at the relevant time the authorization to use the vehicle had been withdrawn, irrespective of the fact that the withdrawal of the authorization renders the registration invalid or entails its revocation.

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 9 February 1984.

For the Registrar

H. A. Rühl
Principal Administrator

T. Koopmans
President of the First Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 24 NOVEMBER 1983

My Lords,

The Cour de Cassation in Paris has referred to the Court under Article 177 of the EEC Treaty a request "for a preliminary ruling on the one hand as to the meaning of the phrase 'provisions in its own national law on compulsory insurance' contained in Article 2(2) of the directive of 24 April 1972" (Council Directive No 72/166/EEC (OJ, L 103, 2. 5. 1972, p. 1)) "and on the other hand as to whether a vehicle which has been taken out of circulation in a Member State of the EEC where it has been registered may be regarded as still normally based in the territory of that State in the context of Article 1 (4) of the directive of 24 April 1972".

These questions have been referred in proceedings before the Cour de Cassation arising out of an automobile

accident. It appears that on 18 July 1976, a collision occurred near Le Paradou in France between a car registered in France and a Fiat car bearing number plates issued in the Federal Republic of Germany. The driver of the latter car has not been traced.

An injured passenger in the French car sued the owner and driver of that car, but her action was dismissed on the basis that the accident was caused by the driver of the Fiat. A second action was brought by the owner of the French car against a Mr Buchwieser, who it was found had entrusted the Fiat to an inexperienced driver. That action succeeded and damages were awarded to the owner. The real dispute, however, was as to who should pay the damages — the Bureau Central Français (the French national bureau representing insurance companies in France), a defendant in the second case, or the Fonds de Garantie Automobile, an organization responsible in France for compensating persons suffering loss or injury not covered by insurance, which intervened in the proceedings. The Tribunal de Grande Instance at Tarascon held that since the Fiat had been stolen, it had not been driven with the consent of the owner and so, under French law, was not covered by insurance at the material time. Accordingly, the claim against the Bureau was dismissed and the Fonds held liable to pay the damages. On appeal, the Cour d'Appel held that the Bureau was liable since the car was registered and normally based in another Member State so that the claimant could rely on the provisions of the directive.

Before the Cour de Cassation, the Bureau, acting on behalf of the German insurers, contended that it had not been shown that the car was registered in Germany for the purposes of Article 1 (4) of the directive so that the directive could not be relied upon. Secondly, it was contended that the combined effect of Article 2 (2) of the directive, Article 1 of the "uniform agreement" entered into between the Bureaux, *inter alios,* of France and Germany, and Article 2 of a supplementary agreement, made pursuant to the directive, dated 16 October 1972, but replaced by an agreement dated 12 December 1973, was that since the car was stolen, and not driven with the authority of the owner, and was therefore under French law not required to be covered by insurance, the Bureau was not liable.

The Cour de Cassation's second question raises the first point taken by the Bureau and it is convenient to take that first. It appears from the Court of Appeal's judgment that in Germany the car was "taken out of circulation" on 20 January 1975 and that the number plates had been declared unusable. It could not, therefore, from a date apparently in 1975, have been used lawfully on the road. From Annex 1 to the Bureau's observations before the Court of Justice, it seems that the Fiat was removed from the register on 26 July 1976, i.e. after the date of the accident.

This second question raises issues substantially similar to those canvassed in Case 344/82 *SA Gambetta Auto* v *Bureau Central Français et Fonds de Garantie Automobile.* For the reasons given in my

Opinion in that case, which I do not think it helpful to repeat, it seems to me that the second question should be answered on the basis that a car which bears a registration plate issued in the territory of a Member State in which it has lawfully been registered is normally based, within the meaning of Directive No 72/166, in the territory of that Member State, even though, at the material time, authorization to use the car had been withdrawn, whether or not withdrawal of such authorization caused the registration to be invalidated or withdrawn. The additional fact in the present case that the number plate had been declared unusable before the accident does not in my view change the legal position.

