

5. How is the term 'damage' resulting for the consumer from the failure to perform, or the improper performance of, the contract in Article 5(2) of Directive 90/314/EEC to be interpreted?
6. Does the term 'damage' resulting for the consumer from the failure to perform, or the improper performance of, the contract in Article 5(2) of Directive 90/314/EEC also cover liability in respect of non-material damage suffered by the consumer?
7. How are the third and fourth subparagraphs of Article 5(2) of Directive 90/314/EEC to be interpreted in the event of claims for compensation in respect of non-material damage on the ground of personal injury which are based on the failure to perform, or the improper performance of, the services under the contract, including the failure to provide the consumer with the original insurance policy, in the case where the latter does not provide for any limitation of liability to pay compensation?
- a) Does it include all stages of the development of human life, beginning with the fertilisation of the ovum, or must further requirements, such as the attainment of a certain stage of development, be satisfied?
- b) Are the following organisms also included:
1. unfertilised human ova into which a cell nucleus from a mature human cell has been transplanted;
 2. unfertilised human ova whose division and further development have been stimulated by parthenogenesis?
- c) Are stem cells obtained from human embryos at the blastocyst stage also included?

(¹) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

**Reference for a preliminary ruling from the
Bundesgerichtshof (Germany) lodged on 21 January 2010
— Prof. Dr. Oliver Brüstle v Greenpeace e.V.**

(Case C-34/10)

(2010/C 100/29)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Prof. Dr. Oliver Brüstle

Defendant: Greenpeace e.V.

Questions referred

1. What is meant by the term 'human embryos' in Article 6(2)(c) of Directive 98/44/EC? (¹)

2. What is meant by the expression 'uses of human embryos for industrial or commercial purposes'? Does it include any commercial exploitation within the meaning of Article 6(1) of the Directive, especially use for the purposes of scientific research?
3. Is technical teaching to be considered unpatentable pursuant to Article 6(2)(c) of the Directive even if the use of human embryos does not form part of the technical teaching claimed with the patent, but is a necessary precondition for the application of that teaching,
- a) because the patent concerns a product whose production necessitates the prior destruction of human embryos,
- b) or because the patent concerns a process for which such a product is needed as base material?

(¹) Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ 1998 L 213, p. 13).