JUDGMENT OF THE COURT
29 February 1996 *

In Case C-193/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Amtsgericht Tiergarten, Berlin, for a preliminary ruling in the criminal proceedings before that court against

Sofia Skanavi

and

Konstantin Chryssanthakopoulos

on the interpretation of Articles 6, 8a and 52 of the Treaty,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris and G. Hirsch (Presidents of Chambers), G. F. Mancini (Rapporteur), F. A. Schockweiler, J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges,

* Language of the case: German.

Advocate General: P. Léger,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent;

— the French Government, by Philippe Martinet, Secretary for Foreign Affairs in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Catherine de Salins, Deputy Director in the same directorate, acting as Agents;

— the United Kingdom, by Stephen Braviner, of the Treasury Solicitor's Department, acting as Agent, and Rhodri Thompson, Barrister;

— 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 the German Government, represented by Gereon Thiele, *Assessor* in the Federal Ministry of Economic Affairs, acting as Agent, the United Kingdom, represented by Rhodri Thompson, and the Commission, represented by Götz zur Hausen, at the hearing on 12 September 1995,

after hearing the Opinion of the Advocate General at the sitting on 17 October 1995,

gives the following

Judgment

1 By order of 20 May 1994, received at the Court on 4 July 1994 and rectified by order of 26 July 1994, received at the Court on 8 August 1994, the Amtsgericht (Local Court) Tiergarten, Berlin, submitted a question under Article 177 of the EC Treaty for a preliminary ruling on the interpretation of Articles 6, 8a and 52 of the EC Treaty.

2 That question has arisen in criminal proceedings brought by the Public Prosecutor against Mrs Skanavi and her husband, Mr Chryssanthakopoulos.

3 Under the combined provisions of Paragraph 4 of the Verordnung über internationalen Kraftfahrzeugverkehr (Regulation on international vehicle traffic) (hereinafter the 'IntVO') and Paragraph 21(1)(1) of the Straßenverkehrsgesetz (Law on Road Traffic) (hereinafter the 'StVG'), Mrs Skanavi has been charged with driving without a licence, an offence punishable by up to one year's imprisonment or by a fine, or, if the offence was committed as a result of carelessness, by up to six months' imprisonment or a fine. Mr Chryssanthakopoulos faces the same penalties under the combined provisions of Paragraph 4 of the IntVO and Paragraph

21(1)(2) of the StVG on the ground that, as the person regularly in charge of a motor vehicle, he directed or allowed a person to drive that vehicle without a licence.

The directives on driving licences

4 Driving licences were first made the subject of harmonization through the adoption of the First Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving licence (OJ 1980 L 375, p. 1), which, as the first recital in its preamble indicates, sought in particular to contribute to improving road traffic safety as well as to assist the movement of persons settling in a Member State other than that in which they have passed a driving test or moving within the Community.

5 To that end, Directive 80/1263 harmonized the relevant national rules, in particular those governing national systems of issuing driving licences, categories of vehicles and the conditions of validity of those licences. It also established a Community model licence and introduced a system for the mutual recognition of driving licences by Member States as well as for the exchange of those licences when the holders transferred their residence or place of work from one Member State to another.

6 Article 8(1) of that directive provides that, if the holder of a valid national driving licence or valid Community model licence issued by a Member State takes up normal residence in another Member State, his licence shall remain valid there for up to a maximum of a year following the taking up of residence. At the request of the

holder within that period, and against surrender of his licence, the host Member State is to issue him with a Community model driving licence for the corresponding category or categories without requiring him, *inter alia*, to pass a practical and theoretical test or to meet medical standards. That State may, however, refuse to exchange the licence if its national regulations, including medical standards, preclude the issue of the licence.

7 Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1) marked a new stage in the harmonization of national provisions, particularly with regard to conditions governing the issue of licences and vehicle categories. It also removed the obligation to exchange driving licences in the event of a change in the normal State of residence, which, according to the ninth recital in its preamble, constitutes an obstacle to the free movement of persons and is inadmissible in the light of the progress made towards European integration.

