OPINION OF ADVOCATE GENERAL LÉGER

delivered on 15 May 2003 [1]

1. This request for a preliminary ruling concerns the interpretation of Article 29 EC. The Bayerisches Oberstes Landesgericht (Supreme Court of Bavaria) (Germany) wishes to know whether that provision precludes national legislation which prohibits, on pain of criminal penalties, the use within the Member State concerned of a vehicle with temporary number plates issued by the competent authorities of the Member State to which that vehicle is intended to be exported.

Relevant national legislation

2. In Germany, privately-owned vehicles must be registered in order to be used on German territory. The national provisions covering the administrative procedure for the registration of such vehicles are contained in the Straßenverkehrsgesetz (Road Traffic Act; the 'StVG') and in the Straßenverkehrs- Zulassungs-Ordnung (Motor Vehicle Registration Order; 'the StVZO').

3. Paragraph 22(1)(1) and (2) of the StVG provides:

'(1) Anyone who, for an unlawful purpose:

1. Attaches to a motor vehicle or trailer for which a number plate has not been issued or which has not been registered a number plate resembling an official number plate;

...

shall, unless the offence is punishable by a heavier penalty under any other provision, be sentenced to up to one year's imprisonment or a fine.

(2) The same penalty shall be imposed on any person using on the public highway or in a public place a motor vehicle or

1 — Original language: French.

trailer whose number plates he knows to be forged, falsified or cancelled as described in subparagraph (1)(1) to (3).'

...

3. uses on the public highway a motor vehicle or trailer contrary to Paragraph 18(1) without the necessary registration or contrary to Paragraph 18(3) without the necessary vehicle authorisation...

4. Paragraph 18(1) of the StVZO provides:

'Compulsory registration

shall be guilty of an offence under Paragraph 24 of the Straßenverkehrsgesetz.'

(1) A motor vehicle designed to reach a maximum speed in excess of six kilometres per hour and its trailer... shall be used on the public highway only if authorised for such use by the grant of a vehicle authorisation or EC Type Approval and the issue of an official number plate for motor vehicles or trailers by the administrative authorities (registration authorities).

...'

6. It is clear from the order for reference that, according to the above provisions, a vehicle purchased in Germany must be registered by the German authorities in order that it may be used in that State or for the purpose of its export to another Member State. Thus, it is illegal to attach Italian temporary number plates to a used vehicle purchased in Germany and to use that vehicle in Germany with the aim of driving it to Italy.

5. Paragraph 18 is to be read in conjunction with Paragraph 69a(2)(3) of the StVZO which provides:

Facts and the main proceedings

'(2) Anyone who intentionally or negligently

7. Mr Grilli is an Italian national with a vehicle sales business in Italy. In August

2000, he travelled to Germany to buy there a used vehicle, to which he attached temporary number plates issued by the Italian administrative authorities.

8. During his return journey to Italy in that vehicle, the German police checked Mr Grilli and confiscated the Italian temporary number plates. On the same day German 'export plates' were issued to him, which he attached to the vehicle, and he continued his journey to Italy.

9. As a result of that check, criminal proceedings were brought against Mr Grilli and led to his being sentenced by the Amtsgericht Ebersberg (Local Court, Ebersberg) (Germany) to a fine of DEM 1 500 for wrongful use of number plates contrary to Paragraph 22(1)(1) and (2) of the StVG and Paragraph 18 combined with Paragraph 69a(2)(3) of the StVZO.

10. Mr Grilli applied to have that sentence set aside and was acquitted by the Amtsgericht Ebersberg. The court found that he had, in fact, infringed the above-cited provisions of the StVG and the StVZO, but that his error was inevitable because of the ambiguous contents of the German-Italian Agreement of 22 December 1993 on the mutual recognition of temporary number plates and road test plates (hereinafter 'the German-Italian Agreement'). [2]

11. The prosecution appealed on a point of law against that decision to the Bayerisches Oberstes Landesgericht, which considered that Mr Grilli had been wrongly acquitted. In its order for reference, [3] the national court stated that the German-Italian Agreement allows only the transfer of vehicles with Italian temporary plates from Italy to Germany and not in the opposite direction as occurred in this case.

