

ANGONESE

JUDGMENT OF THE COURT

6 June 2000 *

In Case C-281/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Pretura Circondariale di Bolzano (District Magistrates' Court, Bolzano), Italy, for a preliminary ruling in the proceedings pending before that court between

Roman Angonese

and

Cassa di Risparmio di Bolzano SpA,

on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and Articles 3(1) and 7(1) and (4) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475),

* Language of the case: Italian.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, D.A.O. Edward, L. Sevón and R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann, J.-P. Puissechet, G. Hirsch, P. Jann, H. Ragnemalm (Rapporteur) and M. Wathelet, Judges,

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- R. Angonese, by G. Lanzinger, of the Bolzano Bar,

- the Cassa di Risparmio di Bolzano SpA, by K. Zeller and T. Dipoli, of the Bolzano Bar,

- the Italian Government, by Professor U. Leanza, Head of Legal Affairs Department, Ministry of Foreign Affairs, acting as Agent, assisted by D. Del Gaizo, Avvocato dello Stato,

- the Commission of the European Communities, by P.J. Kuijper, Legal Adviser, and A. Aresu, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Angonese, the Cassa di Risparmio di Bolzano SpA, the Italian Government and the Commission at the hearing on 28 September 1999,

after hearing the Opinion of the Advocate General at the sitting on 25 November 1999,

gives the following

Judgment

- 1 By order of 8 July 1998, received at the Court on 23 July 1998, the Pretura Circondariale di Bolzano referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and of Articles 3(1) and 7(1) and (4) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) ('the Regulation').
- 2 The question has been raised in the proceedings between Mr Angonese and the Cassa di Risparmio di Bolzano SpA ('the Cassa di Risparmio') concerning a requirement imposed by the Cassa di Risparmio for admission to a recruitment competition.

Community law

3 Article 3(1) of the Regulation provides:

‘Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:

- where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or

- where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

This provision shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.’

4 Article 7(1) and (4) of the Regulation provide:

‘A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in

particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment.

...

Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.'

The main proceedings

- 5 Mr Angonese, an Italian national whose mother tongue is German and who is resident in the province of Bolzano, went to study in Austria between 1993 and 1997. In August 1997, in response to a notice published in the local Italian daily *Dolomiten* on 9 July 1997, he applied to take part in a competition for a post with a private banking undertaking in Bolzano, the Cassa di Risparmio.

- 6 One of the conditions for entry to the competition was possession of a type-B certificate of bilingualism (in Italian and German) ('the Certificate'), which used to be required in the province of Bolzano for access to the former 'carrera di concetto' (managerial career) in the public service.

- 7 According to the file, the Certificate is issued by the public authorities of the province of Bolzano after an examination which is held only in that province. It is usual for residents of the province of Bolzano to obtain the Certificate as a matter of course for employment purposes. Obtaining the Certificate is viewed as an almost compulsory step as part of normal training.

- 8 The national court has found as a fact that, although Mr Angonese was not in possession of the Certificate, he was perfectly bilingual. With a view to gaining admission to the competition, he had submitted a certificate showing completion of his studies as a draughtsman and certificates attesting to his studies of languages (English, Slovene and Polish) at the Faculty of Philosophy at Vienna University and had stated that his professional experience included practising as a draughtsman and translating from Polish into Italian.

- 9 On 4 September 1997, the Cassa de Risparmio informed Mr Angonese that he could not be admitted to the competition because he had not produced the Certificate.

- 10 The Pretore di Bolzano draws attention to the fact that non-residents of Bolzano may have difficulty obtaining the Certificate in good time. He explains that, in the present case, applications to take part in the competition had to be submitted by 1 September 1997, just less than two months after publication of the competition notice. However, there is a minimum period of 30 days between the written tests and the oral tests organised for the purpose of awarding the Certificate and there are a limited number of examination sittings in any given year.

- 11 The requirement for the Certificate imposed by the Cassa di Risparmio was founded on Article 19 of the National Collective Agreement for Savings Banks of 19 December 1994 ('the Collective Agreement'), which provides:

'The institution has the right to decide whether the recruitment of staff referred to in paragraphs 1 and 2, subject in any event to Article 21 below, is to be by way of an internal competition on the basis of either qualifications and/or tests or in accordance with selection criteria specified by the institution.

The institution must lay down as and when necessary the conditions and rules for internal competitions, must appoint selection panels and must lay down the selection criteria mentioned in the first paragraph ...'

