JUDGMENT OF THE COURT (Second Chamber)
28 January 1992 *

In Joined Cases C-330/90 and C-331/90,

REFERENCES to the Court under Article 177 of the EEC Treaty by the Juzgado de lo Penal d'Alicante (Spain), for a preliminary ruling in the proceedings pending before that court between

Ministerio Fiscal (Public Prosecutor)

and

Angel López Brea (Case C-330/90)

and between

Ministerio Fiscal

and

Carlos Hidalgo Palacios (Case C-331/90)

on the interpretation of Council Directive 67/43/EEC of 12 January 1967 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with: 1. matters of 'Real Estate' (excluding 6401) (ISIC Group ex 640), 2. the provision of certain 'Business services not elsewhere classified' (ISIC Group 839) (Official Journal, English Special Edition 1967, p. 3)

THE COURT (Second Chamber),

composed of: F. A. Schockweiler, President of the Chamber, G. F. Mancini and J. L. Murray, Judges,

Advocate General: F. G. Jacobs,
Registrar: D. Louterman, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Ministerio Fiscal, by Ricardo Cabedo, Fiscal Jefe, Alicante,

* Language of the case: Spanish.

— the Colegio Oficial de Agentes de la Propriedad Inmobiliaria, Alicante, by Jorge Jordana de Pozas Fuentes, of the Madrid Bar,

— the Commission of the European Communities, by Étienne Lasnet, Legal Adviser, and Daniel Calleja, a member of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the defendants in the main proceedings, represented by D. M. Gómez Robles, Abogado, the Colegio Oficial de Agentes de la Propriedad Inmobiliaria, the Spanish Government, represented by Gloria Calvo Díaz, acting as Agent, and the Commission, at the hearing on 12 November 1991,

after hearing the Opinion of the Advocate General at the sitting on 13 December 1991,

gives the following

Judgment

1 By orders of 11 September and 11 October 1990, which were received at the Court on 25 October 1990, the Juzgado de lo Penal No 4 de Alicante referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Council Directive 67/43/EEC of 12 January 1967 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with: 1. matters of 'Real Estate' (excluding 6401) (ISIC Group ex 640), 2. the provision of certain 'Business services not elsewhere classified' (ISIC Group 839) (Official Journal, English Special Edition 1967, p. 3).

2 These questions were raised in proceedings brought by the Ministerio Fiscal against Angel López Brea and Carlos Hidalgo Palacios, Spanish nationals residing

in Spain, who set up business in Alicante as estate agents without the required professional qualifications and authorizations.

3 The Juzgado de lo Penal, Alicante, which was hearing the cases brought by the Ministerio Fiscal against Angel López Brea and Carlos Hidalgo Palacios alleging unauthorized exercise of an occupation within the meaning of Article 321 of the Spanish Criminal Code, decided to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

'(1) Are Article 1 of the Decree of 4 December 1969 and Royal Decree 1464/88, in so far as they provide that activities as an intermediary or broker for the purchase, sale and exchange of rural and urban property, for loans secured by a mortgage on such property, for the letting of rural and urban property, for the assignment and transfer and the provision of opinions on the value in the event of the sale, assignment or transfer of such property are functions specific to estate agents, valid in the light of Articles 2, 3 and 5 of Council Directive 67/43/EEC and, as from the entry into force of that directive, may a Member State, in the said real-estate sector, give the exclusive right to carry out such activities to a particular professional group?

(2) May a Member State apply any kind of restriction or exclusion to that directive?'

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the cases, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 It should be noted at the outset that the Court has consistently held that it has no jurisdiction in proceedings under Article 177 of the EEC Treaty to rule on the

compatibility of a national provision with Community law. The Court may however extract from the wording of the questions formulated by the national court, and having regard to the facts stated by the latter, those elements which concern the interpretation of Community law for the purpose of enabling that court to resolve the legal problems before it (see in particular the judgement in Case 14/86 *Pretore di Salò* v *X* [1987] ECR 2545).

6 Accordingly, the first question must be construed in the sense that the national court is seeking to ascertain whether Community law, and in particular the Treaty rules on freedom of establishment and Directive 67/43, is to be interpreted as precluding national rules which reserve certain activities in the real-estate sector to persons practising as estate agents within a regulated profession.

7 In this connection, the Court has consistently held that the Treaty provisions on the freedom of movement for persons cannot be applied to activities which are confined in all respects within a single Member State (see, for example, the judgment in Case C-41/90 *Höfner and Elser* v *Macrotron* [1991] ECR I-1979).

8 It is clear from the facts set out by the national court in its orders for reference that the main proceedings concern Spanish nationals who are practising as estate agents in Spain and do not claim to have obtained in another Member State the professional qualifications required for carrying out such activities.

9 There is thus no connecting factor between such situations and any of those contemplated by Community law, and accordingly the Treaty rules on freedom of establishment are inapplicable.

10 It is also appropriate to examine the scope of Directive 67/43 in order to ascertain whether it contains provisions on harmonization which are also applicable to purely internal situations, like those in the main proceedings.

11 Article 1 of Directive 67/43 provides that Member States must abolish, in respect of the natural persons and companies or firms covered by Title I of the General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services (Official Journal, English Special Edition, Second series IX, p. 3 and p. 7), the restrictions referred to in Title III of those General Programmes affecting the right to take up and pursue the activities specified in Articles 2 and 3 of the directive.

12 The Articles 2(1) and (3) of Directive 67/43 state that the provisions of the directive are to apply to activities of self-employed persons in matters concerning immoveable property as referred to in Annex I to the abovementioned General Programme for the abolition of restrictions on freedom of establishment, and to activities of self-employed persons engaging in 'business services not elsewhere classified' which are referred to in the same annex.

13 An analysis of the abovementioned General Programmes for the abolition of restrictions on freedom of establishment and freedom to provide services reveals that the restrictions envisaged by those provisions are essentially measures discriminating, directly or indirectly, between nationals of other Member States and nationals of the host country.

14 This interpretation of Directive 67/43 is also confirmed by the wording of Article 5, Paragraph 1 of which requires Member States to abolish restrictions which in particular:

(a) prevent beneficiaries from establishing themselves or providing services in the host country under the same conditions and with the same rights as nationals of that country;

(b) exist by reason of administrative practices which result in treatment being applied to beneficiaries that is discriminatory by comparison with that applied to nationals.

15 It should accordingly be held that Directive 67/43 merely requires the abolition of all direct or indirect discrimination based on nationality, but does not aim to harmonize the conditions laid down in national rules regulating the taking up or pursuit of the profession of estate agent.

16 In those circumstances, the reply to be given to the first question, as reformulated, should be that Directive 67/43 does not preclude national rules which reserve certain activities in the real-estate sector to persons practising as estate agents within a regulated profession.

17 In view of this reply to the first question, there is no need to reply to the national court's second question.

Costs

18 The costs incurred by the Commission of the European Communities, which has 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 (Second Chamber),

in answer to the questions referred to it by the Juzgado de lo Penal, Alicante, by orders of 11 September and 11 October 1990, hereby rules:

Council Directive 67/43/EEC of 12 January 1967 concerning the attainment of freedom of establishment and freedom to provide services in respect of activities of self-employed persons concerned with: 1. matters of 'Real Estate' (excluding 6401) (ISIC Group ex 640), 2. the provision of certain 'Business services not elsewhere classified' (ISIC Group 839) does not preclude national rules which reserve certain activities in the real-estate sector to persons practising as estate agents within a regulated profession.

Schockweiler Mancini Murray

Delivered in open court in Luxembourg on 28 January 1992.

J.-G. Giraud
Registrar

F. A. Schockweiler
President