

JUDGMENT OF THE COURT (Fifth Chamber)

11 May 1999 *

In Case C-350/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Verwaltungsgerichtshof, Austria, for a preliminary ruling in the proceedings pending before that court between

Wilfried Monsees

and

Unabhängiger Verwaltungssenat für Kärnten,

Joined party:

* Language of the case: German.

Bundesminister für Wissenschaft und Verkehr,

on the interpretation of Articles 30, 34 and 36 of the EC Treaty (now, after amendment, Articles 28, 29 and 30 EC) and other provisions of Community law relating to the transport of live animals for slaughter,

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann, D. A. O. Edward and L. Sevón (Rapporteur), Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Mr Monsees, by Arnold Köchl, Rechtsanwalt, Villach,
- the Austrian Government, by Wolf Okresek, Sektionschef in the Federal Chancellor's Office, acting as Agent, and
- the Commission of the European Communities, by Claudia Schmidt, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Monsees, represented by Arnold Köchl; the Austrian Government, represented by Christine Pesendorfer, Oberrätin in the Federal Chancellor's Office, acting as Agent; and the Commission, represented by Klaus-Dieter Borchardt, of its Legal Service, acting as Agent, at the hearing on 26 November 1998,

after hearing the Opinion of the Advocate General at the sitting on 17 December 1998,

gives the following

Judgment

1 By order of 24 September 1997, received at the Court on 13 October 1997, the Verwaltungsgerichtshof (Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Articles 30, 34 and 36 of the EC Treaty (now, after amendment, Articles 28, 29 and 30 EC) and other provisions of Community law relating to the transport of live animals for slaughter.

2 That question has been raised in proceedings between Mr Monsees and the Unabhängiger Verwaltungssenat für Kärnten (Independent Administrative Board for Carinthia) concerning the application of legislation governing maximum journey times and distances for the transport of live animals for slaughter.

- 3 Under Article 1(1)(a) and the first indent of Article 1(2)(b) of Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17), Directive 91/628 applies to the transport of domestic animals of the bovine species on a journey of more than 50 kilometres counted from the start of their transport to the place of destination.

- 4 So far as concerns the detailed rules for the transport of bovine animals, and the journey time in particular, point 2(d) of Chapter I of the Annex to Directive 91/628 provides that, during transport, they are to receive water and appropriate food at suitable intervals. Those intervals are not to exceed 24 hours unless an extension of that period by not more than two hours is required in specific cases in the animals' interest.

- 5 Under the first indent of Article 13(1) of that directive, the Commission was to submit, before 1 July 1992, any proposals it had on the fixing of maximum journey times for certain types of animal. Article 13(4) provided that, pending implementation of that provision, the relevant national rules were to continue to apply, subject to the general rules laid down by the Treaty.

- 6 According to the third recital in the preamble to Council Directive 95/29/EC of 29 June 1995 amending Directive 91/628 (OJ 1995 L 148, p. 52), 'some Member States have rules on journey times, feeding and watering intervals, resting periods and space allowances; ... these rules are, in some cases, extremely detailed and are used by some Member States to restrict intra-Community trade in live animals ...'.

- 7 The fourth recital in the preamble to that directive states that 'in order to eliminate technical barriers to trade in live animals and to allow the market organisations in question to operate smoothly, while ensuring a satisfactory level of protection for the animals concerned, it is necessary in the context of the internal market to

modify the rules of Directive 91/628/EEC with a view to harmonising travelling times and resting periods, feeding and watering intervals, and space allowances, for certain types of animal'.

8 Directive 95/29 inserted a new subparagraph (aa) in Article 3(1) of Directive 91/628. Under the second indent of that subparagraph, the Member States are to ensure that 'travelling times and rest periods and feeding and watering intervals for certain types of animals comply with those laid down in Chapter VII of the Annex' to Directive 91/628.

9 That annex, as supplemented by Directive 95/29, lays down in particular, in points 1 and 2 of Chapter VII, that the maximum permissible journey time by road for animals of the bovine species is to be eight hours.

10 However, point 3 allows that period to be extended where the transporting vehicle meets certain additional requirements. In those circumstances, point 4(d) provides that the bovine animals 'must, after 14 hours of travel, be given a rest period of at least one hour sufficient for them in particular to be given liquid and if necessary fed. After this rest period, they may be transported for a further 14 hours.'

11 Under point 8, those journey times may 'in the interests of the animals ... be extended by two hours, taking account in particular of proximity to the place of destination'.

