JUDGMENT OF THE COURT (First Chamber)
21 March 1996 *

In Case C-39/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal de Police, La Rochelle (France), for a preliminary ruling in the criminal proceedings before that court against

Pierre Goupil,

on the interpretation of Article 4(6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (OJ 1985 L 370, p. 1),

THE COURT (First Chamber),

composed of: D. A. O. Edward, President of the Chamber, P. Jann (Rapporteur) and L. Sevón, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar

* Language of the case: French.

after considering the written observations submitted on behalf of:

— Mr Goupil, by Paul Mauriac and Alexandre Carnelutti, both of the Paris Bar,

— the French Government, by Edwige Belliard, Deputy Director of the Legal Department of the Ministry of Foreign Affairs, and Anne de Bourgoing, on assignment to the same department, acting as Agents,

— the United Kingdom, by Lindsey Nicoll, of the Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities, by Götz zur Hausen, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Goupil, represented by Paul Mauriac and Alexandre Carnelutti, of the French Government, represented by Romain Nadal, Deputy Secretary for Foreign Affairs in the Legal Department of the Ministry of Foreign Affairs, acting as Agent, of the United Kingdom, represented by Nicholas Green, Barrister, and of the Commission, represented by Götz zur Hausen, at the hearing on 30 November 1995,

after hearing the Opinion of the Advocate General at the sitting on 25 January 1996,

gives the following

Judgment

1 By judgment of 31 January 1995, received at the Court on 17 February 1995, the Tribunal de Police (Local Criminal Court), La Rochelle, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 4(6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport (OJ 1985 L 370, p. 1; hereinafter 'the regulation').

2 The question was raised in the course of criminal proceedings against Mr Goupil, who was charged with infringing the rules on drivers' working time on four occasions.

3 The regulation prescribes the duration of driving and rest periods in Sections IV and V. However, Article 4 provides:

'This regulation shall not apply to carriage by:

...

(6) vehicles used in connection with the sewerage, flood protection, water, gas and electricity services, highway maintenance and control, refuse collection and

disposal, telegraph and telephone services, carriage of postal articles, radio and television broadcasting and the detection of radio or television transmitters or receivers;

...'

4 Mr Goupil is the chairman and general manager of a cleaning and waste treatment company. The company's vehicles collect waste from undertakings and transport it to a tip or incineration plant. On an inspection, the gendarmerie discovered that one of the company's drivers had on four occasions exceeded the statutory limit for continuous driving. Mr Goupil was prosecuted for infringement of the regulation and of French Decree No 1130 of 17 October 1986.

5 At the hearing before the national court, Mr Goupil stated that under Article 4(6) of the regulation he was not obliged to equip his company's vehicles with a tachograph and that the excess driving time could not therefore constitute an infringement.

6 The Tribunal de Police, La Rochelle, decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 4 of Regulation (EEC) No 3820/85 exempt from the scope of Regulation (EEC) No 3821/85 vehicles belonging to private companies engaged in the collection and treatment of waste which transport waste skips or industrial waste, including cases where such transport is effected over long distances?'

7 In this question, the national court seeks in effect a definition of the phrase 'vehicles used in connection with ... refuse collection and disposal' used in Article 4(6) of the regulation.

8 Article 4 of the regulation lists certain categories of transport which are excluded from its scope. Being thus a derogation from the general scheme, Article 4 may not be interpreted in such a way as to extend its effects beyond what is necessary to safeguard the interests which it seeks to secure. Furthermore, the scope of the derogations which it lays down must be determined in the light of the aims pursued by the regulation (see Case C-116/91 *Licensing Authority South Eastern Traffic Area* v *British Gas* [1992] ECR I-4071, paragraph 12).

9 With regard to the interests which Article 4(6) of the regulation seeks to safeguard, the derogations provided for in that provision are based on the nature of the services in connection with which the vehicles are used. In that respect it is apparent from the list in Article 4(6) that the services envisaged by that provision are all general services performed in the public interest (see *Licensing Authority South Eastern Traffic Area* v *British Gas*, cited above, paragraph 13).

10 The purpose of the regulation, as the first recital in its preamble states, is to harmonize conditions of competition and to improve working conditions and road safety.

11 In the light of those objectives, and primarily that relating to the improvement of road safety, the term 'refuse collection' should be interpreted as applying only to the collection of refuse from a place where it has been deposited. Vehicles used for that activity travel over a limited distance and for a short period, and the transport remains ancillary to the collection. Refuse transport which does not have those features cannot fall within the exemption. It is for the national court to determine in each case before it whether that is so.

12 Moreover, since the services referred to in Article 4(6) are in the public interest, refuse which is capable of being the subject of that activity should be defined to include both domestic and commercial waste and also special waste, the collection of which is in the public interest. That interpretation also conforms to the objective of harmonizing conditions of competition, without however preventing more specific provisions from being applied to certain types of waste, such as Article 13(1)(d) of the regulation, which applies to animal waste.

13 Within the limits thus defined, the movement of vehicles when empty and when preparing to carry out such transportation also falls within Article 4(6) of the regulation.

14 Finally, the vehicles in question do not have to be used by the public authorities directly in order to benefit from the exemption. Regulation No 3820/85 is intended to make more flexible the provisions of Council Regulation (EEC) No 543/69 on the harmonization of certain social legislation relating to road transport (OJ, English Special Edition 1969 (I), p. 170). Unlike the provision it replaces, namely Article 4(4) of Regulation No 543/69, as amended by Council Regulation (EEC) No 2827/77 of 12 December 1977 amending Regulation (EEC) No 543/69 (OJ 1977 L 334, p. 1), Article 4(6) of Regulation No 3820/85 no longer refers to 'vehicles which are used by other public authorities for public services'. The result of that amendment in the wording is that the derogation may benefit not only the public authorities but also private undertakings which provide a general service in the public interest under their control.

15 The answer to the question must therefore be that the words 'vehicles used in connection with ... refuse collection and disposal' in Article 4(6) of the regulation must be interpreted as covering vehicles used for the collection of waste of all kinds which is not subject to more specific rules and for the transportation of such waste over short distances, within the context of a general service in the public interest provided directly by the public authorities or by private undertakings under their control.

Costs

16 The costs incurred by the French Government, the United Kingdom and 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 (First Chamber),

in answer to the question referred to it by the Tribunal de Police, La Rochelle, by judgment of 31 January 1995, hereby rules:

The words 'vehicles used in connection with ... refuse collection and disposal' in Article 4(6) of Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonization of certain social legislation relating to road transport must be interpreted as covering vehicles used for the collection of waste of all kinds which is not subject to more specific rules and for the transportation of such waste over short distances, within the context of a general service in the public interest provided directly by the public authorities or by private undertakings under their control.

Edward Jann Sevón

Delivered in open court in Luxembourg on 21 March 1996.

R. Grass D. A. O. Edward

Registrar President of the First Chamber