JUDGMENT OF THE COURT (Fifth Chamber)

16 January 2003 *

In Case C-439/01,

REFERENCE to the Court under Article 234 EC by the Unabhängiger Verwaltungssenat im Land Niederösterreich (Austria) for a preliminary ruling in the proceedings pending before that court between

Libor Cipra

Vlastimil Kvasnicka

and

Bezirkshauptmannschaft Mistelbach,

on the interpretation and validity of Article 8(1) and (2) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, S. von Bahr and A. Rosas (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the French Government, by G. de Bergues and S. Pailler, acting as Agents,

— the Netherlands Government, by H.G. Sevenster, acting as Agent,

— the Swedish Government, by A. Falk, acting as Agent,

— the Council of the European Union, by R. Frohn and A. Lopes Sabino, acting as Agents,

— the Commission of the European Communities, by C. Schmidt and M. Wolfcarius, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 October 2002,

gives the following

Judgment

1 By order of 6 November 2001, received at the Court on 13 November 2001, the Unabhängiger Verwaltungssenat im Land Niederösterreich (Independent Administrative Chamber of the Land Niederösterreich) referred to the Court for a preliminary ruling under Article 234 EC two questions relating, first, to the interpretation of Article 8(1) and (2) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ 1985 L 370, p. 1) and, second, to the validity of that provision.

2 Those questions were raised in proceedings between Mr Cipra and Mr Kvasnicka, heavy goods vehicle drivers of Czech nationality, and the Bezirkshauptmannschaft Mistelbach (first-instance administrative authority of Mistelbach) concerning a provisional guarantee which the latter required from the drivers when they were alleged not to have complied with the daily rest periods provided for in Regulation No 3820/85.

Legal framework

Community legislation

3 The scope of Regulation No 3820/85 is defined as follows in Article 2:

'1. This Regulation applies to carriage by road... within the Community.

2. The European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) shall apply instead of the present rules to international road transport operations:

— to and/or from third countries which are Contracting Parties to the Agreement, or in transit through such countries, for the whole of the journey where such operations are carried out by vehicles registered in a Member State or in one of the said third countries;

— to and/or from a third country which is not a Contracting Party to the Agreement in the case of any journey made within the Community where such operations are carried out by vehicles registered in one of those countries.'

4 Article 8(1) to (3) of Regulation No 3820/85, on rest periods, provides:

'1. In each period of 24 hours, the driver shall have a daily rest period of at least 11 consecutive hours, which may be reduced to a minimum of nine consecutive hours not more than three times in any one week, on condition that an equivalent period of rest be granted as compensation before the end of the following week.

On days when the rest is not reduced in accordance with the first subparagraph, it may be taken in two or three separate periods during the 24-hour period, one of which must be of at least eight consecutive hours. In this case the minimum length of the rest shall be increased to 12 hours.

2. During each period of 30 hours when a vehicle is manned by at least two drivers, each driver shall have a rest period of not less than eight consecutive hours.

3. In the course of each week, one of the rest periods referred to in paragraphs 1 and 2 shall be extended, by way of weekly rest, to a total of 45 consecutive hours. This rest period may be reduced to a minimum of 36 consecutive hours if taken at the place where the vehicle is normally based or where the driver is based, or to a minimum of 24 consecutive hours if taken elsewhere. Each reduction shall be compensated by an equivalent rest taken en bloc before the end of the third week following the week in question.'

International regulations

5 The European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport ('the AETR Agreement'), which is referred to at Article 2(2) of Regulation No 3820/85, was brought into force in the Community by Council Regulation (EEC) No 2829/77 of 12 December 1977 (OJ 1977 L 334, p. 11). The fourth recital of the preamble to that regulation states that since the subject-matter of the AETR Agreement falls within the scope of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonisation of certain social legislation relating to road transport (OJ, English Special Edition 1969(I), p. 170), from the date of entry into force of that regulation the power to negotiate and conclude that agreement has lain with the Community. However, according to that recital, the particular circumstances in which the negotiations relating to the AETR Agreement warrant, by way of exception, a procedure whereby the Member States of the Community individually deposit the instruments of ratification or accession in a concerted action but none the less act in the interest and on behalf of the Community.