- 12 Point 9, finally, allows the Member States to ‘provide for a maximum non-extendable journey time of eight hours for the transport of animals destined for slaughter, where the transport is carried out exclusively from a place of departure to a place of destination both situated on their own territory’.
- 13 In accordance with the first subparagraph of Article 2(1) of Directive 95/29, the Member States were to bring into force the provisions necessary to comply with that directive by 31 December 1996. However, for the transposition of certain provisions they had an extension which expired on 31 December 1997.
- 14 As regards Austrian legislation, Paragraph 5(1) and (2) of the Tiertransportgesetz-Straße (Law on the Transport of Animals by Road, *Bundesgesetzblatt* No 411/1994; ‘the TGSt’) contains the following provisions governing the transport of animals:

‘Animals shall be transported by road along the shortest route which is normally used by traffic, is justifiable with regard to considerations of veterinary medicine and is permissible under the provisions of law regarding motor vehicles and traffic regulation ...

Animals may be transported for slaughter only as far as the nearest suitable abattoir in Austria; if the provisions of law regarding motor vehicles and traffic regulation are observed and a total journey time of six hours and a distance of 130 kilometres are not exceeded, animals may be transported for slaughter in any event. In calculating the distance, account shall be taken of only half of the kilometres actually travelled on a motorway.’

- 15 Under Paragraph 16(3)(4) of the TGSt, any person who transports animals or causes animals to be transported contrary to Paragraph 5(1) or (2) of that Law commits an administrative offence and is liable to a fine ranging from ATS 10 000 to ATS 50 000.
- 16 Mr Monsees, a haulage contractor, was charged with an offence under that legislation. It is apparent from the order for reference that he took the wheel at 11.00 a.m. on 23 August 1995 at Breitenwisch, Germany, after loading 31 heads of cattle bound for Istanbul, Turkey, and continued on his way until 10.15 a.m. the next day when he was checked by the customs authorities at the border post at Arnoldstein, on the Austro-Italian border. The total journey time was then 23 hours and 15 minutes and the total distance travelled more than 300 kilometres.
- 17 Since Mr Monsees had not transported the animals to the nearest suitable abattoir in Austria, but had continued the journey, without authorisation, beyond the maximum time and distance laid down by Paragraph 5(2) of the TGSt, he was ordered, by an administrative decision of a penal nature ("Straferkenntnis") of 9 January 1996, to pay a fine, subject to imprisonment in the event of non-payment. His appeal to the Unabhängiger Verwaltungssenat für Kärnten challenging that decision was dismissed on 26 June 1996.
- 18 Mr Monsees brought proceedings before the Verwaltungsgerichtshof, contending that the international nature of the transport precluded application of the national legislation, whose effect was to prevent any cattle being transported eastwards out of Germany unless it was accepted that their journey would necessarily end at the nearest suitable abattoir in Austria.

- 19 Since the Verwaltungsgerichtshof took the view that the outcome of the case before it turned on the interpretation of Community law, it decided to stay proceedings and to refer the following question to the Court of Justice:

‘Are Articles 30 to 36 of the EC Treaty (provisions on the freedom of movement of goods) and the other provisions of applicable Community law to be interpreted as preventing a Member State from restricting the transport of animals for slaughter so that animals may be transported for slaughter only as far as the nearest suitable abattoir in that State, and may be transported for slaughter in any event only if, upon observance of the motor vehicle and traffic regulations, a total journey time of six hours and a distance of 130 kilometres are not exceeded, account being taken of only half of the kilometres actually travelled on a motorway?’

- 20 Mr Monsees maintains that Paragraph 5(2) of the TGSt constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty. He submits that, because of the adoption of Directives 91/628 and 95/29, the Austrian legislation cannot be justified under Article 36 of the Treaty. Even if it were accepted that it is justified on the ground of the protection of the health of animals, it does not satisfy the criterion of proportionality under Article 36, since less restrictive alternative measures are available. He adds that the TGSt, as is apparent from its drafting history, also had the objective of reducing road traffic and thus of increasing the safety of road users. Finally, that legislation amounts to an arbitrary means of discrimination, since it favours the export of animals for slaughter from Austria — such animals being allowed to leave the country, subject to the restrictions laid down by the TGSt — whereas it prevents the transit of animals coming from and bound for other Member States or non-member countries.

