

JUDGMENT OF THE COURT
24 November 1998 *

In Case C-274/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Bolzano, Sezione Distaccata di Silandro (Italy), for a preliminary ruling in the criminal proceedings before that court against

Horst Otto Bickel,

Ulrich Franz,

on the interpretation of Articles 6, 8a and 59 of the EC Treaty,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, P. J. G. Kapteyn, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, H. Ragnemalm (Rapporteur), L. Sevón, M. Wathelet and R. Schintgen, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

* Language of the case: Italian.

after considering the written observations submitted on behalf of:

- the Italian Government, by Professor Umberto Leanza, Head of the Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, *Avvocato dello Stato*,
- the Commission of the European Communities, by Pieter van Nuffel, of its Legal Service, and Enrico Altieri, a national civil servant on secondment to that service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Bickel and Mr Franz, represented by Karl Zeller, of the Merano Bar; of the Italian Government, represented by Pier Giorgio Ferri; and of the Commission, represented by Pieter van Nuffel and Lucio Gussetti, of its Legal Service, acting as Agents, at the hearing on 27 January 1998,

after hearing the Opinion of the Advocate General at the sitting on 19 March 1998,

gives the following

Judgment

- 1 By orders of 2 August 1996, received at the Court on 12 August 1996, the Pretura Circondariale, Sezione Distaccata di Silandro (District Magistrates' Court, Silandro Division), Bolzano, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Articles 6, 8a and 59 of the EC Treaty.

- 2 That question was raised in criminal proceedings, brought against Mr Bickel and Mr Franz respectively.
- 3 Mr Bickel is a lorry driver of Austrian nationality, resident at Nüziders in Austria. On 15 February 1994, while driving his lorry at Castelbello in the Trentino-Alto Adige Region of Italy, he was stopped by a *carabinieri* patrol and charged with driving while under the influence of alcohol.
- 4 Mr Franz, a German national resident at Peissenberg in Germany, visited the Trentino-Alto Adige as a tourist. On 5 May 1995, in the course of a customs inspection, he was found to be in possession of a type of knife that is prohibited.
- 5 In each case, the accused made a declaration in the presence of the District Magistrate of Bolzano that he had no knowledge of Italian and, relying on rules for the protection of the German-speaking community of the Province of Bolzano, requested that the proceedings be conducted in German.
- 6 Article 99 of Presidential Decree No 670 of 30 August 1972 concerning the special arrangements for the Trentino-Alto Adige Region (GURI No 301 of 20 November 1972) provides that the German language is to have the same status there as Italian.
- 7 Under Article 100 of that decree, the German-speaking citizens of the Province of Bolzano (the area where most of the German-speaking minority live) are entitled to use their own language in relations with the judicial and administrative authorities based in that province or entrusted with responsibility at regional level.

- 8 Article 13 of Presidential Decree No 574 of 15 July 1988 (hereinafter 'Decree No 574/88') on the implementation of the special arrangements for the Trentino-Alto Adige with regard to the use of German or Ladin in relations between citizens and the public administration and in judicial proceedings (GURI No 105 of 8 May 1989) provides that the administrative and judicial authorities must, in their dealings with citizens of the Province of Bolzano and in documents concerning them, use the language of the person concerned.
- 9 Article 14 of Decree No 574/88 provides moreover that, in cases of *flagrante delicto* or arrest, the judicial or police authority must, before interviewing the person concerned or taking any other procedural step, ask him to state his mother tongue. If he is a German-speaker, the interview and all other steps in the procedure must be conducted in that language.
- 10 Lastly, pursuant to Article 15 of Decree No 574/88, the judicial authority responsible for drawing up a procedural document to be communicated to or served on a suspect or accused person must use that person's presumed language, which is determined on the basis of his known membership of a language group and other information which has come to light during the procedure. Within ten days of communication or service of the first procedural document, the suspect or accused person may contest the language used by making a declaration in person or by arranging to have such a declaration submitted to the prosecuting authority. Where the latter option is exercised, the judicial authority must make sure that any documents already drawn up are translated and that all documents thereafter are drawn up in the language designated.
- 11 Since the national court was uncertain whether the rules of procedure applicable to the citizens of the Province of Bolzano must, under Community law, be extended to nationals of other Member States visiting the province, it decided to stay

proceedings pending a preliminary ruling from the Court of Justice on the following question:

‘Do the principle of non-discrimination as laid down in the first paragraph of Article 6, the right of movement and residence for citizens of the Union as laid down in Article 8a and the freedom to provide services as laid down in Article 59 of the Treaty require that a citizen of the Union who is a national of one Member State but is in another Member State be granted the right to have criminal proceedings against him conducted in another language where nationals of the host State enjoy that right in the same circumstances?’

