JUDGMENT OF THE COURT (First Chamber)
30 April 1998 *

In Case C-47/97,

REFERENCE to the Court under Article 177 of the EC Treaty by Richmond Magistrates' Court (United Kingdom) for a preliminary ruling in the criminal proceedings before that court against

E. Clarke & Sons (Coaches) Ltd and **D. J. Ferne**

on the interpretation of Article 2 of Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ 1992 L 74, p. 1), and of Article 4(3) 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),

THE COURT (First Chamber),

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

Advocate General: S. Alber,
Registrar: L. Hewlett, Administrator,

* Language of the case: English.

after considering the written observations submitted on behalf of:

— E. Clarke & Sons (Coaches) Ltd and D. J. Ferne, by Christopher Hough, Barrister, instructed by Wedlake Saint, Solicitors,

— the United Kingdom Government, by John E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by Sara Masters, Barrister,

— the Commission of the European Communities, by Frank Benyon, Principal Legal Adviser, and Laura Pignataro, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of E. Clarke & Sons (Coaches) Ltd and D. J. Ferne, the United Kingdom Government and the Commission at the hearing on 4 December 1997,

after hearing the Opinion of the Advocate General at the sitting on 29 January 1998,

gives the following

Judgment

1 By order of 3 September 1996, received at the Court on 6 February 1997, Richmond Magistrates' Court referred to the Court, pursuant to Article 177 of the EC Treaty, four questions on the interpretation of Article 2 of Council Regulation

(EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ 1992 L 74, p. 1), and of Article 4(3) 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).

2 Those questions were raised in criminal proceedings brought against E. Clarke & Sons (Coaches) Ltd (hereinafter 'Clarke') and Mr D. J. Ferne for infringement of the obligation to use recording equipment, as provided in Article 3(1) of Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ 1985 L 370, p. 8), which provides:

'Recording equipment shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, except the vehicles referred to in Articles 4 and 14(1) of Regulation (EEC) No 3820/85.'

3 Article 14(2) of Regulation No 3821/85 provides:

'The undertaking shall keep the record sheets in good order for at least a year after their use and shall give copies to the drivers concerned who request them. The sheets shall be produced or handed over at the request of any authorised inspecting officer.'

4 Article 15(7) of that regulation provides:

'Whenever requested by an authorised inspecting officer to do so, the driver must be able to produce record sheets for the current week, and in any case for the last day of the previous week on which he drove.'

5 Article 1 of Regulation No 3820/85 reads as follows:

'in this Regulation:

...

7. "regular passenger services" means national and international services as defined in Article 1 of Council Regulation No 117/66/EEC of 28 July 1966 on the introduction of common rules for the international carriage of passengers by coach and bus.'

6 Article 4 of that regulation provides, *inter alia*:

'This Regulation shall not apply to carriage by:

...

3. vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres;

...'.

7 Regulation No 117/66 was repealed by Article 21(1) of Regulation No 684/92. Article 21(2) of the latter regulation provides:

'References to the Regulations repealed shall be taken as references to this Regulation.'

8 Article 2 of Regulation No 684/92 provides, *inter alia*:

'For the purposes of this Regulation, the following definitions shall apply:

1. Regular services

1.1. Regular services are services which provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points. Regular services shall be open to all, subject, where appropriate, to compulsory reservation.

1.2. Services, by whomsoever organised, which provide for the carriage of specified categories of passengers to the exclusion of other passengers, in so far as such services are operated under the conditions specified in 1.1., shall be deemed to be regular services. Such services are hereinafter called "special regular services".

Special regular services shall include:

(a) the carriage of workers between home and work,

(b) carriage to and from the educational institution for school pupils and students,

(c) the carriage of soldiers and their families between their state of origin and the area of their barracks,

(d) urban carriage in frontier areas.

The fact that a special service may be varied according to the needs of users shall not affect its classification as a regular service.

...

2. Shuttle services

2.1. Shuttle services are services whereby, by means of repeated outward and return journeys, groups of passengers assembled in advance are carried from a single area of departure to a single area of destination. These groups, made up of passengers who have completed the outward journey, are carried back to the place of departure in the course of a subsequent journey. "Area of departure" and "area of destination" mean respectively the place where the journey begins and the place where the journey ends, together with, in each case, localities within a radius of 50 km.