- 12 Although he has acknowledged the Cassa di Risparmio's right to select its future staff from persons who are perfectly bilingual, Mr Angonese has complained that the requirement to have and produce the Certificate is unlawful and contrary to the principle of freedom of movement for workers laid down in Article 48 of the Treaty.
- 13 Mr Angonese claims that the requirement should be declared void and that the Cassa di Risparmio should be ordered to compensate him for his loss of opportunity and to reimburse him the costs he has incurred in the proceedings.

- 14 According to the national court, the requirement to hold the Certificate in order to provide evidence of linguistic knowledge, may, contrary to Community law, penalise job candidates not resident in Bolzano and, in the present case, could have been prejudicial to Mr Angonese who had taken up residence in another Member State for the purpose of studying there. The national court takes the view, moreover, that, if the requirement in issue were held to be inherently contrary to Community law, it would be void under Italian law.

The question submitted for a preliminary ruling

- 15 In those circumstances, the Pretore di Bolzano decided to stay proceedings and to refer the following question to the Court:

‘Is it compatible with Article 48(1), (2) and (3) of the EC Treaty and Articles 3(1) and 7(1) and (4) of Regulation (EEC) No 1612/68 to make the admission of candidates for a competition organised to fill posts in a company governed by private law conditional on possession of the official certificate attesting to knowledge of local languages issued exclusively by a public authority of a Member State at a single examination centre (namely, Bolzano), on completion of a procedure of considerable duration (to be precise, of not less than 30 days, on account of the minimum lapse of time envisaged between the written test and the oral test)?’

- 16 Before examining the question put by the Pretore di Bolzano, it should be noted that observations have been submitted as to its relevance for resolution of the main proceedings and the Court’s jurisdiction to answer it.

- 17 The Italian Government and the Cassa di Risparmio contend that, since Mr Angonese is regarded as having been resident in the province of Bolzano since his birth, the question is artificial and has no connection with Community law.
- 18 In that respect, it should be noted that the Court has consistently held that it is for the national courts alone, which are seised of a case and which must assume responsibility for the judgment to be given, to determine, having regard to the particular features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they refer to the Court. A reference for a preliminary ruling from a national court may be rejected only if it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual nature of the case or the subject-matter of the main action (see, in particular, Case C-230/96 *Cabour and Nord Distribution Automobile v Arnor* [1998] ECR I-2055, paragraph 21).
- 19 Whether or not the reasoning of the order for a reference mentioned in paragraph 14 above is well founded, it is far from clear that the interpretation of Community law it seeks has no relation to the actual facts of the case or to the subject-matter of the main action.
- 20 In those circumstances, the question submitted must be answered.
- 21 The national court is asking essentially whether Article 48 of the EC Treaty and Articles 3 and 7 of the Regulation preclude an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their

linguistic knowledge solely by means of one particular diploma, such as the Certificate, issued in a single province of a Member State.

- 22 As far as the effect of the Regulation is concerned, Article 3(1) is concerned only with provisions laid down by the laws, regulations or administrative action or administrative practices of Member States. Article 3(1) is not therefore relevant in determining the lawfulness of a requirement not based on such provisions or practices.
- 23 As regards Article 7 of the Regulation, the Cassa di Risparmio submits that the requirement to possess the Certificate does not arise under a collective agreement or an individual employment contract, and so the question whether it is lawful under that provision is not relevant.
- 24 Mr Angonese and the Commission contend, however, that Article 19 of the Collective Agreement allows banking undertakings to include discriminatory selection criteria, such as possession of the Certificate, and that it infringes Article 7(4) of the Regulation.
- 25 It should be noted that Article 19 of the Collective Agreement authorises the institutions concerned to lay down the conditions and rules for competitions, as well as the selection criteria.

- 26 Nevertheless, such a provision does not authorise the institutions concerned, either expressly or implicitly, to adopt discriminatory criteria in relation to workers who are nationals of other Member States, which would be incompatible with Article 7 of the Regulation.
- 27 It follows that such a provision does not in itself constitute an infringement of Article 7 of the Regulation and does not have any effect on the lawfulness, under the Regulation, of a requirement such as the one imposed by the Cassa di Risparmio.
- 28 In those circumstances, the question submitted falls to be examined solely in relation to Article 48 of the Treaty.
- 29 Under that provision, freedom of movement for workers within the Community entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
- 30 It should be noted at the outset that the principle of non-discrimination set out in Article 48 is drafted in general terms and is not specifically addressed to the Member States.

