JUDGMENT OF THE COURT (Grand Chamber)

25 November 2008 *

In Case C-455/06,

REFERENCE for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 9 November 2006, received at the Court on 14 November 2006, in the proceedings

Heemskerk BV,

Firma Schaap

v

Productschap Vee en Vlees,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and T. von Danwitz, Presidents of Chambers, A. Tizzano, J.N. Cunha Rodrigues, R. Silva de Lapuerta, J. Malenovský, J. Klučka (Rapporteur), A. Arabadjiev and C. Toader, Judges,

* Language of the case: Dutch.

Advocate General: Y. Bot,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 November 2007,

after considering the observations submitted on behalf of:

— the Netherlands Government, by H.G. Sevenster and C. ten Dam, acting as Agents,

— the Greek Government, by V. Kontolaimos, G. Kanellopoulos and S. Papaioannou, acting as Agents,

— the Hungarian Government, by J. Fazekas, acting as Agent,

— the Commission of the European Communities, by F. Erlbacher, T. van Rijn and M. van Heezik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 May 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Commission Regulation (EC) No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine

animals during transport (OJ 1998 L 82, p. 19), Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17), as amended by Council Directive 95/29/EC of 29 June 1995 (OJ 1995 L 148, p. 52, 'Directive 91/628'), Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11) and Article 33(9) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21).

2 The reference has been made in the context of proceedings between Heemskerk BV and Firma Schaap, on the one hand, and Productschap Vee en Vlees ('Productschap'), on the other, relating to the repayment of part of the export refund which Productschap claims was incorrectly paid to those two companies.

Legal context

Community legislation

Regulation No 1254/1999

3 Regulation No 1254/1999 repealed Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal (OJ, English Special Edition 1968(I), p. 187).

4 Under the second paragraph of Article 33(9) of Regulation No 1254/1999, the payment of the refund for exports of live animals is to be subject to compliance with the provisions established in Community legislation concerning animal welfare and, in particular, the protection of animals during transport.

Regulation No 615/98

5 Article 1 of Regulation No 615/98 states that:

'… the payment of export refunds for live bovine animals falling within CN code 0102 (hereinafter referred to as "the animals") shall be subject to compliance, during the transport of the animals to the first place of unloading in the third country of final destination, with

— Directive 91/628/EEC, and

— this Regulation.'

6 Under Article 2 of that regulation:

‘1. Exit from the customs of the Community may take place only through the following exit points:

— a border inspection post agreed by a Commission decision for veterinary checks on live ungulates from third countries, or

— an exit point designated by the Member State.

2. An official veterinarian at the exit point shall verify and certify in accordance with the provisions of Council Directive 96/93/EC [of 17 December 1996 on the certification of animals and animal products (OJ 1997 L 13, p. 28)], that:

— the animal[s] are fit for the intended journey in compliance with Directive 91/628/EEC,

— the means of transport by which the live animals are to leave the customs territory of the Community complies with Directive 91/628/EEC, and

— provisions have been made for the care of the animals during the journey in accordance with Directive 91/628/EEC.

3. If the official veterinarian at the exit point is satisfied that the requirements of paragraph 2 are met, he shall certify this by the entry

…

— Checks pursuant to Article 2 of Regulation (EC) No 615/98 satisfactory

…'

7 Article 5(2), (3) and (7) of Regulation No 615/98 states that:

'2. Applications for the payment of export refunds drawn up in accordance with Article 47 of [Commission] Regulation (EEC) No 3665/87 [of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1)] must be supplemented within the time-limit laid down in that Article by proof that Article 1 has been complied with.

This proof shall be furnished by:

— the document referred to in Article 2(3) properly completed, and

— where appropriate, the report referred to in Article 3(2).

…

3. The export refund shall not be paid for animals which died during transport or for animals for which the competent authority considers, in the light of the documents referred to in paragraph 2, the reports on the checks referred to in Article 4 and/or all other elements at its disposal concerning compliance with Article 1, that the Directive on the protection of animals during transport, was not complied with.