6 The wording of Article 8(1) to (3) of the AETR Agreement is identical to that of Article 8(1) to (3) of Regulation No 3820/85.

National legislation

7 The provisions of Regulation No 3820/85 were supplemented in Austrian law by Article 134(1) of the Kraftfahrgesetz (Law on motor vehicles) of 1967, which provides that infringements of the regulation are punishable by a fine of up to ATS 30 000.

Main proceedings and questions referred to the Court

8 On 24 October 2000, Mr Cipra and Mr Kvasnicka drove a heavy goods vehicle bearing Czech registration plates to the border post at Drasenhofen (Austria) on the border between Austria and the Czech Republic. The order for reference does not specify whether the vehicle was leaving or entering the territory of the European Union.

9 The Austrian police checked the vehicle's tachograph disks for the period 22 to 24 October 2000 and, being of the view that the claimants in the main proceedings had not complied with the daily rest periods provided for in Article 8 of Regulation No 3820/85, required each of them to pay a provisional security of ATS 1 000. According to the order for reference, a detailed examination of the disks revealed that the drivers, who had taken an uninterrupted rest period of 8 hours and 5 minutes during a period of 30 hours, had complied with the requirements of Article 8(2) of that regulation but not with those of Article 8(1).

10 By decisions of 9 January 2001, the Bezirkshauptmannschaft Mistelbach held that the provisional securities of ATS 1 000 were to stand. It appears from the documents in the file sent by the national court that the Bezirkshauptmannschaft applied Article 8 of the AETR Agreement and not Regulation No 3820/85. The claimants appealed against those decisions before the Unabhängiger Verwaltungssenat im Land Niederösterreich and contended that they had complied with the statutory rest periods.

11 The national court considers that a reading of Article 8(1) and (2) of Regulation No 3820/85 gives rise to doubts as to the relationship between those two paragraphs. It would seem possible either to apply them cumulatively or to regard paragraph 2 as a *lex specialis* that prevails over paragraph 1. According to the

national court, it is necessary to take account of the fact that in paragraph 1 the addressee of the rule is designated by the definite article 'the', in the singular, whereas in paragraph 2 the addressees are specified by the adjectival use of the cardinal number 'two'. It follows from Articles 6 and 7 of the regulation that that definite article 'the', in the singular, cannot be understood in the meaning of the cardinal number 'one', so that the rules laid down in Articles 6, 7 and 8(1) of Regulation No 3820/85 apply irrespective of the composition of the crew. The national court none the less accepts that the purpose of those provisions could argue in favour of a different interpretation.

12 The national court concludes that Article 8(1) of Regulation No 3820/85, read with Article 8(2), is open to various interpretations. Those provisions do not appear to be consistent with the principles of legal certainty and of clarity of Community rules. It further observes that infringements of the regulation attract criminal penalties at national level.

13 In those circumstances, the Unabhängiger Verwaltungssenat im Land Niederösterreich decided to stay proceedings and to refer the following questions to the Court:

'1. Do drivers falling within the scope of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport have to satisfy the requirements set out in Article 8(1) and (2) of that regulation cumulatively where there are two drivers or is Article 8(2) a *lex specialis* that prevails over Article 8(1)?

2. Where there are two drivers falling within the scope of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport, is Article 8(1) of that regulation, or possibly Article 8(1) and (2), inapplicable because of incompatibility with superior community law?'

Admissibility

Observations submitted to the Court

14 The Austrian government considers that the questions are inadmissible, on the ground that they envisage a hypothetical situation. According to the documents in the file in its possession, the vehicle concerned by the main proceedings was travelling between Austria and the Czech Republic. It was not therefore engaged in carriage within the Community for the purposes of Article 2(1) of Regulation No 3820/85 but in an international transport operation within the meaning of the first indent of Article 2(1) of that regulation. The AETR Agreement, which the Republic of Austria and the Czech Republic have ratified, is therefore applicable to the facts of the main proceedings.