- 12 By that question, the national court is essentially asking whether the right conferred by national rules to have criminal proceedings conducted in a language other than the principal language of the State concerned falls within the scope of the Treaty and must accordingly comply with Article 6 thereof. If so, the national court also asks whether Article 6 of the Treaty precludes national rules, such as those in issue, which, in respect of a particular language other than the principal language of the Member State concerned, confer on citizens whose language is that particular language and who are resident in a defined area the right to require that criminal proceedings be conducted in that language, without conferring the same right on nationals of other Member States travelling or staying in that area, whose language is the same.

The first part of the question

- 13 The first point to note is that in the context of a Community based on the principles of freedom of movement for persons and freedom of establishment, the protection of the linguistic rights and privileges of individuals is of particular importance (Case 137/84 *Mutsch* [1985] ECR 2681, paragraph 11).

- 14 Secondly, by prohibiting 'any discrimination on grounds of nationality', Article 6 of the Treaty requires that persons in a situation governed by Community law be placed entirely on an equal footing with nationals of the Member State (Case 186/87 *Cowan* [1989] ECR 195, paragraph 10).
- 15 Situations governed by Community law include those covered by the freedom to provide services, the right to which is laid down in Article 59 of the Treaty. The Court has consistently held that this right includes the freedom for the recipients of services to go to another Member State in order to receive a service there (*Cowan*, paragraph 15). Article 59 therefore covers all nationals of Member States who, independently of other freedoms guaranteed by the Treaty, visit another Member State where they intend or are likely to receive services. Such persons — and they include both Mr Bickel and Mr Franz — are free to visit and move around within the host State. Furthermore, pursuant to Article 8a of the Treaty, '[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'.
- 16 In that regard, the exercise of the right to move and reside freely in another Member State is enhanced if the citizens of the Union are able to use a given language to communicate with the administrative and judicial authorities of a State on the same footing as its nationals. Consequently, persons such as Mr Bickel and Mr Franz, in exercising that right in another Member State, are in principle entitled, pursuant to Article 6 of the Treaty, to treatment no less favourable than that accorded to nationals of the host State so far as concerns the use of languages which are spoken there.
- 17 Although, generally speaking, criminal legislation and the rules of criminal procedure — such as the national rules in issue, which govern the language of the proceedings — are matters for which the Member States are responsible, the Court has consistently held that Community law sets certain limits to their power in that respect. Such legislative provisions may not discriminate against persons to whom

Community law gives the right to equal treatment or restrict the fundamental freedoms guaranteed by Community law (see, to that effect, *Cowan*, paragraph 19).

- 18 Consequently, in so far as they may compromise the right of nationals of other Member States to equal treatment in the exercise of their right to move and reside freely in another Member State, national rules concerning the language to be used in criminal proceedings in the host State must comply with Article 6 of the Treaty.
- 19 Accordingly, the answer to the first part of the question referred for a preliminary ruling must be that the right conferred by national rules to have criminal proceedings conducted in a language other than the principal language of the State concerned falls within the scope of the Treaty and must comply with Article 6 thereof.

The second part of the question

- 20 In the submission of Mr Bickel and Mr Franz, if any discrimination contrary to Article 6 of the Treaty is to be avoided, the right to have proceedings conducted in German must be extended to all citizens of the Union, since it is already available to nationals of one of the Member States.
- 21 The Italian Government contends that the only nationals upon whom the right in question is conferred are those who are both residents of the Province of Bolzano and members of its German-speaking community, the aim of the rules in issue being to recognise the ethnic and cultural identity of persons belonging to the protected minority. Accordingly, the right of that protected minority to the use of its own language need not be extended to nationals of other Member States who are present,

occasionally and temporarily, in that region, since provision has been made to enable such persons to exercise the rights of the defence adequately, even where they have no knowledge of the official language of the host State.

