OPINION OF ADVOCATE GENERAL JACOBS
delivered on 20 May 1992 *

Mr President,
Members of the Court,

1. The Tribunal de Grande Instance, Toulon (Var), has requested a preliminary ruling on the meaning of the expression 'territory in which the vehicle is normally based' in Article 1(4) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360), as amended by Article 4 of Council Directive 84/5/EEC of 30 December 1983 (OJ 1984 L 8, p. 17).

2. The question has been raised in litigation commenced as a result of a road accident that took place in France on 25 July 1985. The vehicle in which the Fournier family was travelling was hit by a car driven by Vaiter Van Werven, who was apparently to blame for the collision. The car that he was driving had originally been registered in Germany but that registration had been cancelled following the theft of the car in the Netherlands. At the time of the accident the car bore Dutch registration plates with a number that had been issued to a different car belonging to a Mr Koppelman. Mr Van Werven had not obtained the compulsory insurance cover provided for in Article 3 of Directive 72/166.

3. The Fourniers sued Mr Van Werven and the Bureau Central Français des Assurances (hereafter 'the Bureau' or 'the French Bureau'). The Bureau was alleged to be liable on the basis of Article R 420-1 of the French Code des Assurances, according to which the Bureau must take responsibility for paying compensation to the victims of accidents involving motor vehicles which are normally based in the territory of a Member State of the EEC. The Bureau argued that it was not required to compensate the Fourniers because the Dutch registration plates fitted to the car were not genuine. It maintains that in those circumstances another body — the Fonds de Garantie Automobile — is liable under an agreement between the two bodies. In addition, the Bureau commenced third-party proceedings against its Dutch counterpart, the Nederlands Bureau der Motorrijtuigverzekeraars ('the Dutch Bureau'), on the ground that that body might be held liable because the car driven by Mr Van Werven bore Dutch number plates. The Dutch Bureau in turn commenced third-party proceedings against the corresponding body in Germany — Huk-Verband — and against Huk-Coburg, a German insurance company

* Original language: English.

which had insured the car when it was still in the hands of its lawful owner.

4. The central issue in the proceedings before the national court is which of the five bodies mentioned above — the French Bureau, the Fonds de Garantie Automobile, the Dutch Bureau, Huk-Verband or Huk-Coburg — must bear ultimate liability towards the Fourniers. The Tribunal de Grande Instance, Toulon (Var), took the view that the answer to that question depended on the meaning of the expression 'territory in which the vehicle is normally based' in Article 1(4) of Directive 72/166, as amended. I shall explain later how (or whether) that provision might be relevant to the outcome of the case. In any event, the Tribunal de Grande Instance, by order of 26 September 1988, lodged at the Court on 9 March 1989, referred the following question to the Court:

'In what territory is a vehicle which has been the subject of successive registrations in more than one Member State, whether duly granted by the competent authorities or indicated by the affixing thereto of false registration plates, normally based within the meaning of Article 1(4) of Community Directive 72/166 of 24 April 1972, as amended by the Community directive of 30 December 1983?'

5. The French Bureau and Huk-Verband appealed against that order to the Cour d'Appel, Aix-en-Provence. By order of 4 April 1990 the Court of Justice suspended the proceedings while the appeals were pending. After the decision to request a preliminary ruling was upheld by the Cour d'Appel, the Court ordered the resumption of the proceedings on 24 April 1991.

The legislative background

6. For several decades it has been compulsory in most European countries and in many non-European countries for the operators of motor vehicles to obtain insurance cover for the benefit of third parties who might suffer physical injury or damage to their property as a result of a road accident. Countries which imposed such an obligation on their own residents would naturally be reluctant to admit vehicles from other countries unless they were covered by a valid insurance certificate containing corresponding guarantees. It was to deal with that problem that the so-called 'green card' system was developed pursuant to Recommendation No 5 adopted on 25 January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe (see Article 1(5) of Directive 72/166).

