

JUDGMENT OF THE COURT
7 JULY 1976¹

Lynne Watson and Alessandro Belmann
(preliminary ruling requested by the Pretura di Milano)

Case 118/75

Summary

1. Free movement of persons and services — Community law — Fundamental principle — Precedence over national law — Individual rights — Protection by the national courts

(EEC Treaty, Articles 48 to 66)

2. Free movement of persons — National of a Member State — Movement into another Member State and stay in that State — Administrative formalities — Acceptability — Conditions — Failure to observe such formalities — Penalties — Limits

(EEC Treaty, Article 7, Article 48)

1. Articles 48 to 66 of the Treaty and the measures adopted by the Community in application thereof implement a fundamental principle of the Treaty, confer on persons whom they concern individual rights which the national courts must protect and take precedence over any national rule which might conflict with them.
2. National regulations which require nationals of other Member States who benefit from the provisions of Articles 48 to 66 of the EEC Treaty to report to the authorities of that State and prescribe that residents who provide accommodation for foreign nationals

must inform the said authorities of the identity of such foreign nationals are in principle compatible with the provisions in question provided, first, that the period fixed for the discharge of the said obligations is reasonable and, secondly, that the penalties attaching to a failure to discharge them are not disproportionate to the gravity of the offence and do not include deportation.

In so far as such rules do not entail restrictions on freedom of movement for persons they do not constitute discrimination prohibited under Article 7 of the Treaty.

In Case 118/75

Reference to the Court under Article 177 of the EEC Treaty by the Pretura di Milano, for a preliminary ruling in the criminal proceedings pending before that court against

¹ — Language of the Case: Italian.

LYNNE WATSON

and

ALESSANDRO BELMANN

in particular on the interpretation of certain provisions of Community law which concern the prohibition on discrimination between nationals of the Member States and on freedom of movement for persons, as well as on the applicability in Community law of the fundamental principles set out in the European Convention on Human Rights,

THE COURT

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

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The order making the reference, the procedure and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. For a certain period at the beginning of 1973, Mr Belmann, an Italian citizen residing in Milan, gave accommodation to Miss Watson, a British citizen, then aged 17. When Miss Watson disappeared suddenly on a journey to Venice Mr

Belmann informed the Milan police (Questura). Thereupon the police found that Miss Watson and Mr Belmann had not discharged the obligations imposed on them by certain provisions of Italian law, and they reported those concerned to the competent judicial authority, the Pretura, Milan.

The provisions allegedly violated by Miss Watson and by Mr Belmann respectively are Article 142 of the 'Testo Unico Legge di Pubblica Sicurezza' (Consolidated Public Security Acts), approved by Royal Decree No 773 of 18 June 1931, hereinafter referred to as 'TULPS', and

Article 2 of Decree-Law No 50 of 11.2.1948 (Gazzetta Ufficiale No 44 of 21.2.1948, p. 598):

- Under the terms of the first paragraph of the said Article 142 'Within three days of his entry into the territory of the State, a foreign national must report to the public security authority of the place where he is staying in order to notify his presence and to make a declaration of residence'.

In the case of failure to discharge this obligation, the penalty provided for is a maximum of three month's detention or a maximum fine of Lit. 80 000 (Article 17 TULPS in conjunction with Article 3 of Law No 603 of 12.7.1961, Gazzetta Ufficiale No 181 of 24.7.1961, p. 2828). In addition, a foreign national who is accused of such an offence may be deported from the territory of the State (Article 150 (4) TULPS); for the foreign national the principal result of such deportation is a prohibition on entry into Italy without the special permission of the Minister for the Interior (Article 252 (1)).

In pursuance, in particular, of certain Council Directives, the Italian authorities have modified Article 142 (1) TULPS so that at present the obligation set out therein is no longer imposed on workers who are nationals of the other Member States and who are working as employed persons for a period of more than three months. In all other cases, however, the provision is unchanged (cf. Articles 1 to 3 of Decree No 1656 of the President of the Republic of 30.12.1965, Gazzetta Ufficiale No 55 of 3.3.1966, p. 990; Article 1 of Decree No 1225 of the President of the Republic of 29.12.1969, Gazzetta Ufficiale No 75 of 25 March 1970, p. 1882).

