JUDGMENT OF THE COURT
OF 28 NOVEMBER 1978 [1]

Criminal proceedings v Michel Choquet (preliminary ruling requested by the Amtsgericht Reutlingen)

"Recognition of driving licences between Member States"

Case 16/78

Free movement of persons and services — National of a Member State — Establishment in another Member State — Driving licence — Licence issued by the State of origin — Obligation to obtain a fresh licence in the host State — Compatibility with Community law — Conditions and limits

(EEC Treaty, Arts. 48, 52 and 59)

It is not in principle incompatible with Community law for one Member State to require a national of another Member State, who is permanently established in its territory, to obtain a domestic driving licence for the purpose of driving motor vehicles, even if he is in possession of a driving licence issued by the authorities in his State of origin.

However, such a requirement may be regarded as indirectly prejudicing the exercise of the right of freedom of movement, the right of freedom of establishment or the freedom to provide services guaranteed by Articles 48, 52 and 59 of the Treaty respectively, and consequently as being incompatible with the Treaty, if it appears that the conditions imposed by national rules on the holder of a driving licence issued by another Member State are not in due proportion to the requirements of road safety. Insistence on a driving test which clearly duplicates a test taken in another Member State for the classes of vehicle which the person concerned wishes to drive, or linguistic difficulties arising out of the procedure laid down for the conduct of any checks, or the imposition of exorbitant charges for completing the requisite formalities could all be examples of this.

In Case 16/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Amtsgericht (Local Court) Reutlingen (Federal Republic of Germany) for a preliminary ruling in the criminal proceedings pending before that court against

1 — Language of the Case: German.

MICHEL CHOQUET (electrician), residing at Reutlingen,

on the interpretation of Articles 5, 7, 48 and 56 of the EEC Treaty with reference to the law of the Federal Republic of Germany on driving licences,

THE COURT,

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), P. Pescatore, M. Sørensen, A. O'Keeffe and G. Bosco, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Michel Choquet, a French national who resides at Reutlingen in the Federal Republic of Germany and works as an electrician, was involved in a road traffic accident at Reutlingen-Gröningen on 15 October 1977.

After the public prosecutor for the Landgericht (Regional Court) Tübingen had issued a summons on 15 November 1977 Mr Choquet was ordered by the Amtsgericht (Local Court) Reutlingen to pay a fine of DM 1 600 for dangerous driving and driving without a driving licence.

In order to drive a motor vehicle in the Federal Republic of Germany an official driving licence is necessary, otherwise the driver is liable to punishment pursuant to Articles 2 and 21 of the Straßenverkehrsgesetz (law on road traffic) of 19 December 1952. Under Articles 6 and 7 of the Paris Convention on Motor Traffic of 24 April 1926, in conjunction with the Regulation on International Motor Traffic of 12 November 1934 as amended by the Regulation of 18 April 1940, a foreigner is entitled to drive a motor vehicle within Federal territory, in accordance with the provisions of his country of origin, with his national driving licence or an international driving licence, for one year after crossing the frontier or from the date of issue of his driving licence. After

that period has elapsed a foreigner in the Federal German Republic must hold a German driving licence. Mr Choquet, who has been resident in the Federal Republic of Germany since 1 January 1976, holds a French driving licence issued by the Préfecture de l'Aisne on 22 November 1968, but not a German driving licence.

An appeal was lodged on 14 December 1977 with the Amtsgericht Reutlingen, which by an order of 13 February 1978 decided, pursuant to Article 177 of the EEC Treaty, to stay proceedings until the Court of Justice has given a preliminary ruling on the following question:

Is it compatible with Community law for a Member State of the European Community to require the nationals of other Member States to possess a driving licence issued by the first Member State for driving motor vehicles and, as the case may be, to penalize them for driving without such a driving licence even though such citizens of the Community have a right of residence under Article 48 *et seq.* of the EEC Treaty and are in possession of an equivalent driving licence from their own country?

