JUDGMENT OF THE COURT (First Chamber)
2 October 1991 *

In Case C-8/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hof van Cassatie van België (Belgian Court of Cassation) for a preliminary ruling in the criminal proceedings pending before that court against

Willy Kennes,

Verkooyen PVBA,

on the interpretation of Article 18 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),

THE COURT (First Chamber),

composed of: G. C. Rodríguez Iglesias, President of the Chamber, Sir Gordon Slynn and R. Joliet, Judges,

Advocate General: C. O. Lenz,
Registrar: J. A. Pompe, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the United Kingdom, by Rosemary Caudwell of the Treasury Solicitor's Department, acting as Agent:

— the Commission of the European Communities, by Thomas Van Rijn, a member of its Legal Service, acting as Agent;

* Language of the case: Dutch.

having regard to the Report for the Hearing,

after hearing oral argument from the Commission and the United Kingdom, represented by D. Wyatt of the Treasury Solicitor's Department, acting as Agent, at the hearing on 15 January 1991,

after hearing the Opinion of the Advocate General at the sitting on 5 February 1991,

gives the following

Judgment

1 By order dated 9 January 1990, which was received at the Court on 12 January 1990, the Hof van Cassatie van België referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation 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).

2 The question arose in the course of criminal proceedings against Mr Kennes, a driver, and the Verkooyen partnership, his employer, as the party liable at civil law, on the ground that Mr Kennes had committed a breach of certain provisions of Regulation No 3820/85 relating to the maximum daily driving period and the mandatory duration of the rest period.

3 Regulation No 3820/85 introduced greater flexibility into the provisions 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), laying down daily and weekly limits on driving periods and requiring certain rest periods. Article 18(1) of Regulation No 543/69, like Article 17(1) of Regulation No 3820/85, requires the Member States to adopt the provisions necessary for the implementation of the respective regulations, in particular as regards the penalties to be imposed in case of breach.

4 Regulation No 543/69 was repealed, save for two temporary exceptions, by Article 18(1) of Regulation No 3820/85. Article 18(2) of that regulation provides that '[r]eferences to the Regulation repealed . . . shall be construed as references to this Regulation'. Regulation No 3820/85 entered into force on 29 September 1986 (Article 19).

5 The Kingdom of Belgium adopted provisions for the implementation of Regulation No 543/69 by Royal Decree of 23 March 1970 (*Moniteur belge* of 1 April 1970) and for the implementation of Regulation No 3820/85 by Royal Decree of 13 May 1987 (*Moniteur belge* of 4 June 1987).

6 On 3 and 4 November 1986, that is, after the entry into force of Regulation No 3820/85 and the repeal of Regulation No 543/69, but before the adoption by the Belgian Government of measures for the implementation of Regulation No 3820/85, Mr Kennes was accused of infringing Articles 6, 7 and 8 of the latter regulation.

7 The Correctionele Rechtbank te Turnhout (Criminal Court, Turnhout) acquitted the defendants on the ground that, at the material time, there was no legal basis authorizing it to impose a penalty: on the one hand, Regulation No 3820/85 prescribed no penalty and, on the other hand, the Royal Decree of 23 March 1970, adopted for the implementation of Regulation No 543/69, was no longer applicable.

8 The Hof van Cassatie, before which an appeal in cassation was brought, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 18(2) of Council Regulation (EEC) No 3820/85 on the harmonization of certain social legislation relating to road transport to be interpreted as meaning that references to Regulation (EEC) No 543/69 in national provisions laying down measures to implement that regulation are also to be construed as references within the meaning of the said Article 18(2)?'

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

10 It must first be observed that Article 17(1) of Regulation No 3820/85, which appears in Section VIII, 'Control procedures and penalties', does not expressly provide for the renewal of the provisions of national law laying down measures for the implementation of Regulation No 543/69. On the contrary, Article 17(1) imposes on the Member States a fresh obligation to adopt such laws, regulations or administrative provisions as may be necessary for the implementation of Regulation No 3820/85, including those covering the penalties to be imposed in case of breach.

11 Next, it should be pointed out that the purpose of Article 18, which forms part of the 'Final provisions' of Regulation No 3820/85, is to set out the effects at legislative level of the amendments to the existing rules arising from the other provisions of the regulation. As may be seen from the second recital of the preamble to Regulation No 3820/85, the Council wished, taking the amendments into account, to bring together in a single text all the relevant social legislation relating to road transport. For that reason Regulation No 543/69 was repealed by Article 18(1).

12 In these circumstances, it is clear that Article 18(2) merely confirms the consequences at Community level of the repeal of Regulation No 543/69. Its purpose therefore was to ensure that references to that regulation appearing in other Community measures, such as Council Directive 80/1263/EEC on the introduction of a Community driving licence (Official Journal 1980 L 375, p. 1), are to be interpreted as references to Regulation No 3820/85. That article therefore by no means relates to the provisions of national law adopted for the implementation of Article 18(1) of Regulation No 543/69.

13 The answer to be given to the question referred to the Court by the Hof van Cassatie van België should therefore be that Article 18(2) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social

legislation relating to road transport is to be interpreted as meaning that it does not relate to references to the repealed Regulation No 543/69 appearing in provisions of national law containing measures for the implementation of that regulation.

Costs

14 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since 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 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 Hof van Caasatie van België by order of 9 January 1990, hereby rules:

Article 18(2) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport is to be interpreted as meaning that it does not relate to references to the repealed Regulation No 543/69 appearing in provisions of national law containing measures for the implementation of that regulation.

Rodríguez Iglesias Slynn Joliet

Delivered in open court in Luxembourg on 2 October 1991.

J.-G. Giraud
Registrar

Rodríguez Iglesias
President of the First Chamber