JUDGMENT OF THE COURT (First Chamber)
2 October 2003 *

In Case C-12/02,

REFERENCE to the Court under Article 234 EC by the Bayerisches Oberstes Landesgericht (Germany) for a preliminary ruling in the criminal proceedings pending before that court against

Marco Grilli

on the interpretation of Article 29 EC,

THE COURT (First Chamber),

composed of: M. Wathelet (Rapporteur), President of the Chamber, P. Jann and A. Rosas, Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

* Language of the case: German.

after considering the written observations submitted on behalf of:

— the Commission of the European Communities, by U. Wölker, acting as Agent, and by B. Wägenbaur, Rechtsanwalt,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2003,

gives the following

Judgment

1 By order of 19 December 2001, received at the Court on 16 January 2002, the Bayerisches Oberstes Landesgericht referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 29 EC.

2 That question was raised in criminal proceedings brought by the Staatsanwaltschaft (Public Prosecutor's Office) against Mr Grilli, an Italian national, who was charged with having driven on the German motorways a vehicle purchased in Germany bearing temporary number plates issued by the authorities of another Member State.

National legislation

3 Paragraph 22(1)1 and (2) of the Straßenverkehrsgesetz (Road Traffic Act; 'the StVG') provides:

'(1) Anyone who, for an unlawful purpose:

1. attaches to a motor vehicle or trailer for which a number plate has not been issued or which has not been registered a number plate resembling an official number plate;

2. ...

3. ...

shall, unless the offence is punishable by a heavier penalty under any other provision, be sentenced to up to one year's imprisonment or a fine.

(2) The same penalty shall be imposed on any person using on the public highway or in a public place a motor vehicle or trailer whose number plates he knows to be forged, falsified or cancelled as described in subparagraph (1)1 to 3.'

4 Paragraph 18(1) of the Straßenverkehrs-Zulassungs-Ordnung (Motor Vehicle Registration Order; 'the StVZO') provides:

'Compulsory registration

(1) A motor vehicle designed to reach a maximum speed in excess of 6 kilometres per hour and its trailer... shall be used on the public highway only if authorised for such use by the grant of a vehicle authorisation or EC Type Approval and the issue of an official number plate for motor vehicles or trailers by the administrative authorities (registration authorities).'

5 Paragraph 69(2)3 of the StVZO states:

'Anyone who intentionally or negligently

...

...

3. uses on the public highway a motor vehicle or trailer contrary to Paragraph 18(1) without the necessary registration or contrary to Paragraph 18(3) without the necessary vehicle authorisation...

shall be guilty of an offence under Paragraph 24 of the Straßenverkehrsgesetz.'

Facts

6 Mr Grilli travelled to Germany in August 2000 in order to buy a private motor vehicle from a second-hand car dealer in Hamburg.

7 Mr Grilli attached to the vehicle Italian temporary number plates bearing the number 'PT-0835' ('targa prova') which had been issued to him beforehand by the Italian administrative authorities. He then set off in the vehicle on the German motorway towards Italy.

8 The German police checked Mr Grilli's vehicle before the Austrian border and confiscated the Italian temporary number plates. On the same day, German 'export plates' were issued to Mr Grilli at his request and he continued his journey towards Italy.

9 The public prosecutor's office commenced criminal proceedings against Mr Grilli for irregular use of number plates. It claimed that, under Paragraph 22(1)1 and (2) of the StVG and the combined provisions of Paragraphs 18 and 69(a)(2)3 of

the StVZO it was an offence to attach Italian temporary number plates to a private motor vehicle purchased in Germany and to travel on the German highway displaying those plates.

10 The Amtsgericht Ebersberg (Germany) first imposed a fine of DEM 1 500 on Mr Grilli for wrongful use of number plates, in accordance with Paragraph 22(1)1 and (2) of the StVG.

11 Mr Grilli appealed against the fine to the Amtsgericht.

12 Initially, the Amtsgericht upheld the breach by Mr Grilli of Paragraph 22 of the StVG in so far as, according to the Agreement on the mutual recognition of temporary number plates and road test plates concluded between Germany and Italy on 22 December 1993, which entered into force on 1 January 1994 (*Verkehrsblatt* 1994, p. 94 et seq.; 'the Agreement'), a motor vehicle acquired in one of those States can only be fitted with temporary number plates issued in the State in which it was acquired before being driven to the other signatory State. However, the national court considered that the terms of the Agreement were ambiguous and that Mr Grilli might therefore have assumed that he was entitled to attach Italian temporary number plates to a private motor vehicle purchased in Germany.