15 The Commission shares the view that the facts of the main proceedings are governed not by Regulation No 3820/85 but by the AETR Agreement. It submits that that agreement, which was signed by the Member States, forms part of Community law and that the Court has jurisdiction to interpret it. It observes, in that regard, that in accordance with the seventh recital of the preamble to Regulation No 3820/85, the subject-matter of the AETR Agreement falls within

the scope of that regulation. The Community therefore has the power to negotiate and conclude the agreement. Only the particular circumstances in which the negotiations took place warranted, by way of exception, a procedure whereby the Member States individually deposited the instruments of ratification or accession in a concerted action but they none the less did so in the interest and on behalf of the Community.

16 The Commission observes that rest periods are governed by Article 8 of the AETR Agreement, the wording of which is identical to that of Article 8 of Regulation No 3820/85. The questions of interpretation on which the Court is required to give a ruling are therefore the same for both articles.

17 The Swedish Government submits that it is for the national court to determine whether the facts of the main proceedings fall within the scope of Regulation No 3820/85 or of the AETR Agreement.

The Court's answer

18 It is settled case-law that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of

Justice is, in principle, bound to give a ruling (see, *inter alia*, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and Joined Cases C-223/99 and C-260/99 *Agorà and Excelsior* [2001] ECR I-3605, paragraph 18).

19 Nevertheless, the Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21). The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39).

20 That is not the case here. There is no suggestion in the order for reference that the questions bear no relation to the actual facts of the main action or its purpose or relate to a purely hypothetical problem.

21 The national court has clearly stated in that regard that it needs an interpretation of the provisions at issue in the main proceedings in order to determine whether Mr Cipra and Mr Kvasnicka did in fact comply with the Community requirements on rest periods.

22 On the facts as described by the national court, however, it appears likely that, as the Austrian Government and the Commission submit, the carriage of goods in

question may be governed by the AETR Agreement. To that extent, the Court can provide an interpretation of Community law which may assist the national court in deciding the case in the main proceedings and it may therefore deem it necessary to consider provisions of Community law to which the national court has not referred in the text of its question (see, in particular, Case C-304/00 *Shawson and Gagg & Sons* [2002] ECR I-10737, paragraphs 57 and 58).

23 As regards the possible application of the AETR Agreement to the main proceedings, it follows from the fourth recital of the preamble to Regulation No 2829/77, whereby that agreement was brought into force in the Community, that in ratifying or acceding to that agreement, the Member States acted in the interest and on behalf of the Community (see paragraph 5 of this judgment). According to Article 2(2) of Regulation No 3820/85, the AETR Agreement is to apply, instead of the provisions of that regulation, to international road transport operations to and/or from non-member countries which are Contracting Parties to the agreement or in transit through such countries for the whole of the journey where such operations are carried out by vehicles registered in a Member State or in one of those non-member countries.

24 In the light of the foregoing, it must be held that the AETR Agreement forms part of Community law and that the Court has jurisdiction to interpret it.

25 As the Swedish Government correctly submits, it is for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, having regard to the facts of the main proceedings, whether it is appropriate to apply in this case Article 8(1) and (2) of Regulation No 3820/85 or Article 8(1) and (2) of the AETR Agreement, which are in any event worded in identical terms.

26 It follows from the foregoing considerations that the reference for a preliminary ruling is admissible.

First question

27 By its first question, the national court is asking essentially whether, where a vehicle is manned by more than one driver, the conditions relating to rest periods laid down in Article 8(1) and (2) of Regulation No 3820/85 are to be fulfilled cumulatively or whether paragraph 2 is a *lex specialis* that prevails over paragraph 1.

Observations submitted to the Court

28 All the parties which have submitted observations take the view that, where Article 8(2) of Regulation No 3820/85 applies, the requirements of paragraph 1 of that article need not be observed. That interpretation is, they claim, corroborated by the wording, the purpose and the context of those provisions.