…

7. Where it is established after payment of the refund that Community legislation on the protection of animals during transport has not been complied with, the relevant part of the refund, including where appropriate the reduction pursuant to paragraph 4, shall be considered to have been paid unduly and shall be recovered in accordance with the provisions of Article 11(3) to (6) of Regulation (EEC) No 3665/87.'

Directive 91/628

8 Article 5(A)(1)(a) to (c) of Directive 91/628 states that:

'Member States shall ensure that:

1. any transporter:

(a) is:

…

(ii) covered by an authorisation valid for all transport of vertebrate animals carried out in one of the territories referred to in Annex I to Directive 90/675/EEC, granted by the competent authority of the Member State of establishment or, if an undertaking established in a third country is concerned, by a competent authority of a Member State of the Union, subject to a written undertaking by the person in charge of the transport undertaking to comply with the requirements of the Community veterinary legislation in force.

…

(b) does not transport any animal, or cause any animal to be transported, in a way which is likely to cause injury or undue suffering to that animal;

(c) uses, for the transport of animals referred to in this Directive, means of transport that will ensure compliance with Community requirements concerning welfare during transport …'

National legislation

9 Article 8:69 of the General Law on administrative law (Algemene wet bestuursrecht) is worded as follows:

'1. The court before which proceedings are brought shall give its ruling on the basis of the application, the documents produced, the preliminary investigation and the consideration of the case at the hearing.

2. The court shall supplement the pleas in law of its own motion.

3. The court may supplement the facts of its own motion.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 It is clear from the order for reference that, on 25 January 2000, each of the applicants in the main proceedings notified the export of 300 in-calf heifers to Morocco, for which they applied and obtained payment of an export refund in accordance with Regulation No 800/1999.

11 On the same day, at Moerdijk (Netherlands), the 600 in-calf heifers, together with 40 in-calf heifers belonging to another undertaking, were loaded onto the M/S Irish Rose, a vessel registered in Ireland ('the vessel'), for transport to Casablanca (Morocco). The official veterinarian who checked the loading certified that the conditions set out in Article 2 of Regulation No 615/98 had been fulfilled.

12 The vessel was authorised by the Irish authorities for the transport of animals on a surface area of 986 m^2.

13 During a check carried out pursuant to Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18), a document was found among the administrative files of the applicants in the main proceedings from which it was apparent that the capacity of the vessel for the transport of live animals had been exceeded by up to 111 head of cattle. Further investigation by the General Inspectorate showed that the official veterinarian had not checked at the exit point if the loading density standards in Chapter VI of the Annex to Directive 91/628 had been complied with. On the basis of that investigation and a statement by the person who accompanied the animals during their transport to

Morocco, the General Inspectorate concluded that the welfare conditions for bovine animals during transport laid down by Directive 91/628 had not been complied with and that the vessel had clearly been overloaded.

14 By decisions of 26 March 2004, the Productschap withdrew the export refund granted to the applicants in the main proceedings and called for repayment of the amounts already paid, plus 10%. In addition, it fixed the statutory rate of interest payable.

15 By letters of 13 April 2004, each of the applicants lodged a complaint against the decisions of 26 March 2004.

16 By decisions of 2 and 25 August 2005, the Productschap decided, after hearing the applicants in the main proceedings on 6 May 2004, to uphold the withdrawal and the repayment of the refund, but to reduce the amounts of the sums to be recovered. Considering that the number of bovine animals in excess of that permitted for the authorised surface area of 986 m^2 had been transported in breach of the standards laid down by Directive 91/628, including those governing loading density, the Productschap took the view that it was necessary to withdraw and recover the refund granted in respect of the part of the load which did not comply with the animal welfare requirements.

17 To that end, it was established that, according to point 47 of the Annex to Directive 91/628, the loading standard for the transportation of in-calf heifers by sea amounted to 1.70775 m^2. In order to calculate the number of animals transported in breach of that loading standard, the Productschap divided the authorised surface area of the vessel, namely 986 m^2, by the area laid down for each animal. It concluded that 62 excess animals had been transported.