8 Article 1(2) of Directive 91/439 provides that driving licences issued by Member States are to be mutually recognized. Article 8(1) of the same directive states that the holder of a valid national driving licence issued by a Member State who has taken up normal residence in another Member State may request that his driving licence be exchanged for an equivalent licence, but is not obliged to do so.

9 Under Article 12 of Directive 91/439, Member States were required, after consulting the Commission, to adopt, before 1 July 1994, the laws, regulations or administrative provisions necessary to comply with the Directive as of 1 July 1996. Article 13 repeals Directive 80/1263 as of 1 July 1996.

The facts

10 Mrs Skanavi and Mr Chryssanthakopoulos, who are Greek nationals, took up residence in Germany in order to take over the undertaking Güstrower Möbel GmbH (hereinafter 'Güstrower') from the Treuhand. At the material time, Mr Chryssanthakopoulos was the managing director of Güstrower.

11 Mrs Skanavi, who had been resident in Germany since 15 October 1992, was stopped by police on 28 October 1993 while driving a car belonging to Güstrower. She was in possession of a driving licence issued by the Greek authorities but did not have a German driving licence.

12 In the light of those facts, the Public Prosecutor at the Landgericht (Regional Court) Berlin asked for fines of 15 *per diem* amounts of DM 200, making a total of DM 3 000, to be imposed on each accused.

13 The national court took the view that the accused had committed the offences with which they were charged as a result of carelessness, Mrs Skanavi having neglected to exchange her licence within one year of taking up normal residence in Germany. However, it considered that the German legislation in question might be at variance with Articles 6, 8a and 52 of the Treaty.

4 In this regard, the national court noted, *inter alia*, that authorization to drive a motor vehicle is under present circumstances an essential condition for the exercise of a trade or profession and that excessive requirements are for that reason liable to impair free movement. In that context, the obligation to exchange discriminates against nationals of other Member States who take up residence in Germany. Even though exchange of a licence is not subject to any special conditions, the holder of a driving licence issued by another Member State who drives a vehicle after the period set for exchanging licences has expired is treated in the same way as a person who has never held a driving licence or whose licence has been withdrawn. That person will thereby incur a custodial sentence or a fine and consequently acquire a criminal record, which might also have consequences for the exercise of his trade or profession, such as withdrawal of a concession on grounds of unreliability. Even if the obligation to exchange were justified on objective grounds, such as the need to check the authenticity of the driving licence or to make additional entries which may be required under German law, the penalties which may be imposed for the breach of such an obligation are, in the national court's view, disproportionate to its gravity.

5 In view of the foregoing, the Amtsgericht Tiergarten, Berlin, decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Are Articles 6, 8a and 52 of the EC Treaty to be interpreted as being incompatible with a provision of national law which requires a national driving licence issued by an EC Member State to be exchanged for a German driving licence within one year of the holder's taking up normal residence in the Federal Republic of Germany, failure to do which will mean that driving a motor vehicle constitutes the offence of driving without a licence, punishable by up to one year's imprisonment or a fine?'

The subject-matter of the preliminary question

16 The question submitted by the national court concerns the interpretation of the provisions of the EC Treaty, although the facts material to the main proceedings occurred on 28 October 1993, that is to say, three days before the Treaty on European Union entered into force. Although Article 6 of the EC Treaty substantially reproduces Article 7 of the EEC Treaty and Article 52 was not amended by the Treaty on European Union, Article 8a is a new provision which, in the view of the national court, may preclude application of the national rules at issue in the criminal proceedings which have been brought before it.

17 It thus appears that the national court could apply the principle, recognized by its national law, that the more favourable rule of criminal law should take retroactive effect and, consequently, set aside national law to the extent to which it is contrary to the provisions of the Treaty.