- Article 2 of Decree-Law No 50 is worded as follows:

'Any person who provides board and lodging, on whatever basis, to a foreign national or a stateless person,

including his own kith and kin, or for any reason whatever takes such person into his employment, shall be bound to inform the competent local public security authority within 24 hours of the identity of such person specifying, in the case of employment, the work allotted to him.

Failure to observe the terms of the preceding provisions entails the imposition of the penalties provided for in Article 1, that is, detention for up to six months, to which may be added a fine of up to Lit. 240 000.

2. By order of 18 November 1975, received at the Court Registry on 1 December 1975, the Pretura di Milano decided to refer to the Court the following questions, which had been set out by the accused in their statement of defence and which it has adopted:

- (a) Do the prohibition of discrimination between nationals of the Member States of the Community and their freedom of movement, residence and establishment in the Member States of the Community constitute fundamental principles which the Court will enforce while protecting the rights conferred upon private parties thereunder?
- (b) Do these fundamental principles include those which are common to the Member States, in particular those set out and protected under the European Convention on Human Rights, especially the right to privacy (Article 8 of the Convention) the importance of which becomes clear when it is viewed in conjunction with freedom of movement, residence and establishment, and [do they also include] the obligation upon a foreign national or upon others on his behalf to report or make his presence, for whatever reason, on the territory of the State known to the competent authorities.
- (c) In case of conflict, do those fundamental principles, as part of Community law, prevail over national laws?

(d) Does the obligation imposed upon a foreign national under national law to report within three days of his entry into the territory of the State to one of its authorities in order to notify his presence (or rather, 'give an account of himself') and to make a declaration of residence, notwithstanding that the foreign national is in transit and remains, pending departure, on the territory of the State for not more than two months:

- (1) produce discrimination between nationals of Member States, especially if such obligation exists only in one or some of the States;
- (2) constitute a direct or indirect restriction of or impediment to the residence (and possibly also to the movement) of nationals of Member States within the Community, whether in the capacity of 'self-employed persons' or 'employed persons', 'persons providing services' or 'persons for whom the services are intended'?

(e) Does the obligation laid down by a national law, imposing on anyone who provides board and lodging, on whatever basis, to a foreign national, including his own kith and kin (meaning a national of one Member State on the one hand, and a national of another Member State on the other) or for any reason whatever takes him into his own employment, the duty to inform the competent local authorities of the identity of the person within 24 hours specifying, in case of employment, the work allotted to him, give rise to discrimination and constitute a restriction of the kind described under (d) (1) and (2) above and on the basis of the criteria for determination and interpretation therein described?

In its statement giving the grounds for the order, the Pretura observes, as regards question (d), that the Court may take into account, as a consideration of fact, the heavy penalties incurred by a foreign

national who does not fulfil the obligation set out in Article 142 TULPS: detention for up to three months; deportation on the basis of a mere information alleging an offence, independently of conviction. Account should be taken of Article 3 (1) and (2) of Council Directive No 64/221 of the Council of 25 February 1964 'on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health' (62/221/EEC, Official Journal, English Special Edition 1963-1964, p. 117) according to which 'Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned' and 'Previous criminal convictions shall not in themselves constitute grounds for the taking of such measures'.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the defendants in the main action, the British and Italian Governments and the Commission.

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

II — Summary of the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The defendants in the main action describe the reason for Miss Watson's stay in Italy as follows: 'Hospitality, and more specifically board and lodging [il vitto e l'alloggio], were offered in exchange for the aid and assistance which the girl was to provide [within the Belmann family], in particular, by looking after a child who was still in infancy'.

Community law contains fundamental principles, observance of which is ensured by the Court. Those principles are expressed, in particular, in the prohibition of discrimination set out in Article 7 of the Treaty which is laid down in further detail in the provisions providing for freedom of movement (Article 48 *et seq.*: freedom of movement for workers; Article 52 *et seq.*: right of establishment; Article 59 *et seq.*: freedom to provide services). They are common to the legal systems of the Member States and are protected by the European Convention on Human Rights, which has been ratified by all the Member States and which is taken into account by the Court, as is shown by its case-law. The Court therefore has jurisdiction to rule on the meaning of the rules and principles contained in that Convention and on the effects which they produce within the legal systems of the Member States. In this instance, it is necessary to consider Articles 8 and 14 of the Convention, as well as Article 2 of its Protocol No 4.