7. In accordance with that recommendation national insurers' bureaux were set up in each country grouping together insurance undertakings authorized in the country concerned to insure motor vehicles against civil liability. Insurance companies were authorized to issue to their clients, on behalf of their national bureau, an international certificate of insurance known as a green card. The green card served as proof that the car in question was properly insured in respect of liability towards third parties. That system

doubtless facilitated international road traffic considerably because it simplified the checks that needed to be carried out by border officials in order to prevent the admission of uninsured vehicles. It did not, however, remove the need for such checks altogether because it was still necessary to ascertain in each case whether a vehicle was covered by a green card. In 1972 the Council decided that such controls should be eliminated since they impeded the free movement of vehicles and persons within the Community and thus affected the functioning of the common market (see the first three recitals in the preamble to Directive 72/166). Accordingly, Article 2(1) of Directive 72/166 provides:

'Member States shall refrain from making checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State.

Likewise, Member States shall refrain from making such insurance checks on vehicles normally based in the territory of a third country entering their territory from the territory of another Member State. Member States may, however carry out random checks'.

But that type of control could only be eliminated if it were possible for border officials to assume that any vehicle ostensibly registered in a Member State was adequately covered by insurance. To that end, Article 3 of Directive 72/166 provides as follows:

'1. Each Member shall, subject to Article 4, take all appropriate measures to ensure that civil liability in respect of the use of vehicles normally based in 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.

2. Each Member State shall take all appropriate measures to ensure that the contract of insurance also covers:

— according to the law in force in other Member States, any loss or injury which is caused in the territory of those States;

...'

8. The Council also took the view that it was necessary to provide for the establishment of a body in each Member State that would guarantee settlement of claims in respect of accidents caused by vehicles normally based in another Member State, presumably on the ground that the victims of such accidents should be able to obtain compensation in their own Member State instead of being compelled to enforce claims against a motorist and insurer based in another country. However, instead of requiring Member States to set up a governmental body for that purpose, the Council decided to entrust the task to the national insurers'

bureaux. Article 2(2) of Directive 72/166 therefore provides:

'As regards vehicles normally based in the territory of a Member State, the provisions of this Directive, with the exception of Articles 3 and 4, shall take effect:

— after an agreement has been concluded between the six national insurers' bureaux under the terms of which each national bureau guarantees the settlement, in accordance with the provisions of its own national law on compulsory insurance, of claims in respect of accidents occurring in its territory caused by vehicles normally based in the territory of another Member State, whether or not such vehicles are insured;

— from the date fixed by the Commission, upon its having ascertained in close cooperation with the Member States that such an agreement has been concluded;

— for the duration of that agreement.'

9. The national bureaux concluded the agreement envisaged by Article 2(2) on 12 December 1973. By Decision 74/166/EEC of 6 February 1974 (OJ 1974 L 87, p. 13) the Commission appointed 15 May 1974 as the date for the abolition of insurance checks in respect of vehicles normally based in Member States.

10. It will be noted that the provisions cited above make frequent reference to the 'territory in which the vehicle is normally based'. According to Article 1(4) of Directive 72/166 that expression means:

'the territory of the State in which the vehicle is registered; or

in cases where no registration is required for a type of vehicle but the vehicle bears an insurance plate, or a distinguishing sign analogous to the registration plate, the territory of the State in which the insurance plate or the sign is issued; or

in cases where neither registration plate nor insurance plate nor distinguishing sign is required for certain types of vehicle, the territory of the State in which the person who has custody of the vehicle is permanently resident.'

Article 4 of Directive 84/5 replaced the first indent of that definition with the words 'the territory of the State of which the vehicle bears a registration plate'.

11. Directive 84/5 made other important adjustments to the scheme established by Directive 72/166. Article 1(1) provides that the compulsory insurance required by Article 3(1) of Directive 72/166 must cover both damage to property and personal injuries. Article 1(2) lays down minimum amounts

for which insurance is compulsory. Article 1(4) provides:

'Each Member State shall set up or authorize a body with the task of providing compensation, at least up to the limits of the insurance obligation, for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied. This provision shall be without prejudice to the right of the Member States to regard compensation by that body as subsidiary or non-subsidiary and the right to make provision for the settlement of claims between that body and the person or persons responsible for the accident and other insurers or social security bodies required to compensate the victim in respect of the same accident.'

Article 2 provides:

'1. Each Member State shall take the necessary measures to ensure that any statutory provision or any contractual clause contained in an insurance policy issued in accordance with Article 3(1) of Directive 72/166/EEC, which excludes from insurance the use or driving of vehicles by:

— persons who do not have express or implied authorization thereto,

...

shall, for the purposes of Article 3(1) of Directive 72/166/EEC, be deemed to be void in respect of claims by third parties who have been victims of an accident.