The order of the Amtsgericht Reutlingen was received at the Court Registry on 16 February 1978.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 24 April 1978 by the Commission of the European Communities, on 8 May 1978 by the Government of the Kingdom of the Netherlands, on 17 May 1978 by the Government of the United Kingdom and on 22 May 1978 by Mr Choquet, the accused in the main proceedings.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

It however requested the Commission to produce a comparative table of the laws and administrative practices of the nine Member States dealing with the question whether a foreign national holding a driving licence issued by his Member State of origin, who takes up residence within the territory of the Member State under consideration, is obliged, and, if so, subject to what conditions as to time-limit, procedure, form and substance, to obtain a driving licence issued by the Member State where he is residing. This request was complied with after the period of time allowed had been extended.

II — Written observations submitted to the Court

Mr Choquet, the accused in the main proceedings, regards the German law on road traffic as incompatible with Community law, in so far as it requires a national of a Member State who holds a domestic driving licence issued by his country of origin, just like other foreign nationals, to obtain a German driving licence after staying one year in the Federal Republic of Germany, and in so far as a national of a Member State who holds a domestic driving licence, when that period has elapsed, is under the threat of punishment for driving without a driving licence if he continues to drive in the Federal Republic of Germany.

(a) These provisions are said to be in breach of the obligation referred to in Article 5 of the EEC Treaty to act in a manner favourable to the Community. In the context of the Community there is no justification, given its objectives, for making a foreign national take a national driving test. The Member States form a single economic area exhibiting the same degree of technical development, industrialization and traffic density, within which road traffic regulations have to a great extent been standardized; the requirements laid down in the different

Member States for obtaining a driving licence may differ but they have been devised with the same intention and with the same objective in mind. Compliance with the Treaty requires that nationals of the Member States should not, in general, be obliged, as are other foreign nationals, to obtain a domestic driving licence but that, by the adoption of less radical measures, any existing restrictions should be removed.

(b) German road traffic law is said to contravene the provisions of the Treaty securing freedom of movement for workers within the Community (Article 48 *et seq.*). Persons whose occupation is to drive motor vehicles are a particular case in point. The holder of a domestic driving licence may, as a national of another Member State, obtain employment as a driver at any time in the Federal Republic of Germany; but, after one year, he cannot pursue his occupation, at all events not under the conditions in force until now, unless he takes a German driving test. This involves him in very considerable expense, mainly because of the linguistic difficulties connected with the complicated wording of the German Highway Code; there is thus a breach of the principle that Member States must accord nationals of the other Member States the same treatment as their own nationals.

(c) The provisions of German law on road traffic are said to contravene the principle of freedom of establishment set out in Article 52 *et seq.* of the EEC Treaty. The holder of a domestic driving licence may establish himself at any time as an independent carrier or taxi-driver. In the case of these independent activities the obtaining of a domestic driving licence amounts in substance to a certificate of fitness to pursue that occupation within the meaning of Article 57 of the EEC Treaty. German law constitutes an obstacle to the effective exercise of freedom of establishment when it insists, at least for the purpose of pursuing an occupation permanently, on the resubmission of evidence of fitness which has already been produced in almost identical circumstances in another Member State.

(d) Nor, in the accused's view, are the provisions of German law justified on grounds of public policy or public security within the meaning of Article 56 (1) of the EEC Treaty. This finding results from the simple fact that any foreign national is entitled to drive for one year on German roads, although nothing is known of the conditions imposed by the State of origin in relation to the issue of a driving licence. This is especially true of nationals of Member States whose requirements for obtaining a driving licence are sufficiently well-known. Furthermore, the fact that driving conditions are the same in the Member States means that anyone who has obtained a driving licence in one of the Member States and may therefore drive in that State is not a danger to public security or public policy in another Member State if he drives in that State.

