JUDGMENT OF THE COURT
10 July 1990 *

In Case C-326/88,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Vestre Landsret (Western Regional Court) for a preliminary ruling in the proceedings pending before that court between

Anklagemyndigheden (Public Prosecutor)

and

Hansen & Søn I/S, in the person of Hardy Hansen,

on the interpretation of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (Official Journal, English Special Edition 1969 (I), p. 170),

THE COURT

composed of: O. Due, President, Sir Gordon Slynn and C. N. Kakouris (Presidents of Chambers), J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, F. Grévisse and M. Díez de Velasco, Judges,

Advocate General: W. Van Gerven
Registrar: H. A. Rühl, Principal Administrator

* Language of the case: Danish.

after considering the observations submitted on behalf of

the Danish Government, by Jørgen Molde, Legal Adviser, acting as Agent,

the United Kingdom, by S. J. Hay of the Treasury Solicitor's Department, acting as Agent,

the Commission of the European Communities, by Johannes Buhl, Legal Adviser, and Ricardo Gosalbo Bono, a member of the Commission's Legal Department, acting as Agents,

having regard to the Report for the Hearing,

after hearing oral argument on the part of Hansen & S n I/S, represented by Mr Hjulmand, advocate, and on the part of the Danish Government, the United Kingdom and the Commission at the hearing on 19 October 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 5 December 1989,

gives the following

Judgment

1 By decision of 29 January 1988, which was received at the Court on 9 November 1988, the Vestre Landsret referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport.

2 That question was raised in criminal proceedings initiated against Hansen & Søn I/S, in its capacity as the employer of a driver, on the ground that the latter had infringed certain provisions of Regulation No 543/69, namely Article 7(2) concerning the maximum daily driving period and Article 11 concerning the compulsory daily rest period.

3 Article 18(1) of Regulation No 543/69 provides that the Member States are to adopt such laws, regulations or administrative provisions as may be necessary for the implementation of the regulation. Those provisions must cover *inter alia* the penalties applicable in case of breach of the rules laid down therein.

4 In accordance with the authority conferred on him by Article 1(1) of Danish Law No 508 of 29 November 1972 to implement the provisions of the aforesaid Council regulation, the Danish Minister for Labour adopted Ministerial Order No 448 of 2 June 1981. According to Article 9 of that order, in the case of infringements of Articles 7 and 11 of Regulation No 543/69 an employer may be made liable to a fine where the journey is undertaken in his interest, even though the infringement cannot be imputed to an intentional act or negligence on his part.

5 On the basis of that provision, Hansen & Søn was ordered to pay a fine by the Graasten District Court, although the infringement was not imputed to an intentional act or negligence on the defendant's part. In its appeal to the Vestre Landsret, Hansen & S n argued that strict criminal liability, such as that introduced by the 1981 order, was incompatible with Regulation No 543/69 of the Council.

6 The Vestre Landsret decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Does Regulation (EEC) No 543/69 of the Council on the harmonization of certain social legislation relating to road transport, as amended, prohibit national provisions under which an employer whose drivers infringe Articles 7(2) and 11 of

the regulation concerning driving and rest periods may be the subject of a criminal penalty notwithstanding the fact that the infringement cannot be imputed to an intentional act or to negligence on the employer's part?'

7 Reference is made to the Report for the Hearing for a fuller account of the legal background and the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 Hansen & Søn has put forward two arguments in support of the view that Article 9 of the 1981 Danish order is incompatible with Regulation No 543/69.

9 In the first place, it argues that, by introducing strict criminal liability, the Danish Government sought to extend the scope of Regulation No 543/69 and imposed on employers an obligation which is not provided for therein. In support of that assertion it refers to the Court's judgment in Case 69/74 *Auditeur de travail* v *Cagnon and Taquet* [1975] ECR 171, paragraph 10, in which the Court stated that the obligation imposed on the employer by Article 11 of that regulation was limited to taking the necessary measures to permit his employees to have the daily rest period laid down.

10 In support of that argument, Hanson & Søn adds that Article 15 of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (Official Journal 1985 L 370, p. 1), which repealed Regulation No 543/69 with effect from 29 September 1986, merely rendered more explicit the provisions that were applicable under the regulation previously in force. According to that provision, the employer is required to organize the work in such a way as to enable drivers to comply with the Community rules, and is required to take appropriate steps to prevent the repetition of any breaches found.