Apart from the provisions of the Treaty referred to above, the Community rules of importance in this instance are certain measures adopted by the Council, in particular Regulation No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), Directive No 64/221 (referred to above), Directive No 68/360 of 15 October 1968 'on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families' (OJ, English Special Edition, 1968 (II), p. 485) and Directive No 73/148 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' (OJ, L172 of 28.6.1973, p. 14). The Court has found on several occasions that these provisions take precedence over national rules which form an obstacle to the effective

enjoyment of the rights conferred thereby on individuals.

Taken as a whole the abovementioned Community provisions lay down, for the nationals of Member States to whom they apply, the right to enter the territory of another Member State on presentation of a valid passport or identity card without the need for any visa or equivalent requirement, and to reside in that State without being subject to any formality, where the period of residence does not exceed three months. For longer periods and as regards employed or self-employed persons, the right of residence is proved by the issue, by the host State, of a residence permit which is valid for five years and is automatically renewable. As regards persons providing and receiving services, the right of residence is simply proved by the issue of a permit of equal duration with the period during which the services are provided. Reference should, however, be made to Article 8 (2) of Directive No 68/360 and Article 4 (2) of Directive No 73/148.

The defendants in the main action have provided a description and a detailed criticism of the Italian legislation which may be of interest in this instance; they make the following principal observations:

(a) As regards the obligation on foreign nationals entering Italy to report their presence in the territory (Article 142 TULPS), until now the Italian State has only applied the abovementioned Council Directives in an incomplete manner.

Self-employed persons and persons providing and receiving services are in an unfavourable position in comparison with employed workers since, independently of the length of their period of residence in Italy, they remain subject to the obligations laid down in Article 142 (1) TULPS.

It is true that Decree No 1656 has simplified, in favour of nationals of other Member States, the details which the individual must provide when he makes a declaration of residence. In practice, however, this is only an apparent simplification, since the declaration of residence form (modello), provided for in the abovementioned Decree, has never been distributed to the Questura, which continues to use the old forms.

(b) As regards the obligation imposed on persons who give lodging to foreign nationals or take them into their employment (Article 2 of Decree-Law No 50), the requirement that it be discharged within 24 hours is extremely strict and unjustified. The same applies to the penalties laid down. Furthermore, the provision may be criticized on the ground that it is applicable, first, without regard to the reason for the period of residence and, secondly, independently of whether the foreign national has himself reported his presence to the public authorities or is a national of another Member State. The provision is even more incomprehensible since a check is already made at the frontier, when the foreign national enters Italy.

To the extent to which it applies to Community workers the said provision is unnecessary and may even be unlawful, since the foreign nationals concerned are treated as national workers for the purposes of eligibility for employment (cf. Articles 1 to 3 of Regulation No 1612/68 and Directive No 68/360). Community workers suffer discrimination in comparison with national workers, since the employer is not obliged to make a similar declaration to the authorities in respect of the latter. As regards nationals of other Member States who enter Italy in order to pursue activities as self-employed persons or to provide services there, the provision in dispute constitutes a restriction on movement and residence within the meaning of Article 1 of Directive No 73/148, which is prohibited under this

article as well as under Articles 52 and 59 of the Treaty. The penalties attaching to a failure to observe Article 2 of Decree-Law No 50 tend to dissuade Italian nationals from offering hospitality or lodging to foreign nationals whom they intend to employ.

(c) In short, the obligations laid down by the provisions of Italian law which the defendants in the main action are alleged to have violated establish discrimination between Italian nationals and nationals of other Member States and form an obstacle to freedom of movement and residence, which is closely linked to the freedom to take up and pursue activities as a self-employed or employed person.

These provisions are not covered by the exception to the principle of the freedom of movement which is provided for, under Articles 48 (3), 56 and 66 of the Treaty, in relation to limitations justified on the grounds of public policy. The concept of public policy must be given a restrictive interpretation and may only be relied on in cases of particular gravity. Although the Member States are free to exercise a certain discretion as regards the application of these limitations, their evaluation cannot be unilateral, but is subject to review by the Community institutions. Community law limits the grounds on which measures of public policy may be based (cf. Article 8 of Regulation No 1612/68; Articles 2 and 3 of Directive No 64/221). The provisions of the Convention on Human Rights are also to this effect.