The *Government of the Kingdom of the Netherlands* points out that the duty imposed on a State to recognize the domestic driving licences of other States derives from the International Conventions on Motor Traffic concluded in Paris on 24 April 1926 and in Geneva on 19 September 1949 respectively, which were signed by the Netherlands. The position with regard to the Federal Republic of Germany is governed by an exchange of notes of 28 October 1959. The Netherlands is also contemplating signing the Convention on Road Traffic concluded in Vienna on 8 November 1968 and the European Convention supplementing that Convention, signed in Geneva on 1 May 1971. However, the above-mentioned obli-

gation only applies to the international movements of travellers. Consequently, if the holder of a foreign driving licence is established in the Netherlands, a Netherlands driving licence will be required under Netherlands law on road traffic. The holder of a foreign driving licence, which is still valid or has been invalid for less than one year at the date when he establishes himself in the Netherlands, is none the less entitled to be granted a Netherlands driving licence without taking another driving test. He must, however, satisfy the legal requirements applicable in the Netherlands with regard to physical fitness to drive motor vehicles: the applicant must produce a declaration as to health signed in his own hand; a medical examination may also be required as a result of that declaration. Thus a foreign national who establishes himself in the Netherlands is entitled to obtain a Netherlands driving licence on production of his foreign driving licence, provided that he satisfies the requirements as to physical fitness laid down under Netherlands law. In order to have his domestic licence transcribed he does not therefore encounter any greater obstacle than does a Netherlands citizen.

These rules are more advantageous than those provided for by the Convention of the Economic Commission for Europe on minimum requirements for the issue and validity of driving licences concluded in Geneva on 1 April 1975, which the Netherlands has not yet signed. The Netherlands intends to adjust its system for the exchange of driving licences to the conditions of that Convention; the more restrictive conditions which are thus to be adopted in relation to the exchange of driving licences would not, however, apply to holders of driving licences from the other Member States of the EEC. In the case of this category the Netherlands would retain the system of unconditional exchange.

The rules providing that a person who establishes himself in the Netherlands has to apply for the issue of a Netherlands driving licence owe their existence to the fact that, under present circumstances, the national driving licence is an essential instrument for maintaining order so far as domestic road traffic is concerned. Any interference with these rules would cause the Netherlands to suffer the following disadvantages:

— Checking that the rules of the road are complied with would become more complicated;

— Checking whether disqualifications from driving are respected would be more difficult;

— The withdrawal of a driving licence issued by another Member State by reason of a finding of unfitness to drive a motor vehicle or because the holder is physically unfit would be impossible;

— A Netherlands driving licence is valid for five years; the period of validity of most of the driving licences issued by the other Member States is unlimited. Establishment in the Netherlands would make the periodic renewal of the document more difficult;

— By reason of the exemption drivers, who are nationals of other Member States of the EEC and who are established in the Netherlands, would not have to comply with the condition, which is applicable in the Netherlands, to produce every five years when the driving licence is renewed a fresh declaration as to fitness nor, for this reason, could they be required to undergo the medical examination which such declaration might render necessary.

Until there is a more comprehensive coordination of the relevant rules at the EEC level the Netherlands are anxious to retain the requirement that if a national of a Member State establishes

himself in the territory of another Member State he must apply for a driving licence issued by that Member State.

The *Government of the United Kingdom* is of the opinion that every Member State must have the right to control the conditions for driving on its roads in the interest of public safety. Member States achieve such control by granting driving licences only to those whom they deem to be qualified to drive safely on their roads and by prohibiting the driving of motor vehicles by any person who does not hold such a licence. This prohibition does not apply to drivers who are temporary visitors and who hold appropriate driving licences or international driving permits granted in another country which are recognized as such licences or permits, so long as they remain visitors, and the country granting the licence or permit and the host country are both parties to the International Convention relative to Motor Traffic concluded in Paris in 1926 or to the Convention on Road Traffic concluded at Geneva in 1949 or to the Convention on Road Traffic concluded in Vienna in 1968.

In the absence of any provision of Community law, each Member State must be entitled to apply national standards, including driving test standards, fitted to the national traffic conditions and to require all who seek their licences to meet those standards. The Court has held that, notwithstanding the Treaty provisions relating to freedom to provide services, each Member State has the right to make its own rules aimed at maintaining professional standards of conduct; *a fortiori* it has the right to make its own rules relating to the conditions on which driving on its roads is permitted, since driver licensing law, unlike freedom to provide services, is not regulated by the Treaties.