12. The referring court, however, expressed doubts as to the possible incompatibility of Article 29 EC with a prohibition such as the one in this case. In that court's view, the temporary number plates provided for by the German-Italian Agreement are intended to facilitate exports or imports between the two Member States. The prohibition on attaching Italian temporary number plates to a vehicle purchased in Germany in order to transfer it to Italy could amount to a measure having equivalent effect to a quantitative restriction on exports. [4]

2 — Which entered into force on 1 January 1994. According to the Amtsgericht, because of the German-Italian Agreement's ambiguity, Mr Grilli may have thought that he was allowed to attach Italian temporary number plates to a vehicle purchased in Germany.

3 — Page 3.

4 — See the order for reference, p. 4.

13. Finally, the referring court expressed doubts as regards the criminal penalties prescribed by the German legislation in respect of Mr Grilli which are, in its view, disproportionate in the light of the decision in *Skanavi and Chryssanthakopoulos*. [5]

The question referred for a preliminary ruling

14. The national court therefore decided to refer the following question to the Court for a preliminary ruling:

'Is Article 29 EC to be interpreted as precluding a national rule that makes it a criminal offence for an Italian national who obtains a temporary registration number from the competent Italian authorities to attach number plates bearing that number to a vehicle offered for sale in Germany, and then drive that vehicle on the German public highway towards Italy?'

Analysis

15. By its question, the national court is seeking to ascertain whether Article 29 EC precludes legislation of a Member State which prohibits the purchase of a vehicle in its territory and the driving of that vehicle to another Member State by a national of another Member State, who attaches temporary number plates issued by the competent national authorities of his Member State for the purpose of exporting the vehicle to his own State. In addition, it is uncertain about the proportionality of the criminal penalties prescribed by the said national legislation in the light of the relevant provisions of Community law.

16. It is true, as the Commission pointed out, [6] that the national court has provided the Court with little information on the factual and legal background. In my view, however, it is possible for the Court to provide guidance on the interpretation of Community law.

17. I shall examine the two parts of the question referred by the national court.

5 — Case C-193/94 [1996] ECR I-929.

6 — See its written observations, paragraph 16 et seq.

On the existence of a measure having equivalent effect to a quantitative restriction on exports

18. I note, first of all, that there are no Community provisions governing the administrative procedure for the registration of vehicles generally and, more particularly, for the purposes of export to another Member State. [7] To date, the only harmonisation measures in the sphere of vehicle taxation relate to tax exemptions for vehicles temporarily imported by non-residents, [8] to the application by Member States of taxes on certain vehicles used for the carriage of goods by road [9] and to vehicle registration documents. [10] None of those directives specifies the national authorities competent to register vehicles.

19. In the absence of Community rules on the matter, the Member States alone are competent to determine the statutory conditions governing the administrative procedure for the registration of vehicles for export to another Member State and also the penalties applicable in the event of a breach of those conditions. [11] That competence must be exercised, however, in compliance with the fundamental freedoms provided for by the EC Treaty, [12] in particular in Article 29 EC.

20. Article 29 EC provides that '[q]uantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between the Member States'.

21. According to settled case-law, that provision of the Treaty prohibits 'national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade in such a way as to provide a particular advantage for national production or for the domestic market of the State in question at the expense of the production or of the trade of other Member States'. [13]

7 — The Commission states that there are only common provisions concerning certain conditions relating to the registration of vehicles, but not those relating to this case (see its written observations, paragraph 20).

8 — Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ 1983 L 105, p. 59).