29 First of all, Article 8(1) of Regulation No 3820/85, which provides that 'the driver shall have a daily rest period of at least 11 consecutive hours', is aimed not at every driver but at the driver who is the only one on the vehicle.

30 Next, improved road safety is one of the objectives pursued by Regulation No 3820/85 and such safety is better ensured where the driver is accompanied by another driver. Since each driver has the opportunity to rest while the other is driving, he could be satisfied with a slightly lower number of hours of consecutive rest over a longer period.

31 The Commission further maintains that the cumulative application of Article 8(1) and (2) of Regulation No 3820/85 to crews consisting of more than one driver would have economic disadvantages for hauliers and would have no positive influence on competition.

32 Last, the Netherlands Government and the Commission maintain that the first sentence of Article 8(3) of Regulation No 3820/85 confirms that paragraphs 1 and 2 of that article are not to be applied cumulatively. The expression 'one of the rest periods referred to in paragraphs 1 and 2' in that sentence means that the Community legislature wished to draw a distinction between the rest periods referred to in paragraph 1 and those referred to in paragraph 2.

33 The Commission states that the alternative, rather than the cumulative, application of paragraphs 1 and 2 of Article 8 of Regulation No 3820/85 is also corroborated by the background to that regulation. The Community rules on social legislation relating to road transport were initially defined in Regulation No 543/69, Article 11(3) and (4) of which expressly and exclusively governed the rest periods of crews composed of more than one person. Furthermore, the Netherlands Government contends that a similar approach was adopted in the Proposal for Regulation 2002/C 51 E/05 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ 2002 C 51 E, p. 234).

The Court's answer

34 The interpretation that the rest periods of a crew consisting of more than one driver are governed by Article 8(2) of Regulation No 3820/85 but not by paragraph 1 of that article is consistent with the wording of those provisions. Under paragraph 1, the driver is required to observe a daily rest period of at least 11 consecutive hours in each period of 24 hours. Paragraph 2 applies only when 'a vehicle is manned by at least two drivers'. The different numbers of drivers referred to in those paragraphs indicates that they govern different situations. The fact that the driver is designated in Article 8(1) of that regulation as 'the' driver and not as 'a' driver is to be explained by the grammatical necessity to use a definite article to identify the addressee of the rule.

35 In interpreting a provision of Community law, it is appropriate to consider also the context in which it occurs and the objects of the rules of which it forms part (see, in particular, Case C-223/98 *Adidas* [1999] ECR I-7081, paragraph 23, and Case C-191/99 *Kvaerner* [2001] ECR I-4447, paragraph 30).

36 In that regard, the primary objective of Regulation No 3820/85 is to improve road safety and also drivers' working conditions.

37 Clearly, when a vehicle is manned by more than one driver, road safety is better ensured. Since each driver is able to rest while the other is driving, he may be satisfied with a slightly lower number of consecutive hours of rest, that is to say, 8 hours instead of 9 hours, over a longer period, namely 30 hours instead of 24 hours. The practical effect of Article 8(2) of Regulation No 3820/85, namely to allow shorter rest periods where the crew is composed of more than one driver, would be compromised if paragraphs 1 and 2 of that article were applied cumulatively.

38 It must therefore be held that the exclusive application of Article 8(2) of Regulation No 3820/85 to crews composed of more than one driver affords sufficient protection to their working conditions and ensures the safety of road transport.

39 The interpretation that paragraphs 1 and 2 of Article 8 of Regulation No 3820/85 must be applied in the alternative and not cumulatively is also corroborated by the rule set out in the first sentence of paragraph 3 of that article, which provides that, in the course of each week, 'one of the rest periods referred to in paragraphs 1 and 2 shall be extended... to a total of 45 consecutive hours'.