...

Member States shall have the option — in the case of accidents occurring on their territory — of not applying the provision in the first subparagraph if and in so far as the victim may obtain compensation for the damage suffered from a social security body.

2. In the case of vehicles stolen or obtained by violence, Member States may lay down that the body specified in Article 1(4) will pay compensation instead of the insurer under the conditions set out in paragraph 1 of this Article; where the vehicle is normally based in another Member State, that body can make no claim against any body in that Member State.

...'

12. No question has been put to the Court concerning the interpretation of Articles 1(4) and 2 of Directive 84/5. The relevance of those provisions to the present case will depend largely on how and when France implemented the directive. Those are matters for the national court to consider.

13. Member States were required to amend their national provisions to comply with Directive 84/5 by 31 December 1987 (Article 5(1)). The provisions thus amended were to be applied by 31 December 1988 (Article 5(2)).

The case-law of the Court

14. Article 1(4) of Directive 72/166 was the subject of two preliminary rulings delivered by the Court on 9 February 1984. Case 344/82 *Gambetta Auto* v *Bureau Central Français* [1984] ECR 591 arose out of an accident caused in Paris by a vehicle bearing an Austrian registration plate. The vehicle had been properly registered in Austria, but authorization to use it had been withdrawn several months earlier following the cancellation of the insurance. Vehicles normally based in Austria were to be regarded as normally based in the Community, under Article 7(2) of Directive 72/166, since the national insurers' bureaux had concluded a guarantee agreement in respect of Austria. The Court was asked essentially whether such a vehicle should still be regarded as being based in the country in which it had been registered even though authorization to use it had been withdrawn. The Court stated as follows (paragraphs 13 to 15):

'It must be remembered that the directive seeks to abolish checking of the "green card" at the frontier. For that purpose it is imperative that the State where the vehicle is normally based should be easily identifiable, and this is ensured by the issue of a registration plate. To require that the plate should be currently valid would amount to replacing checking of the "green card" by systematic checking of registration and would deprive the directive of any useful purpose.

It follows that for the purpose of applying the Council directive the vehicle bearing the plate must be regarded as normally based in the territory of registration even if authorization to use the vehicle has been withdrawn in the meantime.

For the reasons given above the answer to the question must therefore be that when a vehicle bears a properly issued registration plate it must be regarded as normally based, within the meaning of Directive 72/166, in the territory of the State of registration, even if at the material time authorization to use the vehicle had been withdrawn.'

15. A similar conclusion had been reached by Advocate General Sir Gordon Slynn in his Opinion in that case. He then added:

'This conclusion is limited to the case where a plate has been issued by a competent authority in respect of the specific vehicle which carries it. Other situations referred to in the written pleadings and at the hearing — where e. g. an apparent plate is a forgery, or where a genuine plate has been transferred to a vehicle in respect of which it was not issued from another vehicle by a thief or someone else — raise different questions which do not fall for decision here.'

16. Case 64/83 *Bureau Central Français* v *Fonds de Garantie Automobile* [1984] ECR 689 arose out of an accident caused in France by a stolen car bearing a German registration plate. The registration had been cancelled as

a result of the theft. In answer to a question on the interpretation of Article 1(4) of Directive 72/166, the Court ruled as follows:

'When a vehicle bears a properly issued registration plate, that vehicle must be regarded as being normally based, within the meaning of the directive, in the territory of the State in which it is registered, even if 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.'

The relevance of the question referred and the jurisdiction of the Court to answer it

17. As I have observed, the central issue in the litigation before the national court is which of the various bodies concerned must bear ultimate liability towards the Fourniers. The Commission has stated, both in its written observations and in its replies to written questions put by the Court, that Community law is silent on that point. The directives do not deal with the question whether the national bureau of the Member State in which the accident takes place is entitled, after compensating the victims as a result of the guarantee envisaged in Article 2(2) of Directive 72/166, to be reimbursed by the national bureau of the Member State in which the vehicle is normally based. That question is left to national law and to the private-law agreement, the conclusion of which is provided for in the said Article 2(2). As was held in Case 152/83 *Demouche* v *Fonds de Garantie Automobile* [1987] ECR 3833, the Court has no jurisdiction to interpret such an agreement since it is not an act of a Community institution.