The *British Government* considers that the Court has jurisdiction under Article 177 to give a ruling on the provisions of the European Convention on Human Rights only where that Convention is relevant either to the interpretation of the Treaty, of measures adopted by the Community institutions or of the statutes of bodies established by an act of the Council, or to the validity of such acts.

In relation to the validity of Community measures, the case-law of the Court has

taken account of certain fundamental principles common to the Member States, a number of which have also been sanctioned by the Convention. However, the Court regards these principles rather as sources of inspiration than as forming part of the *corpus* of Community law (cf. in particular, Judgment of 14 May 1974, *Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities*, Case 4/73, [1974] ECR 491).

The possible relevance of a provision of the Convention to the interpretation and application of Community law should be assessed independently, and then only in the light of the particular circumstances of each case. Certain provisions of the Convention are so far removed from the objectives of the Community that they are unlikely to play any role in a Community context.

The fundamental rights of most importance for the Community are set out in the Treaty and in secondary Community law. Certain of those rights reflect principles laid down by the Convention. This is true, in particular, as regards the limitations placed on the powers of Member States in relation to control of aliens (cf. Judgment of 28 October 1975, *Roland Rutili v Minister for the Interior*, Case 36/75, [1975] ECR 1219) and as regards the prohibition on discrimination on the grounds of nationality (cf. Articles 7 and 48 (1) of the Treaty; Article 14 of the Convention). On the other hand, Community rules guarantee to nationals of Member States certain fundamental rights which are not referred to by the Convention, that is, freedom of movement for workers, freedom of establishment, freedom to provide services and the right of residence (Articles 48, 52 and 59 of the Treaty; Directives Nos 68/360 and 73/148).

There is no justification for treating the principles established by the Convention, or any of them, as part of Community

law in the sense of being directly applicable in Member States, except in so far as the rights which they guarantee have been embodied or may be implied in provisions of Community law.

Any exercise of overlapping jurisdiction by the institutions established by the Convention and by the Court of Justice of the European Communities could give rise to confusion and conflict. The generalized and somewhat imprecise language of the Convention and of the exceptions to which most of the rights set out in Section I thereof are subject can give rise to questions of construction which fall within the ultimate jurisdiction of the institutions created by the Convention. Similarly, it is for those institutions alone to make a ruling on a national measure which is contrary to the Convention but compatible with Community law.

As regards the notification requirement imposed by the law of the Member States, it can in no way be incompatible with Community rules in so far as it applies solely to visitors, who do not fall into any of the categories of persons protected by the provisions of Title III of Part Two of the Treaty. However, even if it applies to persons protected by the Treaty, it cannot be regarded as a restriction on freedom of movement unless it is subject to onerous and unreasonable conditions or provides, in the event of failure to comply, for disproportionate penalties in relation to the gravity of the offence. At all events, a notification requirement may be justified on grounds of public policy, public security or public health.

The *Italian Government* expresses its regret that, as the national court omitted to indicate clearly the reason for Miss Watson's residence in Italy, it has given the Court 'an irksome task which is, in many respects, unnecessary'.

However, it appears from Question (d) that the individual concerned entered

Italy as a tourist. If this is correct, she does not fall into any of the categories of persons protected by Community law and the fundamental rights which form part of that law, so that the questions raised are rendered nugatory.

Article 7 of the Treaty limits the prohibition on discrimination contained therein to the 'scope of application of this Treaty', which is defined by Article 2. It is put into practical effect by Chapters 1 to 3 of Title III of Part Two of the Treaty, dealing with the free movement of persons and service, the scope of which is clearly defined. When the Court has dealt with fundamental rights it has always considered them 'within the framework of the structure and objectives of the Community' (Judgment of 17 December 1970, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, Case 11/70, [1970] ECR 1125 and *Vandeweghe and Others v Berufsgenossenschaft für die chemische Industrie*, Case 130/73 [1973] ECR 1329, in which the Court declared that it has no jurisdiction under Article 177 to give a ruling 'on the interpretation of provisions of international law which bind Member States outside the framework of Community law').

