

ORDER OF THE PRESIDENT OF THE COURT
24 October 2001 *

In Case C-186/01 R,

REFERENCE to the Court under Article 234 EC by the Verwaltungsgericht
Stuttgart for a preliminary ruling in the proceedings pending before that court
between

Alexander Dory

and

Bundesrepublik Deutschland,

on the interpretation of Article 2 of 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),

* Language of the case: German.

THE PRESIDENT OF THE COURT

makes the following

Order

- 1 By order of 4 April 2001, received at the Court on 30 April 2001, the Verwaltungsgericht (Administrative Court) Stuttgart referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 2 of 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).
- 2 That question has arisen in proceedings brought by Mr Dory against the Federal Republic of Germany to determine whether he was legally obliged to perform military service. Mr Dory argued, on the basis of the judgment in Case C-285/98 *Kreil* [2000] ECR I-69, that compulsory military service for men as laid down in Article 12a(1) of the Basic Law infringes Community law, in particular the principle of equal treatment for men and women, and constitutes unlawful discrimination to the detriment of men.
- 3 In those circumstances, the Verwaltungsgericht Stuttgart decided to stay proceedings and refer the following question to the Court:

‘Is the fact that military service in Germany is compulsory only for men contrary to Community law?’

- 4 By letter received at the Court Registry on 28 September 2001, Mr Dory asked the Court to make an order under Article 243 EC directing the Federal Republic of Germany to suspend the operation of a decision of the Kreiswehrrersatzamt Schwäbisch Gmünd (local military service office) of 24 September 2001 calling him for military service as from 5 November 2001 ('the contested decision') until the Court had given a preliminary ruling on the question referred to it.
- 5 In the event that the Court decides that it has no jurisdiction to prescribe a measure entailing the issue of directions, Mr Dory has asked it to grant him a suspension of the operation of the contested decision.
- 6 It must be observed at the outset that, in the context of the preliminary ruling procedure, the Court has no jurisdiction to entertain an application for interim relief.
- 7 Under Articles 242 and 243 EC and 83 of its Rules of Procedure, the Court has jurisdiction to entertain in interlocutory proceedings, first, applications for suspension of the operation of an act challenged by means of an action brought before it and, second, for other interim measures requested by a party in a case before it and which relate to that case.
- 8 Those articles do not apply to the preliminary ruling procedure, which is based on a clear division of functions between the national courts and the Court of Justice, which only has jurisdiction to rule on the interpretation and validity of the Community provisions the application of which is at issue in a dispute before a national court, the resolution of the dispute being a matter for that court alone (see Cases 36/79 *Denkavit* [1979] ECR 3439, paragraph 12, and Joined Cases 36/80 and 71/80 *Irish Creamery Milk Suppliers Association* [1981] ECR

735, paragraphs 5 and 7, and, in respect of an application to intervene in preliminary ruling proceedings, C-181/95 *Biogen* [1996] ECR I-717, paragraph 5).

- 9 Article 234 EC establishes a system of direct cooperation between the Court of Justice and the national courts by way of a non-contentious procedure which is in the nature of a step in the action pending before the national court and is wholly independent of any initiative by the parties, who are merely invited to state their case within the legal limits laid down by the national court (see Cases 44/65 *Singer* [1965] ECR 965, page 971, 62/72 *Bollmann* [1973] ECR 269, paragraph 4, and C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 31).
- 10 As a result of the substantial difference between contentious proceedings and the incidental procedure provided for in Article 234 EC, it is therefore not possible, in the absence of an express provision, to extend to that procedure the rules prescribed exclusively for contentious proceedings (see, with respect to costs, *Bollman*, cited above, paragraph 5).
- 11 So far as interim measures are concerned, the Court has already held that it is for the national courts, pursuant to the principle of cooperation laid down in Article 10 EC, to ensure the legal protection which persons derive from the direct effect of provisions of Community law (Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 19).
- 12 In particular, it follows from the case-law of the Court that, as a matter of Community law, national courts have to be able to grant interim relief when seised of applications based on Community law and that the interim legal protection which Community law ensures for individuals before national courts must remain the same, irrespective of whether they contest the compatibility of national legal provisions with Community law or the validity of secondary

Community law (Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraphs 19 and 20).

- 13 It follows from all the foregoing considerations that the Court manifestly has no jurisdiction to entertain the application for interim relief made by Mr Dory. The application must therefore be declared inadmissible.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

The application for interim relief is dismissed as inadmissible.

Luxembourg, 24 October 2001.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President