OPINION OF MR ADVOCATE GENERAL VAN GERVEN
delivered on 5 December 1989 *

Mr President,
Members of the Court,

1. This case, which at first sight seems fairly straightforward and in which the Vestre Landsret has asked the Court a question concerning the interpretation of Regulation (EEC) No 543/69 [1] (also known as the 'tachograph regulation', a term which I shall use in my Opinion), invites consideration, on closer scrutiny, of the Member States' discretion with regard to the imposition of criminal penalties for breaches of Community law and, in connection therewith, the protection by Community law of the fundamental rights of individuals against the conduct of the Member States.

Background

2. The national proceedings in this case are criminal proceedings instituted against a Danish undertaking, Hansen & Søn I/S. Hansen is the employer of a Danish driver of a heavy goods vehicle who, as was established on the basis of a check carried out on 1 March 1984 by the Dutch police, had not complied with the rest periods prescribed by the tachograph regulation (see Articles 7(2) and 11 thereof).

The tachograph regulation which, according to its final sentence, is directly applicable in all Member States, imposes a number of obligations on both the crew members of a goods vehicle (driver, driver's mate and conductor) and their employer. The rules on the driving and rest periods do not contain any express provisions concerning the obligations incumbent on the crew members' employer. [2] However, in the 1975 *Cagnon and Taquet* judgment, [3] the Court made it clear that Article 11 of the regulation, which prescribes minimum rest periods for crew members, implicitly also imposes a corresponding obligation on the employer:

'the phrase "shall have had . . . a . . . rest period" in . . . Regulation (EEC) No 543/69 . . . must be interpreted as meaning that the provisions on daily rest must be observed by crew members themselves . . . and by the employer running a road transport undertaking, who is required to take the necessary measures to permit the crew members to have the daily rest period laid down' (paragraph 10).

* Original language: Dutch.

1 — Regulation No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (OJ, English Special Edition 1969 (I), p. 170).

2 — With the exception of Article 15(1) of the tachograph regulation, which provides that 'all operators of regular services shall draw up a service timetable and a duty roster'.

3 — Judgment in Case 69/74 *Auditeur du travail* v *Cagnon and Taquet* [1975] ECR 171.

3. In the meantime, the employer's obligations have been made more explicit in Article 15 of Regulation (EEC) No 3820/85[4] which repealed and replaced Regulation No 543/69; that provision is as follows:

'(1) The transport undertaking shall organize drivers' work in such a way that drivers are able to comply with the relevant provisions of this regulation.

...

(2) The undertaking shall make periodic checks to ensure that the provisions of ... [this regulation] ... have been complied with. If breaches are found to have occurred, the undertaking shall take appropriate steps to prevent their repetition.'

However, that regulation had not yet entered into force at the time of the events which gave rise to Hansen's criminal liability.

4. Section VII of the tachograph regulation (Articles 14 to 18) contains a number of rules concerning 'control procedures and penalties'. Those rules relate to the keeping of what are known as 'control books', the keeping of duty rosters, the fitting of mechanical recording equipment to vehicles and the drawing up of a general report on the implementation of the regulation by the Commission. The dispute between the parties in the main proceedings revolves essentially around Article 18, the final provision in that section, which is worded as follows:[5]

'(1) Member States shall, in due time and after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this regulation.

Such measures shall cover *inter alia* the organization of, procedure for and means of control and the penalties to be imposed in case of breach.

(2) Member States shall assist each other in applying the provisions of this regulation and checking compliance therewith.

...'

5. So far as the penalties are concerned, Denmark opted[6] for a system of so-called 'strict criminal liability' under which, in the event of the infringement of the regulation by one of his employees, an employer may be made liable to a fine (but not to a term of imprisonment) without any proof of an intentional act or negligence on his part being required. The only pre-condition for criminal liability on the part of the employer is that the journey was undertaken primarily in his interest.[7] The order for reference

4 — Council Regulation No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (OJ 1985 L 370, p. 1).