- 21 According to the Austrian Government, even if Paragraph 5(2) of the TGSt constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty, it is justified under Article 36 as it serves to

protect the health of animals. Since Directive 95/29 was not yet applicable when the facts in the main proceedings arose, the Austrian legislation should be examined solely by reference to Article 36. The Austrian Government maintains that Paragraph 5(2) of the TGSt is necessary in order to avoid the mistreatment of animals when transported by road. It satisfies the criterion of proportionality since the distances laid down correspond to assessments of average distances, and the penalties are proportionate since animals are never seized from the haulier. Finally, the provision at issue in the main proceedings is not discriminatory since no distinction is drawn between animals for slaughter according to whether they come from Austria or from another Member State.

22 The Commission states that Paragraph 5(2) of the TGSt constitutes a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty, which cannot be justified by the objective of protecting the health of animals under Article 36. Paragraph 5(2) is not proportionate to the objective pursued since it effectively precludes the international transport of animals for slaughter even if their health is cared for. Furthermore, reference should be made to Directive 95/29 to determine whether a measure may be regarded as proportionate to the objective pursued.

23 The Court finds that, in so far as it lays down short maximum journey times and distances for the transport of animals for slaughter and also provides that all such transport in Austria must end at the nearest suitable abattoir in order for the animals to be killed, Paragraph 5(2) of the TGSt constitutes an obstacle to international transport as regards both journeys to or from Austria and transit through that country. That provision therefore constitutes a measure having an effect equivalent to a quantitative restriction, on both imports and exports, prohibited by Articles 30 and 34 of the Treaty.

24 Before considering whether there is a justification based on the protection of animals under Article 36 of the Treaty, it is first necessary to establish whether

harmonising directives applied in this area. While Article 36 allows the maintenance of restrictions on the free movement of goods, justified on grounds of the protection of the health and life of animals, which constitutes a fundamental requirement recognised by Community law, recourse to Article 36 is no longer possible where Community directives provide for harmonisation of the measures necessary to achieve the specific objective which would be furthered by reliance upon this provision (Case C-5/94 *The Queen v MAFF ex parte Hedley Lomas* [1996] ECR I-2553, paragraph 18).

- 25 Directive 91/628 does not lay down any limit on journey time or distance for the transport of live animals by road. Article 13(1) merely required the Commission to draw up a report before 1 July 1992 dealing, *inter alia*, with that matter and gave it the opportunity to put forward proposals.
- 26 Directive 95/29, on the other hand, contains a number of specific provisions regarding maximum journey times, conditions of transport, animals' feeding and watering intervals, minimum rest periods and loading densities.
- 27 However, while that directive was adopted before the facts of the main proceedings arose, the time-limit for its transposition had still not expired as the Member States had, in principle, until 31 December 1996 to comply with it. Until that date, therefore, a Member State was entitled to rely on Article 36 of the Treaty in order to retain restrictions on the free movement of goods justified on grounds of the protection of health and life of animals.
- 28 It must accordingly be determined whether the national legislation was suitable for achieving the objective of protecting the health of animals and whether it went beyond what was necessary to achieve it (see, to that effect, Case C-84/94 *United Kingdom v Council* [1996] ECR I-5755, paragraph 57).

29 The effect of Paragraph 5(2) of the TGSt is, in fact, to make all international transit by road of animals for slaughter almost impossible in Austria.

30 Furthermore, measures appropriate to the objective of protecting the health of animals and less restrictive of the free movement of goods were conceivable, as the provisions contained in Directive 95/29 demonstrate.

31 In view of the considerations set out above, the answer to the question submitted to the Court must be that, on a correct interpretation of Articles 30, 34 and 36 of the Treaty, a Member State is prevented from restricting the transport by road of animals for slaughter by requiring such transport to be carried out only as far as the nearest suitable abattoir within national territory and under conditions such that, upon observance of the motor vehicle and traffic regulations, a total journey time of six hours and a distance of 130 kilometres are not exceeded, account being taken of only half of the kilometres actually travelled on a motorway.

Costs

32 The costs incurred by the Austrian Government and 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Verwaltungsgerichtshof by order of 24 September 1997, hereby rules:

On a correct interpretation of Articles 30, 34 and 36 of the EC Treaty (now, after amendment, Articles 28 EC, 29 EC and 30 EC), a Member State is prevented from restricting the transport by road of animals for slaughter by requiring such transport to be carried out only as far as the nearest suitable abattoir within national territory and under conditions such that, upon observance of the motor vehicle and traffic regulations, a total journey time of six hours and a distance of 130 kilometres are not exceeded, account being taken of only half of the kilometres actually travelled on a motorway.

Puissochet

Moitinho de Almeida

Gulmann

Edward

Sevón

Delivered in open court in Luxembourg on 11 May 1999.

R. Grass

J.-P. Puissochet

Registrar

President of the Fifth Chamber