JUDGMENT OF THE COURT (Fourth Chamber)
19 October 1995 *

In Case C-128/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesverwaltungsgericht for a preliminary ruling in the proceedings pending before that court between

Hans Hönig

and

Stadt Stockach,

on the interpretation of Article 3(1)(a) of the Annex to Council Directive 88/166/EEC of 7 March 1988 complying with the judgment of the Court of Justice in Case 131/86 (annulment of Council Directive 86/113/EEC of 25 March 1986 laying down minimum standards for the protection of laying hens kept in battery cages) (OJ 1988 L 74, p. 83),

THE COURT (Fourth Chamber),

composed of: C. N. Kakouris, President of the Chamber, P. J. G. Kapteyn (Rapporteur) and J. L. Murray, Judges,

* Language of the case: German.

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Hans Hönig, by Jürgen Gündisch, of the Hamburg Bar,

— Stadt Stockach, by Wolf-Wilhelm Waibel, Leitender Regierungsdirektor at the Regierungspräsidium Freiburg,

— the German Government, by Ernst Röder, Ministerialrat at the Federal Ministry for the Economy, and Bernd Kloke, Regierungsrat at the same Ministry, acting as Agents,

— the United Kingdom, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by Rupert Anderson, Barrister,

— 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 Hans Hönig, Stadt Stockach, the German Government and the Commission at the hearing on 22 June 1995,

after hearing the Opinion of the Advocate General at the sitting on 14 September 1995,

gives the following

Judgment

1 By order of 16 December 1993 received at the Court on 4 May 1994 the Bundesverwaltungsgericht referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 3(1)(a) of the Annex to Council Directive 88/166/EEC of 7 March 1988 complying with the judgment of the Court of Justice in Case 131/86 (annulment of Council Directive 86/113/EEC of 25 March 1986 laying down minimum standards for the protection of laying hens kept in battery cages) (OJ 1988 L 74, p. 83, hereinafter 'the directive').

2 The question was raised in the course of a dispute between Hans Hönig and the town of Stockach concerning the Verordnung zum Schutz von Legehennen bei Käfighaltung of 10 December 1987 (the German Regulation on the protection of laying hens raised in battery cages, hereinafter 'the German regulation', BGBl. I 2622), which came into force on 1 January 1988.

3 Paragraph 2(2) of the German regulation provides that with effect from 1 January 1993 cages used for laying hens with an average weight of over 2 kg must have an area which may be used without restriction of at least 550 cm^2.

4 Article 3(1)(a) of the Annex to the directive provides that Member States are to ensure that from 1 January 1988 laying hens have at least 450 cm^2 of cage area.

5 Mr Hönig, a farmer, raises laying hens in battery cages. Before the national court he claimed that the German regulation was incompatible with Community law because it required a minimum cage area greater than that prescribed by the directive.

6 Mr Hönig argues that the directive lays down minimum requirements for battery cages from which the Member States may not depart. The purpose of the directive, which is to eliminate unfair competition, cannot be achieved unless the Member States apply conditions which are as uniform as possible.

7 The national court considers that there is doubt as to whether Article 3(1)(a) of the Annex to the directive allows the Member States to adopt requirements more stringent than the minimum laid down by it. It takes the view that the directive seeks to bind Member States to certain minimum requirements whilst permitting them to lay down stricter ones; but on that interpretation the purpose of the directive, which is to eliminate distortion in competition on the egg and poultry market, cannot properly be achieved.

8 The national court therefore stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Is Article 3(1)(a) of the Annex to Council Directive 88/166/EEC of 7 March 1988 to be interpreted as meaning that it obliges the Member States to lay down

the minimum cage area specified in the directive, without leaving any scope for more stringent national requirements?'

9 As the Court has emphasized in its decisions, it is necessary in interpreting a provision of Community law to consider not only its wording but also the context in which it occurs and the objects of the rules of which it is part (judgment in Case 292/82 *Merck* v *Hauptzollamt Hamburg-Jonas* [1983] ECR 3781, paragraph 12, and in Case 337/82 *St Nikolaus Brennerei* v *Hauptzollamt Krefeld* [1984] ECR 1051, paragraph 10).

10 As regards in the first place the wording of the directive, Article 3(1)(a) of the Annex provides as follows:

'Member States shall ensure that from 1 January 1988:

— all newly built cages for use within the Community,

— all cages brought into use for the first time,

at least comply with the following requirements:

(a) at least 450 cm^2 of cage area ... shall be provided for each laying hen ...'.

11 On the wording of the provision, therefore, the Member States may not lay down a minimum surface area of less than 450 cm^2 per cage, but may lay down a minimum cage area per hen greater than that provided for; that is shown, moreover, by the title of the directive and Article 1 thereof, which provides that 'this directive lays down the minimum standards for the protection of laying hens kept in battery cages'.

12 The minimum standards contained in the directive were laid down as a consequence of the Council Resolution of 22 July 1980 on the protection of laying hens in cages (OJ 1980 C 196, p. 1) and in Council Decision 78/923/EEC of 19 June 1978 approving the European Convention for the Protection of Animals kept for Farming Purposes (OJ 1978 L 323, p. 12).

13 Next, the purpose of the directive must be considered.

14 As the Advocate General pointed out in paragraph 13 of his Opinion, the directive seeks first to provide protection for animals kept for farming purposes and secondly to reduce the disparities in conditions of competition as between Member States on the market in eggs and poultry.

15 The Community legislature therefore sought to reconcile the interests of the proper functioning of the organization of the market in eggs and poultry with those of animal protection by laying down, according to the third recital in the preamble to the directive, common minimum requirements applicable to all intensive housing systems, including those for laying hens kept in battery cages.

16 Lastly, the use of the words 'as a first step' in the third recital, and the content of the fourth recital in the preamble to the directive, indicate that the latter seeks only a certain degree of harmonization in the protection of hens by means of provisions laying down minimum standards.

17 Admittedly, that interpretation of the directive's provisions may lead, as the plaintiff in the main action has pointed out, to battery hen farmers in one Member State receiving less favourable treatment than those in other Member States, thus allowing some inequalities in competition to persist. However, those are the consequences of the level of harmonization sought by those provisions, which lay down minimum standards.

18 Consequently, the reply to be given to the national court must be that Article 3(1)(a) of the Annex to Council Directive 88/166/EEC of 7 March 1988 complying with the judgment of the Court of Justice in Case 131/86 (annulment of Council Directive 86/113/EEC of 25 March 1986 laying down minimum standards for the protection of laying hens kept in battery cages) is to be interpreted as permitting Member States to lay down stricter national rules regarding cage area for laying hens kept in battery cages.

Costs

19 The costs incurred by the German Government, the United Kingdom and the Commission of the European Communities, 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 (Fourth Chamber),

in answer to the question referred to it by the Bundesverwaltungsgericht by order of 16 December 1993, hereby rules:

Article 3(1)(a) of the Annex to Council Directive 88/166/EEC of 7 March 1988 complying with the judgment of the Court of Justice in Case 131/86 (annulment of Council Directive 86/113/EEC of 25 March 1986 laying down minimum standards for the protection of laying hens kept in battery cages) is to be interpreted as permitting Member States to lay down stricter national rules regarding cage area for laying hens kept in battery cages.

Kakouris Kapteyn Murray

Delivered in open court in Luxembourg on 19 October 1995.

R. Grass
Registrar

C. N. Kakouris
President of the Fourth Chamber