

## Case C-18/02

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

v

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

(Reference for a preliminary  
ruling from the Arbejdsret)

(Brussels Convention — Article 5(3) — Jurisdiction in matters relating to tort,  
delict or quasi-delict — Place where the harmful event occurred — Measure  
taken by a trade union in a Contracting State against the owner of a ship  
registered in another Contracting State)

Opinion of Advocate General Jacobs delivered on 18 September 2003 . . . I-1420

Judgment of the Court (Sixth Chamber), 5 February 2004 . . . . . I-1441

### Summary of the Judgment

1. *Convention on Jurisdiction and the Enforcement of Judgments — Protocol on the Interpretation by the Court of Justice of the Convention — National courts which may request the Court to give a preliminary ruling — Arbejdsret, court of first and last*

*instance under Danish law with jurisdiction over disputes relating to the legality of certain industrial action — Included*

*(Protocol of 3 June 1971, Art. 2)*

2. *Convention on Jurisdiction and the Enforcement of Judgments — Special jurisdiction — Jurisdiction ‘in matters relating to tort, delict or quasi-delict’ — Meaning — Case concerning the legality of industrial action which comes within the exclusive jurisdiction of a court other than the court which has jurisdiction to hear any associated claims for compensation — Included*

*(Brussels Convention of 27 September 1968, Art. 5(3))*

3. *Convention on Jurisdiction and the Enforcement of Judgments — Special jurisdiction — Jurisdiction ‘in matters relating to tort, delict or quasi-delict’ — Place where the harmful event occurred — Damage caused by industrial action initiated by a union in a Contracting State which had admitted a ship registered in another Contracting State into its waters — Damage deemed to have occurred in flag State — Account taken of the nationality of the ship — Limits*

*(Brussels Convention of 27 September 1968, Art. 5(3))*

1. The Arbejdsret, a Danish court which has exclusive jurisdiction as a court of first and last instance in respect of certain disputes in the sphere of employment law, in particular those relating to the legality of industrial action seeking a collective agreement, may refer a question to the Court of Justice for a preliminary ruling under the second indent of Article 2(1) of 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 Enforcements of Judgments in Civil and Commercial Matters. Although that court is not mentioned in Article 2(1) 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, a ruling declaring that that court

has no jurisdiction to refer questions to the Court of Justice for a preliminary ruling would have the unacceptable result that in Denmark questions concerning the interpretation of the Brussels Convention, arising in certain actions relating to employment law, could never be the subject of a reference for a preliminary ruling.

(see paras 14-18)

2. Article 5(3) of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 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.
3. Article 5(3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 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.

For Article 5(3) of the Brussels Convention to apply to such a situation, it is sufficient that the industrial action concerned is a necessary precondition of sympathy action which may result in harm. It is not essential that the harm incurred be a certain or probable consequence of the industrial action in itself.

Lastly, the application of that provision is not affected by the fact that the implementation of industrial action was suspended by the party giving notice of the action pending a ruling on its legality.

In that connection, 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. However, the flag State must necessarily be regarded as the place where the harmful event caused damage if the damage concerned arose aboard the ship in question.

(see paras 28, 29, 34, 38, operative part 1)

(see paras 44, 45, operative part 2)