The Supreme Court of Norway – HR-2012-2393-A – Rt-2012-1951

Court	Supreme Court of Norway – ruling
Date	2012-12-20
Published	HR-2012-2393-A – Rt-2012-1951
Keywords	Norwegian courts' jurisdiction. The Lugano Convention.
Summary	A Singaporean company brought proceedings before a Norwegian court regarding settlement pursuant to a broker contract entered into in Singapore. The case did not have any connection to Norway except that the defendant's legal domicile was here. The majority of the Supreme Court – three judges – held that it does not follow from the Lugano Convention that a plaintiff from a third country is automatically entitled to institute proceedings in Norway. The issue was unresolved by international sources of law. It also had to be assumed that Norwegian law provides satisfactory arrangements, which do not conflict with the rules of the Convention. It was pointed out that pursuant to Norwegian law, it would be out of the ordinary that a Norwegian company which has legal domicile in Norway, could not be sued in Norway. The ruling of the Court of Appeal, in which it was held that the Convention permitted the case to proceed in Norway, was set aside. Dissent 3-2.
Procedure	Haugaland District Court THAUG-2011-157308 – Gulating Court of Appeal LG-2012-15009 – Supreme Court HR-2012-2393-A, (case no 2012/881), civil case, appeal against ruling
Parties	Trico Subsea AS (attorney Frithjof Herlofsen) against Raffles Shipping Projects Pte. Ltd. (attorney Egil André Berglund – test case).
Author	Dissenting: Normann, Stabel. Majority: Kallerud, Noer, Matheson.

(1) Justice **Normann**: This matter concerns the question of whether Norwegian courts have jurisdiction in an international dispute regarding broker commission. In particular, it raises the question of whether the Lugano Convention of 2007 applies when the plaintiff is domiciled outside the Convention area, and the facts of the case are not linked to at least one state that is bound by the Convention.

(2) Raffles Shipping Projects Pte. Ltd. (Raffles) is a company with its main office in Singapore. The company brought proceedings against Trico Subsea AS (Trico Subsea) in Haugaland District Court on 14 April 2011 with a claim for payment of broker commission of up to USD 523 000 in connection with the sale of two vessels owned by Trico Subsea.

(3) Trico Subsea is a Norwegian private limited company with its main office in Haugesund. The company is part of an international group, and is indirectly owned by Trico Marine Services Inc., registered in Delaware, USA. Trico Subsea submitted its statement of defence on 18 May 2011, and claimed that the case should be dismissed.

(4) Haugaland District Court passed a ruling with the following conclusion:

> *1. The claim for dismissal of case no 11-065630TVI-HAUG is rejected. The case will proceed.*
>
> *2. Raffles Shipping Projects Pte Ltd is ordered to provide NOK 300 000 – three hundred thousand – as security for a possible liability for legal costs related to case no 11-065630TVI-HAUG by 29 August 2011.*
>
> *3. A decision regarding legal costs is postponed pursuant to the section 20-8, third subsection of the Dispute Act.*

(5) Whether the Lugano Convention applies to the dispute was not considered by the District Court, which based its decision on the section 4-3 of the Dispute Act.

(6) Trico Subsea appealed to Gulating Court of Appeal, which issued a ruling on 18 November 2011 with the following conclusion:

> *1. The case is dismissed.*
>
> *2. Raffles Shipping Projects Pte Ltd shall pay to Trico Subsea AS legal costs for the Court of Appeal in the amount of NOK 14 825 – fourteen thousand eight hundred and twenty-five – within 2 – two – weeks from the service of this ruling.*
>
> *3. Raffles Shipping Projects Pte Ltd shall pay to Trico Subsea AS legal costs for the District Court in the amount of NOK 15 000 – fifteen thousand – within 2 – two – weeks from the service of this ruling.*

(7) The Court of Appeal also resolved the matter based on an interpretation of section 4-3 of the Dispute Act.

(8) Raffles appealed to the Supreme Court Appeals Selection Committee, which set aside the Court of Appeal's ruling on 19 January 2012 (HR-2012-152-U). The following ruling was handed down:

> *1. The Court of Appeal's ruling is set aside.*

(9) The Appeals Selection Committee started by pointing out that the Court of Appeal had solely considered section 4-3 of the Dispute Act. The Committee further held:

> *(18) It is, however, clear that in cases that fall under the Lugano Convention, the rules of this Convention are decisive for the question of jurisdiction, see section 4-8 of the Dispute Act. The Convention prevails as lex specialis over the provisions of the Dispute Act regarding international jurisdiction, see Ot.prp. no 89 (2008-2009) page 12, Schei et al page 191 and Skoghøy, Tvisteløsning (2010) page 53 et seq. Section 4-3 of the Dispute Act is only applicable if the case falls outside the scope of the Lugano Convention. The Court of Appeal has not considered whether the dispute falls under the Convention.*
> *(19) Thus, the Court of Appeal has defined the subject of its legal assessment too narrowly by only considering the question of jurisdiction pursuant to the section 4-3 of the Dispute Act.*

