

ENDENDIJK

JUDGMENT OF THE COURT (Seventh Chamber)

3 April 2008*

In Case C-187/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Rechtbank Zutphen (Netherlands), made by decision of 19 February 2007, received at the Court on 3 April 2007, in the criminal proceedings against

Dirk Endendijk,

THE COURT (Seventh Chamber),

composed of U. Lõhmus, President of the Chamber, P. Lindh and A. Arabadjiev (Rapporteur), Judges,

Advocate General: Y. Bot,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the written procedure and further to the hearing on 9 January 2008,

* Language of the case: Dutch.

after considering the observations submitted on behalf of:

- Dirk Endendijk, by J.T.A.M. Mierlo, advocaat,

- the Netherlands Government, by C. Wissels and D.J.M. de Grave, acting as Agents,

- the Belgian Government, by A. Hubert, acting as Agent,

- the Greek Government, by V. Kontolaimos and S. Charitaki, acting as Agents,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of the word ‘tether’ (‘aanbinden’) within the meaning of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves (OJ 1991 L 340, p. 28), as amended by Commission Decision 97/182/EC of 24 February 1997 (OJ 1997 L 76, p. 30) (‘Amended Directive 91/629’).

- 2 The reference has been made in the course of criminal proceedings brought against Dirk Endendijk for having, during October 2005, kept calves tethered in conditions not in compliance with the first sentence of point 8 of the Annex to Amended Directive 91/629.

Legal context

Community legislation

- 3 Article 3(1) of Directive 91/629 provides that the housing of calves must be either in groups, in individual boxes or 'by tethering in stalls'. That provision applies to all holdings newly built or rebuilt from 1 January 1994.
- 4 Council Directive 97/2/EC of 20 January 1997, amending Directive 91/629 (OJ 1997 L 25, p. 24), did not formally amend that provision but inserted a new paragraph 3 within Article 3 of Directive 91/629, which provides:

'From 1 January 1998, the following provisions shall apply on all newly built or rebuilt holdings and on all those brought into use after that date:

- (a) no calf shall be confined in an individual pen after the age of eight weeks, unless a veterinarian certifies that its health or behaviour requires it to be isolated in order to receive treatment. ...

...’

- 5 The Annex to Directive 91/629 included in its original version a point 8, which stated as follows:

‘Where tethers are used, they must not cause injury to the calves and must be inspected regularly and adjusted as necessary to ensure a comfortable fit. Each tether must be of sufficient length to allow the calves to move as stipulated in [point] 7 [that is, to lie down, rest, stand up and groom themselves without difficulty and to see other calves]. The design must be such as to avoid, as far as possible, any risk of strangulation or injury.’

- 6 The fifth recital in the preamble to Decision 97/182 states:

‘Whereas tethering of calves causes problems; whereas for that reason individually penned calves should not be tethered and group-housed calves may only be tethered for a short period at the time of feeding milk.’

- 7 Decision 97/182 amended the Annex to the Directive 91/629, in which it replaced point 8 with the following:

‘Calves shall not be tethered, with the exception of group-housed calves which may be tethered for periods of not more than one hour at the time of feeding milk or milk

substitute. Where tethers are used, they shall not cause injury to the calves and shall be inspected regularly and adjusted as necessary to ensure a comfortable fit. Each tether shall be designed to avoid the risk of strangulation or injury and to allow the calf to move in accordance with point 7 [that is, to lie down, to rest, stand up and groom itself without difficulty].’

National legislation

- 8 The Decree on calves (Kalverenbesluit, *Staatsblad* 1994, No 576) includes no definition of the word ‘tether’. Article 3(2) of that decree provides:

‘Calves housed in individual pens and those over eight weeks old intended to be raised as steers shall not be tethered.’

- 9 The explanatory note to that decree indicates, in that regard, that the prohibition on tethering individually penned calves applies to ‘all categories of calves’.

- 10 By Decree of 22 September 1997 (*Staatsblad* 1997, No 478), which came into force on 31 December 1997, the Decree on calves was amended to take account of the amendments introduced by Decision 97/182. Article 2(1) of that decree now provides:

‘Calves shall be kept only in conditions which comply with the first sentence of point 8 of the Annex [to Amended Directive 91/629].’

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

- 11 Mr Endendijk, a Dutch stockbreeder, is charged with having, during October 2005, kept 25 calves tethered in boxes contrary to the first sentence of point 8 of the Annex to Amended Directive 91/629.
- 12 Before the referring court, Mr Endendijk contended that the calves — individually penned in boxes measuring 2.5 m x 1.2 m, each with a roof — were tied by a rope, approximately three metres long, around the neck and therefore could not be considered to be tethered with the meaning of the first sentence of point 8 of the Annex to Amended Directive 91/629.
- 13 In those circumstances, the Rechtbank Zutphen (Zutphen District Court) (Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) How is the word “tethered”, within the meaning of [Amended] Directive 91/629 ... to be interpreted?’