It is conceded that national rules should not be applied to nationals from other Member States whose work involves the driving of vehicles in such a way as to impede freedom of movement. It is submitted that this freedom is not impeded if nationals of other Member States have equal opportunity with nationals of the host State to qualify for and obtain whatever national driving licence is required to establish themselves in their chosen work, and the penalties for driving without, and the costs of obtaining, a driving licence are neither discriminatory nor excessive.

The *Commission* considers that the obligation, as defined by the law of the Federal Republic of Germany, to hold a driving licence may be in breach of the right of freedom of movement enshrined in Article 48 of the EEC Treaty if there is a direct connexion between the driving of a vehicle and the objective of the right of freedom of movement, that is to say if it is necessary for a person to drive in order to seek and pursue an activity and if the obligation to hold a driving licence is not justified on grounds of public policy, public security and public health. The obligation to possess a driving licence does not in itself impede freedom of movement, except where the conditions for obtaining this driving licence constitute an intolerable financial burden upon or discriminate against nationals of other Member States.

In fact, nationals of the other Member States do not have to bear intolerable or discriminatory burdens in order to acquire a German driving licence: pursuant to Article 15 (1) of the Straßenverkehrszulassungsordnung (regulation governing the issue of licences to drive road vehicles) any person who holds a foreign driving licence shall obtain the corresponding German driving licence if there is no doubt as to his fitness, if he is resident in the Federal Republic, if his principal place of abode has for one year been the Federal Republic and if he has

during that period driven a vehicle belonging to the class for which a licence has been applied for. Unlike German applicants, the holder of a foreign driving licence does not have to prove that he knows what steps to take in case of accident and that he has taken a course in first aid. The holder of a foreign driving licence who does not fulfil the conditions relating to residence and length of stay can obtain a German driving licence if he proves by passing a test that he has an adequate knowledge of the German provisions relating to road traffic.

Thus the holder of a foreign driving licence is entitled to obtain a German driving licence. Passing a test is only required in certain well-defined cases. In practice, the system amounts to transcribing a foreign driving licence or exchanging it for a domestic driving licence. The competent authority, in order to cover the administrative expenditure, may make a charge which may not exceed DM 100 (or DM 250 if the applicant has to undergo a psychological test or to be medically examined).

Thus the question relating to the compatibility with Community law of the national obligation to possess a driving licence invites an affirmative answer.

It should be stressed that as part of its common transport policy the Commission forwarded to the Council on 17 August 1972 a proposal for a Council Directive on the harmonization of the laws relating to motor vehicle driving licences (Official Journal 1972, No C 119, p. 1). That proposal provided for the introduction of a single procedure for the issue of driving licences. After consulting the European Parliament and the Economic and Social Committee the Commission forwarded to the Council on 5 December 1975, pursuant to the second paragraph of Article 149 of the EEC Treaty, an amended proposal (Official Journal 1976, No C 8, p. 2). The aim of that proposal was to introduce a Community driving licence which could be issued on an optional basis and at the same time as the national driving licence and which, as it would be valid throughout Community territory, would in practice be tantamount to mutual recognition of national driving licences by the Member States. That proposal is at the present time being discussed by the competent working parties within the Council.

The question referred by the Amtsgericht Reutlingen might be answered as follows:

The right of freedom of movement created by Article 48 of the EEC Treaty is not infringed by national provisions which forbid, and render subject to penalties, the driving of motor vehicles without a domestic driving licence and which provide for the issue, without any driving test, of that domestic driving licence to the holder of a foreign driving licence.

III — Oral procedure

Mr Choquet, the accused in the main proceedings, represented by Rolf Kofler, Advocate at Reutlingen, the Government of the United Kingdom, represented by R. D. Munrow, Assistant Treasury Solicitor, and the Commission of the European Communities, represented by its Legal Adviser, Norbert Koch, submitted their oral observations and their replies to the questions raised by the Court at the hearing on 26 September 1978.