5 — The passage cited is now set out in Article 17 of Regulation (EEC) No 3820/85.

6 — In the order for reference mention is made of a 1972 enabling law and two implementing decrees issued (in 1981 and 1986) by the Danish Minister for Labour.

7 — Drivers/employees who have infringed the provisions of the regulation may also be fined. At the hearing, Counsel for Hansen laid emphasis on the fact that drivers/employees were not fined in practice, unless they were caught *in flagrante delicto*, as was the case here. However, that assertion relates to the *procedure* for prosecuting *employees* which is currently applied in Denmark, and thus falls outside the ambit of this case which concerns the Danish *method* of penalizing *employers*. I do not intend to consider this point in further detail.

states that if the employer is an undertaking (a company limited by shares, a cooperative society or the like), the undertaking as such may be made liable to the fine (as was the case here). The national court also points out that strict criminal liability is generally the rule in Denmark in the field of environmental protection.

For the sake of clarity, I wish to distinguish the Danish system concerning the penalties to be imposed on employers from what is known as the employer's 'civil liability', a system under which the employer is held liable at civil law for payment of fines imposed on his employees, without, however, separate criminal proceedings being instituted against him.

6. Hansen, who was ordered at first instance to pay a fine of DKR 1 500 (corresponding to approximately ECU 186 at the current exchange rate), appealed against that judgment to the Vestre Landsret. It is clear that Hansen can avoid conviction only if the Danish system of strict criminal liability is held by the Court to be incompatible with Community law.

It is in the light of those facts that the national court has asked the Court whether the tachograph regulation precludes the application of national legislation under which an employer may be prosecuted where one of his employees has infringed the provisions of that regulation concerning driving and rest periods, even though neither an intentional act nor negligence can be imputed to the employer. As will become apparent in due course (see paragraph 11 below), I view the question in somewhat broader terms in the sense that it does not focus on the tachograph regulation alone.

The point at issue and the observations submitted to the Court

7. In the written observations submitted to the Court, considerable attention is paid to the question whether the Community has power to lay down rules of a criminal nature or whether the imposition of (criminal) penalties in the event of infringement of Community law is a matter (exclusively) for the Member States. At the hearing, the Danish Government and the United Kingdom, as well as the Commission, acknowledged that this problem *in itself* was not relevant for the purposes of the answer to the question submitted by the national court. I share that view. A rule of criminal law of the kind whose validity is at issue in the main proceedings was adopted in performance of the obligation imposed on the Member States by Article 18 of Regulation No 543/69 to lay down the penalties necessary for the implementation of the regulation. Hence the issue in this case is not one of power: in the circumstances, such power is indisputably vested in the Member States, whether it is a power in its own right or a delegated power. At issue is the narrower question concerning the scope of the Member States' discretion in connection with the performance of their obligations under Article 18 of the tachograph regulation.

The *United Kingdom* and the *Danish Government* have argued essentially that the approach taken in the Danish legislation with regard to strict criminal liability constitutes an entirely permissible exercise of the discretion conferred on the Member States. They are in favour of a broad interpretation of that discretion: the regulation

merely requires the Member States to lay down such penalties as are 'necessary' and 'effective'. A system of strict criminal liability satisfies those requirements because it constitutes an effective (and necessary) remedy against disguised negligence on the part of employers in ensuring compliance with the rules of the regulation by their employees. The Danish Government has explained that the use of that method of penalization is also designed to eliminate, or at least counter, the employer's financial aim (profit motive) in contravening the rule in question, and thus to encourage the adoption of control procedures and preventive measures.

The *Commission* comes to the same conclusion on the basis of a somewhat narrower argument: the introduction of a system of strict criminal liability of the kind which exists in Denmark does not have the effect of extending the obligations imposed on employers by the regulation, constitutes an effective method of ensuring compliance with those obligations and is also applied in cases involving infringement of similar provisions of national law (for instance, on the protection of the working environment).

