

JUDGMENT OF THE COURT

14 January 1988 *

In Case 63/86,

Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, acting as Agent, assisted by Silvio Pieri, an Italian official working for the Commission under the system of exchanges of Community and national officials, with an address for service in Luxembourg at the office of G. Kremlis, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Legal Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that by allowing — by means of various national and regional laws — only Italian nationals to obtain reduced-rate mortgage loans and to lease and be allocated housing built by the public sector or subsidized housing, the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of G. Bosco, President of Chamber, acting for the President, O. Due and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: B. Pastor, Administrator

* Language of the Case: Italian.

having regard to the Report for the Hearing and further to the hearing on 4 June 1987,

having regard to the Opinion of the Advocate General delivered at the hearing on 22 October 1987

gives the following:

Judgment

1 By an application lodged at the Court Registry on 6 March 1986 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by permitting only Italian nationals to purchase or lease housing built or renovated with the aid of public funds or to obtain reduced-rate mortgage loans the Italian Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty and Article 9 (1) of Council Regulation No 1612/68 of the Council of 15 October 1968 (Official Journal, English Special Edition 1968 (II), p. 475). More precisely, the Commission complains that the Italian Republic denies those facilities to the nationals of the other Member States by means of the requirement of Italian nationality prescribed in the Decrees of the President of the Republic No 655 of 23 May 1964 and No 1035 of 30 December 1972, in Law No 33 of 24 April 1980 of the Region of Puglia, in Law No 38 of 7 May 1980 of the Region of Tuscany, in Law No 15 of 25 May 1981 of the Region of Emilia-Romagna and in the 10-year plan of the latter region for residential housing approved on 8 September 1981, and in Law No 22 of 23 April 1982 of the Region of Liguria.

2 It is apparent from the documents before the Court that, following a complaint by a Belgian national whose application for a reduced-rate mortgage loan with a view to the purchase of a dwelling in Mordano (Bologna) where he resided and pursued activities as a self-employed person was rejected by the authorities of the Region of Emilia-Romagna, the Commission sent a formal notice to the Italian

Government initiating the procedure under Article 169 of the EEC Treaty against the aforementioned legislation on the ground that it was contrary to Articles 48, 52 and 59 of the Treaty and to Regulation No 1612/68 of the Council.

- 3 On 16 April 1985 the Commission sent to the Italian Government the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty.
- 4 By telex message of 24 April 1985 the Italian Government drew the Commission's attention to the fact that it had already, in December 1984, forwarded to the Commission a copy of a ministerial circular dated 24 November 1984 according to which nationals of the Member States of the Community who pursued their main occupation in Italy and resided there were to be treated in all respects in the same way as Italian nationals with regard to access to social housing.
- 5 On 4 September 1985 the Commission issued a supplementary opinion in which it took the view that the aforesaid circular was not sufficient to put an end to the infringement on the ground, in particular, that it was not binding on the regional authorities and had not been made the subject of an appropriate publication.
- 6 In the course of the written procedure before the Court the Italian Government acknowledged the inadequacy of the ministerial circular and on 15 May 1987 the President of the Italian Council of Ministers adopted a decree under which the nationals of the other Member States of the Community residing in Italy, in employment there and fulfilling the subjective and objective conditions laid down in the legislation on social housing are deemed to be Italian nationals for the purposes of that legislation.
- 7 At the hearing the Agent of the Commission, having noted that the aforesaid decree was also binding on the regional authorities and had been published in the *Gazzetta ufficiale della Repubblica italiana*, stated that the action had thus become devoid of purpose as regards the relations between the legislation at issue and the Community provisions contained in Article 48 of the Treaty and in Regulation No 1612/68. The Commission therefore discontinued the proceedings so far as that point was concerned.

8 Reference is made to the Report for the Hearing for a fuller account of the Italian legislation, the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 With a view to delimiting the subject-matter of the dispute it should be observed that the action is concerned only with the nationality requirement laid down by the Italian legislation on social housing. As the Commission acknowledged at the hearing, the other conditions prescribed by that legislation are not at issue. Accordingly, after the aforementioned decree of the President of the Italian Council of Ministers of 15 May 1987 and the Commission's withdrawal of part of its conclusions, the only problem presented by this case is whether in the field of application of Articles 52 and 59 of the Treaty Community law prohibits the reservation of access to social housing for nationals of the State in point.

10 On that point the Italian Government contends that there is no direct link between the pursuit of occupations and the right of access to social housing or a reduced-rate mortgage loan with a view to the construction or acquisition of such housing. The nationality condition in question does not constitute a restriction on the right of establishment or on the freedom to provide services. All it does is to limit a facility which could encourage and make easier the exercise of those rights. The obligations which flow from Articles 52 and 59 of the Treaty, as interpreted by the Court, do not extend to such facilities in the respect of which the abolition of nationality conditions would presuppose a coordination of national legislation as laid down in Regulation No 1612/68 with respect to employed persons.

