OPINION OF ADVOCATE GENERAL TESAURO
delivered on 12 June 1997 *

1. By this reference for a preliminary ruling, the Amtsgericht (Local Court), Reutlingen, asks the Court to rule on the interpretation of Article 6 of the EC Treaty, in order to determine whether failure on the part of the Public Prosecutor's Office to use a courtesy title when referring to the defendant in criminal proceedings constitutes a breach of the principle of non-discrimination laid down in that provision.

The legislative context, the facts and the question referred

2. Paragraph 407 of the Strafprozeßordnung (German Code of Criminal Procedure; hereinafter 'the Code') provides that when bringing a criminal action, the Public Prosecutor's Office may, if it considers *inter partes* proceedings unnecessary, submit a written application requesting the magistrate concerned to issue a specific punishment order. Pursuant to Paragraph 408 of the Code, the magistrate may thereafter set a trial date only if he considers that legal arguments preclude him from meeting that request; otherwise, he must endorse the application by affixing his signature and the date thereto, thus transforming the document into a punishment order similar in effect to a judgment.

3. The material events took place in 1996, when the Tübingen Public Prosecutor's Office was initiating criminal proceedings against Mr Grado (an Italian national) and Mr Bashir (a national of a non-member country), who were accused of leaving, without justification, the scene of damage which they had caused to the vehicle of a third party.

By letter of 9 April 1996, the Public Prosecutor's Office applied in the person of the Public Prosecutor in charge of Section 35 to the Amtsgericht Reutlingen for an order finding the defendants guilty as accused. To be more precise, it applied for a punishment order to be issued

'against

1. Martino Grado (...)

2. Shahid Bashir (...)'.

4. The magistrate of the Amtsgericht Reutlingen refused to sign and date the application, on the view that it contravened both the German Constitution [1] and the prohibition of discrimination on grounds of nationality laid down in Article 6 of the Treaty. In particular, the magistrate took exception to

* Original language: Italian.

1 — In particular, Articles 1 and 3(3), which enshrine the right to protection of human dignity and the right to equal treatment.

the Public Prosecutor's failure to use the courtesy title 'Herr' (Mr) when referring to either defendant.

The Public Prosecutor contested the magistrate's refusal before the Landgericht (Regional Court), Tübingen, which approved the way in which the document at issue was framed and further held that the magistrate of the Amtsgericht was not legally entitled to prevent the proceedings from continuing.

5. The Amtsgericht Reutlingen decided, however, to stay the proceedings anew and to refer (this time) to the Court of Justice for a preliminary ruling on the following question:

'Is it compatible with European Community law or is it contrary to the prohibition on discrimination laid down in Article 6 of the Treaty on European Union for a Staatsanwalt (Public Prosecutor) expressly to refuse to use the courtesy title "Herr" in an application, which he has drafted and subsequently placed before the court for signature, for a summary punishment order in the case of a foreign worker (for the purposes of Articles 48 to 51 of the Treaty on European Union) from another Member State of the European Union, particularly where this is contrary to the custom of the Staatsanwaltschaft and to the Staatsanwalt's own usual practice?' [2]

The magistrate further stated in the order for reference that he considers himself legally bound to sign the application for a punishment order in the form in which that document is presented to him by the Public Prosecutor's Office. Accordingly, he is not permitted, when endorsing such a document, to alter or amplify it.

Admissibility

6. Having regard to the subject-matter of the question referred, as compared with the apparent subject-matter (according to the grounds of the order for reference) of the main proceedings, the first point to be established is the relevance of the question itself and, accordingly, the Court's jurisdiction to reply. It is all too clear, however, that the Public Prosecutor's omission of the courtesy title 'Herr' when referring to the defendant in the application for a punishment order is not a fact capable of materially affecting the outcome of the proceedings initiated against that person.

This is not the first time this problem has arisen. On more than one occasion, the Court has been asked to give a preliminary ruling on questions of doubtful relevance to the merits of the case pending before the national court.

7. The Court can now be said to have consolidated its position in this regard. [3] Whilst respecting the division of jurisdiction between the national courts and the Com-

2 — In fact, according to the police report on the defendants' alleged misdeeds, it appears that, at the material time at least, Mr Grado was unemployed. However, the documents before the Court do not contain sufficient information to support any disagreement with the magistrate's findings of fact. It is obvious, however, that the order for reference is in any event intended to refer solely to the alleged discrimination against Mr Grado, who is of Italian nationality, while it cannot concern the position of Mr Bashir, the other defendant, since he is not a national of a Member State.

3 — For a more or less exhaustive summary of the case-law on this point, see Case C-343/90 *Lourenço Dias* [1992] ECR I-4673, paragraphs 13 to 20.

munity judicature, which underpins the preliminary ruling mechanism, and without impliedly contravening the principle laid down in the first judgments to address this subject — namely that it is for the national court to determine the need for a preliminary ruling from the Court in order to enable it to give judgment in the case pending before it [4] — the Court has not hesitated to declare that it has no jurisdiction to rule on questions which, in its view, *manifestly* bear no relation to the facts of the main action or to its purpose. [5]

8. That approach should be fully supported, not only because it is vindicated by the wording of Article 177 of the Treaty, [6] but also because it enables the preliminary ruling procedure to be retained within the framework necessary for its proper operation, and ensuring that it is not employed in a manner which commentators have unhesitatingly categorized as 'misuse'. [7]

Moreover, it is obviously the correct approach to adopt in the present case. As indicated above, regardless of whether the practice followed by the Tübingen Public Prosecutor's Office of omitting (according to the order for reference) the courtesy title 'Herr' when referring to foreign defendants gives rise to any apparent discrimination against such persons, it has no bearing at all on the subject-matter of the main proceedings in which, as I recall, the magistrate was asked to issue a punishment order in respect of the defendant who was accused of having committed a criminal offence.

9. I therefore propose that the Court declare that it has no jurisdiction to answer the question referred by the Amtsgericht Reutlingen, since the interpretation of Community law sought manifestly bears no relation to the facts of the main action or to its purpose.

4 — For example, Case 83/78 *Pigs Marketing Board* [1978] ECR 2347.

5 — There are numerous examples. Rather than going back to the two *Foglia* v *Novello* judgments (Case 104/79 [1980] ECR 745 and Case 244/80 [1981] ECR 3045) which, although they exhaustively re-trace the reasoning behind the case-law in question, are very much a reflection of the specific context in which they were delivered, I would instead refer to the order of 26 January 1990 in Case C-286/88 *Falciola* [1990] ECR I-191 and, similarly, the order of 16 May 1994 in Case C-428/93 *Monin II* [1994] ECR I-1707, in which the Court declined jurisdiction. The principle is illustrated, however, by many other judgments: see, for example, Case 126/80 *Salonia* [1981] ECR 1563, Case C-186/90 *Durighello* [1991] ECR I-5773 and Case C-368/89 *Crispoltoni* [1991] ECR I-3695.

6 — I would emphasize (*repetita iuvant*) the wording of the second paragraph: '[w]here such a question is raised before any court or tribunal of a Member State, that court or tribunal may, *if it considers that a decision on the question is necessary to enable it to give judgment*, request the Court of Justice to give a ruling thereon' (emphasis added).

7 — For a representative view, see Pescatore, 'Il Rinvio Pregiudiziale di cui all'Art. 177 del Trattato CEE e la Cooperazione tra la Corte e i Giudici Nazionali', in *Il Foro Italiano*, 1986, Part V, p. 26 et seq.