

Case C-274/20**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

19 June 2020

Referring court:

Giudice di pace di Massa (Magistrates' Court, Massa, Italy)

Date of the decision to refer:

16 June 2020

Applicants:

GN

WX

Defendant:

Prefettura di Massa Carrara — Ufficio Territoriale del Governo di Massa Carrara

Subject matter of the main proceedings

Action seeking a declaration that the fine imposed on a citizen of the European Union, who has been resident in Italy for more than 60 days, for having driven a car registered in another European State is null and void.

Subject matter and legal basis of the reference

The prohibition in Italy of a person who has been resident in Italy for more than 60 days driving a car registered in another European State (irrespective of who its owner is) could be discriminatory on grounds of nationality. Furthermore, the obligation to register in Italy cars that are registered in another European State in order to be able to drive in Italy, especially after such a short period of residence, could hinder and/or limit, indirectly but substantially, the ability of some European citizens to exercise their rights under Articles 18, 21 and 26, Article 45(1), and Articles 49 to 62 TFEU.

Questions referred

1. Is the concept of the prohibition of ‘discrimination on grounds of nationality’ under Article 18 TFEU to be interpreted as meaning that Member States are prohibited from enacting any legislation that could, indirectly, covertly and/or materially, cause difficulties for nationals of other Member States?

2. If the first question is answered in the affirmative, could Article 93(1-*bis*) of the Codice della Strada (Italian Highway Code), concerning the prohibition of driving with foreign number plates (registered in anybody’s name) after 60 days of residence in Italy, cause difficulties for nationals of other Member States (who own cars with foreign number plates) and consequently be discriminatory on grounds of nationality?

3. Are the following concepts:

a. ‘right to move and reside freely within the territory of the Member States’, as referred to in Article 21 TFEU;

b. ‘internal market’ which ‘shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties’, as referred to in Article 26 TFEU;

c. ‘freedom of movement for workers shall be secured within the Union’, as referred to in Article 45 TFEU;

d. ‘restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited’, as referred to in Articles 49 to 55 TFEU; [and]

e. ‘restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended’, as referred to in Articles 56 to 62 TFEU

to be interpreted as meaning that national provisions that could, indirectly, covertly and/or materially, limit or hinder the ability of European citizens to exercise the right of freedom of movement and residence within the territory of the Member States, the right of freedom of movement for workers within the Union, freedom of establishment and the freedom to provide services, or in any way affect those rights, are also prohibited?

4. If the third question is answered in the affirmative, could Article 93(1-*bis*) of the Italian Highway Code, concerning the prohibition of driving with foreign number plates (registered in anybody’s name) after 60 days of residence in Italy, limit, hinder or in any way affect the exercise of the right of freedom of movement and residence in the territory of the Member States, the right of freedom of

movement for workers within the Union, freedom of establishment and the freedom to provide services?

Provisions of EU law relied on

Articles 18, 21 and 26, Article 45(1), and Articles 49 to 62 TFEU.

Provisions of national law relied on

Codice della Strada (Italian Highway Code) (Decreto Legislativo 30 aprile 1992, n. 285 (Legislative Decree No 285 of 30 April 1992), as amended). In particular, Decreto-Legge 4 ottobre 2018, n. 113 (Decree-Law No 113 of 4 October 2018), converted, with amendments, by Legge 1° dicembre 2018, n. 132 (Law No 132 of 1 December 2018), inserted, inter alia, paragraphs 1-*bis*, 1-*ter* and 7-*bis* into Article 93.

Article 93(1-*bis*):

‘Without prejudice to paragraph 1-*ter*, anyone who has established his or her residence in Italy for more than 60 days shall be prohibited from driving a vehicle registered in another country’.

Article 93(1-*ter*):

‘In the case of a vehicle which is leased or rented, without a driver, by an undertaking established in another Member State of the European Union or of the European Economic Area which has not established a secondary office or other place of business in Italy, and in the case of a vehicle lent free of charge for a given period to a person resident in Italy and bound by an employment or working relationship with an undertaking established in another Member State of the European Union or the European Economic Area which has not established a secondary office or other place of business in Italy, a document, signed by the holder and bearing a specific date, demonstrating the right of that person to be using the vehicle and the duration of that use, shall be kept inside the vehicle in accordance with the provisions of the Community Customs Code. In the absence of such a document, the use of the vehicle shall be deemed to be the responsibility of the driver’.

Article 93(7-*bis*):

‘An administrative fine of between EUR 712 and EUR 2 848 shall apply to infringements of the provisions of paragraph 1-*bis*. The investigating body shall forward the vehicle registration document to the vehicle registration office that is responsible for the territory concerned, issue an immediate ban on the driving of the vehicle, and order it to be transported to and stored in a location to which there is no public access’.

Succinct presentation of the facts and the main proceedings

- 1 The applicants, GN and WX, are a married couple. GN is resident in Italy, while his wife WX lives in Slovakia, and is resident only in Slovakia. In 2019, while WX was in Italy, the couple were driving one day in WX's car, registered in Slovakia, with GN at the wheel, when they were stopped by the Polizia stradale di Massa Carrara (Massa Carrara Traffic Police). GN was issued with a fine, as was his wife as the owner of the vehicle. The car was seized on the grounds that it contravened Article 93(1-*bis*) of the Italian Highway Code, since GN, who had been resident in Italy for more than 60 days, was driving a car registered in another country. By means of an application filed on 27 February 2019, the applicants, GN and WX, commenced proceedings against the Prefettura di Massa Carrara (Massa Carrara Prefecture) seeking a declaration that the fine imposed by the Massa Carrara Traffic Police on the basis of Article 93(1-*bis*) of the Italian Highway Code was null and void. Since the referring court has doubts as to the compatibility of that national legislation with EU law, it has stayed the proceedings and submitted a request for a preliminary ruling to the Court of Justice.

