

Dutch Reference for a Preliminary Ruling on Art. 4 of the Rome Convention (Update)

Following our post on the **first reference for a preliminary ruling on the Rome Convention** on the law applicable to contractual obligations, the questions referred by the **Dutch Supreme Court** (*Hoge Raad*) have been published on the ECJ's website.

The case, lodged on 2 April 2008, is pending under **C-133/08, ICF (Intercontainer Interfrigo (ICF) SC v Balkenende Oosthuizen BV and MIC Operations BV)**.

Questions referred:

a) Must Article 4(4) of the 1980 Convention on the law applicable to contractual obligations 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?

(b) If Question (a) is answered in the affirmative, must Article 4(4) of the 1980 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 1980 Convention?

(c) If Question (b) 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?

(d) If the predominant aspect of the contract relates to the carriage of goods, should the division referred to in Question (b) 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 1980 Convention?

With regard to the ground set out in 3.6.(ii) above:

(e) Must the exception in the second clause of Article 4(5) of the 1980 Convention be interpreted in such a way that the presumptions in Article 4(2), (3) and (4) of the 1980 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?