(10) The case was then referred back to the Court of Appeal, whose ruling of 14 March 2012 (LG-2012-15009) dismissed the appeal from Trico Subsea. The decision of the District Court to bring the case forward was upheld. The Court of Appeal passed the following ruling:

> *1. The appeal is to be dismissed.*
> *2. Trico Subsea AS shall pay legal costs for the Court of Appeal in the amount of NOK 9 000 – nine thousand – to Raffles Shipping Projects Pte. Ltd. within 2 – two – weeks from the service of this ruling.*
> *3. Trico Subsea AS shall pay legal costs for the District Court in the amount of NOK 53 000 – fifty-three thousand – to Raffles Shipping Projects Pte Ltd within 2 – two – weeks from the service of this ruling.*

(11) Trico Subsea has appealed to the Supreme Court. The Supreme Court Appeals Selection Committee decided on 1 June 2012 that all aspects of the appealed case were to be decided by the Supreme Court in a panel of five judges, see section 5 first paragraph second sentence of the Courts Act.

(12) The appellant – *Trico Subsea AS* – has in summary made the following submissions:

(13) The Court of Appeal has erred in its approach by adjudicating the matter based on an interpretation of the Lugano Convention without first considering whether the Convention is applicable at all where the plaintiff, as in this case, is domiciled outside the Convention area, and the facts of the case do not have a connection to at least one state bound by the Convention.

(14) Decisions from the ECJ shall be taken into consideration and be given considerable weight, but they are not automatically decisive. The Lugano Convention is an international treaty, while the Brussels Regime is supranational. The distinction is plays a part in determining the weight of the ECJ's decisions.

(15) The Lugano Convention must be interpreted in accordance with Article 34 of the Vienna Convention, which expresses a general principle of international law. It follows from these principles that an agreement under international law does not establish obligations or rights for third states without their consent. Legal entities that are not domiciled in a state bound by the Convention will thus, as a general rule, not be able to invoke the Lugano Convention.

(16) The Lugano Convention concerns international legal relations, and the purpose is to strengthen the legal protection in its territory for persons who reside there. The Convention also aims to provide a judicial framework for the EEA collaboration, see Ot.prp.no. 89 (2008-2009) page 6. The purpose of the Convention does not indicate that the scope should be interpreted so widely that it also covers cases that do not have a connection to the Convention area.

(17) The decision of the Court of Appeal, will lead to hollowing out the scope of section 4-3 of the Dispute Act.

(18) The Court of Appeal draws more extensive conclusions from the ECJ's decision in case C-281/02 Owusu than there is a basis for. The ECJ's decisions in case C-412/98 Group Josi and case C-281/02 Owusu apply to other situations, and decisive significance cannot be attributed to them. The English Court of Appeal concluded in a judgment of 16 December 2009, Lucasfilm v. Ainsworth, that a matter where neither the plaintiff nor the facts of the matter had

a connection to a country covered by the Brussels Regime, could be rejected by English courts. The same reasoning is relevant for the matter at hand.

(19) I n legal theory the fundamental assumption is that if the plaintiff is not domiciled in a state bound by the Convention, it must be a condition for the Convention to be applied that the matter has such a connection to a state bound by the Convention that it is reasonable that the Convention's provisions apply.

(20) Trico Subsea AS has made the following claim:

1. The ruling of 14 March 2012 by Gulating Court of Appeal in case 12-015009ASK-GUL/AVD1 is set aside.
2. Raffles Shipping Projects Pte Ltd is ordered to compensate Trico Subsea AS for its legal costs for the District Court, the Court of Appeal and the Supreme Court.

(21) The respondent – *Raffles Shipping Projects Pte Ltd* – has in summary made the following submissions:

(22) The Court of Appeal's interpretation of the Lugano Convention is correct. It follows from Article 2 that the Convention applies. The Convention sets no further requirements for connection to the Convention area beyond the requirements of scope, international element and connecting factor. A defendant having its domicile in a state bound by the Convention is a sufficient connecting factor.

(23) The interpretation of the Brussels Convention, the Brussels Regime and the Lugano Convention shall be harmonized. ECJ case law is therefore of decisive importance. This is set out in the preamble to the Lugano Convention 2007 and Protocol no 2 to the Convention. Case law from the Supreme Court also applies a fundamental rule that ECJ case law shall be given considerable weight.