The Cour de Cassation in its first question, asks the Court to rule quite generally on the meaning of the phrase "provisions in its own national law on compulsory insurance" in the directive. Put in a more concrete way on the issues in the case, what the Court wishes to know is whether the guarantee to be entered into by each national bureau as a precondition of the Commission fixing a date for all but Articles 3 and 4 of the directive to come into effect, is a guarantee to settle claims (in respect of accidents occurring in its territory caused by vehicles normally based in the territory of another Member State) on the basis of the rules for compulsory insurance in force in the States where it operates, or on some other basis which ignores any exclusions from insurance which are laid down by the law of its State.

On the one hand, it is contended severally by the Bureau, the Fonds and the French Government that the scheme is to provide for the free movement of vehicles insured in one Member State throughout the Community. The bureau in the State where the accident happens must treat the vehicle as insured, so long as vehicles of that type must be insured in that State, though subject to any limits of liability, for any accident which occurs. Specific exemptions from compulsory insurance provided by national law cannot be relied on to defeat a claim. The handling bureau pays and recovers in the State where the vehicle is normally based, either from the appropriate bureau, if the vehicle is insured, or from the guarantee fund if it is not. Any other result, it is said, would leave gaps and the victim would lose the cover which is intended to be given to him.

On the other hand the Governments of the Republic of Italy and the United Kingdom, together with the Commission, object that the only meaning which can be given to the words in the directive is that claims in respect of vehicles from other Member States are to be met on the same basis as claims against vehicles covered by compulsory insurance in the Member State of the bureau handling the claim. Such an interpretation, it is said, is in addition consistent with the uniform and the supplementary agreements which have been mentioned.

It is to be noted, first, that when Council Directive No 72/166 was amended to take account of the accession of Denmark, Ireland and the United Kingdom, by Council Directive No 72/430/EEC of 19 December 1972 (OJ, L 291, 28. 12. 1972, p. 162), the words "of its own" appearing before "national law" were deleted in the English version. That does not seem to me to make any difference for present purposes. It is however preferable to work on the amended text, "in accordance with the provisions of national law on compulsory insurance", even if the two phrases mean the same.

The second recital to the directive recognizes that disparities between national requirements in the field of compulsory insurance cover against civil liability in respect of the use of motor vehicles, resulted in frontier controls, and that it was desirable that measures should be taken "further to liberalize" the rules regarding the movement of persons and motor vehicles. The directive further recited that checks on green cards could be abolished if there came into existence an agreement whereby the national insurance bureaux each, respectively, guaranteed "compensation in accordance with the provisions of national law in respect of any loss or injury giving entitlement to compensation caused in its territory by one of those vehicles, whether or not insured". For that purpose Member States had to provide for compulsory insurance of vehicles against civil liability, the insurance to be valid throughout Community territory.

Thus the first step to be taken was that Member States should refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State. That, however, was not to come into effect until the bureaux had respectively "guaranteed the settlement, in accordance with the provisions of national law on compulsory insurance, of claims in respect of accidents occurring in its territory", caused by such vehicles "whether or not such vehicles are insured".

By Article 3 each Member State was to take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based on its territory is covered by insurance. "The extent of the liability covered and the terms and conditions of the cover shall be determined on the basis of these measures."

The arrangements might be extended to third countries, so that vehicles normally based in a third country should be treated as vehicles based in the Community, if the national bureaux of the Member States severally guaranteed "each in accordance with the provisions of its own national law on compulsory insurance, settlement" of the claims for the relevant accidents.

As a matter of ordinary language it seems to me that the words "guarantee the settlement, in accordance with the provisions of national law on compulsory insurance, of claims" means that each bureau must undertake to settle claims which its national law compulsorily requires to be covered by insurance. Any

claim falling under such obligation must be met; any claim outside such obligation, even if insurance against it is possible, is not required to be covered by the guarantee.

That meaning is in my view consistent with the provisions of Article 3, paragraph 1 which attribute the extent of the liability covered to the measures taken by Member States to ensure that civil liability is covered by insurance. There is no absolute obligation to ensure that liability exists in every case for injury or loss caused by a vehicle, or that such liability shall be identical in all the Member States. Consistently again, the contract of insurance is required to cover "according to the law in force in other Member States, any loss or injury which is caused in the territory of those States". That seems to me to refer to loss which must, not may, be insured against. Again the guarantee in Article 7 paragraph 2 is to be in accordance with the provisions of national law on compulsory insurance.