18 It is therefore necessary to answer the question submitted since it is for the national court to determine both the need for a preliminary ruling in order to enable it to give judgment and the relevance of the questions which it submits to the Court (see, in particular, Joined Cases C-358/93 and C-416/93 *Bordessa and Others* [1995] ECR I-361, paragraph 10).

The obligation to exchange a licence issued by another Member State

19 By its question, the national court seeks to determine first of all whether, as Community law stands at present and prior to the implementation of Directive 91/439, Articles 6, 8a and 52 of the Treaty preclude a Member State from requiring the

holder of a driving licence issued by another Member State to exchange that licence for a licence of the host Member State within one year of taking up normal residence in that State in order to remain entitled to drive a motor vehicle there.

10 The Court has consistently held that Article 6 of the Treaty, which lays down the general principle of the prohibition of discrimination on grounds of nationality, applies independently only to situations governed by Community law in respect of which the Treaty lays down no specific prohibition of discrimination (see, in particular, Case C-18/93 *Corsica Ferries Italia* v *Corpo dei Piloti del Porto di Genova* [1994] ECR I-1783, paragraph 19).

11 The principle of non-discrimination was implemented and specifically laid down, in relation to the right of establishment, by Article 52 of the Treaty.

12 Article 8a of the Treaty, which sets out generally the right of every citizen of the Union to move and reside freely within the territory of the Member States, finds specific expression in Article 52 of the Treaty. Since the facts with which the main proceedings are concerned fall within the scope of the latter provision, it is not necessary to rule on the interpretation of Article 8a.

13 So far as Article 52 is concerned, the Court has already held, at point 4 of its judgment in Case 16/78 *Choquet* [1978] ECR 2293, that national rules relating to the issue and mutual recognition of driving licences by the Member States exert an influence, both direct and indirect, on the exercise of the rights guaranteed by the

provisions of the Treaty relating to freedom of movement for workers, to freedom of establishment and to the freedom to provide services. In view of the importance of individual means of transport, possession of a driving licence duly recognized by the host State may affect the actual pursuit by persons subject to Community law of a large number of occupations for employed or self-employed persons and, more generally, freedom of movement.

24 At point 7 of the same judgment, however, the Court also stated that, in view of the requirements of road safety, mere recognition of driving licences for the benefit of persons who elected to reside permanently within the territory of a Member State other than the State which issued a driving licence to them could not be contemplated unless the requirements for the issue of those driving licences were harmonized to a sufficient extent.

25 In those circumstances, it was for the Council to achieve that harmonization and to provide that driving licences issued by the Member States should be mutually recognized in order to remove the obstacles to the free movement of persons resulting from the obligation to obtain a driving licence issued by the host Member State.

26 Those obstacles will be totally removed only upon the application, as from 1 July 1996, of Directive 91/439, Article 1(2) of which provides for mutual recognition, without any formality, of driving licences issued by Member States. Furthermore, the obligation imposed on persons taking up residence in a Member State to

exchange the licence issued by another Member State for a licence of the host State constitutes in itself an obstacle to the free movement of persons, as the Council points out in the preamble to Directive 91/439.

27 However, in view of the complexity of the matter and the differences between the legislation of the Member States, the Council was empowered to achieve the necessary harmonization progressively. It was therefore quite open to the Council to allow Member States temporarily to impose an obligation to exchange licences.

28 The answer to the first part of the question submitted must therefore be that, as Community law stands at present and prior to the implementation of Directive 91/439, Article 52 of the Treaty does not preclude a Member State from requiring the holder of a driving licence issued by another Member State to exchange that licence for a licence of the host Member State within one year of taking up normal residence in that State in order to remain entitled to drive a motor vehicle there.

The penalties provided for in the event of breach of the obligation to exchange

29 Secondly, the national court asks whether Articles 6, 8a and 52 of the Treaty preclude the driving of a motor vehicle by a person who could have obtained a licence from the host State in exchange for the licence issued by another Member State but who did not make the exchange within the prescribed period from being treated as driving without a licence and thus rendered punishable by imprisonment or a fine.