Outside the areas of departure and destination, groups may be picked up and set down respectively at up to three different places.

The area of departure and destination and the additional picking-up and setting-down points may be within the territory of one or more Member States.

...

2.3. For the purposes of point 2, a group assembled in advance is a group for which a body or person responsible in accordance with the rules of the State of establishment has taken charge of conclusion of the contract or collective payment of the services or has received all reservations and payments before departure.

3. Occasional services

3.1. Occasional services are services falling neither within the definition of a regular service nor within the definition of a shuttle service.

They include:

(a) ...

(b) services:

— which are carried out for groups of passengers previously assembled, where passengers are not brought back to their points of departure in the course of the same journey; and

— which also cover, in those cases where there is a stay at the place of destination, accommodation or other tourist services not ancillary to carriage or accommodation;

...'

9 Mr Ferne was employed as a coach driver by Clarke, established in Sydenham, near London, whose main business is the operation of tourist coaches. In January 1995 Clarke was chosen by a tour operator to convey tourists between airports, stations, hotels and tourist attractions.

10 On 9 July 1995 Mr Ferne was driving a coach belonging to Clarke on his way to collect a group of tourists at a London hotel and to convey them to the airport. At the airport he took up another group of tourists whom he conveyed to another London hotel via Hampton Court, a tourist attraction. Each component part of the journey was less than 50 km, but the aggregate of those parts was more than 50 km.

11 During an inspection carried out on the second part of the journey, Mr Ferne was unable to produce tachograph record sheets meeting the requirements laid down in Articles 13 to 15 of Regulation No 3821/85. Proceedings were then brought against Clarke for an offence under section 97 of the Road Traffic Act. In the course of those proceedings Clarke argued that, by virtue of the exception laid down in Article 4(3) of Regulation No 3820/85, it was not required to keep tachograph records.

12 Before the national court, the Vehicle Inspectorate objected to the interpretation according to which the transport services in question constituted 'special regular services' within the meaning of Article 2(1.2) of Regulation No 684/92. The transport in question, it contended, constituted rather an 'occasional service' within the meaning of Article 2(3.1)(b) of Regulation No 684/92. Accordingly, it could not benefit from the exception under Article 3 of Regulation No 3821/85.

13 In those circumstances Richmond Magistrates' Court decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are groups of passengers carried on a single journey between an airport and a hotel via, on occasions, a tourist attraction "specified categories of passengers" for the purposes of the application of Article 2(1.2) of Council Regulation (EEC) No 684/92?

2. If the answer to Question 1 is yes, is Article 2(1.2) to be construed so that the carriage of such passengers on that journey where:

(a) each group is picked up at one point of departure and set down at one point of destination (including, on occasions, a visit to a tourist attraction as part of that journey);

(b) the same or similar journey is repeated on a number of occasions pursuant to a block reservation made by a tour operator;

(c) the precise route to be taken is not pre-determined;

is a "special regular service" within the meaning of that Article?

3. If the answer to Question 2 is yes, is Article 4(3) of Council Regulation (EEC) No 3820/85 to be construed so that the distance of "the route covered by the service in question" is to be calculated by reference to:

(a) each component part of the driver's journey during the day;

(b) the aggregate of such component parts?

4. If the answer to Question 2 is no, is Article 2(3) of Council Regulation (EEC) No 684/92 to be construed so that the carriage of such passengers in such circumstances is an "occasional service" within the meaning of that Article?'

The first and second questions

14 It is clear from the order for reference that, in its first and second questions, which it is appropriate to examine together, the national court is essentially seeking to ascertain whether, for the purposes of the application of the exception provided for in Article 3(1) of Regulation No 3821/85, a passenger transport service, supplied on a number of occasions pursuant to a block reservation made by a tour operator and providing for a single journey from an airport to a hotel with a stop, on

occasions, at a tourist attraction, where the precise route to be taken is not predetermined, constitutes a regular service within the meaning of Article 4(3) of Regulation No 3820/85.