Hansen, on the other hand, argued before the national court and at the hearing that the Danish method of penalization goes beyond the discretion left to the Member States by Regulation No 543/69 in two respects: (i) that method has the effect in relation to an employer of broadening the scope of the concept of a criminal offence beyond that which can be deduced from the *Cagnon and Taquet* judgment[8] and the later Regulation No 3820/85, and consequently has no legal basis in the regulation, and (ii) the Danish criminal legislation goes further than that of all the other Member States and thus leads to distortions in competitive relations between transport undertakings from different Member States. Hence a matter which falls within the scope of the Community's powers is *de facto* 'renationalized'.

I propose to consider the Danish approach from two angles: on the one hand, within the framework of Regulation No 543/69 (see paragraphs 8 to 10 below), and on the other within the broader framework of the fundamental principles of Community law (see paragraphs 11 to 16 below).

An 'effective' implementation of Community law

8. According to the principle of cooperation laid down in Article 5 of the EEC Treaty, the Member States are to take 'all appropriate measures, whether general or particular, to ensure fulfilment of the obligations . . . resulting from action taken by the institutions of the Community'. The Court adopted that wording in the 1977 *Amsterdam Bulb* judgment[9] specifically with regard to the imposition of penalties for the infringement of provisions of Community law. The Commission, the Danish Government and the United Kingdom were right to point out that the Member States are entitled to a broad discretion in that regard. Of course, it is a *qualified* discretion, which must satisfy two (pre-)conditions.

8 — Cited in footnote 3 above.

9 — Judgment in Case 50/76 *Amsterdam Bulb* v *Produktschap voor Siergerwassen* [1977] ECR 137, paragraph 32.

First the Member States must ensure that the penalties are effective, proportionate and dissuasive.[10] 'Effective' means, amongst other things, that the Member States must endeavour to attain and implement the objectives of the relevant provisions of Community law. It is apparent from the background[11] and the preamble to Regulation No 543/69 that the objectives pursued by that regulation are both social (harmonization and improvement of working conditions, harmonization of restrictions on working hours, improvement of road safety) and economic (harmonization of the conditions of competition in the road haulage sector, increase in costs in that sector by comparison with transport by rail). 'Proportionate and dissuasive' means that the penalties must be sufficiently, though not excessively strict, regard being had to the objectives pursued. *Secondly*, the Member States must penalize infringements of Community law in the same manner as infringements of national rules of the same kind and importance.[12]

Let us briefly consider the Danish method of penalization in the light of those pre-conditions. So far as the second pre-condition is concerned, I shall be brief. There is no doubt that the penalties laid down by the Danish legislation for infringement of the regulation correspond to the penalties for infringements of national rules of the same kind and importance.[13] So far as the *first* pre-condition is concerned, it is undeniable that to hold an employer, as it were, 'automatically' liable in criminal law in the event of infringement of a rule of Community law by one of his employees constitutes a dissuasive measure which, moreover, may effectively prompt him to verify on a regular basis compliance with the provisions on driving and rest periods by his employees and to pursue an active policy for the prevention of infringements. Moreover, Hansen does not contest this. It will become apparent in due course, when I come to examine Hansen's second argument (see paragraph 10 below), that the method in question, as applied, at any rate in my view, is not disproportionate either.

However, Hansen's assertion is concerned not so much with the aforesaid pre-conditions but is based, as stated earlier, on the premiss that the Danish legislation goes beyond the obligation imposed by Regulation No 543/69 and leads to distortions between transport undertakings from different Member States. In my view, however, Hansen's arguments are not persuasive.