18 The amount of the export refund to be recovered from the applicants in the main proceedings was calculated by the Productschap on the basis of the amount granted in respect of the number of excess animals transported, in proportion to the applicants' participation in the operation as a whole. According to that calculation, each of the applicants in the main proceedings was required to repay the refund in respect of 29 animals. In accordance with Article 5(7) of Regulation No 615/98, read in conjunction with Article 5(4) thereof, the refund granted was, moreover, reduced by an amount equal to that of the refund withdrawn.

19 The applicants in the main proceedings brought an action before the national court against the decisions of 2 and 25 August 2005, cited above. In support of their action, they relied on several pleas in law. Essentially, they claim, first, that the certificate issued by the official veterinarian is conclusive and, second, that the requirement under Irish law that the vessel could transport animals only on a surface area of 986 m^2 was not applicable to a transport from the Netherlands to Morocco.

20 It is, moreover, clear from the order for reference that the College van Beroep voor het bedrijfsleven identified other arguments which might have an influence on the resolution of the dispute in the main proceedings. However, as those arguments had not been raised before it, national rules of procedure precluded their being taken into account. It is apparent from Article 8:69 of the General Law on administrative law that the court is to give its ruling solely on the basis of the issues submitted to it by the parties. Although Article 8:69(2) states that the court is to supplement the pleas in law of its own motion, that provision should, however, be interpreted as meaning that the court is to put the applicants' objections to the contested administrative measure into the correct legal form. It is necessary to make a distinction between that duty of the court to supplement those pleas in law of its own motion and the assessment which the court is required to make on its own initiative. Such an assessment is required only in cases involving the application of rules of public policy, that is to say those rules relating to the powers of administrative bodies and those of the court itself along with the provisions on admissibility.

21 The national court wishes, however, to know whether it is required, in the light of Community law, to take into consideration arguments based on that law which were not put forward by the appellants in the main proceedings.

22 It is in those circumstances that the College van Beroep voor het bedrijfsleven decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) (a) Is an administrative body empowered to decide, contrary to the declaration of the official veterinarian referred to in Article 2(2) of Regulation … No 615/98, that the transport of animals to which the official veterinarian's declaration relates is not in accordance with the conditions laid down in Directive [91/628]?

(b) If the answer to Question 1a is in the affirmative:

Is the exercise by the administrative body of that power on grounds of Community law subject to specific restrictions, and if so, what are those restrictions?

(2) If the answer to Question 1 is in the affirmative:

When assessing whether there is an entitlement to refunds, for which Regulation … No 800/1999, for example, provides, should an administrative body of a Member State determine whether a transport of live animals complies with Community animal welfare legislation by reference to the requirements

applicable in the Member State or to those of the State in which the vessel transporting the live animals is registered and which has granted an authorisation for that vessel?

(3) Does Community law require a court or tribunal to conduct, of its own motion, an examination of grounds derived from Regulation … No 1254/1999 and Regulation … No 800/1999, that is to say, an examination of grounds falling outside the ambit of the disputes as submitted to it?

(4) Is the phrase 'subject to compliance with the provisions established in Community legislation concerning animal welfare' in Article 33(9) of Regulation … No 1254/1999 to be understood as meaning that, where it is established that while transporting live animals a vessel was so heavily laden as to exceed the cargo permitted by the relevant welfare legislation, there was a failure to comply with Community animal welfare legislation only in respect of the number of animals by which the permitted cargo was exceeded, or must it be found that that legislation was not complied with in respect of all the live animals transported?

(5) Does the effective application of Community law entail that a court's examination, of its own motion, of compatibility with provisions of Community law prevails over the principle enshrined in Dutch law of administrative procedure that an individual bringing an action must not be placed thereby in a less advantageous position than if he had not brought that action?'

