REPORT FOR THE HEARING
delivered in Case 241/86 *

I — Facts and procedure

1. *Relevant legislative provisions*

(a) *Belgian legislation*

Article 31 of the Belgian Royal Decree of 15 March 1968, as amended by the Royal Decree of 12 December 1975 (*Moniteur belge* 1975, p. 16518) and the Royal Decree of 16 November 1984 (*Moniteur belge* 1985, p. 275), laying down general rules on the technical conditions which must be satisfied by motor vehicles and their trailers, provides that the height of vehicles whose approval was requested before 1 January 1986 may not exceed four metres.

Article 2 (1) defines the scope of the Royal Decree as follows:

'These general rules shall apply to motor vehicles operated with Belgian registration plates and Belgian-registered trailers towed by them.'

In the case of foreign-registered vehicles, Article 2 (4) provides that, in order to be permitted on public roads in Belgium, such vehicles must satisfy the technical requirements laid down by the Geneva Convention on Road Traffic of 19 September 1949 and the annexes thereto as well as the requirements laid down by the legislation in force in the country of registration, in particular as regards the load carried. The same applies to foreign-registered trailers towed by them or by a motor vehicle registered in Belgium. According to Article 23 of the International Convention on Road Traffic (*Pasinomie* 1954, p. 430), the maximum weights and heights of vehicles which may be used on the roads of a Contracting State are to be governed by national legislation. Article 46 (3) of the Royal Decree of 1 December 1975, laying down general rules for the regulation of road traffic, provides that 'the height of a laden vehicle may not exceed four metres'.

(b) *Community legislation*

On 19 December 1984, acting pursuant to Articles 75 and 76 of the EEC Treaty, the Council adopted Directive 85/3 on the weights, dimensions and certain other technical characteristics of certain road vehicles (Official Journal 1985, L 2, p. 14). Article 3 (1) of the directive provides that Member States may not reject or prohibit the use on their territories in international traffic of vehicles registered or put into circulation in any Member State for reasons relating to their weights and dimensions provided that such vehicles comply with the limit values specified in Annex I. That provision is to apply notwithstanding the fact that the competent authority of the Member State in which the vehicles are registered or put into circulation has authorized limits exceeding those laid down in

* Language of the Case: Dutch.

Annex I. Point 1.3 of Annex I lays down a maximum height of four metres for any vehicle.

Finally, Article 7 of the directive provides that Member States are to take the measures necessary to comply with the directive as from 1 July 1986 as regards the application of all provisions other than Article 4 and Annex II.

2. *Background to the main proceedings*

On 16 August 1985 the Belgian police stopped a French-registered lorry towing a semi-trailer. The driver, Mr Jacques Bodin, was employed by Etablissements Minguet & Thomas, who bore civil liability as his employer. The police found that the vehicle's height exceeded four metres, the maximum height permitted in Belgium. Those facts gave rise to criminal proceedings against Mr Bodin and Éts Minguet & Thomas. At a hearing before the Politierechtbank (Local Criminal Court) Harelbeke, the accused submitted that under French legislation the maximum permitted height was 4.30 metres. They accordingly relied on Community law, in particular the provisions relating to the free movement of goods, arguing that it would be incompatible with those provisions to apply to them the Belgian legislation on the maximum height of vehicles.

3. *The question put to the Court*

By a judgment of 4 June 1986, the Politierechtbank Harelbeke stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

'Is a provision of a royal decree, in this case Article 31 (1), fourth subparagraph, of the Royal Decree of 15 March 1968, prescribing a maximum permitted height of four metres for all vehicles and trailers in the territory of a Member State, contrary to the rules regarding the free movement of goods and the freedom to provide services and the provisions relating to transport laid down in the EEC Treaty where that maximum height does not exist in other Member States?'

4. *Procedure*

That judgment was lodged at the Court Registry on 11 September 1986.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Jacques Bodin, the accused in the main proceedings, and Éts Minguet & Thomas, the party civilly liable, represented by Luc van Dorpe, of the Bar of Kortrijk, and Pierre van Herreweghe, of the Bar of Amiens, by the Government of the Kingdom of Belgium, represented by H. de Belder, Director of European Affairs at the Ministry of Foreign Relations, acting as Agent, the Government of the Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by Ivo M. Braguglia, Avvocato dello Stato, and the Commission of the European Communities, represented by Thomas van Rijn, a member of its Legal Department, acting as Agent.