18. The Commission is undoubtedly right when it says that the question whether the French Bureau may claim a reimbursement from another national bureau in respect of sums paid to the victims of an accident is governed by national law and by the agreements concluded between the bureau, and that Community law does not restrict the freedom of the bureaux to make whatever arrangement they find most convenient in that regard. It is also clear that the Court has no jurisdiction to interpret such an agreement. It does not, however, follow that the Court has no jurisdiction to reply to the question raised by the national court in the present proceedings.

19. The Tribunal de Grande Instance has asked the Court to interpret an expression used in a Community directive. It apparently requires such an interpretation because the same expression has been used in a private-law agreement between the national insurers' bureaux and the outcome of the action pending before it depends on the meaning of the expression in the context of that agreement. The situation is reminiscent of that which occurred in Joined Cases C-297/88 and C-197/89 *Dzodzi* [1990] ECR I-3763 and Case C-231/89 *Gmurzynska-Bscher* v *Oberfinanzdirektion Köln* [1990] ECR I-4003. In those cases the Court held that it had jurisdiction to give a ruling on the interpretation of Community provisions, not for

the purpose of applying those provisions themselves but for the purpose of applying national legislation which incorporated references to the Community provisions. Admittedly, that principle does not necessarily apply to all cases which turn on the construction of a private contract that incorporates concepts of Community law. I consider, however, that it must apply to this case because the agreement between the national bureaux, far from being an ordinary contract governed by private law, is an essential element in the system set up by Directive 72/166. Not only was the agreement contemplated by the directive; its conclusion was a condition precedent to the entry into force of most of the directive's provisions.

20. I conclude from the above that the Court has jurisdiction to reply to the question referred by the Tribunal de Grande Instance. It must, however, be emphasized that in interpreting the two directives the Court's sole task is to give the expression 'territory in which the vehicle is normally based' the meaning that it has in the directives. The question whether the expression has the same meaning in the agreement between national insurers' bureaux is entirely a matter for the national court. Equally, this Court should not be influenced, when interpreting the directives, by the possible repercussions that its ruling may have on the interpretation of that agreement. I shall therefore disregard, as irrelevant, all the arguments that have been put to the Court on the substantive issue as to who should bear ultimate liability for the consequences of the accident suffered by the Fourniers.

The meaning of the expression 'territory in which the vehicle is normally based'

21. The Tribunal de Grande Instance has asked for an interpretation of Article 1(4) of Directive 72/166, as amended by Directive 84/5. Before amendment, Article 1(4) defined the expression 'territory in which the vehicle is normally based' as meaning, apart from certain exceptional circumstances, 'the territory of the State in which the vehicle is registered'. Article 4 of Directive 84/5 replaced that definition with the words 'the territory of the State of which the vehicle bears a registration plate'. At the time when the accident in question occurred the period for implementing Directive 84/5 had not expired. It will be clear from what I have already said that it is not, in my view, the task of this Court to decide whether that circumstance is relevant. Since it is for the national court to decide whether a term used in the agreement between the national bureaux has the same meaning as in Directive 72/166, it is also for the national court to decide whether the term must be construed by reference to the original or the amended version of the directive. I shall therefore confine myself to the question referred by the Tribunal de Grande Instance and seek to interpret Article 1(4) of Directive 72/166, as amended by Directive 84/5.

22. The concept of the territory in which a vehicle is normally based is used at least ten times in Articles 2, 3, 5, 6 and 7 of Directive 72/166. In particular, Article 2 requires Member States to refrain from making

checks on insurance against civil liability in respect of vehicles normally based in the territory of another Member State. Article 3 requires each Member State to take all appropriate measures to ensure that vehicles normally based in its territory are insured. Articles 6 and 7 require Member States, in substance, to ensure that when vehicles normally based in the territory of a third country enter EEC territory they are validly insured in respect of use throughout that territory.