9 — Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures (OJ 1993 L 279, p. 32). That directive was annulled by a judgment of 5 July 1995 in Case C-21/94 *Parliament* v *Council* [1995] ECR I-1827. It continues, however, to apply until the Council adopts new legislation in that respect.

10 — Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles (OJ 1999 L 138, p. 57). The Member States have until 1 June 2004 to transpose that directive into national law.

11 — Bilateral agreements on reciprocity, such as the German-Italian Agreement, may be concluded covering the requirements for temporary registration.

12 — See Case 97/83 *Melkunie* [1984] ECR 2367, paragraphs 9 and 10, and Case C-121/00 *Hahn* [2002] ECR I-9193, paragraph 34.

13 — See Case 15/79 *Groenveld* [1979] ECR 3409, paragraph 7, taking the opposite view to the Opinion in that case of Advocate General Capotorti, who had applied the definition in Case 8/74 *Dassonville* [1974] ECR 837 to Articles 28 EC and 29 EC without making any distinction (paragraph 3). See, also, Case C-80/92 *Commission* v *Belgium* [1994] ECR I-1019, paragraph 24, and Case C-209/98 *Sydhavnens Sten & Grus* [2000] ECR I-3743, paragraph 34.

22. The Court has held, in addition, that, in contrast to Article 28 EC relating to quantitative restrictions on imports and all measures having equivalent effect, Article 29 EC prohibits only national measures which discriminate between products intended for export and those which are marketed within the Member State in question. [14]

23. It is clear from the order for reference that the German legislation requires that a used vehicle, purchased in Germany and being used there, is to carry temporary number plates issued by the German authorities and that is so even if the vehicle is intended for export. [15]

24. Indeed, the national court stated that the German legislation prohibits a situation, such as Mr Grilli's, in which temporary number plates issued by the competent Italian authorities were attached to a vehicle purchased in Germany for the purpose of its transfer to Italy.

25. The national court states that, transferring to Italy a vehicle purchased in Germany for export, to which have been attached temporary number plates issued by the competent Italian authorities, is caught by Paragraph 22(1)(1) and (2) of the StVG. [16]

26. Given the preceding matters, it is for the national court to examine whether, in actual fact, the detailed rules laid down by the German legislation for the issue of temporary number plates are compatible with Community law, and to do so in the light of the conditions deduced from the above-cited case-law. The national court must thus compare the detailed rules laid down by the German legislation for the administrative procedure of the registration of vehicles in Germany with those laid down for the administrative procedure of the registration of vehicles in Germany, but for the purpose of their export to another Member State.

27. It will be able to establish that there is a restriction on exports if it finds that there is a difference in treatment between the administrative procedure for the registration of a vehicle for use in Germany and that for a vehicle intended for export and that the difference is likely to restrict

14 — See, particularly, *Groenveld*, cited above, paragraphs 7 and 9. See also, on that point, Oliver, P., *Free movement of goods in the European Community: under Article 28 to 30 of the EC Treaty*, London, Sweet and Maxwell, 2003, 4th edition, pp. 207 to 214; Léger, P., *Commentaire article par article des traités EU et CE (Article by article commentary on the EU and EC Treaties)*, Paris, Dalloz, 2000, pp. 290 to 294; Commentaire Megret, *Préambule, Principes, Libre circulation des marchandises (Preamble, principles, free movement of goods)*, Brussels, Collection IEE, 1992, 2nd edition, pp. 265 to 268, and for a lively criticism of that case-law, Mattera, A., *Le marché unique européen (The Single European Market)*, Brussels, Jupiter, 1990, 2nd edition, pp. 511 to 523.

15 — In the light of the German-Italian Agreement, 'only vehicles purchased in Germany could be transferred to Italy with German, not Italian, temporary registration plates' (see order for reference, p. 4).

