JUDGMENT OF THE COURT (Third Chamber)
21 May 1987 *

In Case 79/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justiciary, Edinburgh, for a preliminary ruling in the proceedings pending before that court between

R. T. Hamilton, Procurator Fiscal, Dunfermline,

and

Joseph Stanley Wilson Whitelock

on the interpretation of certain provisions of Community regulations on road transport,

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

Advocate General: J. Mischo
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of

the United Kingdom, by Arthur Hamilton, QC, and Mrs S. J. Hay,

the Commission of the European Communities, by its Principal Legal Adviser, George Close,

having regard to the Report for the Hearing and further to the hearing on 22 January 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 March 1987,

* Language of the Case: English.

gives the following

Judgment

1 By a decision of 5 March 1986, which was received at the Court on 14 March 1986, the High Court of Justiciary, Edinburgh, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question as to the interpretation of certain provisions of Community regulations on road transport.

2 The question was raised in criminal proceedings brought against Joseph Stanley Wilson Whitelock for *inter alia* using a lorry adapted for use as a breakdown vehicle in which there had not been installed recording equipment as required by section 97 (1) (a) of the Transport Act 1968, as amended. According to that provision, the use of a vehicle without satisfying the requirements of the Community regulations on recording equipment (tachograph) constitutes an offence.

3 The High Court of Justiciary, Edinburgh, took the view that an interpretation of the Community regulations in question was necessary in order for it to give its judgment and requested a preliminary ruling on the following question:

'Is a motor lorry, which is adapted for use as a breakdown vehicle, by virtue of being fitted with an electrically powered winch and having a demountable crane situated between two ramps at the front of it and a pulley over the front of the body, exempted from the requirements of Article 3 (1) of Council Regulation No 1463/70 (as being a specialized breakdown vehicle as referred to in Article 4 (9) of Council Regulation No 543/69) while being used, in the course of the owner's business as a motor repairer, for the purpose of transporting unroadworthy vehicles purchased by the owner from the place of purchase to his place of business with a view to their repair and sale?'

4 Reference is made to the Report for the Hearing for the details of the main proceedings, the provisions of Community law in question and the observations

submitted by the United Kingdom and the Commission, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 It must be borne in mind first of all that Article 3 (1) of Regulation (EEC) No 1463/70 of the Council of 20 July 1970 on the introduction of recording equipment in road transport (Official Journal, English Special Edition 1970 (II), p. 482), as amended by Council Regulation (EEC) No 2828/77 of 12 December 1977 (Official Journal 1977, L 334, p. 5), provides that 'recording equipment shall be installed and used in vehicles used for the carriage [of] passengers or goods by road . . . , with the exception of the vehicles referred to in Article 4 of Regulation (EEC) No 543/69 . . . '. Article 4 of Regulation (EEC) No 543/69 of the Council of 25 March 1969 on the harmonization of certain social legislation relating to road transport (Official Journal, English Special Edition 1969 (I), p. 170), as amended by Council Regulation (EEC) No 2827/77 of 12 December 1977 (Official Journal 1977, L 334, p. 1), mentions *inter alia*: '9. Specialized breakdown vehicles'.

6 It is apparent from the very words of the provisions quoted above that the derogation in question is conditional only on the nature of the vehicle as a 'specialized breakdown vehicle', regardless of the kind of transport operation carried out.

7 That interpretation is borne out by a comparison of the wording of point 9 of Article 4 of Regulation No 543/69 and the wording of the other derogations listed in that article. As the Commission has rightly pointed out, some of those derogations expressly refer to the actual use to which the categories of vehicles in question must be put or be intended if they are to be covered by the exemption. The fact that no similar condition regarding use is laid down for 'specialized breakdown vehicles' leads to the conclusion that the application of the exemption laid down for such vehicles does not depend on the use actually made of them.

8 It is therefore necessary to determine the meaning of the expression 'specialized breakdown vehicle' in point 9 of Article 4 of Regulation No 543/69.

9 It is to be noted in this regard that in its judgment of 11 July 1984 in Case 133/83 *Regina* v *Scott* [1984] ECR 2863 the Court held that for the purposes of the application of Regulation No 543/69 the term 'specialized vehicle' for certain

types of transport operations is intended to cover exclusively vehicles whose construction, fitments or other permanent characteristics guarantee that they are used primarily for one of those operations.

10 Having regard, on the one hand, to the guidance provided by that judgment and, on the other hand, to the ordinary meaning of the word 'breakdown', the expression 'specialized breakdown vehicle' must be understood as meaning a vehicle whose construction, fitments or other permanent characteristics are such that it will be used mainly for removing vehicles that have recently been involved in an accident or have broken down for another reason. The size of that type of vehicle should enable it to be distinguished from vehicles mainly used for merely transporting other vehicles and not for providing a breakdown service.

11 Within the framework of the cooperation established by Article 177 of the EEC Treaty between national courts and the Court of Justice, it is for the national court to make the necessary findings of fact in order to establish whether a lorry adapted in the way described in the order for reference meets those criteria.

12 For those reasons the answer to the question referred to the Court must be that the expression 'specialized breakdown vehicle' in point 9 of Article 4 of Regulation No 543/69 of the Council of 25 March 1969 means a vehicle whose construction, fitments or other permanent characteristics are such that it will be used mainly for removing vehicles that have recently been involved in an accident or have broken down for another reason. Such a vehicle is not subject to the requirements laid down in Article 3 (1) of Regulation No 1463/70 of the Council of 20 July 1970, whatever use is actually made of it by its owner.

Costs

13 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (Third Chamber),

in answer to the question submitted to it by the High Court of Justiciary, Edinburgh, by decision of 5 March 1986, hereby rules:

The expression 'specialized breakdown vehicle' in point 9 of Article 4 of Regulation No 543/69 of the Council of 25 March 1969 means a vehicle whose construction, fitments or other permanent characteristics are such that it will be used mainly for removing vehicles that have recently been involved in an accident or have broken down for another reason. Such a vehicle is not subject to the requirements laid down in Article 3 (1) of Regulation No 1463/70 of the Council of 20 July 1970, whatever use is actually made of it by its owner.

Galmot Everling Moitinho de Almeida

Delivered in open court in Luxembourg on 21 May 1987.

P. Heim
Registrar

Y. Galmot
President of the Third Chamber