The questions referred for a preliminary ruling

The first question

23 By its first question, the national court asks essentially whether Regulation No 615/98 and, in particular, Articles 1 and 5(3) and (7) thereof, must be interpreted as meaning that a national authority with competence for export refunds is empowered to decide that a transport of animals has not been carried out in accordance with Directive 91/628, although the official veterinarian had certified, pursuant to Article 2(3) of the regulation, that that transport complied with the provisions of that directive. If the answer is in the affirmative, the national court also asks whether the power of that authority is subject to certain limits.

24 It should be pointed out that, in the light of the wording of Articles 1 and 5(3) of Regulation No 615/98, the payment of export refunds is conditional upon compliance with Directive 91/628. It is for the exporter to establish, in accordance with Article 5(1) and (2) of that regulation, that the conditions for the grant of the export refund are met. It should be noted that the exporter must, in order to obtain payment of the export refund, provide the competent authority of the Member State where the declaration is accepted with proof of compliance with Article 1 of that regulation and, accordingly, with that directive, by producing the documents referred to in Articles 2(3) and 3(2) respectively of that regulation. The official veterinarian's certificate is one of those documents.

25 With regard to the evidential nature of such documents, the Court has held that, as is clear from the aim of Articles 3 and 5 of Regulation No 615/98, presentation by the exporter of those documents does not constitute irrefutable proof of compliance with Article 1 of that regulation, or of compliance with Directive 91/628. That evidence is sufficient only in so far as the competent authority does not have at its disposal evidence in the light of which it may find that the directive has not been complied with. That interpretation is confirmed by the wording of Article 5(3) of that regulation, under which the competent authority is entitled not to pay the export refund for animals in respect of which it considers — in the light of the documents referred to in Article 5(2), the reports on the checks referred to in Article 4 of that regulation and/or any other element at its disposal concerning compliance with Article 1 of the regulation — that Directive 91/628 has not been complied with (see Case C-96/06 *Viamex Agrar Handel* [2008] ECR I-1413, paragraphs 34 and 35).

26 Despite the production by the exporter of a certificate from the official veterinarian, in accordance with Article 5(2) of Regulation No 615/98, the competent authority may consider that the exporter has complied neither with Article 1 of that regulation nor with Directive 91/628, provided, inter alia, that the conditions laid down in Article 5(3) of that regulation are met (*Viamex Agrar Handel*, above, paragraph 36).

27 As the Advocate General has pointed out at point 51 of his Opinion, it is necessary to treat that reasoning — according to which the competent authority may decide, despite the documents provided by the exporter, not to pay the refund — as also applying if the refund has already been paid to the exporter.

28 Any other interpretation would render redundant, first, Article 5(7) of Regulation No 615/98, by virtue of which, where it is established, after payment of the refund,

that Community legislation on the protection of animals during transport has not been complied with, the refund shall be recovered in accordance with the provisions of Article 11(3) to (6) of Regulation No 3665/87 and, second, the checks organised ex posteriori, referred to in Regulation No 4045/89.

29 With regard to the question whether such competence is subject to certain limits, the Court has already held that Article 5 of Regulation No 615/98 cannot be interpreted as permitting the competent authority arbitrarily to call into question the evidence attached by the exporter to its export refund application. The discretion which the competent authority enjoys is not unlimited, since it is circumscribed by Article 5. That discretion appears, in particular, limited as to the nature and the evidentiary value of the elements on which the competent authority relies (see *Viamex Agrar Handel*, paragraph 38).

30 The Court held that the competent authority is thus required, pursuant to Article 5(3) of Regulation No 615/98, to base itself on objective and specific elements relating to the welfare of the animals which are capable of establishing that the documents attached by the exporter to its export refund application do not prove compliance with the provisions of Directive 91/628 during transportation, and it is for the exporter to show, where appropriate, that the elements relied on by that authority to substantiate its finding of non-compliance with that regulation and that directive are not relevant (*Viamex Agrar Handel*, paragraph 41).