9. With regard to Hansen's *first argument*, I fail to see how the Danish method of penalization went beyond the limits (set by reference to the regulation) of the obligations incumbent upon the employer. That method is designed to penalize disguised negligence on the part of the employer who (i) is required to adopt the necessary measures to enable his employees to benefit

10 — See the judgments in Case 68/88 *Commission* v *Greece* [1989] ECR 2965, paragraph 24, in Case 14/83 *Von Colson and Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1891, paragraph 15 and in Case 79/83 *Harz* v *Deutsche Tradax* [1984] ECR 1921, in particular paragraphs 21 to 28

11 — Set out in detail in A Butt Philip: 'The application of the EEC regulations on drivers' hours and tachographs in the road transport sector', in *Making European policies work* (Edited by H Siedentopf and J Ziller), London, 1988, p. 88 et seq

12 — See the judgment in Case 68/88, already cited in footnote 10, paragraph 24.

13 — The Danish Government has drawn attention to the fact that the system of strict criminal liability is also used in the legislation on the protection of the working environment. According to the documentation available to the Court, there are other instances of its application, such as the legislation on environmental protection, on nuclear power-stations and on customs matters

from the rules on driving and rest periods (see the *Cagnon and Taquet* judgment), and (ii) must in practice carry out checks in compliance with the provisions of the regulation: in my view, the control procedures provided for in Section VII of the regulation are intended not only to permit checks on the part of the authorities, but also to enable the employer to carry out preventive checks.[14] The Danish approach does not extend the scope of those obligations, but merely imposes strict(er) penalties in connection therewith by automatically penalizing an employer whenever one of his employees infringes the rules in question.

Hansen seems to be saying that the regulation imposes on the employer only an obligation as to the means,[15] while the Danish method of penalization has transformed it *de facto* into an obligation as to the result to be achieved. Even if that is the case, it is exclusively a consequence of the method applied. The national legislature has a discretion in that regard: in the *Amsterdam Bulb* judgment[16] referred to earlier, the Court stated that where the Member States adopt measures in implementation of Article 5 of the Treaty in order to ensure compliance with the rules of Community law, they are competent

'in the absence of any provision in the Community rules providing for specific sanctions to be imposed on individuals for a failure to observe those rules, ... to adopt such sanctions as appear to them to be appropriate' (paragraph 33).

In any event, even if implementation by a Member State were to lead to an extension of the employer's actual obligations, such an extension would still not necessarily be incompatible with the tachograph regulation. That is clear from Article 13 of the regulation, which expressly authorizes such an extension so far as the employees' obligations are concerned. It is immediately apparent from that provision, in my view, that the Member States may — with a view to attaining the objectives of the regulation — extend the employer's obligations (which are not expressly set out in the regulation but are specified in detail in the *Cagnon and Taquet* judgment).

10. As stated earlier, Hansen contends in its *second argument* that the application of a system of strict criminal liability leads to distortions in the conditions of competition between Member States. It is quite true that the harmonization of the conditions of competition was one of the principal aims of Regulation No 543/69. The form of a regulation was chosen with a view to imposing a number of detailed and directly applicable obligations on individuals and undertakings operating in the transport sector so as to avoid divergences in national legislation.[17] That aim of maximum harmonization proved capable of attainment as regards the applicable rules (of conduct), but not as regards the checks and penalties provided for by those rules. Notwithstanding the Commission's insistence, no uniform rules

14 — Both obligations are now expressly incorporated in the new version of the tachograph regulation (see paragraph 3 above). Hence the conclusions which I shall reach are equally valid with regard to the present version of that regulation.

15 — Hansen deduces the scope of its obligations from Article 15 of the 1985 tachograph regulation (set out in paragraph 3 above). In its view, that regulation merely clarifies what was previously laid down by Regulation No 543/69 according to the *Cagnon and Taquet* judgment.

16 — Cited in footnote 9 above.

17 — A. Butt Philip, loc cit., at p. 90.

were ever adopted in that sector reportedly on account of the express opposition of the Member States to relinquishing their powers in the field of criminal law.[18] As a direct result of that situation, the checks and penalties prescribed by the rules of the regulation vary from one Member State to another.