(2) Is the material, the length or the purpose of the tethering of any significance in that respect?’

The questions referred

- 14 Since the two questions referred from the national court are closely interconnected it is appropriate to reply to them jointly.
- 15 As a preliminary point, it should be stated that, in order to determine the meaning of the word ‘tether’, in the absence of a definition of that word in Amended Directive 91/629 it is necessary to refer to the usual and everyday accepted meaning of that word (Case 349/85 *Denmark v Commission* [1988] ECR 169, paragraph 9, and Case C-164/98 P *DIR International Film and Others v Commission* [2000] ECR I-447, paragraph 26).
- 16 That point having been made, it must be noted that Amended Directive 91/629 expressly prohibits the tethering of calves when they are penned in individual boxes. In the regard, the fifth recital in the preamble to Decision 97/182 states that ‘individually penned calves should not be tethered’, an approach which is mirrored in point 8 of the Annex to Amended Directive 91/629.
- 17 That point provides, as is indicated at paragraph 7 of this judgment, that ‘calves shall not be tethered, with the exception of group-housed calves which may be tethered for periods of not more than one hour at the time of feeding milk or milk substitute ...’.
- 18 Consequently, the interpretation that calves are not tethered where they are held by a rope approximately three metres long, allowing them some freedom of movement, since that freedom of movement meets the requirements of Amended Directive 91/629, cannot be accepted.

19 In the first place, it follows from the wording both of Article 3(3) of Amended Directive 91/629 and of point 8 of the Annex to that directive that the option of tethering calves relates only to calves penned in groups and not to individually penned calves, for which the prohibition is absolute. But, as the minutes of the main proceedings refer only to individually penned calves, it must be inferred that the right to tether calves has no bearing on those proceedings.

20 In the second place, it should be pointed out, for the sake of completeness, that the option of tethering calves must be exercised only exceptionally, as it concerns periods which cannot exceed one hour and which are restricted to the time of feeding milk. It is, therefore, only during short periods that it is permitted, by way of exception, for calves to be tethered, and moreover such tethering must take place under conditions where their freedom of movement is guaranteed, so that they can lie down, rest, stand up and groom themselves without difficulty. In other words, the circumstances in which the defendant in the main proceedings proposes that his animals are to be regarded as untethered are precisely the circumstances from which those animals must benefit where, exceptionally, they are tethered, an option which is possible only for group-housed calves. That is not the case with the defendant's calves in the main proceedings.

21 As regards the fact that the Dutch version of point 8 of the Annex to Amended Directive 91/629 refers to a tether which is metallic in nature, using the word 'chains' ('kettingen'), it should first be pointed out that that fact does not alter the scope of the exception provided for by that provision, which applies only to group-housed calves at the time of feeding milk. That was not the case with the defendant's calves in the main proceedings, which were, according to the order for reference, penned in individual boxes.

22 It should secondly be pointed out that, in any event, the word in question cannot be examined solely in the Dutch version of that point, as Community provisions must be interpreted and applied uniformly in the light of the versions existing in all Euro-

pean Community languages (see Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28; Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 36; and Case C-280/04 *Jyske Finans* [2005] ECR I-10683, paragraph 31).

- 23 According to settled case-law, the wording used in one language version of a Community provision cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Such an approach would be incompatible with the requirement of the uniform application of Community law (see Case C-149/97 *Institute of the Motor Industry* [1998] ECR I-7053, paragraph 16).
- 24 Where there is divergence between the various language versions of a Community text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (Case C-437/97 *EKW and Wein & Co* [2000] ECR I-1157, paragraph 42, and Case C-1/02 *Borgmann* [2004] ECR I-3219, paragraph 25).
- 25 It must be stated that the language versions, other than the Dutch version, of point 8 of the Annex to Amended Directive 91/629 refer to a general term. For example, the German-language version uses the word 'Anbindevorrichtung' (tethering device), the English-language version uses the word 'tether', and the French-language version the word 'attache' ('tether'), while the Italian-language version uses the word 'attacco'. That use of a general term is wholly logical taking account, first, of the absolute prohibition noted at paragraph 16 of this judgment and, then, of the animal care required under Amended Directive 91/629, where, exceptionally, there is a derogation from the prohibition against tethering calves as in the circumstances referred to at paragraph 17 of this judgment. The word 'chain' is thus contrary to the objective pursued by the Community legislature.

- 26 The reply to the questions referred must therefore be that a calf is tethered within the meaning of Amended Directive 91/629 where it is tied by a rope, irrespective of the material, length and purpose of that rope.

Costs

- 27 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 (Seventh Chamber) hereby rules:

A calf is tethered within the meaning of Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves, as amended by Commission Decision 97/182/EC of 24 February 1997, where it is tied by a rope, irrespective of the material, length and purpose of that rope.

[Signatures]