(24) The scope of the Lugano Convention is defined in Article 1. It is not disputed that an international connection requirement can be deduced from the preamble. Besides this, the Convention operates with different forms of connecting factors, where the most central is the defendant's domicile, see Article 2.

(25) Article 2 must be interpreted literally, and the article does not open for a discretionary connection requirement. Exceptions may be made from the requirement regarding the defendant's domicile, but this must follow explicitly from Article 22, 23 or 27. Clarity and predictability considerations indicate that there is no room for discretionary assessment.

(26) The presumption in Rt-1995-1244 is that the Convention is applicable also when the plaintiff is domiciled in a third country. The decision predates the Lugano Convention of 2007. Today, general due process considerations have been given even greater weight.

(27) In the ECJ's decisions in case C-412/98 Group Josi and in case C-281/02 Owusu, the court concludes clearly that there is no room for discretionary connection criteria, and that the Convention also applies when the plaintiff is domiciled outside the Convention area.

(28) The English Court of Appeal's decision in the Lucasfilm case is not final and legally binding and furthermore concerned a dispute which is regulated by Article 22 of the Lugano Convention. The decision is irrelevant to our case. International legal theory is unified in

dismissing a discretionary connection requirement. Nor does Nordic legal theory, with the exception of Skoghøy, Tvisteløsning (2010) and Schei et al, Tvisteloven (2007), support this notion.

(29) Raffles Shipping Projects Pte Ltd has made the following claim:

1. The appeal is dismissed.
2. Trico Subsea AS is ordered to compensate Raffles Shipping Project Pte Ltd.'s for its legal costs for the District Court, the Court of Appeal and the Supreme Court.

(30) **My conclusion is** that the appeal must be dismissed.

(31) The appeal is a second-tier appeal of a ruling, wherein the competence of the Supreme Court is limited to considering the Court of Appeal's procedure and the general interpretation of a written r legal rule, see section 30-6, b) and c) of the Dispute Act. It follows from firm case law that the expression "written legal rule" includes international conventions, see i.a. Rt-2012-1486, paragraph 25. The Supreme Court may after therefore consider whether the Court of Appeal has interpreted the Lugano Convention correctly.

(32) First, I have some comments on the sources of law.

(33) The Lugano Convention of 1988 was from 1 January 2010 replaced by the Lugano Convention of 2007, but the rules governing the questions raised in this matter have not been changed. Thus, case law prior to 2010 will still be of interest. The Lugano Convention applies as Norwegian law, see section 4-8 of the of the Dispute Act, and as lex specialis, takes precedence over conflicting national rules, see The Supreme Court Appeals Selection Committee's ruling of 19 January 2012 with reference to i.a. Ot.prp.no. 89 (2008-2009) page 12. As far as the Lugano Convention 1988 was concerned, the principle of precedence is also expressed in Rt-2011-897 section 33 and Ot.prp no. 51 (2004-2005) page 163.

(34) The Lugano Convention modelled on the Brussels Convention 1968, and EU Regulation 44/2001 – The Brussels Regime – applicable to Member States of the EU. The following is stated regarding the relationship between the Brussels Convention 1968 and the Lugano Convention 1988 in Rt-2004-981 section 22:

> *The Lugano Convention is in all essentials a parallel to the Brussels Convention, which was entered into on 27 September 1968 between the EEC countries. The ECJ has jurisdiction over cases regarding the application of the Brussels Convention, and pursuant to a declaration made at the signing of the Lugano Convention, 'due consideration' must be taken to the decisions of the ECJ and also to national courts' decisions regarding 'those provisions of the Brussels Convention which are in all essentials repeated in the Lugano Convention' when interpreting the Convention. It follows from this that ECJ case law in particular will be an important source of law when Norwegian courts are to consider the interpretation of the Lugano Convention.*

(35) A corresponding obligation to take into account decisions regarding the Lugano Convention 1988, the Brussels Convention and the Brussels Regulation, follows from protocol 2 regarding, among other things, uniform interpretation of the Lugano Convention 2007, see Schei et al, Tvisteloven, Volume 1, page 192. I would add that it is stated in Rt-2011-897 section 35 that the ECJ's interpretation of similar provisions in the Brussels Convention carry "great weight" when interpreting the corresponding provisions in the Lugano Convention.

(36) Trico Subsea has argued that the Court of Appeal's approach to the case is wrong, as it bases its decision on an interpretation of the Lugano Convention without first discussing whether the

Convention applies at all. Therefore, I will first consider the question of whether it can be considered an absolute requirement that the plaintiff is domiciled in a state bound by the Convention for the Convention to apply.