- 31 Thus, the Court has held that the prohibition of discrimination based on nationality applies not only to the actions of public authorities but also to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services (see Case 36/74 *Walrave v Union Cycliste Internationale* [1974] ECR 1405, paragraph 17).
- 32 The Court has held that the abolition, as between Member States, of obstacles to freedom of movement for persons would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise of their legal autonomy by associations or organisations not governed by public law (see *Walrave*, paragraph 18, and Case C-415/93 *Union Royale Belge des Sociétés de Football Association and Others v Bosman and Others* [1995] ECR I-4921, paragraph 83).
- 33 Since working conditions in the different Member States are governed sometimes by provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons, limiting application of the prohibition of discrimination based on nationality to acts of a public authority risks creating inequality in its application (see *Walrave*, paragraph 19, and *Bosman*, paragraph 84).
- 34 The Court has also ruled that the fact that certain provisions of the Treaty are formally addressed to the Member States does not prevent rights from being conferred at the same time on any individual who has an interest in compliance with the obligations thus laid down (see Case 43/75 *Defrenne v Sabena* [1976] ECR 455, paragraph 31). The Court accordingly held, in relation to a provision of the Treaty which was mandatory in nature, that the prohibition of discrimination applied equally to all agreements intended to regulate paid labour collectively, as well as to contracts between individuals (see *Defrenne*, paragraph 39).

- 35 Such considerations must, *a fortiori*, be applicable to Article 48 of the Treaty, which lays down a fundamental freedom and which constitutes a specific application of the general prohibition of discrimination contained in Article 6 of the EC Treaty (now, after amendment, Article 12 EC). In that respect, like Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), it is designed to ensure that there is no discrimination on the labour market.
- 36 Consequently, the prohibition of discrimination on grounds of nationality laid down in Article 48 of the Treaty must be regarded as applying to private persons as well.
- 37 The next matter to be considered is whether a requirement imposed by an employer, such as the Cassa di Risparmio, which makes admission to a recruitment competition conditional on possession of one particular diploma, such as the Certificate, constitutes discrimination contrary to Article 48 of the Treaty.
- 38 According to the order for reference, the Cassa di Risparmio accepts only the Certificate as evidence of the requisite linguistic knowledge and the Certificate can be obtained only in one province of the Member State concerned.
- 39 Persons not resident in that province therefore have little chance of acquiring the Certificate and it will be difficult, or even impossible, for them to gain access to the employment in question.

- 40 Since the majority of residents of the province of Bolzano are Italian nationals, the obligation to obtain the requisite Certificate puts nationals of other Member States at a disadvantage by comparison with residents of the province.
- 41 That is so notwithstanding that the requirement in question affects Italian nationals resident in other parts of Italy as well as nationals of other Member States. In order for a measure to be treated as being discriminatory on grounds of nationality under the rules relating to the free movement of workers, it is not necessary for the measure to have the effect of putting at an advantage all the workers of one nationality or of putting at a disadvantage only workers who are nationals of other Member States, but not workers of the nationality in question.
- 42 A requirement, such as the one at issue in the main proceedings, making the right to take part in a recruitment competition conditional upon possession of a language diploma that may be obtained in only one province of a Member State and not allowing any other equivalent evidence could be justified only if it were based on objective factors unrelated to the nationality of the persons concerned and if it were in proportion to the aim legitimately pursued.
- 43 The Court has ruled that the principle of non-discrimination precludes any requirement that the linguistic knowledge in question must have been acquired within the national territory (see Case C-379/87 *Groener v Minister for Education and the City of Dublin Vocational Educational Committee* [1989] ECR 3967, paragraph 23).
- 44 So, even though requiring an applicant for a post to have a certain level of linguistic knowledge may be legitimate and possession of a diploma such as the Certificate may constitute a criterion for assessing that knowledge, the fact that it

is impossible to submit proof of the required linguistic knowledge by any other means, in particular by equivalent qualifications obtained in other Member States, must be considered disproportionate in relation to the aim in view.

- 45 It follows that, where an employer makes a person's admission to a recruitment competition subject to a requirement to provide evidence of his linguistic knowledge exclusively by means of one particular diploma, such as the Certificate, issued only in one particular province of a Member State, that requirement constitutes discrimination on grounds of nationality contrary to Article 48 of the EC Treaty.
- 46 The reply to be given to the question submitted must therefore be that Article 48 of the Treaty precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State.

Costs

- 47 The costs incurred by the Italian Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, 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,

in answer to the question referred to it by the Pretura Circondariale di Bolzano by order of 8 July 1998, hereby rules:

Article 48 of the EC Treaty (now, after amendment, Article 39 EC) precludes an employer from requiring persons applying to take part in a recruitment competition to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a Member State.

Rodríguez Iglesias

Edward

Sevón

Schintgen

Kapteyn

Gulmann

Puissochet

Hirsch

Jann

Ragnemalm

Wathelet

Delivered in open court in Luxembourg on 6 June 2000.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President