The essential arguments of the parties to the main proceedings

- 2 The applicants have asked the referring court to disapply Article 93(1-*bis*) of the Italian Highway Code since, in their opinion, it is clearly at odds with Articles 18, 21, 26 and 45, and Articles 49 to 62 TFEU. They also maintain that such a rule, which is contrary to the logic of European integration, should not be permissible in the single European area. Member States should not adopt rules that could restrict the right of European citizens to drive in any Member State using a car registered in any other European State. Number plates should simply be European, in substance and not just form. This is the only way to ensure that the freedoms enshrined in EU law are fully respected. In addition, European citizens should be able to have their own car serviced in any other Member State. It should be possible to insure such cars with any European insurer; otherwise there is no free insurance market. The purpose of the rule, according to the Italian Government, is to limit the practice of 'esterovestizione' (that is, tax inversion) with regard to cars. However, in order to deal with tax inversion — that is, in order to establish the country of taxation of goods and income — all European countries have signed special 'Conventions for the Avoidance of Double Taxation' based on the OECD [(Organisation for Economic Co-operation and Development)] model. In reality, therefore, the effect of the rule is to protect domestic insurance companies. Such covert protectionism is clearly at odds with the single market and with EU competition policy.

Succinct presentation of the reasons for the reference

- 3 The referring court raises doubts as to the compatibility of the abovementioned national legislation with EU law, and specifically with the provisions of the

abovementioned articles of the TFEU. Any restriction on the use of a car, especially on grounds of its nationality, inevitably restricts the rights of some European citizens within the European area. According to the provisions of the national rule at issue, persons who reside in Italy for more than 60 days are prohibited from using a car registered in another EU State, irrespective of who its owner is. For that reason, in order to avoid heavy fines, persons who wish to reside in Italy for more than 60 days are obliged to register their car, which has already been registered in another country, in Italy or, alternatively, to transport (export) the car to the country of origin, which entails a highly complicated procedure.

- 4 Registering a car in Italy, in addition to the costs of registration and the complex bureaucratic process, requires the person concerned to have the car serviced again in Italy, to pay vehicle tax in Italy (even if the equivalent tax for that year has already been paid in another country) and, last but not least, to purchase a new insurance policy from an Italian insurer.
- 5 Conversely, the export procedure involves sending the vehicle registration certificate and number plates to the competent Italian authority, which issues a provisional document and temporary number plates so that the vehicle can be transported to the country of origin. The new number plates must be insured again, while the original number plates and vehicle registration certificate can be de-registered with the competent authority in the country of origin after a lengthy waiting period (around 6 months). The provisional document and temporary number plates are not valid beyond Italy's borders.
- 6 For that reason, the rule at issue could indirectly or materially discriminate against European citizens on grounds of their nationality and restrict their right to freedom of movement and residence, freedom of movement for workers, and the right to freedom of establishment and freedom to provide services.

Discrimination

- 7 The national rule could be discriminatory, since Italians (whose cars are already registered in Italy, since they live there) will not have to incur extra costs and/or put up with added inconvenience in order to reside or continue to reside in Italy for more than 60 consecutive days.
- 8 By contrast, other European citizens, in order to reside in Italy (for professional, work, study or tourism reasons) for more than 60 days, will have to incur significant costs and endure lengthy bureaucratic procedures. Moreover, Italians wishing to reside for more than 60 days in another European country have the right to use their own Italian-registered cars in that European country, since no other European State requires cars to be registered in the country after such a short time. This could lead to inequality.

- 9 Furthermore, if all European countries were to introduce such measures in a reciprocal manner, this would create an untenable situation and result in an impasse, particularly in light of the fact that a European citizen may be resident in more than one European State.

Restriction of the right of freedom of movement and residence, freedom of movement for workers, freedom of establishment and freedom to provide services in the European area

- 10 Conversely, the obligation to register their own car in Italy (especially after what is, objectively speaking, a very short period of residence in Italy — 60 days), could limit the ability of European citizens to exercise their freedoms under the TFEU, as referred to in the abovementioned articles (such as seasonal workers, for example). After 2 months, those workers would have to register their car in Italy and then register it again on returning to their country of origin.
- 11 Not only is such a procedure uneconomical, it could actually prevent or at least restrict the right to freedom of movement for workers in the European area, particularly in Italy. The same argument also applies to any period of residence for study reasons or for holidays lasting more than 60 consecutive days, or to professionals or companies who need to perform a job or provide a service in Italy that could take longer than 60 days and who subsequently wish to return to their country of origin.
- 12 The Italian rule at issue could effectively mean that such persons waive their rights or head for other countries that do not impose such restrictions. The interpretation of EU law on this point is relevant for the purposes of the decision, since, if Article 93(1-*bis*) of the Italian Highway Code is discriminatory under Article 18 TFEU and/or indirectly restricts the rights and freedoms of European citizens, as referred to in Articles 21, 26 and 45, Articles 49 to 55, and Articles 56 to 62 TFEU, the contested fine should be declared null and void.