Having said this, it is undeniable that the principles of non-discrimination and of freedom of movement and residence constitute fundamental principles of the Community, on which Community nationals may rely. The same applies to the fundamental rights common to the Member States and acknowledged by the European Convention on Human Rights. However, as regards in particular the right to respect for private life, protected by Article 8 of the Convention and referred to in Question (b) raised by the Pretura of Milan, there is here no specific relationship with the sphere of economic activity governed by the Treaty. From this point of view, and in the light of its judgment in Case 130/73 referred to above, the Court has no jurisdiction to

rule on the interpretation of the said Article 8.

As regards the legislation in dispute, it is not only intended to subject foreign nationals to a form of control, but also to guarantee them the assistance to which they are entitled (for example, the transmission of urgent information which the Consular authorities of their State of origin wish to bring to their notice). Furthermore, the notification requirement has a functional aspect, that is, it is necessary for the issue of the residence permit provided for by Articles 2 and 5 of Directive No 64/221, Article 4 *et seq.* of Directive No 68/360 and Article 4 *et seq.* of Directive No 73/148. Finally, a comparable obligation is imposed upon Italian nationals, who are required to register their names, their place of residence and the place of residence of all persons living with them, on the register of local residents. There is, therefore, no discrimination.

Furthermore, the rules in question do not form an impediment to the residence or movement of nationals of Member States. Under the terms of Article 7 of Decree No 1656, the decision authorizing the residence of such a national or refusing such authorization must be taken within six months of the declaration of residence and, meanwhile, the person concerned is entitled to reside provisionally in Italian territory. The obligation to make this declaration therefore affects neither the right to enter the State nor the right to reside there and move about freely. Moreover, it is not contrary to Article 8 of the Convention on Human Rights.

At all events, the obligation imposed on foreign nationals to report their presence to the authorities is fully justified on grounds of public policy, according to the interpretation of this concept in the abovementioned directives. This is shown in particular by the fact, to which reference has already been made, that that obligation must be related to the

duty to issue a residence permit, which is imposed on the authorities by those directives.

The *Commission* begins its observations with a detailed description of the Italian legislation.

It considers that Miss Watson came to Italy as a tourist. She must, therefore, be regarded as a person receiving services who is covered by Articles 59, *et seq.* of the Treaty.

The principle of the free movement of persons, laid down in the first three chapters of Title III of Part Two of the Treaty, implies a prohibition on all discrimination based on nationality, as well as ensuring the right to enter and reside in the territory of any Member State, and this principle is of direct effect as regards those whom it concerns — employed workers, self-employed workers, and persons providing and receiving services.

In essence, the questions referred by the Pretura, Milan, must be understood as asking the Court to define the scope of the exception laid down in Articles 48 (3) and 56 (1) in favour of discriminatory measures which are justified on grounds of public policy or public security. As regards this point, the case-law of the Court shows that although the Member States have a certain area of discretion, they are still bound to respect the limits imposed by the Treaty, in particular the fundamental principles of the Community system. Therefore, a measure which, although adopted on grounds of public policy, infringes other general principles of Community law or conflicts with the fundamental rights of nationals of the Member States, is not 'justified' within the meaning of Article 56.

In general terms, it is not sufficient that a measure is justified on grounds of public policy; it must, in addition, be impossible for public policy to be safeguarded effectively other than by a

discriminatory measure. This is the case for example, where the different treatment applied to a foreign national as compared with a national of the State concerned corresponds to a real difference in their factual situation. It follows that, as Community measures gradually bring the position of the foreigner into line with that of the national, the possibility of providing for discriminatory treatment becomes progressively more restricted. It is now clear from recent case-law of the Court that the right to enter and reside in another Member State for the purpose of pursuing an economic activity there is conferred directly on the individuals concerned by the Treaty. Therefore it does not depend on any gratuitous, limited authorization by the host State, and a residence permit issued or right of abode granted by the latter have no other objective than to certify and record the exercise of that right for administrative purposes.

Having made these observations, the Commission defines its attitude with regard to the obligations which the defendants in the main action have allegedly failed to discharge as follows:

(a) As regards the obligation on a foreign national to notify his presence in the host country, this is a measure which, although discriminatory, is generally justified by the need to keep a check on the presence of foreign nationals. As such, it has been authorized by Article 8 (2) of Directive No 69/360 and by Article 4 (2) of Directive No 73/148 for those cases in which it is unnecessary to issue a residence permit.

