JUDGMENT OF THE COURT

23 May 1996 *

In Case C-5/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the High Court of Justice, Queen's Bench Division (England and Wales), for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Ministry of Agriculture, Fisheries and Food,

ex parte **Hedley Lomas (Ireland) Ltd,**

on the interpretation of Articles 34 and 36 of the EC Treaty and the principle of non-contractual State liability for breach of Community law,

* Language of the case: English.

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris, D. A. O. Edward and G. Hirsch (Presidents of Chambers), G. F. Mancini (Rapporteur), F. A. Schockweiler, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, H. Ragnemalm and L. Sevón, Judges,

Advocate General: P. Léger,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Hedley Lomas (Ireland) Ltd, by Conor C. Quigley, Barrister, instructed by A. M. Burstow, Solicitor,

— the United Kingdom Government, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, and by S. Richards and N. Paines, Barristers,

— the Commission of the European Communities, by T. Cusack, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Hedley Lomas (Ireland) Ltd, represented by Conor C. Quigley, the United Kingdom Government, represented by B. Gardner, of the Treasury Solicitor's Department, acting as Agent, assisted by S. Richards and N. Paines, and the Commission, represented by T. Cusack, at the hearing on 7 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 20 June 1995,

gives the following

Judgment

1 By order of 6 December 1993, received at the Court on 10 January 1993, the High Court of Justice of England and Wales, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation of Articles 34 and 36 of that Treaty and the principle of non-contractual State liability for breach of Community law.

2 Those questions have been raised in proceedings between Hedley Lomas (Ireland) Ltd (hereinafter 'Hedley Lomas') and the Ministry of Agriculture, Fisheries and Food for England and Wales following that Ministry's refusal to issue a licence for the export of live sheep to Spain requested by Hedley Lomas on 7 October 1992.

3 Between April 1990 and 1 January 1993 the Ministry of Agriculture, Fisheries and Food systematically refused to issue licences for the export to Spain of live animals for slaughter on the ground that their treatment in Spanish slaughterhouses was contrary to Council Directive 74/577/EEC of 18 November 1974 on stunning of animals before slaughter (OJ 1974 L 316, p. 10, hereinafter 'the Directive').

4 As is clear from its preamble, the Directive, which is based on Articles 43 and 100 of the EEC Treaty, is intended to remove the disparities between the legislation of Member States in the field of protection of animals which directly affect the functioning of the common market. It also seeks, in general, to avoid all forms of cruelty to animals and, as a first step, to avoid all unnecessary suffering on the part of animals when being slaughtered. Articles 1 and 2 of the Directive require Member States to ensure the stunning, by appropriate approved methods, of animals for slaughter of the following species: bovine animals, swine, sheep, goats and

solipeds. The Directive does not harmonize procedures for monitoring compliance with its provisions.

5 The Kingdom of Spain had to comply with the Directive as from the date of its accession to the Community on 1 January 1986.

6 The Directive was transposed in Spain by Royal Decree of 18 December 1987 (*Boletin Oficial del Estado* No 312 of 30 December 1987) which reproduces in particular the provisions of Articles 1 and 2 of the Directive and specifies, as approved methods of stunning, the use of a captive-bolt gun or pistol, electric shock or carbon dioxide. It does not lay down any penalty for breach of its provisions.

7 Despite the adoption of that decree, the Ministry of Agriculture, Fisheries and Food became convinced, in particular on the basis of information obtained from the Spanish Society for the Protection of Animals, that a number of Spanish slaughterhouses were not complying with the rules contained in the Directive, either because they did not have the necessary equipment for stunning animals or because the equipment was not being used correctly or at all. Although it did not have sufficient evidence as to the overall position in Spanish slaughterhouses, the Ministry formed the view that the information in its possession indicated a degree of non-compliance with the Directive such as to create a substantial risk that animals exported to Spain for slaughter would suffer treatment contrary to the Directive.

8 Following complaints in 1990 by animal welfare groups in the United Kingdom and Spain, the Commission contacted the Spanish authorities and held several meetings with them to discuss the situation in Spain, in particular the absence of punitive measures for non-compliance with the Spanish provisions implementing the Directive. In view of assurances given by the national and regional authorities

in Spain regarding the application of the Directive, the Commission decided, in 1992, not to take any action under Article 169 of the EEC Treaty. The Commission informed the United Kingdom authorities that it considered the United Kingdom's general ban on exports of live animals to Spain to be contrary to Article 34 of the EEC Treaty and not capable of justification under Article 36 of that Treaty.