The Advocate General delivered his opinion at the hearing on 24 October 1978.

Decision

1 By an order of 13 February 1978, which was received at the Court Registry on 16 February 1978, the Amtsgericht Reutlingen referred to the Court, pursuant to Article 177 of the EEC Treaty, a question on the interpretation of Article 48 of the EEC Treaty in conjunction with the mutual recognition of motor vehicle driving licences for the benefit of Community nationals.

This question has been raised during criminal proceedings in which a French national established in the Federal Republic of Germany, where he is employed as an electrician, is being prosecuted for driving a motor vehicle without a driving licence which is valid under German law.

2 The Court file shows that when the police carried out a check on the occasion of a road traffic accident in which the accused was involved he produced a driving licence issued by the French authorities.

The German administration does not regard that driving licence as being valid, whereas according to the provisions of the national road traffic rules a holder of a foreign driving licence who has been established for more than one year in the territory of the Federal Republic of Germany is obliged to obtain a German driving licence.

However, according to the information supplied during these proceedings, in that case the conditions to which the issue of the driving licence are subject are simplified as compared with the procedure for the issue of the domestic driving licence and do not as a general rule lead to a fresh driving test.

In this connexion the court making the reference points out that the acquisition of a fresh driving licence may nevertheless create language difficulties and involve the person concerned in expenses which are so disproportionate that they may amount to discrimination against nationals of the other Member States in contravention of Article 7 of the Treaty and may impede the exercise of the right to freedom of movement for workers which is guaranteed by Article 48.

3 It is for the purpose of resolving this doubt that the Amtsgericht has referred to the Court the question whether it is "compatible with Community law for a Member State of the European Community to require the nationals of other Member States to possess a driving licence issued by the first Member State for driving motor vehicles and, as the case may be, to penalize them for

driving without such a driving licence even though such citizens of the Community have a right of residence under Article 48 *et seq.* of the EEC Treaty and are in possession of an equivalent driving licence from their own country".

The connexion between the matter at issue and the EEC Treaty

4 The Government of the United Kingdom, in its observations submitted during the proceedings, drew attention to the fact that there is no Community legal provision which specifically relates to the issue of driving licences.

In this connexion it should be pointed out, in the first place, that the Commission in a proposal for a directive on the harmonization of the laws relating to motor vehicle driving licences, which it submitted to the Council on 5 December 1975 (Official Journal 1976, No C 8, p. 2), indicated that Article 75 (1) (c) of the Treaty relating to the implementation of a common transport policy was the legal basis of the measures proposed.

That article, which authorizes the Council to lay down "any . . . appropriate provisions" in transport matters, could indicate a solution to the dispute only by way of implementing measures adopted by the Council, and at the present stage there are none.

It must nevertheless be appreciated 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 establishment and, subject to the reference contained in Article 61 (1) of the Treaty, to the provision of services in general.

In fact, taking into account the importance of individual means of transport, the 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.

5 It is apparent therefore that, even in the absence of any specific Community law provisions in this field, the Amtsgericht was right to refer its question asking the Court to rule on the possible effect of the requirements for the issue or recognition of driving licences on freedom of movement for workers, to which must be added the freedom of establishment and the freedom to provide services, which are all guaranteed by the Treaty.

The substance

6 The rules regarding the issue of driving licences, including the determination of the conditions under which a foreign driving licence may be recognized or exchanged for a domestic driving licence, fall primarily within the scope of the responsibilities devolving upon the Member States, within their national territory, concerning the safety of highway traffic.

7 A comparative study of the present position in this field in the Member States makes it clear that their laws on the issue of driving licences — especially as far as concerns the rules for driving tests, the frequency of medical examinations, the term of validity of driving licences and the definition of the different classes of motor vehicles — differ to such an extent that the mere recognition of driving licences for the benefit of persons who elect to reside permanently within the territory of a Member State other than the State which issued them with a driving licence cannot be contemplated unless the requirements for the issue of those driving licences are harmonized to a sufficient extent.

