JUDGMENT OF THE COURT (Sixth Chamber)

5 February 2004 *

In Case C-18/02,

REFERENCE to the Court 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 by the Arbejdsret (Denmark) for a preliminary ruling in the proceedings pending before that court between

Danmarks Rederiforening, acting on behalf of **DFDS Torline A/S,**

and

LO Landsorganisationen i Sverige, acting on behalf of **SEKO Sjöfolk Facket för Service och Kommunikation,**

on the interpretation of Article 5(3) of the abovementioned Convention of 27 September 1968 (OJ 1978 L 304, p. 36), 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 version — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention

* Language of the case: Danish.

of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1),

THE COURT (Sixth Chamber),

composed of: V. Skouris, acting on behalf of the President of the Sixth Chamber, J.N. Cunha Rodrigues (Rapporteur), J.-P. Puissochet, R. Schintgen and F. Macken, Judges,

Advocate General: F.G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Danmarks Rederiforening, acting on behalf of DFDS Torline A/S, by P. Voss, advokat,

— LO Landsorganisationen i Sverige, acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation, by S. Gärde, advokat,

— the Danish Government, by J. Molde and J. Bering Liisberg, acting as Agents,

— the Swedish Government, by A. Kruse, acting as Agent,

— the United Kingdom Government, by J.E. Collins, acting as Agent, and K. Beal, Barrister,

— the Commission of the European Communities, by N. Rasmussen, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Danmarks Rederiforening, acting on behalf of DFDS Torline A/S, represented by P. Voss, LO Landsorganisationen i Sverige, acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation, represented by S. Gärde and H. Nielsen, advokat, the Danish Government, represented by J. Molde, the Swedish Government, represented by A. Kruse, and the Commission, represented by N. Rasmussen and A.-M. Rouchaud, acting as Agent at the hearing on 20 May 2003,

after hearing the Opinion of the Advocate General at the sitting on 18 September 2003,

gives the following

Judgment

1 By order of 25 January 2002, received at the Court on 29 January 2002, the Arbejdsret (Labour Court, Denmark) referred to the Court for a preliminary ruling, in accordance with 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'), two questions on the interpretation of Article 5(3) of that Convention (OJ 1978 L 304, p. 36), 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 version — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), 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) and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1) ('the Brussels Convention').

2 Those questions arose in the course of litigation between Danmarks Rederiforening (the Danish Association of Shipping Companies), acting on behalf of DFDS Torline A/S (hereinafter 'DFDS'), a shipowner, and LO Landsorganisationen i Sverige (the Swedish Congress of Trade Unions, 'LO'), acting on behalf of SEKO, Sjöfolk Facket för Service och Kommunikation ('SEKO'), a trade union, concerning the legality of industrial action, in respect of which notice was served on DFDS by SEKO.

Legal background

3 Article 2 of the Protocol provides:

'The following courts may request the Court of Justice to give preliminary rulings on questions of interpretation:

(1) ...

— in Denmark: højesteret [Supreme Court]

...

(2) the courts of the Contracting States when they are sitting in an appellate capacity...'

4 The first paragraph of Article 2 of the Brussels Convention provides:

'Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.'

5 Under Article 5(3) of the Brussels Convention:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

...

(3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred.'

Dispute in the main proceedings and the questions referred for a preliminary ruling

6 The dispute in the main proceedings concerns the legality of a notice of industrial action given by SEKO against DFDS, with the object of securing a collective agreement for Polish crew of the cargo ship *Tor Caledonia* owned by DFDS, serving the route between Göteberg (Sweden) and Harwich (United Kingdom).

7 The *Tor Caledonia* is registered in the Danish international ship register and is subject to Danish law. At the time of the facts in the main proceedings, the Polish crew were employed on the basis of individual contracts, in accordance with a

framework agreement between a number of Danish unions on the one hand, and three Danish associations of shipping companies on the other. Those contracts were governed by Danish law.

8 After DFDS rejected a request by SEKO on behalf of the Polish crew for a collective agreement, on 21 March 2001, SEKO served a notice of industrial action by fax, with effect from 28 March 2001, instructing its Swedish members not to accept employment on the *Tor Caledonia*. The fax also stated that SEKO was calling for sympathy action. Following that request, the Svenska Transportarbetareförbundet (Swedish Transport Workers Union, 'STAF') gave notice, on 3 April 2001, of sympathy action with effect from 17 April 2001, refusing to engage in any work whatsoever relating to the *Tor Caledonia*, which would prevent the ship from being loaded or unloaded in Swedish ports.