9 That general ban was lifted, with effect from 1 January 1993, following a meeting between the United Kingdom's Chief Veterinary Officer and his Spanish counterpart to review the progress achieved by Spain in giving effect to the Directive and to examine means of ensuring in future that all animals exported from the United Kingdom would be treated in accordance with the Directive. Following those exchanges of views, the two Governments drew up measures to ensure that animals sent from the United Kingdom for immediate slaughter in Spain would be sent only to slaughterhouses which the Spanish authorities had confirmed as meeting Community requirements on animal welfare.

10 On 7 October 1992 Hedley Lomas applied for an export licence for a quantity of live sheep intended for slaughter in a specified Spanish slaughterhouse. The licence was not issued, even though, according to the information obtained by Hedley Lomas, the slaughterhouse in question had been approved since 1986 and was complying with Community directives on animal welfare and the United Kingdom authorities did not have any evidence to the contrary.

11 Hedley Lomas brought proceedings before the High Court of Justice in which it seeks, first, a declaration that the refusal by the Ministry of Agriculture, Fisheries and Food to grant it an export licence is contrary to Article 34 of the Treaty and, second, damages.

12 The Ministry does not deny that the refusal to issue the export licence constitutes a quantitative restriction on exports but argues that it was justified under Article 36 of the Treaty and was consequently compatible with Community law.

13 Taking the view that the case before it necessitated the interpretation of Community law, the High Court of Justice decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the existence of a harmonizing directive (Directive 74/577/EEC), which does not contain any sanctions or procedures for non-compliance, prevent a Member State (Member State A) from relying on Article 36 of the EEC Treaty to justify measures restrictive of exports in circumstances where an interest specified in that article is threatened by the failure of another Member State (Member State B), as a matter of fact, to secure the results required by the directive?

If the answer to Question 1 is in the negative,

(2) In the circumstances described in Question 1, does Article 36 entitle Member State A to prohibit the export of live sheep to Member State B for slaughter

(i) generally; or

(ii) in a case where the stated destination of the sheep is a slaughterhouse in Member State B in respect of which Member state A does not have evidence that the provisions of the Directive are not complied with?

If the answer to Question 1 is in the affirmative, or if the answer to Question 2 is in the negative, and in the circumstances of this case:

(3) Is Member State A liable as a matter of Community law to compensate a trader in damages for any loss caused to the trader by the failure to grant an export licence in breach of Article 34 and, if so, under what conditions does such liability arise and how is such compensation to be calculated?'

The first and second questions

14 The first question must be understood as asking whether Community law precludes a Member State from invoking Article 36 of the Treaty to justify a limitation of exports of goods to another Member State on the sole ground that, according to the first State, the second State is not complying with the requirements of a Community harmonizing directive which pursues an objective which Article 36 is intended to protect, but does not lay down either any procedure for monitoring their application or any penalties in the event of their breach.

15 Before the substance of the question is addressed, it must be observed, as is clear from the order for reference, that in the present case the United Kingdom authorities' general refusal to grant export licences for Spain was based solely on the conviction that a certain number of Spanish slaughterhouses were not complying with the requirements of the Directive itself and that there was at least a significant risk that animals exported to Spain would undergo, upon slaughter, treatment contrary to the Directive.

16 It is against that factual background that the first question asked by the national court must be answered.

17 The refusal by a Member State to issue export licences constitutes a quantitative restriction on exports, contrary to Article 34 of the Treaty.

18 Article 36 of the Treaty allows the maintenance of restrictions on the free movement of goods, justified on grounds of the protection of the health and life of animals, which constitutes a fundamental requirement recognized by Community law. However, recourse to Article 36 is no longer possible where Community directives provide for harmonization of the measures necessary to achieve the specific objective which would be furthered by reliance upon this provision.

19 This exclusion of recourse to Article 36 cannot be affected by the fact that, in the present case, the Directive does not lay down any Community procedure for monitoring compliance nor any penalties in the event of breach of its provisions. The fact that the Directive lays down no monitoring procedure or penalties simply means that the Member States are obliged, in accordance with the first paragraph of Article 5 and the third paragraph of Article 189 of the Treaty, to take all measures necessary to guarantee the application and effectiveness of Community law (see, in particular, the judgment in Case 68/88 *Commission* v *Greece* [1989] ECR 2965, paragraph 23). In this regard, the Member States must rely on trust in each other to carry out inspections on their respective territories (see also the judgment in Case 46/76 *Bauhuis* v *Netherlands* [1977] ECR 5, paragraph 22).

20 A Member State may not unilaterally adopt, on its own authority, corrective or protective measures designed to obviate any breach by another Member State of rules of Community law (judgment in Joined Cases 90/63 and 91/63 *Commission* v *Luxembourg and Belgium* [1964] ECR 625 and judgment in Case 232/78 *Commission* v *France* [1979] ECR 2729, paragraph 9).