However, it must be remembered that a check is already carried out at the frontier, that in Italy, foreign nationals, like Italian nationals, are required to ask for their names to be added to the register of local residents of the commune in which they have established their place of residence and, finally, that under Italian legislation hotel-keepers and any persons who offer lodging in

exchange for payment must inform the local public security authority every day of the identity of the persons lodging with them, whether nationals or foreigners. In the circumstances, the provision contained in Article 142 (1) TULPS is only of very limited use and, therefore, appears to be oppressive and excessively severe, particularly if one considers the brevity of the period laid down for this purpose and the severity of the penalty attaching to a failure to discharge the obligation. This penalty is even less justified in the light of the fact that Italian nationals only risk a fine of Lit 2 000 to Lit 10 000 for a failure to discharge their obligation to add their names to the register of local residents.

In short, therefore, the provision in dispute violates the fundamental principle of proportionality, which forms part of the common legal heritage of the Member States and is set out in Article 56 (1) of the Treaty, which only allows for exceptions which are 'justified' on grounds of public policy, public security and public health.

(b) As regards the obligation contained in Article 2 of Decree No 50, it is only imposed in cases in which hospitality is offered to a foreign national. It thus creates discrimination between Italian citizens and nationals of other Member States, to the detriment of the latter.

In the light of the brevity of the period laid down and the gravity of the penalties which may be imposed, the provision in question appears to be excessively severe. Furthermore, it violates the fundamental principles set out in Articles 8 and 14 of the European Convention on Human Rights (the right to respect for private and family life and the home; enjoyment of the rights and freedoms acknowledged by the Convention without any distinction based on national origin). It constitutes an unreasonable intrusion into private life. In cases such as the present, hospitality is given for strictly personal reasons which, as a result of the

provision in question, are necessarily revealed to a public authority, without regard for the discretion which must surround the private reasons for human action.

Following its ratification by the Member States, the Convention is now legally binding upon the Community, both in relation to measures adopted by Community institutions and each time that a provision of Community law is invoked.

Finally, therefore, the Commission proposes that an affirmative reply be given to Questions (a), (b) and (c) and that in addition it be stated that:

Articles 48 (3) and 56 (1) of the EEC Treaty must be interpreted as meaning that the following cannot be regarded as being justified on grounds of public policy and public security:

- (1) National measures which oblige nationals of other Member States to notify their presence to the authorities, where that obligation:
 - must be discharged within an unreasonably short period from the time of entry into the territory of the State;
 - is in addition to other obligations imposed on the said foreign nationals or on other persons which are intended to ensure that a check is kept on the population; and
 - breach of which is punishable by imprisonment;
- (2) National measures which oblige anyone giving board and lodging for personal reasons to a foreigner who is a national of a Member State to inform the authorities within 24 hours of the identity of such person, and breach of which is punishable by imprisonment.

During the oral procedure, which took place on 6 May 1976, the defendants in the main action, represented by Bruno Nascimbene, Advocate of the Milan Bar, the Italian Government, represented by

Ivo Maria Braguglia, Deputy State Advocate-General, the British Government, represented by Mr Gibson, of the Treasury Solicitor's Office, and the Commission of the European Communities, represented by Jean-Claude Séché, Legal Adviser, and Eugenio de March, a member of the Legal Department, expanded the arguments which they had put forward in the course of the written procedure.

On that occasion, the following statements were made in particular:

The *Italian and British Governments* disagree with the argument put forward by the Commission, that any citizen of a Member State moving within the territory of another Member State, even as a tourist, is protected by the Treaty as a person for whom services are intended. Taken as a whole, their arguments maintain that although Article 59 of the Treaty also refers to the person for whom the services are intended, this is not for the purpose for protecting that person as such, but in order to enable those who provide the services to be protected, since

otherwise that protection would be incomplete. Furthermore, the Commission's view is contradicted by the fact that there are tourists such as campers or hitch-hikers who do not make use of the services of the host country. In its judgment of 12 December 1974 (*Walrave v Association Union Cycliste Internationale*, Case 36/74 1974 ECR 1405) the Court ruled that the Treaty is only concerned with economic activities.

Furthermore, the *British Government* points out that as regards the question of the extent to which the Court must protect the fundamental rights referred to in the European Convention on Human Rights, a distinction must be made according to whether the action in question is taken by the Community or by the Member States. In this respect, the latter, who have a certain area of discretion in connexion with the implementation of the Convention, are only liable to the institutions provided for thereby.