31 The Court held that, in any event, the competent authority is required to justify its decision by stating the reasons why it considers the evidence presented by the exporter does not enable it to be concluded that Directive 91/628 was complied with. For that purpose, the authority is required, in particular, to make an objective assessment of the documents presented to it by the exporter and to show the pertinence of

the elements it has relied on in order to establish that the documentation attached to the export refund application was not sufficient to show compliance with the relevant provisions of that directive (*Viamex Agrar Handel*, paragraph 42).

32 In the light of the foregoing considerations, the answer to the first question must be that Regulation No 615/98 and, in particular, Articles 1 and 5(3) and (7) thereof, must be interpreted as meaning that a national authority with competence for export refunds is empowered to decide that a transport of animals was not carried out in accordance with the provisions of Directive 91/628, although, under Article 2(3) of the regulation, the official veterinarian had certified that that transport complied with the provisions of that directive. In order to reach that conclusion, that authority must rely on objective elements relating to the welfare of the animals such as to call into question the documents presented by the exporter, it being for the latter to show, in that case, that the elements relied on by the competent authority to substantiate its finding of non-compliance with Directive 91/628 are irrelevant.

The second question

33 By its second question, the national court asks, essentially, for clarification whether — when assessing if a right to a refund exists in the situations for which Regulation No 800/1999 provides — the competent authority of the Member State of export should take into account, for the purpose of determining whether Community legislation on animal welfare during transport have been complied with, the available surface area of the vessel based on the standards in force in that Member State or that mentioned upon the grant of authorisation based on the standards in force in the State in which the vessel is registered.

34 In that regard, it should be pointed out that both the State of export and the State of registration of the vessel referred to by the national court are Member States of the European Union.

35 Directive 91/628 does not contain any express provision concerning the total surface area of a vessel capable of being used for the transport of animals.

36 In that context, if a vessel is authorised in respect of a certain surface area by the competent authority of the Member State of registration, it is necessary to assess whether the surface area indicated in the authorisation represents the surface area within which the welfare of the animals is guaranteed. It is common ground that, in order to grant an authorisation, the competent authority must necessarily carry out detailed checks in order to calculate the total effective surface area of the vessel that is such as to ensure the welfare of the animals during transport.

37 Accordingly, the competent authority of the Member State of export must take that effective surface area into account in order to assess whether the transport of the animals on the vessel was carried out in compliance with the provisions of Directive 91/628 on animal welfare.

38 In the light of the foregoing considerations, the answer to the second question must be that, where a vessel has been authorised for the transport of animals in respect of a certain surface area by the Member State of registration of the vessel, the competent authority of the Member State of export must take that authorisation as a basis for assessing whether Community legislation on the welfare of animals during transport has been complied with.

The fourth question

39 By its fourth question, which it is appropriate to examine before the third and fifth questions, the national court asks, essentially, whether the notion of 'compliance with the provisions established in Community legislation concerning animal welfare' referred to in Article 33(9) of Regulation No 1254/1999 must be understood as meaning that, where it is established that the Community requirements relating to loading density laid down in Chapter VI, point 47(B) of the Annex to Directive 91/628 were not complied with during the transport of the animals, it is necessary to make a finding of non-compliance with those provisions in respect of all the live animals transported.

40 Under Chapter VI, point 47(B) of the Annex to the directive, the loading density for each animal is to be determined, in the case of transport by sea, in square metres.

41 As the Advocate General has pointed out at point 74 of his Opinion, if the total surface area available on the vessel for the transport of animals divided by the number of animals actually transported does not comply with the surface area per animal laid down in Chapter VI, point 47(B) of the Annex to Directive 91/628, it must be held that the Community standards relating to loading density have not been complied with for any of the animals transported. It is common ground that if the loading density is exceeded, the space available for each animal is reduced since the number of animals on the vessel is greater than that permitted under those standards.

42 Moreover, it should be pointed out that the overloading of a vessel necessarily affects all the animals, since it results in the restriction of their physical movements, reduces the amount of space necessary for their comfort, increases the risk that those animals

will be injured and results in distressing transport conditions, not only for the excess animals, but for all the animals transported.

