Reference for a preliminary ruling by the Arbejdsret by order of 25 January 2002 in the case of Danmarks Rederiforening acting on behalf of DFDS Torline A/S against LO Landsorganisation i Sverige, acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation

(Case C-18/02)

(2002/C 109/35)

Reference has been made to the Court of Justice of the European Communities by order of the Arbejdsret (Labour Court) of 25 January 2002, received at the Court Registry on 29 January 2002, for a preliminary ruling in the case of Danmarks Rederiforening (Danish Association of Shipping Companies), acting on behalf of DFDS Torline A/S against LO Landsorganisation i Sverige (Swedish Congress of Trade Unions), acting on behalf of SEKO Sjöfolk Facket för Service och Kommunikation (union representing maritime workers in service and communications sectors) on the following questions:

Question 1

a) Must Article 5(3) of the Convention [1] be construed as covering cases concerning the legality of collective industrial action for the purpose of securing an agreement in a case where any harm which may result from the illegality of such collective 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 collective 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 collective 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?

Question 2

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

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[1] 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ L 204, 1975, p. 28) modified by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic with the adjustments made to them by the Convention on the accession of the Kingdom of Denmark, of Ireland and of the United Kingdom of Great Britain and Northern Ireland and the adjustments made to them by the Convention on the accession of the Hellenic Republic (OJ L 285, 1989, p. 1).

Reference for a preliminary ruling by the Oberster Gerichtshof by order of that Court of 20 December 2001 in the case of Dr Viktor Hlozek against Roche Diagnostics Gesellschaft mbH

(Case C-19/02)

(2002/C 109/36)

Reference has been made to the Court of Justice of the European Communities by order of the Oberster Gerichtshof (Supreme Court) of 20 December 2001, received at the Court Registry on 29 January 2002, for a preliminary ruling in the case of Dr Viktor Hlozek against Roche Diagnostics Gesellschaft mbH on the following questions:

1.a) Are Article 141 EC and Article 1 of Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19) to be interpreted

where an employer which dismisses a large group of employees as a result of a merger with another company is required, on account of its social obligation towards the entire workforce, to agree with the works council a social plan, which is binding in relation to the employees, in order to alleviate the effects of dismissal, in particular the risk of age-related unemployment,

as precluding a social plan under which all female employees aged 50 and over at the time of their dismissal and all male employees aged 55 and over at the time of their dismissal are entitled, irrespective of the period of employment, that is to say with no account being had to any 'qualification periods' and solely on the basis of age — or to the fact that the risk of long-term unemployment for men and for women generally differs according to their age &mdash, to a 'bridging allowance' amounting to 75 % of their final gross monthly salary for five years, but at most until they become entitled to a statutory pension?

1.b) In particular, is the concept of pay in Article 141 EC and Article 1 of the directive to be construed as including, in the case of benefits which are related not to work performed but solely to membership of a workforce and the social obligation on the employer, allowance for the risk of long-term unemployment so that pay must regarded as equal where — overall — it covers the same degree of risk even though this risk normally occurs in different age groups in the case of men and women?

1.c) Or can, if the concept of 'pay' in these provisions after all covers only the cash benefit as such, the varying risk thus construed justify different treatment of men and women?

2. Is the concept of 'occupational social security schemes' within the meaning of Article 2(1) of Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ 1986 L 225, p. 40), as amended by Council Directive 96/97/EC of 20 December 1996 (OJ 1996 L 46, p. 20), to be construed as including bridging allowances in the above sense?

Is the concept of the risk of 'old age, including early retirement' in Article 4 of the directive to be construed as including such 'bridging allowances'?

Does the concept of 'scheme' in Article 6(1)(c) of the directive cover only the question of fulfilment of the requirements for entitlement to the bridging allowance or also membership of the workforce as a whole?

3.a) Is 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 1976 L 39, p. 40) to be interpreted to the effect that the 'bridging allowance' described above constitutes a condition governing dismissal within the meaning of Article 5 of this directive?

3.b) Is this directive to be interpreted as precluding a social plan under which all female employees aged 50 and over at the time of their dismissal and all male employees aged 55 and over at the time of their dismissal are entitled, irrespective of the period of employment, that is to say with no account being had to any 'qualification periods' and solely on the basis of age — or to the fact that the risk of long-term unemployment for men and for women generally differs according to their age —, to a 'bridging allowance' amounting to 75 % of their final gross monthly salary for five years, but at most until they become entitled to a statutory pension?

Reference for a preliminary ruling by the Oberlandesgericht Innsbruck by order of that Court of 14 January 2002 in the case of Petra Engler against Janus Versand Gesellschaft m.b.H.

(Case C-27/02)

(2002/C 109/37)

Reference has been made to the Court of Justice of the European Communities by order of the Oberlandesgericht (Higher Regional Court) Innsbruck of 14 January 2002, received at the Court Registry on 31 January 2002, for a preliminary ruling in the case of Petra Engler against Janus Versand Gesellschaft m.b.H. on the following questions:

For the purposes of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 ('the Convention'), does the provision in Paragraph 5j of the Austrian Konsumentenschutzgesetz (Consumer Protection Law) ('KSchG'), BGBl. 1979/140, in the version of Paragraph 1(2), of the Austrian Fernabsatz-Gesetz (Distance Selling Law), BGBl. I 1999/185, which entitles consumers to claim from undertakings in the courts prizes ostensibly won by them where the undertakings send (or have sent) them prize notifications or other similar communications worded so as to give the impression that they have won a particular prize, also constitute:

1. a contractual claim under Article 13(3); or

2. a contractual claim under Article 5(1); or

3. a claim in respect of a tort, delict or quasi-delict under Article 5(3)