurisdiction clause, assess the validity of the clause according to the applicable law, including conflict of laws rules, where it sits (Report by Professor Schlosser on 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 to the Convention on Jurisdiction and the enforcement of judgments in Civil and Commercial matters and to the Protocol on its interpretation by the Court of Justice, OJ 1979 C 59, p. 71, paragraph 176).

20 Furthermore, it is settled case-law that the validity of a jurisdiction clause under Article 17 of the Convention must be assessed by reference to the relationship between the parties to the original contract (see to that end Case 71/83 Tilly Russ v Nova [1984] ECR 2417, paragraph 24, and Case C-159/97 Castelletti v Trumpy [1999] ECR I-1597, paragraphs 41 and 42). It follows that it is in relation to those parties, which it is for the national court to identify, that the conditions of application of Article 17 of the Convention must be assessed. The circumstances in which a jurisdiction clause may be enforced against a person who was not privy to the original contract are the subject-matter of the third question, which is considered below.

21 That being so, the reply to the second question must be that the first paragraph of Article 17 of the Convention only applies if, first, at least one of the parties to the original contract is domiciled in a Contracting State and, secondly, the parties agree to submit any disputes to a court or the courts of a Contracting State.

The third question

22 By its third question, the national court essentially asks whether a jurisdiction clause which has been agreed between a carrier and a shipper and appears in a bill of lading is valid as against any third party bearer of the bill of lading or whether it is only valid as against a third party bearer of the bill of lading who succeeded by virtue of the applicable national law to the shipper's rights and obligations when he acquired the bill of lading.

23 It is sufficient to note that the Court has held that, in so far as the jurisdiction clause incorporated in a bill of lading is valid under Article 17 of the Convention as between the shipper and the carrier, it can be pleaded against the third party holding the bill of lading so long as, under the relevant national law, the holder of the bill of lading succeeds to the shipper's rights and obligations (Tilly Russ, paragraph 24, and Castelletti, paragraph 41).

24 It follows that the question whether a party not privy to the original contract against whom a jurisdiction clause is relied on has succeeded to the rights and obligations of one of the original parties must be determined according to the applicable national law.

18 Uz prvu je pretpostavku potrebno konstatirati da je prema članku 53. stavku 1. Konvencije sjedište društava za potrebe primjene Konvencije istovjetno prebivalištu. Prema istoj odredbi, sud prilikom odlučivanja o tome gdje se nalazi sjedište primjenjuje propise svog međunarodnog privatnog prava. Stoga se kriteriji na temelju kojih se može odrediti gdje se nalazi sjedište pravne osobe i koju ulogu pri tom ima glavno sjedište trebaju preuzeti iz nacionalnog prava koje se primjenjuje prema kolizijskim normama koje treba primjenjivati sud pred kojim je pokrenut postupak.

19 Uz drugu je pretpostavku potrebno konstatirati da se članak 17. Konvencije ne primjenjuje na odredbu kojom se kao nadležni sud navodi sud treće države. Ako se unatoč takvu sporazumu postupak pokrene pred sudom u nekoj državi članici, taj sud mora ocijeniti učinak sporazuma prema pravu, uključujući kolizijsko pravo, koje se primjenjuje u njegovu sjedištu (izvještaj profesora dr. Schlossera uz Konvenciju od 9. listopada 1978. o pristupanju Kraljevine Danske, Irske i Ujedinjenog Kraljevstva Velike Britanije i Sjeverne Irske uz Konvenciju o sudskoj nadležnosti i ovrsi sudskih odluka u građanskim i trgovačkim stvarima te uz Protokol o tumačenju ove Konvencije od strane Suda, SL 1979, C 59, str. 71, Nr. 176.).

20 Prema ustaljenoj sudskoj praksi, učinkovitost sporazuma o sudskoj nadležnosti treba se u pogledu članka 17. Konvencije ocijeniti s obzirom na odnos između stranaka prvobitnog ugovora (usporedi u tom smislu presude od 19. lipnja 1984. u predmetu 71/83, *Tilly Russ,* [1984] ECR 2417, točka 24., i od 16. ožujka 1999. u predmetu C-159/97, *Castelletti,* [1999] ECR I-1597, točke 41. i 42.). Stoga se pretpostavke za primjenu članka 17. Konvencije trebaju ispitati u odnosu na te stranke, a nacionalni sud treba odrediti tko su stranke. Pretpostavke pod kojima sporazum o sudskoj nadležnosti nema učinka u odnosu na treću stranu koja nije sudjelovala u prvobitnom ugovoru predmet su trećeg pitanja koje se razmatra u daljnjem tekstu.

21 Na drugo pitanje stoga treba odgovoriti da se članak 17. stavak 1. Konvencije primjenjuje samo ako barem jedna od stranaka prvobitnog ugovora ima prebivalište u državi ugovornici i ako su se stranke sporazumjele da će međusobne sporove rješavati pred sudom ili sudovima države ugovornice.

O trećem pitanju

22 Svojim trećim pitanjem nacionalni sud želi znati je li odredba o sudskoj nadležnosti o kojoj su se sporazumjeli prijevoznik i otpremnik (pošiljatelj) i koja je ugrađena u teretnicu valjana u odnosu na svakog trećeg imatelja teretnice ili samo u odnosu na onog trećeg imatelja na kojeg su preuzimanjem teretnice prema nacionalnom mjerodavnom pravu prešla prava i obveze otpremnika.