Admittedly, the lack of harmonization of the rules relating to checks and penalties does not mean that the Member States have a free hand. As stated earlier, Article 5 of the Treaty imposes restrictions on the Member States' choice as regards the method of penalization, which are based *inter alia* on the objectives of the regulation, including the prevention of distortions of the conditions of competition within the common market.[19] Unlike Hansen, however, I consider — although the final assessment is of course a matter for the national court — that a system such as the Danish one gives rise to no such distortions. A recent comparative survey of the imposition of penalties for non-compliance with the rules of the tachograph regulation in the Member States shows that the penalties imposed by Denmark are not markedly more or less severe than those imposed in the other Member States.[20] At the hearing the Danish Government stated that the usual fine for an infringement is approximately DKR 1 000 (approximately ECU 124 at the current rate of exchange), and that in practice fines increase sharply only in the event of repeated infringements. Nor do the frequency of checks and the policy of bringing prosecutions for non-compliance in Denmark differ significantly from the practice in other Member States.[21] Even though it would seem, at least as regards the penalties attaching to the rules of the tachograph regulation, that Denmark is the only country which takes the approach involving strict criminal liability, in economic terms that approach does not lead to a result which differs from the (more widespread) system of making the employer liable at civil law for fines imposed on his employees. In those circumstances, in my view, there is no distortion of the conditions of competition.

18 — A. Butt Philip, loc. cit., at p. 105.

19 — The preamble to the Resolution (EEC) 85/C 348/01 of the Council and the Representatives of the Governments of the Member States, meeting within the Council, of 20 December 1985 (OJ 1985 C 348, p. 1) expressly states, after all, 'that it is necessary to ensure *homogenous* and effective implementation of the regulations in question by Member States, in particular in order to avoid distortions of the conditions of competition between transport undertakings' (see the last recital in the preamble; emphasis added). That resolution was adopted at the same time as Regulation (EEC) No 3820/85

20 — See the table in A. Butt Philip, loc. cit., at pp. 103 and 104.

Nulla poena sine culpa: the question of fundamental rights

11. Even though I conclude on the basis of the foregoing considerations that a system of strict criminal liability of the kind described above penalizes non-compliance with the rules laid down by Regulation No 543/69 in a manner which is effective, that conclusion does not bring my investigation to an end. That is foreshadowed in a question which the Court asked at the hearing: does a system which permits a person to be convicted without any proof of fault or negligence on his part come into conflict with the principle *nulla poena sine culpa*?

The Danish Government stated at the hearing that the introduction in Denmark of strict criminal liability did not give rise to any constitutional objections. However, it is not an internal Danish problem that is at issue here (which would fall outside the Court's jurisdiction), since the contested provision of Danish law was introduced *in implementation of* a provision of Community

21 — Ibid.

law, namely Article 18 of Regulation No 543/69. Since the Member States are required to give effect to Community law in compliance with the general principles thereof (and, more particularly, with the fundamental rights of individuals), the national court must assess national implementing legislation in the light of Community law in that respect as well.[22] Specifically, the question is whether Regulation No 543/69 permits Member States, in the light of the fundamental principles of Community law, to penalize infringements of the regulation by means of a system of strict criminal liability. Having regard to the recent case-law of the European Court of Human Rights and the fundamental interest in compliance with fundamental rights in the Community legal order, I shall briefly consider that question in order to supplement the answer to be given to the national court. Besides, the present version of the tachograph regulation raises the same problem.

12. It was made clear at the hearing, in reply to questions put by the Court, that under the Danish system the employer can in no way escape being penalized once it is established that one of his employees has infringed the rules of the regulation and that the journey took place primarily in the employer's interest. There is no need for evidence of any fault (intentional act or negligence) on the employer's part: the mere fact that an employee of his has committed an infringement raises, as it were, an irrebuttable presumption (in other words a legal fiction) that the employer was negligent in exercising supervision over his employees and/or in pursuing an active policy of prevention. How does a system of that kind stand in relation to the general principles of Community law, in particular fundamental rights? In accordance with the established case-law of the Court,[23] I shall consider whether such a system can be regarded as consistent with the constitutional traditions common to the Member States and with international declarations of intent concerning the protection of human rights, to which the Member States have either adhered or contributed, with particular reference to the rules contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as 'the Convention').