(37) I will start with the principle of international law about the relative effect of international treaties, meaning that an international agreement neither establishes obligations nor rights for a state that has not given their consent, see Article 34 of the Vienna Convention on the Law of Treaties of 23 May 1969. I therefore agree that we must establish a particular basis that shows the contracting state intended to commit itself in such a manner.

(38) The parties agree that the dispute seen in isolation falls under the scope of the Lugano Convention, see Article 1, and that the dispute is of an international character. Article 1 limits the scope to "civil and commercial matters", but the wording gives no guidance with regard to potential claims regarding the parties' or the matters' connection to the Convention area. As is the case with other conventions, there are no preparatory works to provide further illumination of the question. It is, however, clear that the states bound by the Convention generally have been of the view that it is advantageous for the defendant to be sued in his or her domicile.

(39) The clear principal rule of the Convention is that persons that reside in a state bound by the Convention "shall … be sued in the courts of that State" see Article 2 no 1, which is at the core of our case.

(40) In previous Norwegian case law, the question of whether there should be a requirement that the plaintiff is domiciled in the Convention area has been answered in the negative, with reference to the provision in Article 6 (1) of the Lugano Convention 1988. The provision corresponds to the Article 2 no. 1 of the Lugano Convention 2007 and Article 2 of the Brussels Convention 1968.

(41) In Rt-1995-1244 it was therefore argued that it was an incorrect interpretation of the legal provision when the Court of Appeal presumed that a party which was not domiciled in a state bound by the Convention could invoke the Convention's jurisdiction provisions. The Appeals Selection Committee made the following comment on this, pages 1245-1246:

> *When it comes to the Court of Appeal's decision on the question of jurisdiction, the appeal is directed at the interpretation of the Act implementing the Lugano Convention. It is argued that the plaintiff, domiciled in a state not bound by the Convention, cannot invoke the Convention's jurisdiction provisions. The Appeals Selection Committee agrees with the Court of Appeal that it cannot be assumed that the legal domicile of the plaintiff limits the scope of Article 6 (1) of the Convention. Neither in this provision nor in the wording of the Convention, is there any support of such a limitation. What may potentially justify such a limitation would be that it is beyond the purpose of the Convention to benefit plaintiffs from outside the Convention countries. It is not, however, so that this right to bring an action would exclusively benefit the plaintiff. Regardless of who the plaintiff is, it is advantageous that a case involving several defendants within the Convention countries could be filed at the legal domicile of one of them.*

(42) It is so that this particular matter concerned two defendants who were alleged to be jointly liable, and who were both domiciled in countries within the Convention area. I will get back to the question of whether one can read a special connection requirement into this. The view that it would normally be advantageous if a case is filed at the defendant's legal domicile, is in any case relevant. The fundamental point of view in the decision is that since this is generally the case, one accepts that the Convention may benefit plaintiffs domiciled outside the Convention area.

(43) That a plaintiff domiciled in a third country may invoke the Brussels Convention's jurisdiction provisions has also been confirmed by the ECJ. In case C-412/98 Group Josi, the question was whether the Brussels Convention applied in cases where the plaintiff was domiciled outside the convention area. The facts of the matter were that a Canadian insurance company – Universal General Insurance company (UGIC) – had brought proceedings against the Belgian reinsurance company Group Josi Reinsurance Company SA (Group Josi) before a court in France. The Canadian company had its main office in Vancouver, while Group Josi had its main office and domicile in Belgium. The matter concerned a sum of money, which UGIC believed Group Josi was responsible on the basis that the latter was party to a reinsurance agreement.

(44) In answering the question of whether the Convention applied, the ECJ turned directly to Article 2 of the treaty. In section 34 the court says that "the system of common rules on conferment of jurisdiction established in Title II of the Convention is based on the general rule, set out in the first paragraph of Article II, that persons domiciled in a Contracting State are to be sued in the courts of that state, irrespective of the nationality of the parties." The court states that the background for the rule being a general principle is that "it makes it easier, in principle, for a defendant to defend himself", see section 35.

(45) The court expressly declined to place weight on the plaintiff's domicile in its assessment of the Convention's scope, and stated that an exception from Article 2 could only be considered where it is expressly stated in a provision of the Convention that the application of the jurisdiction rules is based on the fact that the plaintiff is domiciled in a Contracting State, see sections 57 and 58.

(46) In section 61, the court concludes: "Title II of the Convention is *in principle* applicable where the defendant is domiciled or seat in a Contracting State, *even if the plaintiff is domiciled in a non-member country*." (highlighted here).

(47) For Group Josi, the decision was positive because the company should then be sued at its domicile in Belgium and not in France. In my view, the principle that the ECJ expresses, must, however, be applicable also in cases where proceedings are actually brought at the defendant's legal domicile within the Convention area, as in our case.