21 The answer to the first question must accordingly be that Community law precludes a Member State from invoking Article 36 of the Treaty to justify a limitation of exports of goods to another Member State on the sole ground that, according to the first State, the second State is not complying with the requirements of a Community harmonizing directive which pursues the objective which Article 36 is intended to protect but does not lay down either any procedure for monitoring their application or any penalties in the event of their breach.

22 In view of the reply given to the first question, it is unnecessary to reply to the second question.

The third question

23 By its third question the national court asks the Court to state the conditions under which a Member State is obliged to make good damage caused to an individual by its refusal to issue an export licence in breach of Article 34 of the Treaty.

24 The principle of State liability for loss and damage caused to individuals as a result of breaches of Community law for which the State can be held responsible is inherent in the system of the Treaty (judgment in Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 35, and judgment in Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 31). Furthermore, the conditions under which State liability gives rise to a right to reparation depend on the nature of the breach of Community law giving rise to the loss or damage (judgment in *Francovich and*

Others, cited above, paragraph 38; judgment in *Brasserie du Pêcheur and Factortame*, cited above, paragraph 38).

25 In the case of a breach of Community law attributable to a Member State acting in a field in which it has a wide discretion to make legislative choices the Court has held, at paragraph 51 of its judgment in *Brasserie du Pêcheur and Factortame*, cited above, that such a right to reparation must be recognized where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation resting on the State and the damage sustained by the injured parties.

26 Those three conditions are also applicable in the circumstances of this case.

27 As regards the first condition, as is clear from the answer given to the first question, the United Kingdom's refusal to issue an export licence to Hedley Lomas constituted a quantitative restriction on exports contrary to Article 34 of the Treaty which could not be justified under Article 36. Whilst Article 34 imposes a prohibition on Member States, it also creates rights for individuals which the national courts must protect (judgment in Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347, paragraphs 66 and 67).

28 As regards the second condition, where, at the time when it committed the infringement, the Member State in question was not called upon to make any legislative choices and had only considerably reduced, or even no, discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach.

29 In that respect, in this particular case, the United Kingdom was not even in a position to produce any proof of non-compliance with the Directive by the slaughterhouse to which the animals for which the export licence was sought were destined.

30 As regards the third condition, it is for the national court to determine whether there is a direct causal link between the breach of the obligation resting on the State and the damage sustained by the applicant in the main proceedings.

31 As appears from paragraphs 41, 42 and 43 of *Francovich and Others*, cited above, subject to the right to reparation which flows directly from Community law where the three conditions referred to above are satisfied, the State must make reparation in accordance with its domestic law on liability for the consequences of the loss and damage caused. However, the conditions for reparation of loss and damage laid down by domestic law must not be less favourable than those relating to similar domestic claims and must not be such as in practice to make it impossible or excessively difficult to obtain reparation (see also the judgment in *Brasserie du Pêcheur and Factortame*, cited above, paragraph 67).

32 The answer to the third question must therefore be that a Member State has an obligation to make reparation for the damage caused to an individual by a refusal to issue an export licence in breach of Article 34 of the Treaty where the rule of Community law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between the breach and the damage sustained by the individuals. Subject to that reservation, the State must make good the consequences of the loss or damage caused by a breach of Community law attributable to it, in accordance with its domestic law on liability. However, the conditions laid down by the applicable domestic laws must not be less favourable than those relating to similar domestic claims or framed in such a way as in practice to make it impossible or excessively difficult to obtain reparation.

Costs

33 The costs incurred by the United Kingdom Government and by 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

in answer to the questions referred to it by the High Court of Justice, Queen's Bench Division, by order of 6 December 1993, hereby rules:

1. **Community law precludes a Member State from invoking Article 36 of the EC Treaty to justify a limitation of exports of goods to another Member State on the sole ground that, according to the first State, the second State is not complying with the requirements of a Community harmonizing directive which pursues the objective which Article 36 is intended to protect but does not lay down either any procedure for monitoring their application or any penalties in the event of their breach.**

2. **A Member State has an obligation to make reparation for the damage caused to an individual by a refusal to issue an export licence in breach of Article 34 of the Treaty where the rule of Community law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between the breach and the damage sustained by the individuals. Subject to that reservation, the State must make**

good the consequences of the loss or damage caused by a breach of Community law attributable to it, in accordance with its domestic law on liability. However, the conditions laid down by the applicable domestic laws must not be less favourable than those relating to similar domestic claims or framed in such a way as in practice to make it impossible or excessively difficult to obtain reparation.

Rodríguez Iglesias Kakouris Edward

Hirsch Mancini Schockweiler

Moitinho de Almeida Kapteyn Murray

Ragnemalm Sevón

Delivered in open court in Luxembourg on 23 May 1996.

R. Grass G. C. Rodríguez Iglesias

Registrar President