23. If those provisions are construed in the light of the purpose of Directive 72/166, the meaning of the words 'territory in which the vehicle is normally based' cannot, in my view, give rise to much doubt. That purpose is to abolish frontier controls of compulsory insurance cover in order to facilitate the free movement of motor vehicles and persons between Member States (see the second and third recitals in the preamble). The system established by the directive is founded on the presumption that cars are duly registered and insured in the country of which they bear a number plate, regardless of whether the plate is genuine. When a French border official sees a car with a Dutch number plate he abstains from checking whether the driver has a green card because Community law requires him to assume that the car is registered in the Netherlands and properly insured, in accordance with Article 3 of Directive 72/166, or at least that, if it is not insured, the French insurers' bureau will compensate the victims of an accident caused by the car (subject to a possible right of recourse against the Dutch insurers' bureau, if that is provided for in the agreement between the bureaux). If the border official were only required to abstain from checking the insurance documents of cars that are *genuinely* registered in a Member State, the purpose of the system would be defeated. Before allowing a car to cross the border the official would first have to check that the registration is genuine, which he could only do by examining the registration documents carried by the driver. There would be little point in abolishing checks on insurance documents but making that abolition dependent on the checking of other documents (compare paragraph 13 of the judgment in *Gambetta Auto*, cited above in paragraph 14).

24. It follows that, if Article 1(4) of Directive 72/166 is looked at in the light of the purpose of the directive, it must be construed as meaning that a vehicle is to be regarded as normally based in the country of which it bears a registration plate, irrespective of whether the plate is genuine. Article 2(1) of the directive would be deprived of its purpose if Article 1(4) were construed in any other way. That conclusion seems unavoidable even as regards the original version of Article 1(4). Once the amendment introduced by Article 4 of Directive 84/5 is taken into account, there is still less room for doubt. The amended version of Article 1(4) states that a vehicle is to be regarded as normally based in the territory of the State of which it bears a registration plate. Following the amendment the literal interpretation

coincides with the interpretation based on the purpose of the legislation.

25. Confirmation that that interpretation is correct is to be found in the penultimate recital in the preamble to Directive 84/5, which states that the abolition of checks on insurance is conditional on the granting by the national insurers' bureau of a guarantee of compensation for damage caused by vehicles normally based in another Member State and that 'the most convenient criterion for determining whether a vehicle is normally based in a given Member State is the bearing of a registration plate of the State'. The convenience of that criterion would be greatly diminished if border officials were required to investigate whether a plate having all the appearance of a genuine plate properly issued in a Member State was indeed what it appeared to be.

26. Further confirmation of the interpretation proposed above may be found in the legislative history of Directive 84/5. When the proposal for a second directive on the subject of motor insurance was submitted to the Economic and Social Committee, that body suggested that the registration plate should be the decisive element only if it was 'one issued for the vehicle in accordance with the regulations (even if its period of validity has expired) and not a false plate or one unlawfully affixed to the vehicle' (point 6.2 of the Committee's opinion, OJ 1981 C 138, p. 15). Similarly, the European Parliament proposed (OJ 1981 C 287, p. 44) that the first indent of Article 1(4) should read:

'the territory of the State of which the vehicle bears a *properly issued* registration plate'.

And yet no trace of those proposals from the Economic and Social Committee and the European Parliament is to be found in the final version of Directive 84/5. That seems to indicate conclusively that the Community legislature consciously chose not to distinguish between genuine plates affixed to a vehicle in accordance with a valid registration and false plates improperly affixed to a vehicle without the consent of the competent authority. Either type of plate is capable of determining in what country a vehicle is normally based.

27. Although some may find that solution shocking inasmuch as it allows the thief or the forger to bring about various legal consequences by means of his unlawful act, it is worth noting that it is likely in most cases to accord with reality. Stolen cars, just as much as cars operated by their lawful owners, must be 'normally based' somewhere or other, and it does not require a great deal of insight into the criminal mind to appreciate that a person who knowingly operates a stolen vehicle will in all probability equip it with registration plates for the territory in which he operates it; to equip a stolen car with foreign registration plates would be to excite the kind of attention from the authorities that thieves normally seek to avoid. Hence, in the vast majority of cases a vehicle bearing false registration plates will in fact be 'normally based' in the country indicated by those plates.

Conclusion

28. I am therefore of the opinion that the question referred to the Court by the Tribunal de Grande Instance, Toulon (Var), should be answered as follows:

Where a vehicle registered in one Member State is stolen and is unlawfully equipped with registration plates which create the impression that it is registered in another Member State, Article 1(4) of Council Directive 72/166, as amended by Article 4 of Council Directive 84/5, must be interpreted as meaning that the vehicle is normally based in the territory of the second Member State.