In these circumstances the requirements imposed by a Member State on persons established within its territory, in so far as the recognition of driving licences issued by other Member States is concerned, cannot be regarded as amounting in themselves to an obstacle to freedom of movement for workers, to freedom of establishment or to the liberalization of the provision of services.

Consequently, controls designed to guarantee to Member States that the holder of a driving licence issued by another Member State who is established within their territory satisfies the requirements laid down for their own nationals by the legislation applicable in that field cannot in principle be regarded as a requirement which is incompatible with the rules of the Treaty.

8 Legislative provisions of this kind could be considered to contravene Community law only if their application were to cause persons in one Member State who had obtained a driving licence in another Member State such difficulties that those persons would in fact be hindered in the free exercise of the rights which Articles 48, 52 and 59 of the Treaty guarantee them in connexion with the free movement of persons, freedom of establishment and freedom to provide services.

Insistence on a driving test which clearly duplicates a test taken in another Member State for the classes of vehicle which the person concerned wishes to drive, or linguistic difficulties arising out of the procedure laid down for the conduct of any checks, or the imposition of exorbitant charges for completing the requisite formalities could all be examples of this.

Such obstacles to the recognition of a driving licence issued by another Member State are not in fact in due proportion to the requirements for the safety of highway traffic.

9 The answer to the question referred must therefore be that it is not in principle incompatible with Community law for one Member State to require a national of another Member State, who is permanently established in its territory, to obtain a domestic driving licence for the purpose of driving motor vehicles, even if he is in possession of a driving licence issued by the authorities in his State of origin.

However, such a requirement may be regarded as indirectly prejudicing the exercise of the right of freedom of movement, the right of freedom of establishment or the freedom to provide services guaranteed by Articles 48, 52 and 59 of the Treaty respectively, and consequently as being incompatible with the Treaty, if it appears that the conditions imposed by national rules on the holder of a driving licence issued by another Member State are not in due proportion to the requirements of road safety.

Costs

10 The costs incurred by the Government of the Kingdom of the Netherlands, the Government of the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

As these proceedings are in the nature of a step in the criminal proceedings pending before the Amtsgericht Reutlingen, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Amtsgericht Reutlingen by order of 13 February 1978, hereby rules:

1. **It is not in principle incompatible with Community law for one Member State to require a national of another Member State, who is permanently established in its territory, to obtain a domestic driving licence for the purpose of driving motor vehicles, even if he is in possession of a driving licence issued by the authorities in his State of origin.**

2. However, such a requirement may be regarded as indirectly prejudicing the exercise of the right of freedom of movement, the right of freedom of establishment or the freedom to provide services guaranteed by Articles 48, 52 and 59 of the Treaty respectively, and consequently as being incompatible with the Treaty, if it appears that the conditions imposed by national rules on the holder of a driving licence issued by another Member State are not in due proportion to the requirements of road safety.

Kutscher Mertens de Wilmars Mackenzie Stuart

Pescatore Sørensen O'Keeffe Bosco

Delivered in open court in Luxembourg on 28 November 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 24 OCTOBER 1978 [1]

Mr President,
Members of the Court,

Under German law an official driving licence is required for the purpose of driving motor vehicles and, in the case of vehicles for which a licence is required, driving without any such driving licence is punishable by imprisonment or a fine (Articles 2 and 24 of the Straßenverkehrsgesetz (Law on Road Traffic) of 19 December 1952). According to Articles 6 and 7 of the Paris Convention on Motor Traffic of 24 April 1926 in conjunction with Articles 4 and 5 of the Regulation on International Motor Traffic of 12 November 1934 as amended by the Regulation of 18 April 1940 and also an announcement of 15 November 1952, holders of foreign driving licences — whether they are foreign nationals or German citizens — are entitled, if they possess a driving licence issued by another country or an international driving licence, to drive a motor vehicle within the territory of the Federal Republic of Germany for a period of one year after crossing the frontier or from the date of issue of their driving licence. Thereafter, a German driving licence

1 — Translated from the German.