43 In those circumstances, the answer to the fourth question must be that the notion of 'compliance with the provisions established in Community legislation concerning animal welfare' referred to in Article 33(9) of Regulation No 1254/1999 must be interpreted as meaning that, where it is established that the Community requirements relating to loading density laid down in Chapter VI, point 47(B) of the Annex to Directive 91/628 were not complied with during the transport of the animals, it is necessary, in principle, to make a finding of non-compliance with those provisions in respect of all the live animals transported.

The third and fifth questions

44 By its third and fifth questions, which it is appropriate to examine together, the national court asks, essentially, whether Community law requires national courts to examine, of their own motion, pleas in law derived from Regulations No 1254/1999 and Regulation No 800/1999 falling outside the ambit of the dispute, where such an examination would result in denial of the principle of Dutch law that an individual bringing an action must not be placed in a less favourable position than if he had not brought that action (principle of the prohibition of *reformatio in pejus*).

45 The College van Beroep voor het bedrijfsleven indicates that, in accordance with Article 8:69 of the General Law on administrative law, it may not, as a rule, take account of arguments which fall outside the ambit of the dispute as defined by the

parties. It states, moreover, that, if Community law required it to raise of its own motion pleas based on Regulations Nos 1254/1999 and 800/1999, it might come up against the procedural rule prohibiting *reformatio in pejus* enshrined in Dutch administrative law, according to which an individual who brings an action cannot find himself in a less favourable position than he would have been in, had the action not been brought. It does not rule out the possibility that, if those regulations are taken into account, the burden on the applicants in the main proceedings may be increased.

46 In that regard it should be pointed out that Community law cannot oblige a national court to apply Community legislation of its own motion where this would have the effect of denying the principle, enshrined in its national procedural law, of the prohibition of *reformatio in pejus*.

47 Such an obligation would be contrary not only to the principles of respect for the rights of the defence, legal certainty and protection of legitimate expectations, which underlie the prohibition, but would expose an individual who brought an action against an act adversely affecting him to the risk that such an action would place him in a less favourable position than he would have been in, had he not brought that action.

48 In the light of the foregoing, the answer to the third and fifth questions must be that Community law does not require national courts to apply, of their own motion, a provision of Community law where such application would lead them to deny the principle, enshrined in the relevant national law, of the prohibition of *reformatio in pejus*.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Commission Regulation (EC) No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport, and, in particular, Articles 1 and 5(3) and (7) thereof, must be interpreted as meaning that a national authority with competence for export refunds is empowered to decide that a transport of animals was not carried out in accordance with the provisions of Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC, as amended by Council Directive 95/29/EC of 29 June 1995, although, under Article 2(3) of that regulation, the official veterinarian had certified that that transport complied with the provisions of that directive. In order to reach that conclusion, that authority must rely on objective elements relating to the welfare of the animals such as to call into question the documents presented by the exporter, it being for the latter to show, in that case, that the elements relied on by the competent authority for its finding of non-compliance with Directive 91/628, as amended by Directive 95/29, are irrelevant.**

2. **Where a vessel has been authorised for the transport of animals in respect of a certain surface area by the Member State of registration of the vessel, the competent authority of the Member State of export must take that**

authorisation as a basis for assessing whether Community legislation on the welfare of animals during transport has been complied with.

3. The notion of 'compliance with the provisions established in Community legislation concerning animal welfare' referred to in Article 33(9) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal must be interpreted as meaning that, where it is established that the Community requirements relating to loading density laid down in Chapter VI, point 47(B) of the Annex to Directive 91/628, as amended by Directive 95/29, were not complied with during the transport of the animals, it is necessary, in principle, to make a finding of non-compliance with those provisions in respect of all the live animals transported.

4. Community law does not require national courts to apply, of their own motion, a provision of Community law where such application would lead them to deny the principle, enshrined in the relevant national law, of the prohibition of *reformatio in pejus.*

[Signatures]