30 For the reasons set out in paragraphs 20 to 22, it is necessary to rule only on the interpretation of Article 52.

31 Under the provisions of Directive 80/1263, a driving licence issued by a Member State is recognized by the other Member States in which the holder is not normally resident and, for one year, also in the State in which he takes up normal residence.

32 Although the holder may be required to have his licence exchanged in order to remain entitled to drive motor vehicles within the territory of the host Member State after the expiry of the one-year period, his original licence remains valid in the Member State which issued it and continues to be recognized by the other Member States.

33 Member States may indeed refuse to exchange licences in certain circumstances expressly set out in the Directive, but that possibility cannot affect the entitlement of licence holders to have their licences exchanged if there are no such exceptional circumstances.

34 It follows that the issue of a driving licence by a Member State in exchange for a licence issued by another Member State does not constitute the basis of the right to drive a motor vehicle in the territory of the host State, which is directly conferred by Community law, but evidence of the existence of such a right.

35 In those circumstances, the obligation to exchange driving licences which Member States may impose under the Directive is essentially a way of meeting administrative requirements.

36 In the absence of Community rules governing the matter, the Member States remain competent to impose penalties for breach of such an obligation. However, it follows from settled case-law concerning non-compliance with formalities for establishing the right of residence of an individual enjoying the protection of Community law that Member States may not impose a penalty so disproportionate to the gravity of the infringement that this becomes an obstacle to the free movement of persons; this would be especially so if the penalty consisted of imprisonment (see, in particular, Case C-265/88 *Messner* [1989] ECR 4209, paragraph 14). In view of the effect which the right to drive a motor vehicle has on the actual exercise of the rights relating to the free movement of persons, the same considerations must apply with regard to breach of the obligation to exchange driving licences.

37 Treating a person who has failed to have a licence exchanged as if he were a person driving without a licence, thereby causing criminal penalties, even if only financial in nature, such as those provided for in the national legislation in question in this case, to be applied, would also be disproportionate to the gravity of that infringement in view of the ensuing consequences.

38 As the national court has pointed out, a criminal conviction may have consequences for the exercise of a trade or profession by an employed or self-employed person, particularly with regard to access to certain activities or certain offices, which would constitute a further, lasting restriction on freedom of movement.

39 The answer to the second part of the question submitted by the national court must therefore be that, in view of the resultant consequences, such as may arise under the national legal system in question, Article 52 of the Treaty precludes the

driving of a motor vehicle by a person who could have obtained a licence from the host State in exchange for the licence issued by another Member State but who did not make that exchange within the prescribed period from being treated as driving without a licence and thus rendered punishable by imprisonment or a fine.

Costs

40 The costs incurred by the German and French Governments, 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,

in answer to the question referred to it by the Amtsgericht Tiergarten, Berlin, by order of 20 May 1994, rectified by order of 26 July 1994, hereby rules:

1. As Community law stands at present and prior to the implementation of Council Directive 91/439/EEC of 29 July 1991 on driving licences, Article 52 of the EC Treaty does not preclude a Member State from requiring the holder of a driving licence issued by another Member State to exchange that licence for a licence of the host Member State within one year of taking up

normal residence in that State in order to remain entitled to drive a motor vehicle there.

2. In view of the resultant consequences, such as may arise in the national legal system in question, Article 52 of the Treaty precludes the driving of a motor vehicle by a person who could have obtained a licence from the host State in exchange for the licence issued by another Member State but who did not make that exchange within the prescribed period from being treated as driving without a licence and thus rendered punishable by imprisonment or a fine.

Rodríguez Iglesias Kakouris Hirsch Mancini

Schockweiler Moitinho de Almeida Gulmann

Murray Jann Ragnemalm Sevón

Delivered in open court in Luxembourg on 29 February 1996.

R. Grass G. C. Rodríguez Iglesias

Registrar President