16 — The German legislation treats the situation of Mr Grilli, who has temporary plates issued in good and proper form by the Italian authorities, in the same way as that of a person who has used forged or falsified plates.

patterns of exports. [17] Likewise, the referring court must ascertain whether the national legislation creates a difference in treatment between the domestic trade of a Member State and its external trade and whether it follows from such finding that such difference favours its national trade at the expense of that of another Member.

28. If such is the case, that is to say if the national legislation amounts to a measure having equivalent effect to a quantitative restriction on exports, the national court will then have to consider whether it is justifiable under Article 30 EC, which provides for the circumstances by which a Member State may find it necessary to derogate from the free movement of goods.

29. In particular, the referring court will have to ascertain whether the national legislation can be justified on grounds of public policy or public security. It will have to establish that the national legislation is necessary to attain the intended purpose and that it is not arbitrary discrimination or a disguised restriction on trade between Member States. [18]

17 — See my Opinion in *Sydhavnens Sten & Grus*, cited above, point 115.

18 — See Case 50/85 *Schloh* [1986] ECR 1855, paragraph 13.

30. Hence, if the national court finds that a national rule:

— is likely to restrict patterns of exports,

— creates a difference in treatment between the domestic trade of a State and its external trade,

— gives rise to an advantage for that State's national trade at the expense of that of another Member State and cannot be justified under Article 30 EC,

then such national rule must be regarded as a measure having equivalent effect to a quantitative restriction on exports within the meaning of Article 29 EC.

The criminal penalties laid down by the German legislation

31. In its order for reference, the national court expresses doubts as regards the

criminal penalties laid down by the German legislation in question which might be regarded as disproportionate in the light of the judgment in *Skanavi and Chryssanthakopoulos*, cited above.

32. According to settled case-law, the Member States may not impose disproportionate criminal penalties which might create an obstacle to freedom of movement for workers. [19]

33. Thus, in *Skanavi and Chryssanthakopoulos*, cited above, which concerned the requirement to exchange a driving licence on the transfer of residence to another Member State, the Court observed that 'the treatment, by the national legislation in question, of a person who has failed to have a licence exchanged as if he were a person driving without a licence, thereby causing criminal penalties, even if only financial in nature,... would also be disproportionate to the gravity of that infringement in view of the ensuing consequences'. [20]

34. The Court has also ruled that a criminal sentence, even other than imprisonment, can have consequences for anyone's trade or professional activity. It added that 'as the national court has pointed out, a criminal conviction may have consequences for the exercise of a trade or profession by an employed or self-employed person, particularly with regard to access to certain activities or certain offices, which would constitute a further, lasting restriction on freedom of movement'. [21]

35. In this case, Mr Grilli, who attached temporary number plates which had been properly issued by the competent Italian authorities, is treated by the German legislation in the same way as a person driving a vehicle with forged or falsified number plates. As a result, he can be sentenced to criminal penalties, like imprisonment or a fine, in accordance with the provisions of the StVG.

36. It is for the national court to consider in the light of *Skanavi and Chryssanthakopoulos* whether the criminal penalties laid down by the national legislation for infringement of its requirements are disproportionate in relation to the gravity of the offence inasmuch as they limit the exercise of freedom of movement under the Treaty.

19 — See, in particular, Case C-265/88 *Messner* [1989] ECR 4209, paragraph 14.

20 — Paragraph 37.

21 — See *Skanavi and Chryssanthakopoulos*, paragraph 38.

Conclusion

37. I suggest, as a result, that the Court should rule:

A national rule likely to restrict patterns of exports, which creates a difference in treatment between the internal trade of a Member State and its external trade, with the result that it favours its national trade at the expense of another Member State's, and which cannot be justified by any of the exceptions laid down by the Treaty, may be declared, by the national court, to be a measure having equivalent effect to a quantitative restriction on exports within the meaning of Article 29 EC.

It is for the national court to consider whether the criminal penalties laid down by the national legislation for infringement of its requirements are disproportionate in relation to the gravity of the offence inasmuch as they limit the exercise of freedom of movement under the Treaty.