23 Dovoljno je konstatirati da je Sud utvrdio da se odredba o sudskoj nadležnosti koja je sadržana u teretnici, ako je valjana u odnosu između otpremnika i prijevoznika u smislu članka 17. Konvencije, može istaknuti u odnosu na trećeg imatelja ako je imatelj teretnice prema mjerodavnom nacionalnom pravu preuzeo prava i obveze otpremnika (presude *Tilly Russ*, točka 24., i *Castelletti*, točka 41.).

24 Stoga se treba odrediti prema nacionalnom pravu je li treća osoba, koja nije sudionik prvobitnog ugovora i u odnosu na koju se ističe odredba o sudskoj nadležnosti, preuzela prava i obveze prvobitnih stranaka.

25 If he did, there is no need to ascertain whether he accepted the jurisdiction clause in the original contract. In such circumstances, acquisition of the bill of lading could not confer upon the third party more rights than those attaching to the shipper under it. The third party holding the bill of lading thus becomes vested with all the rights, and at the same time becomes subject to all the obligations, mentioned in the bill of lading, including those relating to the agreement on jurisdiction (Tilly Russ, paragraph 25).

26 On the other hand, if, under the applicable national law, the party not privy to the original contract did not succeed to the rights and obligations of one of the original parties, the court seised must ascertain, having regard to the requirements laid down in the first paragraph of Article 17 of the Convention, whether he actually accepted the jurisdiction clause relied on against him.

27 Accordingly, the reply to the third question must be that a jurisdiction clause agreed between a carrier and a shipper which appears in a bill of lading is enforceable against a third party bearer of the bill of lading if he succeeded to the rights and obligations of the shipper under the applicable national law when he acquired the bill of lading. If he did not, it must be ascertained whether he accepted that clause having regard to the requirements laid down in the first paragraph of Article 17 of the Convention.

The fourth question

28 By its fourth question, the national court is essentially asking what the applicable national law is for the purposes of determining the rights and obligations of a third party bearer of a bill of lading and, in the event that the relevant national law provides no solution, what are the rules which should be applied.

29 Under Article 1 of the Protocol, the Court has jurisdiction to give rulings on the interpretation of the Convention.

30 The question which national law is applicable for the purposes of determining the rights and obligations of a third party bearer of a bill of lading is not one of interpretation of the Convention; it falls within the jurisdiction of the national court, which must apply its rules of private international law.

31 Similarly, the question how to supply a lacuna in the applicable national law, apart from being hypothetical, is not one of the interpretation of the Convention.

32 It follows that the fourth question is inadmissible.

25 Ako je to slučaj, nije potrebno provjeravati je li ta treća strana prihvatila odredbu o sudskoj nadležnosti iz prvobitnog ugovora. U ovom slučaju preuzimanje teretnice ne može naime trećem imatelju dati veća prava od onih koje je imao otpremnik. Na trećeg imatelja na ovaj način prelaze sva prava i obveze iz teretnice, uključujući ona koja proizlaze iz sporazuma o sudskoj nadležnosti (presuda *Tilly Russ*, točka 25.).

26 Ako pak prema mjerodavnom nacionalnom pravu treća strana koja nije bila sudionik prvobitnog ugovora nije preuzela prava i obveze prvobitnih stranaka, sud pred kojim je pokrenut postupak mora u pogledu pretpostavki iz članka 17. stavka 1. Konvencije provjeriti je li ta strana prihvatila odredbu o sudskoj nadležnosti koja se ističe u odnosu na nju.

27 Stoga je odgovor na treće pitanje da je odredba o sudskoj nadležnosti koja je ugovorena između prijevoznika i otpremnika i koja je ugrađena u teretnicu valjana u odnosu na trećeg imatelja teretnice ako je on preuzimanjem teretnice preuzeo prava i obveze otpremnika prema mjerodavnom nacionalnom pravu. Ako nije, onda se u pogledu pretpostavki iz članka 17. stavka 1. Konvencije treba provjeriti je li prihvatio tu odredbu.

O četvrtom pitanju

28 Svojim četvrtim pitanjem nacionalni sud želi znati prema kojem se nacionalnom pravu trebaju odrediti prava i obveze trećeg imatelja teretnice i, u slučaju da se ta prava i obveze ne mogu odrediti prema mjerodavnom nacionalnom pravu, koji se propisi trebaju primijeniti.

29 Prema članku 1. Protokola, Sud Europskih zajednica odlučuje o pitanjima tumačenja Konvencije.

30 Pitanje prema kojem se nacionalnom pravu određuju prava i obveze trećeg imatelja teretnice nije povezano s tumačenjem Konvencije i spada u nadležnost nacionalnog suda koji treba primijeniti propise svoga međunarodnog privatnog prava.

31 Isto tako, pitanje na koji bi se način mogla popuniti eventualna pravna praznina u nacionalnom mjerodavnom pravu, osim što je hipotetske naravi, nije povezano s tumačenjem Konvencije

32 Stoga četvrto pitanje nije dopušteno.