(48) Thus, the ECJ has not seen the fact that the Brussels Convention is an international treaty which in principle regulates the relationship between the states bound by the Convention as a limitation to the scope of the Convention, i.a. with reference to the principle that it is normally an advantage for defendants to be sued at their legal domicile.

(49) Nor does legal theory assume that the fact that the plaintiff is not domiciled within the convention area prevents the application of the convention, see Bull, Norsk Lovkommentar 2005, note 1, Frantzen, Lov og rett 2012, from page 379 and also from page 573 and Bogdan, Luganokonventionen, TfR 1991 from page 387 (on page 397). Schei et al, Tvisteloven (2007) page 193 and Skoghøy, Tvisteløsning (2010) page 55 are on the same footing.

(50) Following this, I find it clear that there is no room to stipulate an absolute requirement that the plaintiff is domiciled in a state bound by the Convention for the Lugano Convention 2007 to apply.

(51) I will now discuss whether, when the plaintiff is not a resident of a state bound by the Convention, there is a legal basis for an additional condition, namely that the dispute has such a connection to a state bound by the Convention that it is reasonable for the Convention's rules to apply. Schei et al and Skoghøy have assumed such additional condition exists in their previously mentioned works.

(52) My conclusion is that current law does not open for such an additional term. As previously mentioned, Article 2 no. 1 sets a clear general rule and it is expressly stated that it may only be derogated from where the convention itself contains special rules of jurisdiction, see also Article 3. Thus, the wording does not open for such a condition.

(53) Nor does the legislator assume that such a condition applies. I refer to Ot.prp no 89 (2008-2009), at page 7 regarding the convention's scope:

> *The convention's rules on the jurisdiction of the courts basically applies to all cases where the defendant is domiciled in the state in question (Article 2). In addition, one must read in a requirement that the matter must be* international. *It is not a requirement that the case has a connection to at least one other state bound by the Convention, see the ECJ's decision in the so-called Owusu case (C-281/02).*

(54) Trico Subsea has claimed that the purpose indicates that the Convention may not be given so wide an interpretation that it includes legal action taken by legal entities in third countries, when the matter has no connection to the Convention area. Reference is made to the preamble to the Lugano Convention, which states that the purpose of the Convention is to "strengthen in their territories the legal protection of persons (…) established" in the States bound by the Convention.

(55) However, this purpose may not unambiguously be taken to support such an interpretation. I agree that the Convention's primary purpose is to attend to the considerations of the citizens of the States bound by the Convention. It is my view, however, that it is inaccurate to say that dismissing a legal action from the defendant's legal venue is strengthens the defendant's legal protection. As earlier mentioned, it would on the contrary normally be advantageous for defendants to be sued by at their legal domicile, see Rt-1995-1244 and the ECJ's judgment in case C-412/98 Group Josi, section 35. It is precisely this normal situation that constitutes the background for the rule.

(56) Furthermore, the considerations of clarity and predictability, which are emphasized in Clause 11 of the preamble to the Brussels Regime, argue against giving the courts a discretionary right to reject a case based on a consideration of whether it has a closer connection to another state. In the Group Josi case, the ECJ (in sections 34 and 35 which I have quoted earlier) was entirely clear that this concerns a general principle with little room for exceptions.

(57) The court has further rejected that there is room for a discretionary forum non conveniens assessment as long as a national court has jurisdiction pursuant to Article 2 of the Brussels Convention, because the defendant is domiciled in a state bound by the Convention. In the ECJ case C-281/02 Owusu, a British citizen, domiciled in Great Britain, suffered a personal injury during a vacation in Jamaica. He brought proceedings in Great Britain against the person that had rented him the holiday home, who was also domiciled in Great Britain, in addition to five Jamaican companies.

(58) Initially, the court noted that the Brussels Convention 1968 Article 2 regarding legal domicile at the place of domicile, was applicable even if both the plaintiff and the defendant were domiciled in the same Convention state. Thereafter the ECJ discussed whether the forum non conveniens doctrine could still be applied by the British courts. The question was therefore if the British courts were free to assess whether the case would be more appropriately handled by the Jamaican courts.