15 For the definition of regular services, reference must be made, by virtue of Article 1(7) of Regulation No 3820/85 and Article 21(2) of Regulation No 684/92, to Article 2(1) of the latter regulation.

16 That provision distinguishes between regular services and special regular services. The former are open to all and provide for the carriage of passengers at specified intervals along specified routes, passengers being taken up and set down at predetermined stopping points. Special regular services are provided under the same conditions, but only for specified categories of passengers. It must therefore be considered whether a transport service such as that at issue in the main proceedings satisfies those conditions.

17 First, the condition as to the provision of the service 'at specified intervals', in the sense contemplated by Regulation No 684/92, requires the frequency of the service to be specified with precision and to be characterised by a degree of regularity. The existence of a timetable which is available to potential users of the service is indicative of a specified frequency.

18 In the present case it is clear from the order for reference that the transport service at issue in the main proceedings is organised in accordance with the needs of tour operators. The frequency of the service is therefore not regular in nature and is not predetermined by the transport undertaking but is dependent on reservations made by customers.

19 Second, the expression 'specified route' within the meaning of Regulation No 684/92 must be taken to mean a precisely defined route. That condition must be read in conjunction with the condition that there must be predetermined stopping points. In that connection, it is not sufficient for the points of departure and arrival to be known in advance; as is clear from the wording of Article 2(1.1) of Regulation No 684/92, there must also be stopping points along the route of the journey at which passengers may be taken up and set down. It follows that the persons

concerned must be in a position to know the route to be taken and the stopping points.

20 However, the order for reference shows that the route to be taken by the transport service at issue in the main proceedings is specified only in a very general manner. Moreover, the points of departure and arrival may vary and there is no intermediate stopping point. The fact that the coaches in point in the main proceedings occasionally stop near a tourist attraction cannot be regarded as meaning that there is a stopping point in the sense contemplated by Regulation No 684/92. There is no provision for new passengers to be taken up or for passengers to be set down to end their journey at those places.

21 Finally, the term 'specified categories of passengers' within the meaning of Regulation No 684/92 must be understood as referring to passengers sharing the same status. That interpretation stems from the examples given in Article 2(1.2) of Regulation No 684/92 which refers, *inter alia*, to the carriage of workers, school pupils, students and soldiers.

22 It is not sufficient, on the other hand, for there merely to be a group of passengers assembled in advance. Such a group may form the subject of a shuttle service, as defined in Article 2(2) of Regulation No 684/92.

23 In the case in the main proceedings, the transport service is on each occasion carried out for a different group of passengers, the only common element being that they all made reservations for a journey with the same tour operator. Such passengers do not therefore belong to a single specified category.

24 In light of the foregoing, the reply to the first and second questions must therefore be that a passenger transport service, supplied on a number of occasions pursuant to a block reservation made by a tour operator and providing for a single journey from an airport to a hotel with a stop, on occasions, at a tourist attraction, where the precise route to be taken is not predetermined, does not constitute a regular service within the meaning of Article 4(3) of Regulation No 3820/85.

The third question

25 Since the third question was asked only in the event of an affirmative reply to the second question, there is no need to reply to it.

The fourth question

26 In its fourth question the national court asks whether a carriage of passengers such as that at issue in the main proceedings constitutes an occasional service within the meaning of Article 2(3) of Regulation No 684/92.

27 Since the derogation provided for in Article 4(3) of Regulation No 3820/85 applies only to regular services, and not to occasional services, there is no need to reply to that question.

Costs

28 The costs incurred by the United Kingdom Government and by 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 (First Chamber),

in answer to the questions referred to it by Richmond Magistrates' Court by order of 3 September 1996, hereby rules:

A passenger transport service, supplied on a number of occasions pursuant to a block reservation made by a tour operator and providing for a single journey from an airport to a hotel with a stop, on occasions, at a tourist attraction, where the precise route to be taken is not predetermined, does not constitute a regular service within the meaning of Article 4(3) of Regulation No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport.

Wathelet Jann Sevón

Delivered in open court in Luxembourg on 30 April 1998.

R. Grass

Registrar

M. Wathelet

President of the First Chamber