

JUDGMENT OF THE COURT (Sixth Chamber)

19 October 1995 *

In Case C-111/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunale Civile e Penale di Milano, Italy, for a preliminary ruling in the non-contentious proceedings (giurisdizione volontaria) brought before that court by

Job Centre Coop. arl,

on the interpretation of Articles 48, 55, 59, 60, 66, 86 and 90 of the EC Treaty,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, acting for the President of the Chamber,
F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur), J. L. Murray and H.
Ragnemalm, Judges,

* Language of the case: Italian.

Advocate General: M. B. Elmer,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Job Centre Coop. arl, by Pietro Ichino, Guglielmo Burragato and Caterina Rucci, of the Milan Bar,

- the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of the Economy, and Bernd Kloke, Regierungsrat in the same ministry, acting as Agents, and

- the Commission of the European Communities, by Marie-José Jonczy, Legal Adviser, and Nicola Anecchino, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Job Centre Coop. arl, of the Italian Government, represented by Danilo Del Gaizo, Avvocato dello Stato, and of the Commission, represented by Marie-José Jonczy, and by Enrico Traversa, of its Legal Service, at the hearing on 23 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 8 June 1995,

gives the following

Judgment

- 1 By order of 31 March 1994, received at the Court on 11 April 1994, the Tribunale Civile è Penale di Milano (Civil and Criminal District Court, Milan) referred for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 48, 55, 59, 60, 66, 86 and 90 of the EC Treaty.

- 2 Those questions were raised in the context of an application submitted by the representatives of Job Centre ('JCC') to the Tribunale Civile e Penale di Milano for confirmation of its memorandum of association, in accordance with Article 2330(3) of the Italian Civil Code.

- 3 JCC is a cooperative society with limited liability which is in the course of being set up with its head office in Milan. Under its articles of association, its activities are to include, in particular, serving as an intermediary between supply and demand on the employment market and providing temporary staff for third parties. Its object is to enable workers and undertakings, whether they are members or not, to draw on such services on the employment market in Italy and the Community.

- 4 In Italy, the employment market is subject to a mandatory placement system administered by public employment agencies and regulated by Law No 264 of 29 April 1949. Article 11(1) of that Law prohibits the pursuit of any activity, even unremunerated, as an intermediary between supply and demand for paid employment. The first paragraph of Article 1 of Law No 1369 of 23 October 1960 lays down a prohibition on acting as an intermediary or subcontractor in employment relationships, failure to comply with which gives rise, *inter alia*, to penal sanctions.

- 5 In the proceedings before the Tribunale Civile e Penale di Milano, JCC submitted that the prohibition of private placement and provision of temporary workers are contrary to Community law. The national court therefore sought a preliminary ruling from the Court on the following questions:

‘1. May the national laws on employment procurement and temporary work, which relate to matters of public policy because their purpose is to protect the interests of workers and of the national economy, be considered as instances of the exercise of official authority within the meaning of the combined provisions of Articles 66 and 55 of the EEC Treaty?’

2. May the Community rules relied upon by the applicants, in the absence of specific implementing provisions in that area, be considered directly applicable (calling into question the public policy aims of the Italian laws currently governing employment procurement and temporary work) and do they permit any person subject to public or private law to pursue, without specific supervision or authorization, any activity as an intermediary between supply and demand on the employment market and/or as provider of labour on a temporary basis for third persons, in the event that a Member State is not able through its own administrative apparatus fully to meet the demand for services on the labour market?’

- 6 The Commission and the Italian Government have raised objections as to the admissibility of the questions referred. In particular, they have submitted that those questions were raised in the context of ‘non-contentious proceedings’ whose purpose is not to settle a dispute after hearing argument from opposing parties but to issue an administrative decision.

- 7 It appears from the documents before the Court that an application for confirmation of the articles of association of a company is examined, in Italy, in non-contentious proceedings ('giurisdizione volontaria'). In the present case, such an application was lodged with the Tribunale Civile e Penale di Milano. Under Article 2330(3) of the Italian Civil Code, if after hearing the submissions of the public authorities the Tribunale finds that the articles of association meet the conditions laid down by law, it must order the registration of the company. Under Article 2331(1), the company acquires legal personality on registration. The person legally empowered to apply for confirmation or registration may appeal against any adverse decision under Articles 2330(4) or 2189(3) of the Italian Civil Code.
- 8 Under Article 177 of the Treaty, the Court has jurisdiction to give preliminary rulings concerning the interpretation of the Treaty and of acts of the institutions of the Community. The second paragraph of that article adds: 'Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.'
- 9 Whilst that provision does not make reference to the Court subject to the proceedings during which the national court frames a question for a preliminary ruling being *inter partes* (see, most recently, Case C-18/93 *Corsica Ferries Italia v Corpo dei Piloti del Porto di Genova* [1994] ECR I-1783, paragraph 12), it is none the less apparent from Article 177 that a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (Case 138/80 *Borker* [1980] ECR 1975, paragraph 4, and Case 318/85 *Greis Unterweger* [1986] ECR 955, paragraph 4).

- 10 That is not the case in the present instance.
- 11 When, in accordance with the applicable national legislation and under the 'giurisdizione volontaria' procedure, the national court rules on an application for confirmation of a company's articles of association with a view to its registration, it is performing a non-judicial function which, in other Member States, is entrusted to administrative authorities. It is exercising administrative authority without being at the same time called upon to settle any dispute. Only if the person empowered under national law to apply for such confirmation seeks judicial review of a decision rejecting that application — and thus of the application for registration — may the court seised be regarded as exercising a judicial function, for the purposes of Article 177, in respect of an application for the annulment of a measure adversely affecting the petitioner (see Case 32/74 *Haaga* [1974] ECR 1201).
- 12 The Court therefore has no jurisdiction to rule on the questions raised by the Tribunale Civile e Penale di Milano.

Costs

- 13 The costs incurred by the Italian Government, the German Government and the Commission of the European Communities, 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 (Sixth Chamber)

The Court of Justice of the European Communities has no jurisdiction to answer the questions raised by the Tribunale Civile e Penale di Milano in its order for reference of 31 March 1994.

Mancini

Schockweiler

Kapteyn

Murray

Ragnemalm

Delivered in open court in Luxembourg on 19 October 1995.

R. Grass

Registrar

G. F. Mancini

For the President of the Sixth Chamber