13 The Amstgericht therefore held that Mr Grilli could rely on an inevitable error in respect of the prohibition in issue and acquitted him.

14 The prosecution appealed to the Bayerisches Oberstes Landesgericht on a point of law against the acquittal.

15 That court considered that Mr Grilli had been wrongly acquitted and should have been convicted under Paragraph 22(1)1 and (2) of the StVG, since the conditions for the application of those provisions were fulfilled.

16 According to the Bayerisches Oberstes Landesgericht, the Agreement applies only to movements of temporarily registered vehicles from Italy to Germany and does not authorise the situation, relevant in this case, of the movement to Italy of a vehicle purchased in Germany bearing Italian temporary number plates. Furthermore, the Bayerisches Staatsministerium für Wirtschaft und Verkehr (Bavarian Ministry of the Economy and Transport) stated in a press release dated 28 February 1994 that, even after the Agreement had entered into force, on 1 January 1994, only vehicles purchased in Germany bearing German, and not Italian, temporary number plates could be taken to Italy.

17 Last, unlike the Amtsgericht, the Bayerisches Oberstes Landesgericht considers that Mr Grilli could not be found not guilty on the ground of inevitable error, since the exacting requirements which according to case-law and legal writing must be satisfied in order to establish the inevitable nature of such an error are not fulfilled in this case.

18 The national court none the less states that Article 29 EC may preclude Mr Grilli's conviction since the purpose of the temporary number plates referred to in the Agreement is to facilitate exports or imports of motor vehicles between the two Member States and therefore, ultimately, trade in goods in the Community. The prohibition on attaching an Italian temporary registration to a vehicle purchased in Germany and on taking that vehicle to Italy may therefore constitute a measure having equivalent effect to a restriction, since a German exporter may find it easier to put a vehicle into service than an Italian importer.

19 The doubts of that court as to the interpretation of Article 29 EC are increased by the considerations expressed by the Court in Case C-193/94 *Skanavi and Chryssanthakopoulos* [1996] ECR I-929. That case concerned the obligation, where a person changed his place of residence from one Member State to another Member State, to exchange within a certain period the driving licence issued in the former Member State. The Court was asked, more particularly, whether Article 52 of the EC Treaty (now Article 43 EC) precludes the driving of a motor vehicle by a person who could have obtained a licence from the host State in exchange for the licence issued by another Member State but who did not make the exchange within the prescribed period from being treated as driving without a licence and thus rendered punishable by imprisonment or a fine.

20 At paragraph 36 of the judgment in *Skanavi and Chryssanthakopoulos* the Court observed, first of all, that, according to settled case-law concerning non-compliance with formalities for establishing the right of residence of an individual enjoying the protection of Community law, Member States may not impose a penalty so disproportionate to the gravity of the infringement that this becomes an obstacle to the free movement of persons. It held that, in view of the effect which the right to drive a motor vehicle has on the actual exercise of the rights relating to the free movement of persons, the same considerations must apply with regard to breach of the obligation to exchange driving licences.

21 In that judgment, the Court considered that treating a person who has failed to have a licence exchanged as if he were a person driving without a licence, thereby giving rise to criminal penalties, even if only financial in nature, such as those provided for in the national legislation in question, to be applied, would also be disproportionate to the gravity of that infringement in view of the ensuing consequences for freedom of movement of persons (*Skanavi and Chryssanthakopoulos*, paragraph 37).

22 The Bayerisches Oberstes Landesgericht wonders whether the criminal penalty imposed on Mr Grilli must be regarded as disproportionate to the gravity of the infringement within the meaning of *Skanavi and Chryssanthakopoulos*. Should

that be so, the Bayerisches Oberstes Landesgericht considers that, from the viewpoint of Community law, there can be no valid ground for the penalties provided for by the criminal law.

23 Taking the view that the outcome of the proceedings therefore depended on the interpretation of Community law, the Bayerisches Oberstes Landesgericht decided to refer the following question to the Court for a preliminary ruling:

'Is Article 29 EC to be interpreted as precluding a national rule that makes it a criminal offence for an Italian national who obtains a temporary registration number from the competent Italian authorities to attach number plates bearing that number to a vehicle offered for sale in Germany, and then drive that vehicle on the German public highway towards Italy?'

Substance

24 By its question, the national court is seeking essentially to ascertain whether Article 29 EC precludes legislation of a Member State which prohibits a national of another Member State, on pain of criminal penalties such as imprisonment or a fine, from taking to that other State a vehicle purchased in the first Member State bearing temporary number plates issued, for the purpose of exporting the vehicle to that other Member State, by the competent authorities of the latter State.