A preliminary remark I wish to make is that legislation such as Denmark's undoubtedly contains penalties of a *criminal* nature, being both deterrent and punitive, which are intended to penalize and prevent infringements.[24]

13. Let us begin with the constitutional rules and practices of the Member States.

22 — Support for this view can be found in the recent case-law of the Court. See the judgment in Case 12/86 *Demirel* v *Stadt Schwäbish Gmünd* [1987] ECR 3747, paragraph 28, in which the Court refused to examine the compatibility of national rules with Article 8 of the European Convention on Human Rights since they 'did not have to implement a provision of Community law'. See also the judgment in Case 5/88 *Wachauf* v *Germany* [1989] ECR 2609, paragraph 19, in which the Court stated that the requirements resulting from the aforesaid Convention 'are also binding on the Member States when they implement Community rules . . .'; see further the Opinion of Mr Advocate General Jacobs in that case, who finds it self-evident that 'when acting in pursuance of powers granted under Community law, Member States must be subject to the same constraints . . . as the Community legislator' (p. 14 of the typed version). For further references, see K. Lenaerts: *Le juge et la Constitution aux États-Unis d'Amérique et dans l'ordre juridique européen*, 1988, p. 580 et seq.

23 — See, for instance, the recent judgment in Joined Cases 46/87 and 227/88 *Hoechst* v *Commission* [1989] ECR 2859, and the *Wachauf* judgment, already cited in footnote 22, paragraph 18, with reference to the judgment in Case 44/89 *Hauer* v *Land Rheinland-Pfalz* [1979] ECR 3727.

24 — See the criteria adopted by the European Court of Human Rights in its judgment of 21 February 1984 in *Öztürk*, *Publications of the European Court of Human Rights*, Series A, Vol. 73, and its judgment of 25 August 1987 in *Lutz*, ibid, Vol. 123-A.

Clearly, although the question whether an offence is punishable generally depends on the possibility of imputing it in one way or another to the defendant (*nulla poena sina culpa*) there are a number of — as a rule fairly exceptional — cases in which that principle may be derogated from. According to the documents available to the Court, there are four Member States in which employers or undertakings may, in specific areas such as environmental protection, protection of the working environment and consumer protection, be made liable in criminal law for infringements committed by their employees or appointees in the exercise of their duties, even though such infringements cannot be imputed to the employer or undertaking personally.[25] The justification for that state of affairs is said to be, amongst other things, the need for effective protection in a given area as a matter of public interest, simplification of the penalty attaching to a given set of rules (particularly in the case of offences in which the 'true' perpetrator cannot be identified either easily or at all), the promotion of an active policy of prevention and so on.

The practice in some other Member States, which is largely based on the same considerations, is to make employers or undertakings liable at civil law for the payment of fines imposed as a result of the conduct of their employees or appointees. Although in formal terms no *criminal* penalty is involved here (in some cases also because under the legal system concerned no such penalties may be imposed on legal persons), a practice of that kind produces substantially the same effects. On the basis of all those factors taken together, it is impossible, in my view, to deduce from the constitutional tradition common to the Member States the existence of an *absolute* prohibition on the introduction in certain specified circumstances of a system of strict criminal liability.

