JUDGMENT OF THE COURT (Sixth Chamber)
19 March 2002 *

In Case C-224/00,

Commission of the European Communities, represented by C. O' Reilly and G. Bisogni, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by O. Fiumara, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by maintaining in force a legislative rule (Article 207 of the Italian highway code) providing for different and disproportionate treatment of offenders according to the place of registration of their

* Language of the case: Italian.

vehicle, the Italian Republic has failed to fulfil its obligations under Article 6 of the EC Treaty (now, after amendment, Article 12 EC),

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, N. Colneric, R. Schintgen, V. Skouris (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: C. Stix-Hackl,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 6 December 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 31 May 2000 the Commission of the European Communities brought an action under Article 226 EC for a

declaration that, by maintaining in force a legislative rule (Article 207 of the Italian highway code) providing for different and disproportionate treatment of offenders according to the place of registration of their vehicles, the Italian Republic has failed to fulfil its obligations under Article 6 of the EC Treaty (now, after amendment, Article 12 EC).

National legislation

2 Articles 202 to 205 of Legislative Decree No 285 of 30 April 1992 laying down the new highway code (GURI No 114 of 18 May 1992, Ordinary Supplement, hereinafter 'the highway code'), provides:

'Article 202 — Reduced Payment

As regards offences for which the present code provides for the imposition of an administrative pecuniary penalty, subject to the application of any ancillary penalties, the offender shall be permitted to pay, no later than 60 days from the date of the recording or notification of the offence, a sum equal to the minimum prescribed by the particular provisions.

...

Article 203 — Appeal to the Prefect

1. Within the 60 days following the date on which the offence was officially recorded or notified, if the reduced payment has not been made in a case where it is permitted, the offender... (may) appeal to the prefect...

2. ...

3. If, within the prescribed time-limits, no appeal has been brought and the reduced payment has not been made, the police report... shall constitute authority to levy execution for a sum equal to half of the maximum of the administrative penalty prescribed and for the costs of the proceedings.

Article 204 — Powers of the Prefect

If, after examining the police report..., the prefect considers that the finding that an offence has been committed is well founded, he shall issue, within 60 days, a reasoned order requiring the payment of a fixed sum which shall not be less than twice the minimum prescribed by law.

Article 205 — Appeal to the courts

1. The parties concerned may bring an appeal [before an ordinary court] against the order to pay...

...'

3 Article 207 of the highway code, which applies to offences committed with a vehicle registered in a State other than Italy or bearing an EE registration plate, reads as follows:

'1. Where a contravention of the present code, punishable by the imposition of an administrative pecuniary penalty, is committed with a vehicle registered abroad or bearing an EE registration plate, the offender may make immediate payment to the booking officer of the reduced payment prescribed in Article 202....

2. If, for any reason, the offender does not exercise the option of making a reduced payment, he shall be required to pay to the booking officer, by way of security, a sum equal to half of the maximum of the pecuniary penalty prescribed for the offence committed. Instead of paying the said security, the offender may provide an appropriate surety document guaranteeing payment of the sums due. The payment of the security or the provision of the surety document shall be mentioned in the police report recording the offence. The security or surety document shall be lodged at the police station or department to which the booking officer is attached.

3. In the absence of payment of the security or presentation of the guarantee referred to in paragraph 2, the booking officer shall, as a precautionary measure, immediately confiscate the offender's driving licence. In the absence of a driving licence, the vehicle shall be impounded until one of the conditions referred to in paragraph 2 is satisfied, and in any case for a period not exceeding 60 days.'

4 It is clear from the documents before the Court that the administrative penalties prescribed in the highway code have all been fixed in such a way that their maximum amount is equal to four times their minimum amount. Therefore, 'half of the maximum' referred to in Articles 203 and 207 is equal to the 'twice the minimum' referred to in Article 204, and the two expressions must be regarded as equivalent.

Pre-litigation procedure

5 The Commission, taking the view that Article 207 of the highway code provides for different and disproportionate treatment of offenders according to the place of registration of their vehicles, contrary to Article 6 of the Treaty, initiated the Treaty infringement procedure. Having given the Italian Republic formal notice to submit its observations, on 2 October 1998 the Commission issued a reasoned opinion requesting that Member State to take the measures necessary to comply therewith within two months of the date of its notification.