(59) The ECJ stated that Article 2 is a mandatory provision that, according to its wording, only could be deviated from where this is expressly determined in the Brussels Convention, see paragraph 37. It was irrelevant if the case due to *the subject matter in dispute or the plaintiff's*

domicile had a connection to a third country because it would not impose an obligation on the third country if the court in a Contracting State was found to have jurisdiction, see paragraphs 30 and 31. The court concluded thereafter in paragraph 46:

> *…the Brussels Convention precludes a court of a Contracting State from declining the jurisdiction conferred on it by Article 2 of that convention on the ground that a court of a non-Contracting State would be a more appropriate forum for the trial of the action even if the jurisdiction of no other Contracting State is in issue or the proceedings have no connecting factors to any other Contracting State.*

(60) I read this statement to mean that when a state bound by the Convention has jurisdiction by virtue of being the defendant's domicile, the courts in that country cannot refuse to hear the case, by with reference to that the fact that the case may be more appropriately dealt with by the courts of another country, within or outside the Convention area. It is so that the question of the Owusu case was whether the internationality condition was fulfilled. The issue in our case nonetheless has clear parallels to the Owusu case, because the question in our case is also whether a court in a contracting state should be able to renounce its jurisdiction on the basis of a discretionary assessment of whether the dispute may be more appropriately dealt with by the courts of a state outside the Convention area, and whether the matter has other connecting factors to another state bound by the Convention.

(61) Foreign theory has also perceived the decision in the Owusu case so that it leaves no room for a forum non conveniens assessment in deciding whether to apply the Brussels Convention, see, for example Fentiman, Common Market Law Review 43, 2006 page 705 et seq. (page 732).

(62) I find further support in Nordic legal theory for the notion that one cannot, by way of interpretation, establish an additional discretionary condition to the effect that the case must have a connection to a state bound by the Convention when the plaintiff is domiciled in a third state, see Frantzen, in a debate with Skoghøy in Lov og Rett, 2012 page 379 et seq. and page 573 et seq. and Bull, Norsk Lovkommentar, footnote 1 with reference to the Owusu case. Also, Pålsson, Bryssel I-förordning jämte Brüssel- och Luganokonventionerna, 2008 rejects such a connection requirement. On pages 71-72 he discusses whether the applicability of the Brussels Convention must be limited to disputes with a connection to at least one Member State:

> *According to an opinion that has been argued in the literature, it is also necessary that the dispute has a certain connection to* more than one Member State*. The idea has been that the regulation is intended to solve problems relating to jurisdiction issues between Member States, but not to regulate issues relating only to the relationship between a Member State and a third country. However, this restriction does not find support in the text of the regulation and it appears it can now be disregarded. It was clearly rejected by the ECJ in the case of Owusu.*

(63) In an older version of the book from 2002, Pålsson has taken a more open attitude to the question, which is now rejected in the above quotation from the 2008 edition.

(64) Thus, I cannot see that, from the current legal sources, there is a legal basis for a particular connection requirement in the Lugano Convention. If this had been the case, it would have to be derived from earlier Norwegian law, which has now been expressed in Section 4-3, first paragraph of the Dispute Act. However, the perception would then presuppose that the Lugano Convention allows national regulation of matters of the type that is the subject of these proceedings. However, the Convention leaves no room for national regulation of the question of jurisdiction. As already mentioned, the Lugano Convention takes precedence over the rules

of the Dispute Act as lex specialis. The conclusion is therefore that the Court of Appeal has applied a correct understanding of the Lugano Convention.

(65) I thus find that the appeal has to be rejected. Since I know I am in the minority following the judgment deliberations, I will not formulate a conclusion.

(66) Justice **Kallerud**: I have reached a different result than the first voting justice.

(67) Initially, I find it appropriate to recapitulate that our case concerns a company domiciled in Singapore that has brought proceedings before a Norwegian court against a Norwegian company with its headquarters here. The plaintiff's claim concerns settlement under a broker contract regarding the sale of two vessels which was allegedly entered into in Singapore. Apart from the fact that the defendant has its legal domicile here, the parties agree that the facts of the case have no connection to Norway. The question is therefore whether the Convention applies to a dispute brought by a plaintiff from a third country when the dispute's sole connection to the Convention area is that the defendant's legal domicile is here.

(68) I agree with the first voting justice's general reflections regarding the sources of law and refer to these. I further agree that the dispute falls within the scope of the Convention and that it is of an international character. This is, however, without significance for my point of view because I cannot see that the Convention grants the plaintiff any right to bring proceedings in Norway in a matter such as this.

(69) I assume, as the first voting justice, that an international convention does not in principle establish rights or obligations for anyone other than the states that are parties to the agreement. There are no indications that when the Lugano Convention was entered into, it was meant to make a general exception to this fairly self-evident principle. The parties to the Convention will of course also here, as in other international agreements of the nature we face here, principally aim to provide legal norms that apply for their own citizens and their own territory. In the Lugano Convention this is emphasized in the preamble where it is stated that one of the purposes of entering into the Convention is "to strengthen in their territories the legal protection of persons therein established".