40 In the light of the foregoing considerations, the answer to the first question must be that, where a vehicle has more than one driver, Article 8(2) of Regulation No 3820/85 applies as a *lex specialis* that prevails over paragraph 1 of that article. Those provisions must not therefore be applied cumulatively.

41 As the textual, teleological and contextual factors identified in paragraphs 34 and 36 to 39 of this judgment are common to Article 8 of Regulation No 3820/85 and to Article 8 of the AETR Agreement, the same interpretation also applies to Article 8(1) and (2) of that agreement.

42 As stated at paragraph 25 of this judgment, it is for the national court to determine, having regard to the facts of the main proceedings, whether to apply the provisions of Regulation No 3820/85 or those of the agreement.

Second question

43 By its second question, the national court seeks to ascertain whether Article 8(1) and (2) of Regulation No 3820/85 is consistent with the principle of legal certainty, which requires that a regulation be clear. In essence, it is asking the Court about the validity of those provisions.

Observations submitted to the Court

44 All the parties which have submitted observations take the view that the requirements of legal certainty, as defined in the Court's case-law, have not been disregarded by Article 8(1) and (2) of Regulation No 3820/85.

45 According to the French Government and the Commission, those provisions are perfectly clear. The Swedish Government maintains that the requirements as to rest periods resulting from those provisions are sufficiently clear. The Austrian Government submits that the meaning of the regulations at issue in the main proceedings may be inferred from their objective without there being any room for doubt. According to the Netherlands Government, the rules are not incomprehensible.

46 The Council, which expresses a formal view only on the second question, submits that the interpretation of Article 8(1) and (2) of Regulation No 3820/85 follows from the teleological and systematic context of which those provisions form part. That interpretation is confirmed by their wording, so much so that the Council regards them as sufficiently precise. The Council contends that the Court has already had occasion, in a number of cases, to consider the provisions of the regulation and that such consideration has not revealed any contradiction or any indications of legal uncertainty. Furthermore, the contested provisions are consistent with the interinstitutional agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ 1999 C 73, p. 1).

The Court's answer

47 It has consistently been held that the principle of legal certainty, which in this case is the only potentially relevant superior rule, requires that rules imposing obligations on persons must be clear and precise so that they may know without ambiguity what are their rights and obligations and take steps accordingly (see, to that effect, Case 169/80 *Gondrand Frères and Garancini* [1981] ECR 1931, paragraph 17).

48 Clearly, and particularly in view of the answer to the first question, the requirements on rest periods which apply to crews consisting of a single driver or of at least two drivers are apparent with sufficient clarity from the wording of Article 8(1) and (2) of Regulation No 3820/85 and also from its context and from the objectives pursued by the legislation of which it forms part. As may be inferred from paragraph 41 of this judgment, a similar finding may be made in respect of Article 8(1) and (2) of the AETR Agreement.

49 Having regard to the foregoing, the answer to the second question must be that examination of Article 8(1) and (2) of Regulation No 3820/85 in the light of the principle of legal certainty has failed to disclose any matters of such a kind as to affect its validity.

Costs

50 The costs incurred by the Austrian, French, Netherlands and Swedish Governments and by the Council 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 proceedings 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 questions referred to it by the Unabhängiger Verwaltungssenat im Land Niederösterreich by order of 6 November 2001, hereby rules:

1. In the case of transport by more than one driver, Article 8(2) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport applies as a *lex specialis* that prevails over paragraph 1 of that article. Consequently, those provisions are not to be applied cumulatively.

2. The same interpretation applies to Article 8(1) and (2) of the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR).

3. It is for the national court to determine, having regard to the facts of the main proceedings, whether it is appropriate to apply the provisions of Regulation No 3820/85 or those of that agreement.

4. **Examination of Article 8(1) and (2) of Regulation No 3820/85 in the light of the principle of legal certainty has failed to disclose any matters of such a kind as to affect its validity.**

Wathelet Edward La Pergola

von Bahr Rosas

Delivered in open court in Luxembourg on 16 January 2003.

R. Grass

Registrar

M. Wathelet

President of the Fifth Chamber