11 That argument cannot be accepted. Articles 7 and 11 of Regulation No 543/69 set limits to the driving periods and rest periods which must be complied with by the

driver and other crew members of a vehicle. Article 18 requires the Member States to take the measures necessary to ensure compliance with those limits. A provision of national law which makes an employer criminally liable for an infringement by one of his employees of the rules laid down by Articles 7 and 11 of Regulation No 543/69 does not in itself extend the scope of that regulation. Such liability constitutes a means of ensuring compliance with the limits set by those provisions.

12 As for Article 15 of Regulation No 3820/85, its purpose is not to limit the employer's liability for his employees who fail to comply with the driving and rest periods, but to impose specific and distinct obligations on the employer himself. It follows that there is nothing in the provisions in question to prevent an employer from being made strictly liable in criminal law.

13 Hansen & Søn also maintains that although Denmark alone has introduced a system of strict criminal liability, the risk of being penalized is greater for undertakings established in that Member State and therefore competition within the common market is distorted, contrary to the aims of Regulation No 543/69 which is designed to harmonize the relevant national legislation.

14 It should be noted, in that regard, that although Regulation No 543/69 is designed to harmonize certain provisions which affect competition in the field of road transport, it leaves a broad discretion to the Member States with regard to the implementation of those provisions. In the first place, Article 13 authorizes the Member States to apply stricter measures to drivers of vehicles registered within their territory, and secondly Article 18 leaves it to the Member States to determine the nature and the severity of the penalties to be imposed in case of breach.

15 It should be further observed that the economic consequences of an infringement of Regulation No 543/69 vary not only according to the system of criminal liability introduced by the Member State in question but also according to the level

of the fine imposed and the degree of effectiveness of the checks carried out. Accordingly, the introduction of a system of strict criminal liability does not in itself involve a distortion of the conditions of competition.

16 Regulation No 543/69 must therefore be regarded as not precluding the application of national provisions penalizing an employer whose drivers have infringed Articles 7(2) and 11 of the regulation, even though that infringement cannot be imputed to an intentional wrongful act or to negligence on the employer's part.

17 Furthermore, it should be borne in mind that, according to the consistent case-law of the Court, as confirmed by its judgment in Case 68/88 *Commission* v *Greece* [1989] ECR 2965, where a Community regulation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the EEC Treaty requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law. For that purpose, whilst the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive.

18 It is apparent from the order for reference that the introduction of strict criminal liability corresponds to the system generally applicable in Denmark for the protection of the working environment.

19 Furthermore, it is necessary to bear in mind, in the first place, that a system of strict liability may prompt the employer to organize the work of his employees in such a way as to ensure compliance with the regulation and, secondly, that road safety, which, according to the third and ninth recitals in the preamble to Regulation No 543/69, is one of the objectives of that regulation, is a matter of public interest which may justify the imposition of a fine on the employer for infringements committed by his employees and a system of strict criminal liability. Hence the imposition of a fine, which is consistent with the duty of cooperation referred to in Article 5 of the EEC Treaty, is not disproportionate to the objective pursued. The application of the principle of proportionality to the amount of the fine has not been called in question in this case.

20 It follows from all the foregoing considerations that the answer to the question submitted by the Vestre Landsret must be that neither Regulation No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport nor the general principles of Community law preclude the application of national provisions under which an employer whose drivers infringe Articles 7(2) and 11 of the regulation may be the subject of a criminal penalty notwithstanding the fact that the infringement cannot be imputed to an intentional wrongful act or to negligence on the employer's part, on condition that the penalty provided for is similar to those imposed in the event of infringement of provisions of national law of similar nature and importance and is proportionate to the seriousness of the infringement committed.

Costs

21 The costs incurred by the Danish Government, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Vestre Landsret, by decision of 28 January 1988, hereby rules:

Neither Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport nor the general principles of Community law preclude the application of national provisions under which an employer whose drivers infringe Articles 7(2) and 11 of the regulation

may be the subject of a criminal penalty notwithstanding the fact that the infringement cannot be imputed to an intentional wrongful act or to negligence on the employer's part, on condition that the penalty provided for is similar to those imposed in the event of infringement of provisions of national law of similar nature and importance and is proportionate to the seriousness of the infringement committed.

Due Slynn Kakouris

Moitinho de Almeida Rodríguez Iglesias Grévisse Díez de Velasco

Delivered in open court in Luxembourg on 10 July 1990.

J.-G. Giraud
Registrar

O. Due
President