(70) Thus, there is a presumption against a convention between states being interpreted as conferring rights to legal entities in a third country without granting similar rights in the third country to persons and companies in the convention state. Such an interpretation of the convention would mean that the legal status of parties in civil cases was unbalanced: the party domiciled in a third country could, pursuant to the Convention, be entitled bring proceedings at the opposite party's legal domicile, while the party in a Lugano state would not have a corresponding right and could only bring proceedings in the third country if that country's national law allows for it. A corresponding imbalance would arise with regard to obligations: the party in the Lugano area would be obliged to accept proceedings being brought at their legal domicile also by parties from third countries, while parties from states which have not signed the Convention can obviously not be subject to such a duty under the Convention. If the introduction of such an arrangement was intended, then it would be natural that this was clearly expressed in the Convention, or was developed through consistent case law. In my view, this is not the case.

(71) Further, I note that when a party in a state bound by the Convention invokes the rules of the Convention this may, of course, sometimes entail benefits for a plaintiff from a third country. In other cases, it may be disadvantageous. This is, however, different from granting rights to a party outside the Convention area. In my view, it is natural to see the two key decisions from the ECJ in this light.

(72) The first voting justice has noted that it may be an advantage for the defendant if the case is filed at his legal domicile. This is of course correct, and is also reflected in the main rule in Article 2. However, for the question of the general understanding of the scope of the Convention, I find it difficult to see that this may be given particular weight. That it may in general be advantageous for a party to be sued in his home country – and that the states bound by the Convention therefore have agreed that this shall be the arrangement between them – does not, in my view, provide any support for parties outside the Convention area being entitled to bring proceedings before a party's legal domicile in a state bound by the Convention.

(73) I will come back to the understanding of the decisions of the ECJ in further detail, but I find it natural to first emphasize how the scope of the Lugano Convention has been perceived in Norwegian law to this date.

(74) The Civil Procedure Commission concluded that the Lugano Convention only applied where either the parties or the dispute had "sufficient connection" to a state bound by the Convention, see NOU 2001:32A page 156. It reads as follows:

> *An additional prerequisite for the application of the Lugano Convention is that the parties or dispute have sufficient connection to an EEA/EU state…*

(75) Further guidance for our question is, in my view, not to be found in the preparatory works. In the white paper Ot.prp.no. 89 (2008-2009) regarding consent to the ratification of the Lugano Convention 2007, the situation where the plaintiff comes from outside the Convention area and the subject matter is not related to the Convention area, is not mentioned. There is no trace of a dismissal of the connection requirement emphasised in the preparatory works of the Dispute Act in the white paper.

(76) In Rt-1995-1244, as the first voting justice has mentioned, it was argued that the plaintiff, who was domiciled outside the Convention area, could not invoke the Convention's jurisdiction provisions. The Appeals Selection Committee did not, as far as I can see, consider this general question, but said that "… it cannot be assumed that the plaintiff's domicile limits the scope of the Convention…". The core of the matter was that a company from outside the Convention area brought proceedings before a Norwegian court against two defendants. One of them demanded that the case be dismissed because he claimed that he had no legal domicile in Norway, but in the United Kingdom, i.e. in another state bound by the Convention. The highlighted statement by the first voting justice on the advantage of being sued in one's domicile expressly refers to "… a case involving several defendants domiciled in states bound by the Convention". In my opinion, as already stated, one cannot deduce anything about rights for a plaintiff from a third country from this statement.

(77) The Civil Procedure Commission's assumption regarding a connection to the Convention area has been followed up in the core Norwegian legal theory on legal proceedings. Skoghøy, Tvisteløsning, 2010, page 55, reads:

> *If the plaintiff is not domiciled in a state bound by the Convention, however, it must be a condition for the application of the Convention that the facts of the matter which is the subject of the proceedings has such a connection to a state bound by the Convention that it is reasonable that the Convention's provisions shall apply.*

(78) Schei et al, Tvisteloven Volume 1, 2007, page 193 expresses approximately the same. I cannot see that Bull has commented on our question.

(79) The opinion held in the preparatory works and legal theory is well reasoned i and may, in my opinion, be anchored in the general scope of the convention, as I have already discussed. As I

see it, the requirement of sufficient connection to a state bound by the Convention is not a condition that comes in addition to the provisions of the Convention, but follows from a natural interpretation of the Convention itself. In his articles in Lov og Rett 2012 pages 193 and 438, Skoghøy emphasizes this aspect. His states, among other things, on page 440:

> *It would be quite sensational if, when entering into the Convention, the Lugano states undertook obligations in favour of plaintiffs from third countries without any subject matter connection to the Lugano area. Such an obligation would have the character of a 'third-country promise'. I cannot see that there is a basis for interpreting any such promise into the Convention.*

(80) From my general understanding of the Convention's scope, the plaintiff in our case cannot, *pursuant to the convention,* automatically demand to bring proceedings in Norway.