9 On 4 April 2001, DFDS brought an action against SEKO and STAF, seeking an order that the two unions acknowledge that the principal and sympathy actions were unlawful and that they withdraw the notices of industrial action.

10 On 11 April 2001, the day of the first hearing before the Arbejdsret, SEKO decided to suspend the industrial action pending the court's final decision, while the STAF's notice of industrial action was withdrawn on 18 April 2001.

11 However, on 16 April 2001, the day before the first day of sympathy action called by STAF, DFDS decided to withdraw the *Tor Caledonia* from the Göteborg-Harwich route, which was served from 30 May by another ship leased for that purpose.

12 DFDS brought an action for damages against SEKO before the Sø- og Handelsret (Denmark), claiming that the defendant was liable in tort for giving notice of unlawful industrial action and inciting another Swedish union to give notice of sympathy action, which was also unlawful. The damages sought are for the loss allegedly suffered by DFDS as a result of immobilising the *Tor Caledonia* and leasing a replacement ship. The court decided to stay its decision on the action for damages pending the decision of the Arbejdsret.

13 Taking the view that, in order to decide the question raised by SEKO concerning its jurisdiction and the lawfulness of the industrial action in question, an interpretation of Article 5(3) of the Brussels Convention was necessary, the Arbejdsret decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) (a) Must Article 5(3) of the Brussels Convention be construed as covering cases concerning the legality of industrial action for the purpose of securing an agreement in a case where any harm which may result from the illegality of such industrial action gives rise to liability to pay compensation under the rules on tort, delict or quasi-delict, such that a case concerning the legality of notified industrial action can be brought before the courts of the place where proceedings may be instituted for compensation in respect of any harm resulting from that industrial action?

(b) Is it necessary, as the case may be, that any harm incurred must be a certain or probable consequence of the industrial action concerned in itself, or is it sufficient that that industrial action is a necessary condition governing, and may constitute the basis for, sympathy actions which will result in harm?

(c) Does it make any difference that implementation of notified industrial action was, after the proceedings had been brought, suspended by the notifying party until the court's ruling on the issue of its legality?

(2) Must Article 5(3) of the Convention be construed as meaning that damage resulting from industrial action taken by a trade union in a country to which a ship registered in another country (the flag State) sails for the purpose of securing an agreement covering the work of seamen on board that ship can be regarded by the ship's owners as having occurred in the flag State, with the result that the ship's owners can, pursuant to Article 5(3), bring an action for damages against the trade union in the flag State?'

Admissibility of the request for a preliminary ruling

14 As a preliminary point, it must be observed that the Arbejdsret is not mentioned in the second indent of Article 2(1) of the Protocol, and does not sit in an appellate capacity, as required in Article 2(2), which lists the courts of the Contracting States which may request the Court of Justice to give preliminary rulings on questions of interpretation of the Brussels Convention.

15 It is clear, however, from the order for reference that, under Danish law, the Arbejdsret has exclusive jurisdiction to rule on certain disputes in the sphere of employment law, in particular, those relating to the legality of industrial action seeking a collective agreement. Therefore, the Arbejdsret is a court of first and last instance.

16 In those circumstances, a literal interpretation of the Protocol, declaring that the national court has no jurisdiction to refer questions for preliminary ruling, would have the result that in Denmark questions concerning the interpretation of the Brussels Convention, arising in actions such as the present, could never be the subject of a reference for a preliminary ruling.

17 Plainly such an interpretation of Article 2(1) and (2) of the Protocol would be contrary to the objectives stated in the preamble to the Brussels Convention, in particular, those relating to the determination of the international jurisdiction of the courts of the Contracting States and the protection of persons established therein.

18 It follows that the request for a preliminary ruling by the Arbejdsret is admissible.

Question 1(a)

19 By its first question, the national court asks, essentially, whether Article 5(3) of the Brussels Convention must be interpreted as meaning that a case concerning the legality of industrial action, in respect of which exclusive jurisdiction belongs, in accordance with the law of the Contracting State concerned, to a court other than the court which has jurisdiction to try the claims for compensation for the damage caused by that industrial action, falls within the definition of 'tort, delict or quasi-delict'.

20 In Denmark, the Arbejdsret has jurisdiction to determine the lawfulness of industrial action, while other courts have jurisdiction to adjudicate claims for consequential damage.

21 SEKO argues that the dispute before the national court cannot be related to 'tort, delict or quasi-delict' within the meaning of Article 5(3) of the Brussels Convention, because that court is not hearing a claim for damages. However, if the Arbejdsret found that the industrial action suspended by SEKO was unlawful, SEKO would have to withdraw its notice of industrial action and DFDS would not then have any ground for bringing a claim for damages. Accordingly, SEKO argues, Article 2 of the Brussels Convention is applicable.

