

Reference for a preliminary ruling by the Sør- og Handelsret by order of that court of 20 February 1996 in the cases of Handels- og Kontorfunktionærernes Forbund i Danmark (HK), acting on behalf of Berit Høj Pedersen, v. the Fællesforening for Danmarks Brugsforeninger (FDB), acting on behalf of Kvikly Skive; HK, acting on behalf of Bettina Andresen, v. Dansk Tandlægeforening, acting on behalf of Jørgen Bagner, a dental practitioner; HK, acting on behalf of Tina Pedersen, v. Dansk Tandlægeforening, acting on behalf of Jørgen Rasmussen, a dental practitioner; and Kristelig Funktionær-Organisation, acting on behalf of Pia Sørensen v. Dansk Handel & Service, acting on behalf of Hvitfeldt Guld og Sølv ApS.

(Case C-66/96)

(96/C 133/35)

Reference has been made to the Court of Justice of the European Communities by order of the Sør- og Handelsret (Maritime and Commercial Court) of 20 February 1996, which was received at the Court Registry on 11 March 1996, for a preliminary ruling in the cases of (1) Handels- og Kontorfunktionærernes Forbund i Danmark (Union of Commercial and Clerical Employees in Denmark) (HK), acting on behalf of Berit Høj Pedersen, Bettina Andresen and Tina Pedersen, v. the Fællesforening for Danmarks Brugsforeninger (Joint Association of Danish Cooperative Societies) (FDB), acting on behalf of Kvikly Skive, and Dansk Tandlægeforening (Danish Association of Dental Practitioners), acting on behalf of Jørgen Bagner and Jørgen Rasmussen, dental practitioners, and (2) Kristelig Funktionær-Organisation (Christian Commercial and Clerical Employees' Organization), acting on behalf of Pia Sørensen, v. Dansk Handel & Service (Danish Commercial and Service-Industries Association), acting on behalf of Hvitfeldt Guld og Sølv ApS, on the following question:

Does Community law, including Article 119 of the EC Treaty and Directives 75/117/EEC⁽¹⁾, 76/207/EEC⁽²⁾ and 92/85/EEC⁽³⁾, preclude national legislation from exempting employers from the provision of pay to pregnant employees in cases where:

1. the absence is attributable to the fact that the pregnancy substantially aggravates an illness that is otherwise unconnected to the pregnancy;
2. the absence is attributable to an illness caused by the pregnancy;
3. the absence is attributable to the fact that the pregnancy shows a morbid development and that continued work would create a risk for the health of the woman or her unborn child;
4. the absence is attributable to general pregnancy-related inconveniences that occur in any normal pregnancy and, moreover, do not result in incapacity for work;
5. the absence results from a medical opinion intended to protect the unborn child but which is not based on an actual morbid condition or special risks for the unborn child;
6. the absence is attributable to the fact that the employer, on the basis of the pregnancy alone, takes the view that

he cannot provide work for the pregnant employee, despite the fact that the latter is not unfit for work,

and in situations 1 to 3 and 6 the State guarantees that the pregnant employee will receive the same rate of benefit as she would receive if on sick leave, whereas in situations 4 and 5 no State benefit is received, and the employer, moreover, is required under national legislation to provide full pay during illness?

- (1) Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States of relating to the application of the principle of equal pay for men and women (OJ No L 45, 19. 2. 1975, p. 19).
- (2) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ No L 39, 14. 2. 1976, p. 40).
- (3) Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ No L 348, 28. 11. 1992, p. 1).

Reference for a preliminary ruling from the Kantongerecht, Arnhem, by judgment of that court of 4 March 1996 in the case of Albany International BV v. Stichting Bedrijfspensioenfonds Textielindustrie

(Case C-67/96)

(96/C 133/36)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Kantongerecht (Cantonal Court), Arnhem, of 4 March 1996, which was received at the Court Registry on 11 March 1996, for a preliminary ruling in the case of Albany International BV v. Stichting Bedrijfspensioenfonds Textielindustrie on the following questions:

- (a) Is an occupational pension scheme within the meaning of Article 1 (1) (b) of the Wet betreffende verplichte Deelneming in een Bedrijfspensioenfonds (Law on Compulsory Participation in an Occupational Pension Scheme) an undertaking within the meaning of Articles 85, 86 or 90 of the EC Treaty?
- (b) If so, is the fact of making membership of the occupational pension scheme for industrial undertakings compulsory a measure adopted by a Member State which nullifies the useful effect of the competition rules applicable to undertakings?
- (c) If question (b) must be answered in the negative, can other circumstances render compulsory membership incompatible with Article 90 of the Treaty, and if so, which?