11 At the hearing the Italian Government acknowledged, however, that the nationality condition in question could be regarded as contrary to Article 52 of the Treaty as regards the right of establishment in respect of a main activity. On the other hand, as regards the 'secondary' right of establishment and the freedom to provide services the Italian Government maintains that the exercise of those rights does not imply the permanent presence of the person concerned in the place where the occupation is pursued. It cannot therefore be the case that the Community rules on non-discrimination apply to the access of such persons to social housing. Furthermore, those persons cannot satisfy the other conditions laid down by the

legislation in question which are not discriminatory and are linked to the social objectives of that legislation.

- 12 In response to those arguments it should be pointed out that Articles 52 and 59 of the Treaty are essentially intended to give effect, in the field of activities as self-employed persons, to the principle of equal treatment enshrined in Article 7 according to which 'within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited'.

- 13 Those two articles are thus intended to secure the benefit of national treatment for a national of a Member State who wishes to pursue an activity as a self-employed person in another Member State and they prohibit all discrimination on grounds of nationality resulting from national or regional legislation and preventing the taking up or pursuit of such an activity.

- 14 As is apparent from the general programmes which were adopted by the Council on 18 December 1961 (*Journal Officiel* 1962, pp. 32 and 36) and which, as the Court has pointed out on numerous occasions, provide useful guidance with a view to the implementation of the provisions of the Treaty relating to the right of establishment and the freedom to provide services, the aforesaid prohibition is concerned not solely with the specific rules on the pursuit of occupational activities but also with the rules relating to the various general facilities which are of assistance in the pursuit of those activities. Among the examples mentioned in the two programmes are the right to purchase, exploit and transfer real and personal property and the right to obtain loans and in particular to have access to the various forms of credit.

- 15 For a natural person the pursuit of an occupation does not presuppose solely the possibility of access to premises from which the occupation can be pursued, if necessary by borrowing the amount needed to purchase them, but also the possibility of obtaining housing. It follows that restrictions contained in the housing legislation applicable to the place where the occupation is pursued are liable to constitute an obstacle to that pursuit.

- 16 If complete equality of competition is to be assured, the national of a Member State who wishes to pursue an activity as a self-employed person in another Member State must therefore be able to obtain housing in conditions equivalent to those enjoyed by those of his competitors who are nationals of the latter State. Accordingly, any restriction placed not only on the right of access to housing but also on the various facilities granted to those nationals in order to alleviate the financial burden must be regarded as an obstacle to the pursuit of the occupation itself.
- 17 That being so, housing legislation, even where it concerns social housing, must be regarded as part of the legislation that is subject to the principle of national treatment which results from the provisions of the Treaty concerning activities as self-employed persons.
- 18 It is true, as the Italian Government has contended, that in practice not all instances of establishment give rise to the same need to find permanent housing and that as a rule that need is not felt in the case of the provision of services. It is also true that in most cases the provider of services will not satisfy the conditions, of a non-discriminatory nature, bound up with the objectives of the legislation on social housing.
- 19 However, it cannot be held to be *a priori* out of the question that a person, whilst retaining his principal place of establishment in one Member State, may be led to pursue his occupational activities in another Member State for such an extended period that he needs to have permanent housing there and that he may satisfy the conditions of a non-discriminatory nature for access to social housing. It follows that no distinction can be drawn between different forms of establishment and that providers of services cannot be excluded from the benefit of the fundamental principle of national treatment.
- 20 It must therefore be held that, by permitting, under various provisions of its legislation, only Italian nationals to purchase or lease housing built or renovated with the help of public funds and to obtain reduced-rate mortgage loans, the Italian Republic has failed to fulfil its obligations under Articles 52 and 59 of the EEC Treaty.

Costs

- 21 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs asked for in the successful party's pleading. According to Article 69 (4) a party who discontinues or withdraws from proceedings is to be ordered to pay the costs unless the discontinuance or withdrawal is justified by the conduct of the other party.
- 22 At the hearing the Commission abandoned one of the heads of claim in its application because the Italian Republic had complied with its obligations in that respect after the institution of the proceedings.
- 23 It follows that the partial withdrawal by the Commission is justified by the conduct of the Italian Republic which moreover has been unsuccessful so far as the remainder of the action is concerned.
- 24 The Italian Republic must therefore be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- (1) Declares that by permitting, under various provisions of its legislation, only Italian nationals to purchase or lease housing built or renovated with the help of public funds and to obtain reduced-rate mortgage loans the Italian Republic has failed to fulfil its obligations under Articles 52 and 59 of the EEC Treaty.**

(2) Orders the Italian Republic to pay the costs.

Bosco

Due

Rodríguez Iglesias

Koopmans

Everling

Galmot

Kakouris

Joliet

O'Higgins

Schockweiler

Delivered in open court in Luxembourg on 14 January 1988.

P. Heim

Registrar

A. J. Mackenzie Stuart

President