The Advocate-General delivered his opinion at the hearing on 2 June 1976.

Law

- 1 By order of 18 November 1975 received at the Court Registry on 1 December 1975 the Pretura, Milan, referred to the Court under Article 177 of the EEC Treaty a series of questions dealing in particular with the interpretation of Articles 7 and 48 to 66 of that Treaty.
- 2 These questions have been raised within the context of criminal proceedings against, on the one hand, a British national who spent several months in Italy and, on the other, an Italian national who gave her accommodation.
- 3 The said British national is alleged to have failed to discharge the obligation to report, within three days of her entry into the territory of the Italian Republic, to the police authorities of the place where she was staying 'in order

to notify [her] presence and to make a declaration of residence'. This obligation is imposed by Italian legislation on all foreign nationals, with the exception of certain categories of employed workers from other Member States, and the penalties provided for in the event of a failure to discharge it are a maximum fine of Lit. 80 000 or a maximum of three months' detention and, in addition, possible deportation from the national territory, entailing a prohibition on re-entry without the permission of the Minister for the Interior.

- 4 The Italian national is charged with having failed to inform the said authorities within twenty-four hours of the identity of the British national in question. This obligation is imposed by Italian legislation on 'any person who provides board and lodging, on whatever basis, to a foreign national or a stateless person, ... or for any reason whatever takes such person into his employment', and failure to discharge it renders the person concerned liable to a maximum fine of Lit. 240 000 or a maximum of six months' detention.
- 5 The questions referred to the Court ask essentially whether such rules are contrary to the provisions of Articles 7 and 48 to 66 of the Treaty, on the ground that they constitute discrimination based on nationality and a restriction on freedom of movement for persons within the Community.
- 6 They also ask whether the above mentioned Community rules constitute fundamental principles which create individual rights and take precedence over national rules to the contrary.
- 7 1. It is appropriate to deal with these questions as a whole.
- 8 Without giving the reason for the temporary residence in Italy of the defendant in the main action or defining her position in relation to the provisions of Community law which might be applicable to her the national court referred to the first three chapters of Title III of Part Two of the Treaty, which concern workers, the right of establishment and services, without making any distinction between those chapters.
- 9 Nevertheless comparison of these different provisions shows that, to the extent to which they may be applied in cases such as the present, they are based on the same principles both in so far as they concern the entry into

and residence in the territory of Member States of persons covered by Community law and the prohibition of all discrimination between them on grounds of nationality.

- 10 It is for the national court to consider whether, and if so in what capacity, the defendant in the main action is covered by the provisions of one or other of the abovementioned chapters.

- 11 2. Article 48 provides that freedom of movement for workers shall be secured within the Community.

Paragraph (3) of that article provides that it shall entail the right to enter the territory of Member States, to move freely there, to stay there for the purpose of employment and to remain there after the end of this employment.

Articles 52 and 59 provide that restrictions on the freedom of establishment and the freedom to provide services within the Community shall be abolished by progressive stages which shall be completed by the end of the transitional period.

- 12 These provisions, which may be construed as prohibiting Member States from setting up restrictions or obstacles to the entry into their territory of nationals of other Member States, have the effect of conferring rights directly on all persons falling within the ambit of the abovementioned articles, as later given closer articulation by certain provisions adopted by the Council in implementation of the Treaty.

- 13 Thus, Article 1 of Regulation No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968 (II), p. 475) provides that any national of a Member State shall, irrespective of his place of residence, have 'the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State'.

- 14 Article 4 of Directive No 68/360 of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (loc. cit. p. 485) provides that Member States shall grant 'the right of residence in their territory' to the persons referred to and further states that as 'proof' of this right an individual residence permit shall be issued.

- 15 Further, the preamble to Directive No 73/148 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 (OJ, L 172, p. 14) states that freedom of establishment can be fully attained only 'if a right of permanent residence is granted to the persons who are to enjoy freedom of establishment' and that freedom to provide services entails that persons providing and receiving services have 'the right of residence for the time during which the services are being provided'.
- 16 The provisions of the Treaty and of secondary Community law to which reference has just been made implement a fundamental principle contained in Article 3 (c) of the Treaty, which states that, for the purposes set out in Article 2, the activities of the Community shall include the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital.

These provisions take precedence over any national rule which might conflict with them.