However desirable it may be that the law on compulsory insurance for vehicle accidents should be identical in each Member State of the Community, so that the citizen knows that he will be covered everywhere on a uniform basis, it does not seem to me that this directive goes that far. It abolished the need for green card control at the frontier whilst leaving intact the provisions of national law on compulsory insurance save where express obligations were imposed, as for example in Article 3.

To have changed the position obtaining under the previous green card arrangements (which covered liability against which insurance was compulsory in the country visited) would have required in my view much more explicit language.

I find it impossible to read the qualifying words in Article 2 paragraph 2 as limiting the method of settlement, as opposed to the substance of the law on compulsory insurance. Guaranteeing "settlement" in accordance with national provisions, as expressed in the Article, is the same as guaranteeing "compensation" in accordance with national provisions, as expressed in the recital.

To read the obligation to be entered into as meaning that all claims in respect of accidents caused by vehicles normally based in other States, whether or not such vehicles are insured, must be settled seems to me to give no real or adequate meaning to the words "in accordance with the provisions of national law on compulsory insurance". The settlement of such claims is to have regard to the conditions of national law be they extensive or restrictive.

Nor does it seem to me possible, as is argued, to limit the qualifying words to the quantum of insurance cover.

Contrary to what I understand to be the Bureau's argument, I see no inconsistency between allowing the claim where an apparent insurance is invalid (e.g. because the contract is void or suspended for non-payment of premiums

so that the vehicle is not insured) and limiting the cover to that required by national law. The relevant insurance cover is that which is obligatory by national law. Even if there is an inconsistency here, which I do not accept, that is in my opinion what the directive has required.

In my view, accordingly, the guarantee which the Bureau had to give was that they would pay those claims, but only those claims, which their national law required to be covered by compulsory insurance, such claims to be met whether or not there is in existence a contract of insurance. It follows that if it was not obligatory under French law to insure against accidents caused by persons who are not driving with the consent of the owner or insured, e.g. who had stolen the car, the agreement which the bureaux were required to enter into was not obliged to cover them.

Although, as I see it, the Court does not have jurisdiction in respect of disputes as to the supplementary agreement entered into by the bureaux or the uniform agreement which is referred to in it, or as to their interpretation, directly under Article 177, these two agreements seem to me entirely consistent with the construction of the obligation in Article 2 (2) of the directive which is contended for by the Commission and the two intervening governments.

By Article 2 (a) of the Supplementary Agreement of 12 December 1973, which is recited in the Commission decision fixing the date for the directive to come fully into effect, when a vehicle normally based in the territory of a Member State goes into the territory of another Member State and is there "subject to compulsory third party insurance in force in that territory", the owner or user shall be deemed to be insured "within the meaning of the Uniform Agreement", and to be deemed further to be the holder of a valid certificate of insurance, whether he has a certificate or not. "An insured" in the Uniform Agreement means a person insured under a policy of insurance (Article 1 (b)). A "policy of insurance" means a policy issued by a member of a national bureau to an insured to cover liability arising out of the use of a vehicle and, whatever its terms, "shall be deemed to be a policy giving exactly the indemnity required by the compulsory motor insurance law of the country in which an accident occurs and no more".

In reaching this conclusion I have left aside the draft of the directive relied upon by the Bureau since it does not seem to me right to rely on it. I appreciate that gaps may arise, as the Bureau contends, and the difficulties that may be caused under French law and by the arrangements which have been made between the Bureau and the Fonds. It may be that these will be avoided if the new proposed directive, which in my view goes much further than the directive under consideration, is adopted.

Accordingly I conclude that the questions should be answered on the lines:

(a) the agreement to be concluded in accordance with Article 2 (2) of Council Directive No 72/166/EEC as amended by Council Directive No 72/430/EEC required that each national bureau should guarantee the settlement only of claims in respect of accidents occurring in the territory of the Member State of that bureau caused by vehicles normally based in the territory of another Member State which the law of the Member State of that bureau made it obligatory to ensure against, and not of claims in respect of which compulsory insurance is not obligatory.

(b) a vehicle which bears a registration plate issued in the territory of a Member State in which it has lawfully been registered is normally based, within the meaning of Directive No 72/166 as amended by Directive No 72/430 in the territory of that State even though at the material time, authorization to use the car has been withdrawn, whether or not withdrawal of such authorization caused the registration to be invalidated or itself withdrawn.