6 By letters of 22 October and 12 November 1998, the Italian authorities denied the alleged infringement, arguing, in particular, that Article 207 had not provoked any objection by the Community authorities when they received notification of the highway code. By letter of 18 January 1999, the Italian authorities indicated to the Commission that they were examining the possibility of inserting amendments to the draft law amending the code, which was before the Italian Parliament. However, the Commission was thereafter not sent any information concerning the possible amendment of Article 207 of the highway code.

7 In those circumstances, the Commission decided to bring the present action.

Pleas and arguments of the parties

8 The Commission argues that the Italian legislation entails discrimination based on the place of registration of the vehicle which amounts to a *de facto* difference in treatment between resident and non-resident offenders. The latter are prejudiced compared to the former, inasmuch as they are required to pay the minimum amount of the fine immediately or to provide security of twice that amount, on pain of having their driving licence confiscated or their vehicle impounded. Since the category of non-resident offenders basically coincides with that of nationals from other Member States, that difference in treatment results in indirect discrimination according to nationality, which operates to the detriment of nationals of other Member States.

9 Whilst observing that, in Case C-29/95 *Pastoors and Trans-Cap* [1997] ECR I-285, the Court acknowledged that a difference in treatment between resident and non-resident offenders may be objectively justified if it is intended to prevent the non-payment of fines by non-resident offenders and is proportionate to that objective, the Commission argues that the system set up by Article 207 of the highway code is manifestly disproportionate and discriminatory and therefore contrary to Article 6 of the Treaty.

10 According to the Commission, it would have sufficed to provide all the necessary guarantees to the Italian authorities if the Italian legislation had provided for the immediate payment of security equal to the minimum amount prescribed; at the same time, this would have been proportionate to the objective pursued, which is to obtain payment of the sum prescribed in Article 202 of the highway code without infringing the non-resident's right to a period during which to decide whether to pay or to lodge an appeal.

11 The Italian government recognises that the Italian legislation results in indirect discrimination on grounds of nationality.

12 Relying on paragraphs 22 and 24 of the judgment in *Pastoors and Trans-Cap*, cited above, it argues that that discrimination is essential in order to ensure the payment of fines owed by non-resident offenders, given the absence of Community instruments or bilateral conventions between the Italian Republic and the other Member States ensuring the enforcement abroad of the penalties concerned.

13 The solution recommended by the Commission is inadequate because, first, it does not eliminate the most serious aspect of the discrimination, namely the obligation to make immediate payment, and, second, it constitutes an advantage for a non-resident who contests the contravention by bringing an appeal before the prefect, as provided for by law, if that appeal is ultimately dismissed. In such a case, security in an amount equal to the minimum of the fine would not be enough to cover the penalty prescribed by the Italian legislation, which may not be less than twice the minimum.

Findings of the Court

14 First, it should be recalled that Article 6 of the Treaty, which is a specific expression of the general principle of equality, prohibits any discrimination on grounds of nationality.

15 According to settled case-law, the rules regarding equality of treatment between nationals and non-nationals forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead to the same result (see *Pastoors and Trans-Cap*, paragraph 16).

16 In this case, the Italian legislation treats persons contravening the highway code differently according to the place of registration of their vehicle. In particular, in the case of an infringement committed with a vehicle registered in Italy, the offender has 60 days from the recording or notification of the offence in which to pay the minimum amount prescribed; if he has not already paid that minimum amount, he may also appeal during that time to the prefect. On the other hand, it is clear from Article 207 of the highway code that, where an infringement is committed with a vehicle registered in a State other than Italy or bearing an EE registration plate, the offender must either immediately pay the minimum amount prescribed, or, particularly if he wishes to contest the alleged infringement before the prefect, must provide security equal to twice the minimum amount, on pain of having his driving licence confiscated or his vehicle impounded.

17 Thus, Article 207 of the highway code clearly introduces a difference in treatment to the detriment of offenders in possession of a vehicle registered in a Member State other than Italy.

18 It is true that that difference in treatment is not directly based on nationality. Nevertheless, it is undisputed that, in Italy, the great majority of offenders in possession of a vehicle registered in another Member State are not Italian nationals, whereas the great majority of offenders in possession of a vehicle registered in Italy are Italian nationals.

19 It follows that the difference in treatment introduced by Article 207 of the highway code to the detriment of offenders in possession of a vehicle registered in a Member State other than Italy in fact leads to the same result as discrimination on the grounds of nationality.