25 It follows from Part III of the order for reference, moreover, as described at paragraph 22 of this judgment, that the national court is in doubt as to the proportionality of the criminal penalties laid down in the relevant regulations in the light of Article 29 EC.

26 In order to provide a useful reply to the national court, it is therefore necessary to consider, first, whether national rules such as those at issue before the national court constitute a measure having equivalent effect to a quantitative restriction prohibited by Article 29 EC and, second, whether the criminal penalties they provide for are to be regarded as disproportionate to the gravity of the offence, within the meaning of *Skanavi and Chryssanthakopoulos*.

Observations submitted to the Court

27 The Commission submits that, in spite of its wording, the question must be interpreted as seeking to ascertain, first, whether Article 29 EC precludes the provisions of German law which require that, where a motor vehicle put into service in Germany is to be exported, it must bear the corresponding temporary number plates, issued beforehand by the competent German authorities, and only then whether Article 29 EC precludes the provisions of German law which make a breach of the above provisions, namely the irregular use of number plates, a criminal offence.

28 On the basis of that interpretation of the question, the Commission states that the national provisions governing the statutory conditions for putting a motor vehicle into service in Germany for export to another Member State are not cited and/or

referred to in the order for reference. It therefore wonders to what extent the Court has the necessary information on the applicable German provisions to be able to give a ruling.

29 According to the Commission, provisions of Community law exist only as regards certain conditions concerning the putting into service of motor vehicles, which have no relevance to the main proceedings.

30 The Commission infers that the determination of the statutory requirements governing the administrative procedure for putting a motor vehicle into service and/or taking it to another Member State therefore remains within the competence of the Member State concerned, which must none the less exercise that competence in compliance with Community law.

31 As regards the interpretation of Article 29 EC in the present case, the Commission observes that the Court has held that that provision is directly applicable and, as such, confers on individuals rights which the courts of the Member States are required to protect (see, for example, Case C-47/90 *Delhaize and Le Lion* [1992] ECR I-3669).

32 According to a consistent line of decisions, Article 29 EC prohibits all national measures which have as their specific object or effect the restriction of patterns of exports and therefore the establishment of a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to provide a particular advantage for national production or for the domestic market of the State in question (see, for example, Case C-209/98 *Sydhavnens Sten & Grus* [2000] ECR I-3743, paragraph 34).

33 The Commission therefore proposes that a comparison should be made between the provisions of German law concerning the administrative procedure for putting motor vehicles into service in Germany and those governing the administrative procedure for putting motor vehicles into service in Germany for export to another Member State, in order to determine whether the general obligation governing the putting into service applies in the same way to the putting into service of a motor vehicle in Germany and for the export of a motor vehicle from Germany to another Member State, in which case the requirement for putting the vehicle into service does not in itself represent any specific restriction on export patterns.

34 The Commission contends that those rules draw a distinction between, on the one hand, the putting into service of vehicles normally kept in Germany, whether with a view to being permanently registered in Germany or to being temporarily registered for the purposes of testing and/or transport within the confines of the national borders and, second, the putting into service of vehicles in Germany with a view to their being exported to another Member State. Ultimately, however, in the national regulations in force in Germany, the conditions governing the putting into service of a vehicle intended for export to another Member State are no more restrictive than the conditions governing the putting into service of a vehicle intended to remain permanently in Germany.

35 The Commission therefore proposes that the answer to the question should be that Article 29 EC does not preclude rules such as those in issue in the main proceedings.

The Court's reply

36 It should be observed as a preliminary point that reference has been made in the main proceedings to the Agreement, which may have the consequence that a German national exporting to Germany a vehicle purchased in Italy and an

Italian national exporting to Italy a vehicle purchased in Germany are not treated in the same way. As no question as been raised in that regard and as the text of the Agreement has not been communicated, the Court draws the national court's attention to the possible impact of that Agreement on free movement of goods and persons. Thus, it would be useful to consider whether the Agreement entails any discrimination in that it allows a vehicle bearing temporary number plates issued by the competent German authorities to be driven from Italy to Germany but does not allow a vehicle displaying temporary number plates issued by the competent Italian authorities to be driven from Germany to Italy.

37 As regards, first, the question whether the fact that a Member State prohibits a national of another Member State from driving a used car purchased on its territory where the vehicle is bearing temporary number plates issued, for the purpose of export to the other Member State, by the competent authorities of that State is a measure having equivalent effect to a quantitative restriction on exports, it must be recalled that, as the Commission rightly maintains, there is no Community provision governing the putting into service of vehicles, whether generally or, more specifically, for export to another Member State.