22 Such reasoning cannot be accepted.

23 First, it is clear from settled case-law that the object of the Brussels Convention is not to unify the procedural rules of the Contracting States, but to determine which court has jurisdiction in disputes concerning civil and commercial matters in intra-Community relations and to facilitate the enforcement of judgments (see, in particular, Case C-68/93 *Shevill and Others* [1995] ECR I-415, paragraph 35, and Case C-80/00 *Italian Leather* [2002] ECR I-4995, paragraph 43).

24 Therefore, the Kingdom of Denmark is able to establish a system under which jurisdiction to determine the legality of industrial action and jurisdiction to hear actions for damages for any consequential loss do not belong to the same national courts.

25 Adopting the interpretation supported by SEKO would mean that in order to obtain compensation for loss arising from industrial action which took place in Denmark, and for which a party domiciled in another Contracting State is liable, a plaintiff would, first, have to bring proceedings before a court of the State where the defendant is domiciled, on the legality of the industrial action, and second, bring an action for damages before a Danish court.

26 Such an interpretation would be contrary to the principles of sound administration of justice, legal certainty and the avoidance of multiplication of bases of jurisdiction as regards the same legal relationship that the Court has repeatedly held to be objectives of the Brussels Convention (see, in particular, Case C-269/95 *Benincasa* [1997] ECR I-3767, paragraph 26, and *Italian Leather*, paragraph 51).

27 Second, the Court has already held that it is not possible to accept an interpretation of Article 5(3) of the Brussels Convention according to which application of that provision is conditional on the actual occurrence of damage. Likewise it has held that the finding that the courts for the place where the harmful event occurred are usually the most appropriate for deciding the case, in particular on the grounds of proximity and ease of taking evidence, is equally relevant whether the dispute concerns compensation for damage which has already occurred or relates to an action seeking to prevent the occurrence of damage (Case C-167/00 *Henkel* [2002] ECR I-8111, paragraphs 46 and 48).

28 It follows from the foregoing, that the answer to Question 1(a) must be that Article 5(3) of the Brussels Convention must be interpreted as meaning that a case concerning the legality of industrial action, in respect of which exclusive jurisdiction belongs, in accordance with the law of the Contracting State concerned, to a court other than the court which has jurisdiction to try the claims for compensation for the damage caused by that industrial action, falls within the definition of 'tort, delict or quasi-delict'.

Question 1(b)

29 By Question 1(b), the national court asks, essentially, if it is necessary for the application of Article 5(3) of the Brussels Convention to a situation such as that in the dispute in the main proceedings, that the harm incurred must be a certain or probable consequence of the industrial action in itself, or whether it is sufficient that that industrial action is a necessary condition of sympathy action which may result in harm.

30 It is apparent from the file that, at the date of the facts in the main proceedings, DFDS employed only Polish sailors aboard the *Tor Caledonia*. Since the notice of industrial action given by SEKO consisted of a request to SEKO's Swedish members not to accept jobs on the ship in question, the industrial action could not in itself have caused harm to DFDS. However, it was necessary in order that sympathy action consisting, in this case, of a refusal to undertake any work relating to loading or unloading the *Tor Caledonia* in Swedish ports, could legally be carried out.

31 In the absence of SEKO's notice of industrial action, the harm that DFDS claims to have suffered, arising from the withdrawal of the *Tor Caledonia* from the Göteborg-Harwich route and the hire of another ship, would not, therefore, have occurred.

32 According to the case-law of the Court, liability in tort, delict or quasi-delict can only arise provided that a causal connection can be established between the damage and the event in which that damage originates (Case 21/76 *Bier* ('*Mines*

de Potasse d'Alsace') [1976] ECR 1735, paragraph 16). It cannot but be noted that in a situation such as that at issue in the main proceedings, a causal link could be established between the harm allegedly suffered by DFDS and SEKO's notice of industrial action.

33 As regards SEKO's argument that, in order for the Danish courts to have jurisdiction the industrial action must have taken place and have caused harm giving rise to financial loss, and that a claim for damages must have been submitted, it is sufficient to point out that, as the Court has held in paragraph 27 hereof, Article 5(3) of the Brussels Convention may be applied to an action seeking to prevent the occurrence of future damage.

34 Accordingly, the answer to Question 1(b) must be that for the application of Article 5(3) of the Brussels Convention to a situation such as that in the dispute in the main proceedings, it is sufficient that the industrial action is a necessary precondition of sympathy action which may result in harm.