20 However, according to the case-law of the Court, that finding is not sufficient for such legislation to be held to be incompatible with Article 6 of the Treaty. It is

also necessary to examine whether Article 207 of the highway code is not justified by objective circumstances (see, to that effect, *Pastoors and Trans-Cap*, paragraph 19) and whether it may not be proportionate to the objective pursued. If that is not the case, the national measure in issue must be regarded as prohibited by Article 6 of the Treaty.

21 As regards the circumstances likely to justify a difference in treatment between offenders, it is clear from paragraphs 21 and 22 of the judgment in *Pastoors and Trans-Cap* that the absence of any conventions to secure the enforcement of a court decision in a Member State other than that in which it was pronounced objectively justifies a difference in treatment between resident and non-resident offenders and that the obligation imposed on the latter to pay a sum by way of security is appropriate to prevent them from avoiding an effective penalty simply by declaring that they do not consent to the immediate levying of the fine.

22 Although the finding referred to paragraph 21 of this judgment was made by the Court in a case in which the difference in treatment between offenders was based on their residence, it remains valid for the purposes of determining whether or not the difference in treatment introduced by Article 207 of the highway code to the detriment of offenders in possession of a vehicle registered in a Member State other than Italy is compatible with Article 6 of the Treaty. The Italian Government has, in fact, admitted in its defence that the difference in treatment at issue in the present case corresponds to a *de facto* difference in treatment between resident and non-resident offenders.

23 Having regard to the foregoing, it should be noted that, as the Italian Government has rightly argued, without being challenged by the Commission, in the absence of international or Community instruments to ensure that a

pecuniary penalty for an infringement of the highway code committed in one Member State may if necessary be enforced in another Member State, there is a risk that the penalty will not be paid and collected. Moreover, the Commission has not contested the Italian Government's claim that there are likewise no bilateral conventions between the Italian Republic and other Member States which could ensure such enforcement.

24 Those circumstances justify the difference in treatment imposed by Article 207 of the highway code, in so far as that article requires only offenders in possession of a vehicle registered in a Member State other than Italy to pay a sum by way of security or to lodge a surety document.

25 However, inasmuch as the amount fixed in respect of that security or surety document is set at twice the minimum prescribed in the case of immediate payment, thereby encouraging offenders to whom Article 207 of the highway code applies to make immediate payment of the minimum amount and thus to waive their right under the law to a period of time in which to decide whether to pay or to contest the alleged infringement before the prefect, the difference in treatment introduced by that article appears to be disproportionate to the objective at which that provision is aimed.

26 That objective is to ensure the payment of pecuniary penalties owed by offenders in possession of a vehicle registered in a Member State other than Italy. As the Commission rightly argues, that objective could also be achieved if the offenders covered by Article 207 of the highway code were obliged to pay security in an amount equal to the minimum prescribed and that security could be confiscated by the Italian authorities at the end of the 60-day period prescribed in Article 202 of the code.

27 However, the Italian Government argues that such a measure would not be appropriate to ensure payment of the pecuniary penalty prescribed in Article 204 of the highway code in the event that an offender covered by Article 207 were to bring an appeal before the prefect within the 60-day period and it were then dismissed. In that event, the offender is required to pay a fine which may not be less than twice the minimum prescribed.

28 That argument of the Italian Government cannot affect the finding made in paragraph 25 of this judgment and must consequently be rejected. As the Commission has rightly observed, payment of the pecuniary penalty prescribed in Article 204 of the highway code could be guaranteed by other measures imposed at a later stage.

29 In the light of all the foregoing, it must be held that, by maintaining in force, in Article 207 of the Italian highway code, a disproportionate difference in treatment between offenders based on the place of registration of their vehicles, the Italian Republic has failed to fulfil its obligations under Article 6 of the Treaty.

Costs

30 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that, by maintaining in force, in Article 207 of the Italian highway code, a disproportionate difference in treatment between offenders based on the place of registration of their vehicles, the Italian Republic has failed to fulfil its obligations under Article 6 of the EC Treaty (now, after amendment, Article 12 EC);

2. Orders the Italian Republic to pay the costs.

Macken Colneric Schintgen

Skouris Cunha Rodrigues

Delivered in open court in Luxembourg on 19 March 2002.

R. Grass F. Macken

Registrar President of the Sixth Chamber