38 Nor is there any Community provision that determines the national authorities competent to register motor vehicles.

39 In the absence of any Community rules on the matter, the Member States alone are competent to determine the statutory conditions governing the administrative procedure for the putting into service of motor vehicles, including for export to another Member State, and also the penalties applicable in the event of a breach of those conditions.

40 As the Advocate General states at point 19 of his Opinion, that competence must none the less be exercised in compliance with the fundamental freedoms provided for in the EC Treaty, in particular in Article 29 EC.

41 According to consistent case-law, that provision concerns national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States (Case 15/79 *Groenveld* [1979] ECR 3409, paragraph 7).

42 Unlike Article 28 EC, which concerns quantitative restrictions on imports and measures having equivalent effect to such restrictions, Article 29 EC prohibits only national measures which provide for a difference in treatment between products destined for export and those sold within the Member State concerned (*Groenveld*, cited above, paragraphs 7 and 9).

43 In the main proceedings, the German rules require that a used motor vehicle purchased on German territory and used on the German public highway display temporary number plates issued by the competent German authorities, even if the vehicle is to be exported to another Member State.

44 In order to determine whether such rules constitute a quantitative restriction on exports or a measure having equivalent effect to such a restriction, the national court must consider whether the detailed provisions established by the rules at

issue in the main proceedings for the issue of temporary number plates are compatible with Community law, in the light of the conditions identified in the case-law and set out at paragraphs 41 and 42 of this judgment.

45 The national court will thus have to compare the detailed provisions established by the German rules for the administrative procedure for the putting into service of vehicles in Germany with those laid down for the administrative procedure for the putting into service in Germany of vehicles intended for export to another Member State. In order to be able to conclude that there is a restriction on exports, it is necessary first of all to ascertain whether there is a difference in treatment between the administrative procedure for the putting into service of a vehicle intended for use in Germany and that for a vehicle intended for export, and whether that difference in treatment is of such a kind as to restrict export patterns. Next, the national court must ascertain whether the German regulations in issue in the main proceedings give rise to a difference in treatment between trade within Germany and its external trade and, if appropriate, whether it follows that the regulations favour national trade at the expense of that of another Member State.

46 As the Advocate General states at point 28 of his Opinion, it is only if the national court concludes that the national rules constitute a measure having equivalent effect to a quantitative restriction on exports that it will have to consider whether the regulations may be justified under Article 30 EC, which entails an assessment of the proportionality of the penalties.

47 For that purpose, the national court will be required, inter alia, to consider whether the national rules at issue in the main proceedings may be justified on grounds of public order or public security. If so, it will have to establish whether they are necessary in order to achieve the object pursued and do not constitute arbitrary discrimination or a disguised restriction of trade between Member States.

48 Accordingly, the answer to the first part of the question must be that Article 29 EC precludes the rules of a Member State which prohibit a national of another Member State, on pain of criminal penalties such as imprisonment or a fine, from taking to that other State a vehicle purchased in the first Member State bearing temporary number plates issued, for the purpose of the export of the vehicle to the other Member State, by the competent authorities of the latter State, if those rules are of such a kind as to restrict export patterns, create a difference in treatment between a State's domestic trade and its external trade and give rise to an advantage for national trade at the expense of that of another Member State, provided that those rules cannot be justified under Article 30 EC. It is for the national court to ascertain whether that is so in the main proceedings.

49 As regards, second, the proportionality of the criminal penalties provided for in the national rules at issue in the main proceedings, it should be noted that, if those rules are not held to be contrary to Article 29 EC, the question of proportionality does not arise. If, on the other hand, rules such as those at issue in the main proceedings are held to be contrary to Article 29 EC, the penalties for which they make provision are inapplicable, so that there is no need to consider the question of their proportionality to the gravity of the infringement.

Costs

50 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Bayerisches Oberstes Landesgericht by order of 19 December 2001, hereby rules:

Article 29 EC precludes the rules of a Member State which prohibit a national of another Member State, on pain of criminal penalties such as imprisonment or a fine, from taking to that other State a vehicle purchased in the first Member State bearing temporary number plates issued, for the purpose of the export of the vehicle to that other Member State, by the competent authorities of the latter State, if those rules are of such a kind as to restrict export patterns, create a difference in treatment between a State's domestic trade and its external trade and give rise to an advantage for national trade at the expense of that of another Member State, provided that those rules cannot be justified under Article 30 EC. It is for the national court to ascertain whether that is so in the main proceedings.

Wathelet Jann Rosas

Delivered in open court in Luxembourg on 2 October 2003.

R. Grass

Registrar

M. Wathelet

President of the First Chamber