- 17 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.
- 18 Under the terms of Article 8 (2) of Directive No 68/360 and Article 4 (2) of Directive No 73/148, 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.

Such an obligation could not in itself be regarded as an infringement of the rules concerning freedom of movement for persons.

However, such an infringement might result from the legal formalities in question if the control procedures to which they refer were such as to restrict the freedom of movement required by the Treaty or to limit the right conferred by the Treaty 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.

- 19 In particular as regards the period within which the arrival of foreign nationals must be reported, the provisions of the Treaty are only infringed if the period fixed is unreasonable.
- 20 Among the penalties attaching to a failure to comply with the prescribed declaration and registration formalities, deportation, in relation to persons protected by Community law, is certainly incompatible with the provisions of the Treaty since, as the Court has already confirmed in other cases, such a measure negates the very right conferred and guaranteed by the Treaty.
- 21 As regards other penalties, such as fines and detention, whilst the national authorities are entitled to impose penalties in respect of a failure to comply with the terms of provisions requiring foreign nationals to notify their presence which are comparable to those attaching to infringements of provisions of equal importance by 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 persons.
- 22 In so far as national rules concerning the control of foreign nationals do not involve restrictions on freedom of movement for persons and on the right, conferred by the Treaty on persons protected by Community law, to enter and reside in the territory of the Member States, the application of such legislation, where it is based upon objective factors, cannot constitute 'discrimination on grounds of nationality', prohibited under Article 7 of the Treaty.
- 23 Provisions which require residents of the host State to inform the public authorities of the identity of foreign nationals for whom they provide accommodation, and which are for the most part connected with the internal order of the State, can only be called into question from the point of view of Community law if they place an indirect restriction on freedom of movement for persons.

The foregoing observations concerning the obligations imposed on nationals of other Member States are therefore equally valid as regards the above mentioned requirement.

Costs

- 24 The costs incurred by the British and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Pretura, Milan, hereby rules:

1. Articles 48 to 66 of the Treaty and the measures adopted by the Community in application thereof implement a fundamental principle of the Treaty, confer on persons whom they concern individual rights which the national courts must protect and take precedence over any national rule which might conflict with them.
2. National regulations which
 - require nationals of other Member States who benefit from the provisions of Articles 48 to 66 of the EEC Treaty to report to the authorities of that State,
 - and
 - prescribe that residents who provide accommodation for such foreign nationals must inform the said authorities of the identity of such foreign nationals

are in principle compatible with the provisions in question provided, first, that the period fixed for the discharge of the said obligations is reasonable and, secondly, that the penalties attaching to a failure to discharge them are not disproportionate to the gravity of the offence and do not include deportation.

3. In so far as such rules do not entail restrictions on freedom of movement for persons, they do not constitute discrimination prohibited under Article 7 of the Treaty.

Lecourt

Kutscher

O'Keeffe

Mertens de Wilmars

Pescatore

Sørensen

Mackenzie Stuart

Delivered in open court in Luxembourg on 7 July 1976.

A. Van Houtte

R. Lecourt

Registrar

President

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI
DELIVERED ON 2 JUNE 1976¹

*Mr President,
Members of the Court,*

1. On the subject of the movement of workers, the provision of services and the right of establishment, the Court has hitherto had occasion to concern itself with the application, in particular cases, of the clause safeguarding public policy. The Judgments in Cases 41/74, *Van Duyn*, 67/74, *Bonsignore*, 36/75, *Rutili* and 48/75, *Royer*, laid down basic principles and criteria on this subject and began to outline the limits of the powers of derogation exceptionally allowed to the States in carrying out the task of safeguarding public policy on their territory.

In each of those cases, the references to this Court for a preliminary ruling were intended to enable the court of reference

to determine the compatibility with Community law of a single national administrative act (denial of entry, expulsion order, territorial restriction on freedom of residence) adopted by the national authorities in the case of aliens under the wide powers of discretion conferred upon them by national legislation concerning aliens.

In the present case, on the other hand, the decision which the Italian court is called upon to make regarding compatibility with Community law is directly and exclusively concerned with national legislative acts. It must also, and at once, be emphasized that these acts were not adopted in exercise of an exceptional power of derogation, as in the case of the state measures with which the abovementioned cases were concerned, but were the expression of a

¹ — Translated from the Italian.