

Case C-230/97

**Criminal proceedings
against
Ibiyinka Awoyemi**

(Reference for a preliminary ruling
from the Hof van Cassatie (Belgium))

(Driving licence — Interpretation of Directive 80/1263/EEC —
Failure to comply with the obligation to exchange a licence issued
by one Member State to a national of a non-member country for a licence
from another Member State in which that person is now resident —
Criminal penalties — Effect of Directive 91/439/EEC)

Opinion of Advocate General Léger delivered on 16 July 1998 I - 6784
Judgment of the Court (Second Chamber), 29 October 1998 I - 6795

Summary of the Judgment

1. *Freedom of movement for persons — Freedom of establishment — Driving licence — National of a non-member country holding a Community model driving licence — Failure to comply with the obligation to exchange the driving licence issued by the Member State of origin for a licence of the host Member State — Treated as equivalent to driving without a licence — Criminal penalties — Whether permissible*
(EC Treaty, Arts 48 and 52; Council Directive 80/1263, Art. 8(1), first subpara.)

2. *Freedom of movement for persons — Freedom of establishment — Driving licence — National of a non-member country holding a Community model driving licence — Failure to comply with the obligation to exchange licences provided for by Directive 80/1263 — Criminal penalties — Directive 91/439 — Direct effect of Articles 1(2) and 8(1) — Scope — National legal principle of the retroactive effect of the more favourable provisions of criminal law — Effect (Council Directive 80/1263, Art. 8(1), first subpara., and Directive 91/439, Arts 1(2) and 8(1))*

1. Although Member States may not, in the event of breach of the obligation to exchange driving licences laid down in the first subparagraph of Article 8(1) of Directive 80/1263 on the introduction of a Community driving licence, impose a criminal penalty so disproportionate to the gravity of the infringement as to become an obstacle to the free movement of persons, in view of the effect which the right to drive a motor vehicle has on the actual exercise of a trade or profession by an employed or self-employed person, particularly with regard to access to certain activities or certain offices, the justification for the restriction imposed on the power of the Member States to provide for criminal penalties in this area is the free movement of persons established by the Treaty. A national of a non-member country may not effectively rely on the rules governing the free movement of persons which apply only to a national of a Member State of the Community who seeks to establish himself in the territory of another Member State or to a national of the Member State in question who finds himself in a situation which is connected with any of the situations contemplated by Community law.

preclude the driving of a motor vehicle by a national of a non-member country who holds a Community model driving licence issued by one Member State and who, having transferred his residence to another Member State, could have obtained a licence issued by the host State in exchange, but did not complete that formality within the prescribed period of one year, from being treated by the latter State as driving without a licence and thus rendered punishable by imprisonment or a fine.

2. Articles 1(2) and 8(1) of Directive 91/439 on driving licences impose on Member States clear and precise obligations which consist in the mutual recognition of Community model driving licences and in the prohibition on requiring the exchange of driving licences issued by another Member State, regardless of the nationality of the holder, since the States concerned have no discretion as to the measures to be adopted in order to comply with those requirements. It may be inferred from the direct effect which should therefore be attributed to those provisions that individuals are entitled to rely on them in proceedings before the national courts.

Accordingly, neither the provisions of Directive 80/1263 nor those of the Treaty

It follows that a national of a non-member country who holds a valid Community model driving licence issued by one Member State, who has taken up normal residence in another Member State, but who has not exchanged his driving licence within the one-year period prescribed by the first subparagraph of Article 8(1) of Directive 80/1263, is entitled to rely directly on Articles 1(2) and 8(1) of Directive 91/439 in order to challenge the imposition, in the Member State in which he

has established his new residence, of a term of imprisonment or a fine for driving without a licence. Community law does not prevent a court of such a Member State, by reason of the principle that forms part of national law in certain Member States of the retroactive effect of more favourable provisions of criminal law, from applying the aforesaid provisions of Directive 91/439 even where the offence took place before the date set for compliance with that directive.