REPORT FOR THE HEARING
delivered in Case 79/86 *

I — Facts and written procedure

1. 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) provides for the introduction of recording equipment (tachographs) in vehicles used for the carriage of passengers or goods by road. It determines in particular the technical characteristics of tachographs and defines the vehicles in which they must be installed. Article 3 (1) of that regulation, as amended by Council Regulation (EEC) No 2828/77 of 12 December 1977 (Official Journal 1977, L 334, p. 5), provides in this regard:

'Recording equipment shall be installed and used in vehicles used for the carriage of passengers or goods by road and registered in a Member State, with the exception of the vehicles referred to in Article 4 of Regulation (EEC) No 543/69 and of vehicles used for the carriage of passengers on regular services where the route covered by the service in question exceeds 50 kilometres.'

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'.

2. On 5 July 1983, Mr Whitelock, who carried on business as a motor repairer, was driving a Bedford motor lorry registered in the United Kingdom on the southbound carriageway of the Perth to Edinburgh motorway in the District of Dunfermline. The lorry, which was not fitted with recording equipment as provided for in the Community provisions cited above, had been converted for use as a breakdown vehicle. It was fitted with an electrically powered winch, a demountable crane situated between two ramps at the front of it and a pulley over the front of the body. A trailer, also fitted with a winch, was attached to the lorry.

It appears from the documents before the Court that in the course of his business as a motor repairer Mr Whitelock was on 24-hour 'call-out' from the police in order to assist in towing away vehicles involved in accidents. On the day in question, he was transporting old, unroadworthy cars, which he had bought himself at the motor auction market, to his garage for repair in order to render the cars roadworthy and suitable for sale to private individuals. Two of the cars in question had been winched on to the lorry by means of its winch, whilst a third had been loaded on the trailer by means of the trailer winch.

On the basis of those facts Mr Whitelock was charged with a number of offences, including the offence of using the lorry

* Language of the Case: English.

described above without fitted recording equipment as required by section 97 (1) (a) of the Transport Act 1968, as amended by Regulation 2 (1) (a) of the Passenger and Goods Vehicles (Recording Equipment) Regulations 1979. According to those provisions, the use of a vehicle without satisfying the requirements of Council Regulation No 1463/70 of 20 July 1970 constitutes an offence.

At first instance Mr Whitelock was acquitted by the Sheriff of the charges brought against him on the ground in particular that his lorry was a 'specialized breakdown vehicle' within the meaning of the Community regulations and was therefore exempt from the requirement that it should be fitted with monitoring equipment. The prosecution appealed against that judgment.

The High Court of Justiciary, Edinburgh, has stayed the appeal proceedings and referred the following question to the Court for a preliminary ruling under Article 177 of the EEC Treaty:

'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?'

3. The order for reference was received at the Court on 14 March 1986.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the United Kingdom, represented by Arthur Hamilton, QC, and Mrs S. J. Hay, acting as Agent, and by the Commission of the European Communities, represented by its Principal Legal Adviser, George Close, acting as Agent.

By order of 7 July 1986 the Court (Third Chamber) dismissed Mr Whitelock's application for legal aid made pursuant to Articles 76 and 104 of the Rules of Procedure.

By decision of 10 November 1986 the Court, having heard the report of the Judge-Rapporteur and the views of the Advocate General, assigned the case to the Third Chamber pursuant to Article 95 of the Rules of Procedure and decided to open the oral procedure without any preparatory inquiry.

II — Written observations

The United Kingdom suggests that the question referred to the Court should be answered in the negative. The Commission, on the other hand, considers that the question calls for an affirmative reply.

1. The *United Kingdom* observes first of all that the scope of Regulations Nos 543/69 and 1463/70 must be determined by reference to the wording of the provisions in question, the structure of the regulations and their objectives. The three objectives of Regulation No 543/69 are the social protection of drivers, the improvement of

road safety and the elimination of disparities liable to cause distortion of competition in the road transport sector. The scope of the exemptions from those regulations should not be construed so as to jeopardize those objectives.

The United Kingdom considers that the consideration of the question referred to the Court raises two subordinate issues. The first concerns the meaning and scope of the word 'breakdown' and in particular whether that concept is restricted to situations of rescue and emergency or includes any situation in which an unroadworthy vehicle is carried by another vehicle. The second subordinate issue concerns the meaning of 'specialized' and in particular whether a vehicle which is physically equipped so that it can be used and is in fact used at times for breakdown purposes but can also be used and is in fact at other times used for other purposes of carriage is a specialized breakdown vehicle.

As regards the concept of 'breakdown', the United Kingdom points out that as originally worded Article 4 of Regulation No 543/69 referred in a single paragraph to 'vehicles used for the carriage of sick or injured persons and for carrying rescue material, and specialized breakdown vehicles'. That wording suggests that specialized breakdown vehicles perform an emergency or rescue function. The subsequent amendment of Article 4 by Regulation No 2827/77, which put 'specialized breakdown vehicles' into a separate paragraph, was not intended to change the meaning of that expression. The natural sense of the English word 'breakdown' suggests the occurrence of an event in relation to the vehicle to be dealt with rather than a mere description of its state or condition such as 'unroadworthy'. That interpretation also accords with the concept of an unforeseen mishap which appears to be inherent in the French and German language texts.

