JUDGMENT OF THE COURT (First Chamber)
12 December 1989 *

In Case C-265/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretura di Volterra (Magistrate's Court, Volterra) for a preliminary ruling in the criminal proceedings pending before that court against

Lothar Messner

on the interpretation of Articles 3(c) and 56(1) of the EEC Treaty,

THE COURT (First Chamber)

composed of: Sir Gordon Slynn, President of Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Principal Administrator

after considering the observations submitted on behalf of

the Government of the Italian Republic, by Ivo Braguglia, avvocato dello Stato,

the Commission of the European Communities, by Guido Berardis, a member of its Legal Department,

* Language of the case: Italian.

having regard to the Report for the Hearing and further to the hearing on 29 June 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 12 October 1989,

gives the following

Judgment

1 By an order of 14 September 1988, which was received at the Court on 28 September 1988, the Pretura di Volterra referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 3(c) and 56(1) of the Treaty as they relate to the free movement of persons.

2 That question arose in criminal proceedings brought against Lothar Messner, a German national, who is accused of not having made, within three days of entering Italian territory, the declaration of residence prescribed by Italian legislation. With regard to nationals of the Member States, that obligation is imposed on employed persons and persons supplying or receiving services who intend to remain in Italy for no more than three months. Breach of the obligation is punished by imprisonment of up to three months or a fine of up to LIT 400 000.

3 Since the national court had doubts as to whether that legislation is compatible with Community law, it stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'May Article 3(c) in conjunction with Article 56(1) of the EEC Treaty be interpreted as meaning that it is lawful for Italy to impose on nationals of another Member State of the Community an obligation to make a formal declaration of

residence within three days of entering Italian territory, failing which they are liable to a criminal penalty, in view of the fact that a feudal obligation of that kind, whose nature and purpose are manifestly oppressive and which is clearly inspired by xenophobia, cannot be justified on any specific ground of public policy, public security or public health?'.

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the observations submitted to the Court, which are referred to or mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

5 The question asked by the national court is, in essence, whether the fact that a Member State imposes on nationals of the other Member States, exercising their right to freedom of movement, the obligation to make a declaration of residence within three days of entering that State's territory, subject to a penal sanction for failure to comply, is compatible with the provisions of Community law on the free movement of persons.

6 Inthe judgment in Case 118/75 *Watson and Belmann* [1976] ECR 1185, the Court has already held that by creating the principle of freedom of movement for persons and by conferring on any person falling within its ambit the right of access to the territory of the Member States, for the purposes intended by the Treaty, Community law has not excluded the power of Member States to adopt measures enabling the national authorities to have an exact knowledge of population movements affecting their territory.

7 The Court pointed out that under Article 8(2) of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (Official

Journal, English Special Edition, 1968, (II), p. 485) and Article 4(2) of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (Official Journal 1973, L 172, p. 14), the competent authorities in the Member States may require nationals of the other Member States to report their presence to the authorities of the State concerned.

8 The Court accordingly concluded that such an obligation could not in itself be regarded as an infringement of the rules concerning freedom of movement for persons. It pointed out, however, that such an infringement might result from legal formalities if those formalities were designed in such a way that they restricted the freedom of movement required by the Treaty or limited the right conferred on nationals of the Member States to enter and reside in the territory of any other Member State for the purposes intended by Community law (paragraph 18 of the judgment in *Watson and Belmann*, cited above).

9 It is evident from the judgment in *Watson and Belmann* that such is the case, in particular, when the time allowed for making the declaration of arrival by foreigners is not reasonable or when the penalties for failure to discharge that obligation are disproportionate to the gravity of the infringement.

10 It must be pointed out in that regard that the period of three days referred to in the preliminary question appears excessively restrictive in view of the need of those concerned to have sufficient time to travel from the frontier to their destination and to inquire there about the competent authority and the required administrative formalities.

11 The imposition of such a time-limit does not appear to be absolutely necessary in order to protect the host State's interest in obtaining exact knowledge of population movements affecting its territory. There is no reason to suppose that that

interest would be compromised if a longer period were allowed. Moreover, that view is confirmed by the fact that the majority of the Member States of the Community imposing a similar obligation allow those concerned appreciably longer periods.

12 It follows that a time-limit of three days cannot be regarded as reasonable.

13 With regard to the penalties laid down for infringement of the legislation at issue, which consist of imprisonment or a fine, it must be pointed out that a fine cannot be allowed if the time-limit imposed for making the declaration of residence is not reasonable.

14 Moreover, it must be added that, as the Court has already held in its judgment of 3 July 1980 in Case 157/79 *Regina* v *Pieck* [1980] ECR 2171, in relation to a failure to comply with the formalities required to establish the right of residence of a worker enjoying the protection of Community law, whilst the national authorities are entitled to make the failure to comply with such provisions subject to penalties comparable to those attaching to minor offences committed by their own nationals, they are not justified in imposing a penalty so disproportionate to the gravity of the infringement that it becomes an obstacle to the free movement of workers. This would be especially so if the penalty consisted of imprisonment.

15 The reply to the national court must therefore be that it is incompatible with the provisions of Community law on the free movement of persons for a Member State to impose on nationals of other Member States exercising their right to freedom of movement the obligation, subject to a penal sanction for failure to comply, to make a declaration of residence within three days of entering that State's territory.

Costs

16 The costs incurred by the Italian Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (First Chamber),

in answer to the question submitted to it by the Pretura di Volterra, by an order of 14 September 1988, hereby rules:

It is incompatible with the provisions of Community law on the free movement of persons for a Member State to impose on nationals of other Member States exercising their right to freedom of movement the obligation, subject to a penal sanction for failure to comply, to make a declaration of residence within three days of entering that State's territory.

Slynn Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 12 December 1989.

J.-G. Giraud
Registrar

Gordon Slynn
President of the First Chamber