14. The same qualified approach emerges from the interpretation given by the European Court of Human Rights to Article 6(2) of the Convention. According to that provision, everyone charged with a criminal offence is presumed innocent until proved guilty according to law. The European Court has reaffirmed that although the Convention does not in principle prohibit presumptions of law or of fact from being raised in the field of criminal law, the Member States must remain within 'reasonable' limits in that regard: account must be taken of the importance of the interests at stake and the observance of the rights of the defence.[26] That assessment is consistent with the rule of proportionality, which the Court has applied in its decisions on the observance of fundamental rights in Community law: restrictions may be imposed on the exercise of those rights, provided the restrictions correspond to the objectives of general interest pursued thereby and do not impair the very substance of those rights.[27] Besides, as we know, the rule of proportionality has been applied by the Court in its decisions for some considerable time for the purpose of assessing the control procedures and penalty measures introduced by the Member States in relation to one of the freedoms guaranteed by the Treaties. In that regard as well, restrictions are permissible provided they go no further than what is strictly

25 — My understanding of this legislation is that it is also based on the conviction that the employer bears a special responsibility for certain dangerous acts carried out by persons at his request and in his (economic) interest.

26 — See the judgment of 7 October 1988 in *Salabiaku*, published in Series A, Vol 141-A, in particular paragraph 28.

27 — See the *Wachauf* judgment, already cited in footnote 22, paragraph 18.

necessary, do not regulate the control procedures in such a way as to eliminate the freedom required by the Treaty and do not impose on individuals penalties which are so disproportionate to the gravity of the infringement as to hinder the exercise of that freedom. [28]

The rule of proportionality applied by the European Court of Human Rights in connection with Article 6 of the Convention accordingly admits of certain restrictions to the principle *nulla poena sine culpa.* If that is true (as reaffirmed by the European Court) with regard to employers who are natural persons, it is true *a fortiori* with regard to employers who are legal persons (as is the case in the dispute in the main proceedings): legal persons or undertakings may not, according to the case-law of the Court of Justice, simply and automatically rely on the rights conferred by the Convention. [29]

15. It seems to me that a system of strict criminal liability can pass the test of proportionality where it is apparent that the system is aimed at important interests, such as the promotion of road safety and the improvement of working conditions for employees, and that its application does not involve the imposition of excessively severe penalties. The interests safeguarded by a system of that kind are frequently of a 'general' nature, in the sense that infringement of the rule is not necessarily detrimental to specific individuals (which in practice greatly lessens the risk of prosecution and punishment) but instead can even be economically advantageous for the employer. In those circumstances, a Member State's interest in protecting such interests by recourse to criminal law, without any requirement of fault or culpability, can take precedence over the right of employers or undertakings as a matter of principle to be penalized only in respect of facts which can be imputed to them personally. Evidently it is for the national court to make that assessment, having regard to the relevant Danish legislation.

Conclusion

16. In the light of the foregoing considerations, I propose that the question submitted by the Vestre Landsret for a preliminary ruling should be answered as follows:

28 — See the judgments in Case 203/80 *Casati* [1981] ECR 2595, paragraph 27, in Case 118/75 *Watson and Belmann* [1976] ECR 1185, paragraphs 17 and 18 and in Case 41/76 *Donckerwolke* v *Procureur de la République* [1976] ECR 1921, paragraphs 32 to 38.

29 — As regards Article 6 of the Convention, see most recently the judgments in Case 374/87 *Orkem* v *Commission* [1989] ECR 3283, paragraphs 30 and 31, and in Case 27/88 *Solvay* v *Commission* [1989] ECR 3355, paragraphs 27 and 28. See also the Opinion of Mr Advocate General Darmon in those cases, [1989] ECR 3301, paragraphs 135 to 137 and 145. As regards Article 8 of the Convention, see the judgment in Case 136/79 *National Panasonic* v *Commission* [1980] ECR 2033, paragraph 19.

'Neither Article 18 of Regulation No 543/69 on the harmonization of certain social legislation relating to road transport nor the general principles of Community law preclude the introduction by a Member State of a system of "strict criminal liability" under which an employer whose employees/drivers have infringed Articles 7(2) and 11 of the aforesaid regulation may be penalized by a fine, even though the infringement cannot be imputed to an intentional act or to negligence on the employer's part, where it is apparent that the Member State's interest in attaining the objectives of the regulation by those means takes precedence over the employer's interest in the existence of fault as a condition for the imposition of penalties.'