- 22 The Commission points out that the right to have proceedings conducted in German is not accorded to all Italian nationals, but only to those who are resident in the Province of Bolzano and who belong to its German-speaking community. Accordingly, it is for the national court to determine whether the rules in issue genuinely give rise to discrimination on grounds of nationality, to identify the group of persons discriminated against and then to determine whether such discrimination is justifiable by reference to objective circumstances.
- 23 The documents before the Court show that the Italian rules restrict the right to have proceedings conducted in German to German-speaking citizens of the Province of Bolzano. It follows that German-speaking nationals of other Member States, particularly Germany and Austria — such as Mr Bickel and Mr Franz — who travel or stay in that province cannot require criminal proceedings to be conducted in German despite the fact that the national rules provide that the German language is to have the same status as Italian.
- 24 In those circumstances, it appears that German-speaking nationals of other Member States travelling or staying in the Province of Bolzano are at a disadvantage by comparison with Italian nationals resident there whose language is German. Whereas a member of the latter group may, if charged with an offence in the Province of Bolzano, have the proceedings conducted in German, a German-speaking national from another Member State, travelling in that province, is denied that right.

- 25 Even on the assumption that, as the Italian Government maintains, German-speaking nationals of other Member States who are resident in the Province of Bolzano may rely on the rules in issue and submit their pleadings in German — so that there is no discrimination on grounds of nationality as between residents of the region — Italian nationals are at an advantage by comparison with nationals of other Member States. The majority of Italian nationals whose language is German are in a position to demand that German be used throughout the proceedings in the Province of Bolzano, because they meet the residence requirement laid down by the rules in issue; the majority of German-speaking nationals of other Member States, on the other hand, cannot avail themselves of that right because they do not satisfy that requirement.
- 26 Consequently, rules such as those in issue in the main proceedings, which make the right, in a defined area, to have criminal proceedings conducted in the language of the person concerned conditional on that person being resident in that area, favour nationals of the host State by comparison with nationals of other Member States exercising their right to freedom of movement and therefore run counter to the principle of non-discrimination laid down in Article 6 of the Treaty.
- 27 A residence requirement of that kind can be justified only if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the legitimate aim of the national provisions (see, to that effect, Case C-15/96 *Schöning-Kougebetopoulou* [1998] ECR I-47, paragraph 21).
- 28 However, it is clear from the order for reference that this is not the position in the case of the rules in issue.
- 29 The Italian Government's contention that the aim of those rules is to protect the ethno-cultural minority residing in the province in question does not constitute a

valid justification in this context. Of course, the protection of such a minority may constitute a legitimate aim. It does not appear, however, from the documents before the Court that that aim would be undermined if the rules in issue were extended to cover German-speaking nationals of other Member States exercising their right to freedom of movement.

30 Furthermore, it should be recalled that Mr Bickel and Mr Franz pointed out at the hearing, without being contradicted, that the courts concerned are in a position to conduct proceedings in German without additional complications or costs.

31 Consequently, the answer to the second part of the question referred for a preliminary ruling must be that Article 6 of the Treaty precludes national rules which, in respect of a particular language other than the principal language of the Member State concerned, confer on citizens whose language is that particular language and who are resident in a defined area the right to require that criminal proceedings be conducted in that language, without conferring the same right on nationals of other Member States travelling or staying in that area, whose language is the same.

Costs

32 The costs incurred by the Italian Government and the Commission, 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 Pretura Circondariale di Bolzano, Sezione Distaccata di Silandro, by orders of 2 August 1996, hereby rules:

1. The right conferred by national rules to have criminal proceedings conducted in a language other than the principal language of the State concerned falls within the scope of the EC Treaty and must comply with Article 6 thereof.
2. Article 6 of the Treaty precludes national rules which, in respect of a particular language other than the principal language of the Member State concerned, confer on citizens whose language is that particular language and who are resident in a defined area the right to require that criminal proceedings be conducted in that language, without conferring the same right on nationals of other Member States travelling or staying in that area, whose language is the same.

Rodríguez Iglesias

Kapteyn

Puissochet

Hirsch

Jann

Mancini

Moitinho de Almeida

Gulmann

Murray

Ragnemalm

Sevón

Wathelet

Schintgen

Delivered in open court in Luxembourg on 24 November 1998.

R. Grass

G. C. Rodríguez Iglesias

Registrar

President