Rescue consists in providing on-the-spot assistance to vehicles which are disabled due to a mechanical defect or an accident and, if necessary, providing a towing or carriage facility to the nearest convenient place for repair or for disposal as scrap. Rescue from such random locations of unforeseen mishap is to be contrasted with pre-planned collection from a place such as a motor auction market. In the rescue situation, usually a single vehicle will be carried or towed, whereas in other cases, there is a greater likelihood that several vehicles are transported together. Moreover, in the rescue situation, the rescuing vehicle is likely to be summoned from as near a place as available and after attending at the scene to convey the disabled vehicle to the nearest convenient place for repair or disposal. However, in the non-rescue situation, the distances to and from the place of collection may be substantial and the objectives of road safety and the social protection of drivers more likely to be prejudiced.

Consequently, the United Kingdom submits that 'breakdown' is restricted to the situation where there has occurred a mechanical defect or accident to a vehicle on the public road and by reason of the

emergency directly arising from such occurrences the vehicle and possibly the occupants require to be rescued. It does not apply to the collection of unroadworthy vehicles from a market where such vehicles are sold.

As regards the notion of a 'specialized' vehicle, the United Kingdom refers to the judgment of 11 July 1984 in Case 133/83 *Regina* v *Thomas Scott & Sons Bakers Limited and Brian Rimmer* [1984] ECR 2863 which concerned the use of specialized vehicles for door-to-door selling (Article 14a (3) (a) of Regulation No 543/69). In that case the Court reached the conclusion that the construction, fitments and other permanent characteristics of the vehicle must ensure that it is primarily used for a transport operation falling within the exceptions laid down by the regulation.

That single test of specialization may not work so readily in relation to specialized breakdown vehicles where the permanent characteristics may not be sufficient to ensure that the vehicle will not be used for other purposes, namely for general carriage. Consequently, in the present case, it is necessary to look at specialization both with regard to physical characteristics and with regard to the use to which the vehicle is put. To be exempt as a specialized breakdown vehicle, the vehicle in question must be not only specially constructed or adapted for breakdown purposes but must also be kept and used for such purposes only. That argument was also accepted in a judgment delivered by the Queen's Bench Division of the High Court in England (*Universal Salvage Limited and Another* v *Boothby* [1984] RTR 289).

2. The *Commission* states that the question referred to the Court raises two principal problems, namely (i) whether a vehicle of the type envisaged is apt to be described as a specialized breakdown vehicle in the sense of Article 4, point 9, of Regulation No 543/69 and (ii) whether the fact that the breakdown vehicle was being used for the carriage of unroadworthy vehicles purchased at an auction some distance from the owner's centre of operation, and not for example in connection with a recent traffic incident, affects the exemption.

As regards question (i), some guidance is to be found in the judgment of 11 July 1984 in Case 133/83 *Regina* v *Scott* (cited above) in which it was held that the term 'specialized vehicle' for certain types of transport operations was intended to cover exclusively vehicles whose construction, fitments or other permanent characteristics guaranteed that they were used primarily for one of those operations. In the present case, it seems possible to conclude that the breakdown vehicle in question shows a sufficient degree of specialization as a breakdown vehicle, with its crane, ramps and pulley, to guarantee that it is used primarily as a breakdown vehicle. Question (i) should therefore be answered in the affirmative.

As regards question (ii), it is necessary to ask whether the exemption was intended to be limited to the use of breakdown vehicles in their characteristic function of carrying away a recently broken-down vehicle. It is to be noted in this regard that the exemption is accorded to specialized breakdown vehicles as such and not to specialized breakdown vehicles being used for a particular purpose.

In this context it is illuminating to contrast the wording of the exemption for

breakdown vehicles in point 9 of Article 4 with the various other exemptions contained in the same article or in Article 14a of Regulation No 543/69. Those exemptions may be divided into three categories:

(i) vehicles exempted on the grounds of their construction and equipment (for example, Articles 4 (6) and (9));

(ii) vehicles exempted on the ground of their use, irrespective of their construction and equipment (for example, Articles 4 (3), (4), (5), and (8), 14a (2) (b), 14a (2) (c));

(iii) vehicles exempted on the grounds of their construction and use (for example, Articles 4 (1), (2) and (7), 14a (3) (a)).

The fact that there is no use limitation attached to specialized breakdown vehicles, whereas such a limitation applies to other vehicles, leads to the conclusion that the Community legislature must have intended that there was to be no such limitation as regards specialized breakdown vehicles. The conclusion to be drawn therefore is that the actual use to which the vehicle in question was being put in the circumstances of this case does not prevent the exemption from operating.

In conclusion, the Commission proposes the following answer to the question referred to the Court:

'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 may be regarded as being a specialized breakdown vehicle for the purposes of Article 4 (9) of Council Regulation No 543/69. The fact that it was 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 is not susceptible to affect the application of the exemption provided by Article 4 (9).'

U. Everling
Judge-Rapporteur