By an order of 29 January 1987 the Court assigned the case to the Sixth Chamber pursuant to Article 95 (1) and (2) of the Rules of Procedure.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it requested the Commission to reply in writing to a question.

II — Summary of the written observations submitted to the Court

In the view of *Mr Bodin and Éts Minguet & Thomas,* a technical requirement imposing a maximum height of four metres for all lorries is arbitrary in the absence of any real technical necessity. The application of that requirement to vehicles registered in another Member State constitutes discrimination against undertakings in that Member State as well as an obstacle to the free movement of goods and free competition in the common market. If lorries could be denied entry at the frontier on the ground that they did not satisfy Belgian technical requirements, French transport undertakings would not be able to use the greater part of their fleets for transport within the common market.

In particular, they refer to Article 76 of the EEC Treaty, which provides that Member States may not make the various provisions governing transport less favourable in their direct or indirect effect on carriers of other Member States as compared with national carriers. Since there is no provision for a maximum height of four metres in other Member States, the contested provision of the Belgian Royal Decree has the effect of putting national carriers at an advantage.

The *Belgian Government* confines itself to the observation that the Belgian legislation is in conformity with Directive 85/3 and that the maximum permitted height in other Member States, for example the Federal Republic of Germany and the Netherlands, is also four metres.

The *Italian Government* also refers to Directive 85/3. It points out that that directive was already in force at the time of the offences alleged against Mr Bodin, namely 16 August 1985. Accordingly the fact that the Belgian provision is in conformity with the directive may render the Politierechtbank's question purposeless.

Finally, the Italian Government observes that it would be difficult to conceive how a national provision designed to ensure road safety can constitute a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the EEC Treaty. In any event, the national provision is justified on the grounds of 'public security' and the 'protection of health and life of humans' mentioned in Article 36 of the Treaty.

The *Commission* first states that a provision such as Article 31 of the Belgian Royal Decree, which prohibits the entry into national territory of vehicles not satisfying certain technical requirements, may, in principle, be regarded as a measure having equivalent effect within the meaning of Article 30. It observes that vehicles are to be regarded as goods covered by Article 30 of the Treaty and that consequently their freedom of movement within the Community is guaranteed. Furthermore, the quantity and nature of the goods which may be transported by a vehicle are directly influenced by the provision on maximum heights. Because such a provision is applicable to both national vehicles and vehicles from other Member States, it is necessary, in accordance with the judgments of the Court, to examine whether it is justified by imperative requirements to the effectiveness of fiscal supervision, fair trading and consumer protection. If, as in this instance, that is not the case, it is necessary to ascertain whether a maximum height of four metres laid down for vehicles is justified under Article 36 of the Treaty, in particular on grounds related to road safety

and the protection of public health. That may be the case since the maximum limit may be governed by the state of viaducts or tunnels or even roads and bridges. Moreover, there is no reason to suppose that the prohibition in question constitutes a means of arbitrary discrimination or a disguised restriction on trade between Member States.

In the second place, the Commission submits that the provisions of the Treaty relating to the freedom to provide services are not applicable since Article 61 of the Treaty provides that the freedom to provide services in the field of transport is to be governed by the provisions of the title relating to transport. In that connection the Commission states that that title does not contain provisions capable of being applied in this case. However, Directive 85/3 lays down a Community provision on the maximum height of vehicles which is identical to the Belgian provision.

In the light of those considerations, the Commission proposes that the question put to the Court be answered as follows:

'The rules of Community law, in particular the provisions relating to the free movement of goods, the freedom to provide services and to transport, must be interpreted as meaning that they do not preclude a Member State from maintaining in force a national legislative provision laying down a maximum permitted height of four metres for any vehicle or trailer on its national territory, when there is no such maximum height in other Member States.'

T. Koopmans
Judge-Rapporteur