(81) In my view, case law from the ECJ and foreign theory cannot lead to a different interpretation of the Convention than what I have found so far. I can hardly see that the decisions are decisive for our case. The issues considered by the ECJ are different from our case and relate to matters within the Convention area. In my view, the general statements in the judgments must be read with this in mind.

(82) The Group Josi decision must, in my opinion, be understood on the basis that the question in the matter was a *choice between two legal domiciles that were both in states bound by the Convention*, and where it was the plaintiff that claimed that the Convention did not apply. The Belgian company, Group Josi, did not have to accept proceedings brought by a Canadian company in France. In accordance with the main rule in Article 2 of the Convention, the defendant could demand that the proceedings were brought before the company's legal domicile in Belgium. The facts of the matter thus concerned a sued company from a state bound by the Convention who, in a court in another state bound by the Convention, claimed that even though the plaintiff came from a third country, the company was entitled to be sued at its own legal domicile, in accordance with the main rule in Article 2 of the Convention. I can hardly see that the judgment gives decisive support for the notion that a plaintiff from a third country can invoke the Convention in a situation like ours.

(83) In the Owusu case, *both the plaintiff and one of the defendants were domiciled in a state bound by the Convention*, while the dispute originated in a third country. The British defendant claimed that a case filed in the United Kingdom had to be rejected, among other things because the dispute had a closer connection to the third country. The central question before the ECJ was whether such a case fulfilled the requirement that the dispute must be 'international' which has been interpreted into the Convention. That the court did answer this question in the affirmative cannot be decisive for our case, which is undoubtedly 'international'. The second question – whether the British non conveniens doctrine was in accordance with the Convention – does not, in my view, answer the issue in our case. That such a doctrine is problematic within the Convention area, says little about the limits of its general scope. I would also point out that this case did not concern a plaintiff from a third country who, in a matter with no connection to the Convention area, invoked the Convention against a legal entity in a state bound by the Convention.

(84) Although certain statements in the decisions are somewhat general and – seen in isolation – may seem far-reaching, I emphasize that in neither case were both the plaintiff and the dispute exclusively connected to a third country, as is the case here. And the court does not generally discuss the question of principle regarding whether a third-country citizen is entitled by virtue of the Convention to bring proceedings in a state bound by the Convention solely because the defendant has legal domicile there pursuant to the Convention.

(85) Against this backdrop, I can hardly see that these decisions are decisive in our case. In my view, the foreign theory discussing these decisions does not clarify our question.

(86) In my view, there is hardly any contradiction between the opinion expressed in the preparatory works and legal theory to the effect that the parties or the dispute must have sufficient connection to a state bound by the Convention, and the two decisions I have commented on. In both cases there were in various ways such a connection to a state bound by the Convention that the Convention applied. I find it doubtful and undetermined whether the ECJ would also conclude that legal domicile in itself is a sufficient connection to a state bound by the Convention. The question is thus, as I see it, not answered by the international sources of law, and I cannot see any reason why the Norwegian courts should take the lead here. This is especially because, as I will discuss momentarily, in my view Norwegian law provides satisfactory solutions that do not conflict with the provisions of the Lugano Convention.

(87) Raffles is accordingly – as I see it – not entitled to bring proceedings against Trico Subsea at a Norwegian court pursuant to the Lugano Convention. The Court of Appeal's ruling should thus be set aside.

(88) I add that in the new hearing, the Court of Appeal must place considerable weight on the fact that – *according to Norwegian law* – it is very rare that a Norwegian company with its legal domicile in Norway cannot be sued in Norway, see amongst others Schei et al, Tvisteloven volume 1, 2007, page 186 and Skoghøy, Tvisteløsning, 2010 page 48.

(89) The appeal has thus been successful, and Trico Subsea has claimed compensation for legal costs for the District Court, the Court of Appeal and the Supreme Court. The case has raised a question of principle that has not previously been clarified, and legal costs should not be awarded for any of the courts.

(90) I vote for the following

ruling:

1. The ruling of the Court of Appeal is set aside.

2. The parties bear their own legal costs for the District Court, the Court of Appeal and the Supreme Court.

(91) Justice **Noer**: I agree with the second voting, Justice Kallerud, in the essentials and in the result.

(92) Justice **Matheson**: Likewise

(93) Justice **Stabel**: I agree with the first voting, Justice Normann, in the essentials and in the result.

(94) After voting, the Supreme Court handed down the following

ruling:

1. The ruling of the Court of Appeal is set aside.

2. The parties bear their own legal costs for the District Court, the Court of Appeal and the Supreme Court.