Question 1(c)

35 By Question 1(c) the national court asks, essentially, whether the application of Article 5(3) of the Brussels Convention is affected by the fact that the party which notified the industrial action has suspended its implementation pending a ruling on its legality.

36 In that regard, it must be observed that, according to settled case-law, the strengthening of the legal protection of persons established in the Community by enabling the claimant to identify easily the court in which he may sue and the defendant reasonably to foresee in which court he may be sued, is one of the objectives of the Brussels Convention (Case C-256/00 *Besix* [2002] ECR I-1699, paragraphs 25 and 26, and Case C-334/00 *Tacconi* [2002] ECR I-7357, paragraph 20).

37 That objective would not be achieved if, after an action falling within Article 5(3) of the Brussels Convention is brought before the court of a Contracting State having jurisdiction, the suspension by the defendant of the tortious conduct giving rise to that action could have the effect of depriving the court seised of its jurisdiction, and of jurisdiction being assigned to a court in another Contracting State.

38 It follows that the answer to Question 1(c) must be that the application of Article 5(3) of the Brussels Convention is not affected by the fact that the implementation of industrial action was suspended by the party giving notice pending a ruling on its legality.

Second question

39 By its second question the national court asks, essentially, whether Article 5(3) of the Brussels Convention must be interpreted as meaning that the damage

resulting from industrial action taken by a trade union in a Contracting State to which a vessel registered in another Contracting State sails can be regarded as having occurred in the flag State, with the result that the shipowner can bring an action for damages against that trade union in the flag State.

40 According to settled case-law, where the place in which the event which may give rise to liability in tort, delict or quasi-delict occurs and the place where that event results in damage are not identical, the expression 'place where the harmful event occurred' in Article 5(3) of the Brussels Convention must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the plaintiff, in the courts for either of those places (*Mines de potasse d'Alsace*, paragraphs 24 and 25, *Shevill and Others*, paragraph 20, and *Henkel*, paragraph 44).

41 In this case, the event giving rise to the damage was the notice of industrial action given and publicised by SEKO in Sweden, the Contracting State where that union has its head office. Therefore, the place where the fact likely to give rise to tortious liability of the person responsible for the act can only be Sweden, since that is the place where the harmful event originated (see, to that effect, *Shevill and Others*, paragraph 24).

42 Furthermore, the damage allegedly caused to DFDS by SEKO consisted in financial loss arising from the withdrawal of the *Tor Caledonia* from its normal route and the hire of another ship to serve the same route.

43 It is for the national court to inquire whether such financial loss may be regarded as having arisen at the place where DFDS is established.

44 In the course of that assessment by the national court, the flag State, that is the State in which the ship is registered, must be regarded as only one factor, among others, assisting in the identification of the place where the harmful event took place. The nationality of the ship can play a decisive role only if the national court reaches the conclusion that the damage arose on board the *Tor Caledonia*. In that case, the flag State must necessarily be regarded as the place where the harmful event caused damage.

45 In the light of the foregoing, the answer to Question 2 must be that, in circumstances such as those in the main proceedings, Article 5(3) must be interpreted as meaning that the damage resulting from industrial action taken by a trade union in a Contracting State to which a ship registered in another Contracting State sails must not necessarily be regarded as having occurred in the flag State with the result that the shipowner can bring an action for damages against that trade union in the flag State.

Costs

46 The costs incurred by the Danish, Swedish and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not

recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Arbejdsret by order of 25 January 2002, hereby rules:

1. (a) **Article 5(3) of the Brussels 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, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be interpreted as meaning that a case concerning the legality of industrial action, in respect of which exclusive jurisdiction belongs, in accordance with the law of the Contracting State concerned, to a court other than the court which has jurisdiction to try the claims for compensation for the damage caused by that industrial action, falls within the definition of 'tort, delict or quasi-delict'.**

(b) For the application of Article 5(3) of the Brussels Convention to a situation such as that in the dispute in the main proceedings, it is sufficient that that industrial action is a necessary precondition of sympathy action which may result in harm.

(c) The application of Article 5(3) of the Brussels Convention is not affected by the fact that the implementation of industrial action was suspended by the party giving notice pending a ruling on its legality.

2. In circumstances such as those in the main proceedings, Article 5(3) must be interpreted as meaning that the damage resulting from industrial action taken by a trade union in a Contracting State to which a ship registered in another Contracting State sails must not necessarily be regarded as having occurred in the flag State, with the result that the shipowner can bring an action for damages against that trade union in the flag State.

Skouris Cunha Rodrigues Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 5 February 2004.

R. Grass V. Skouris

Registrar President