JUDGMENT OF THE COURT
2 February 1989 *

In Case 186/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Commission d'indemnisation des victimes d'infraction (Compensation Board for victims of an offence) attached to the tribunal de grande instance, Paris, for a preliminary ruling in the proceedings pending before that board between

Ian William Cowan

and

Le Trésor public (Treasury)

on the interpretation in particular of the prohibition of discrimination laid down in Article 7 of the EEC Treaty,

THE COURT

composed of: O. Due, President, T. Koopmans, R. Joliet and T. F. O'Higgins (Presidents of Chambers), Sir Gordon Slynn, G. F. Mancini, C. N. Kakouris, F. A. Schockweiler, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco, Judges,

Advocate General: C. O. Lenz
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of

Ian William Cowan, the plaintiff in the main proceedings, by M. Renouf, P. Jenkinson and L. Misson, lawyers,

* Language of the case: French.

the Trésor public, the defendant in the main proceedings, in the written procedure by the Agent of the French Government, G. Guillaume, Director of Legal Affairs at the Ministry of Foreign Affairs, assisted by M. Giacomini, Secretary of Foreign Affairs in that Ministry, acting as Deputy Agent, and in the oral procedure by M. Giacomini, assisted by M. Baconnin, an expert,

the Commission of the European Communities, by its Legal Adviser J. Amphoux, acting as Agent,

having regard to the Report for the Hearing, supplemented following the hearing on 13 October 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 6 December 1988,

gives the following

Judgment

1 By order of 5 June 1987, which was received at the Court on 16 June 1987, the Commission d'indemnisation des victimes d'infraction attached to the tribunal de grande instance, Paris, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the prohibition of discrimination laid down in Article 7 of the Treaty, in order to be able to assess whether a provision of the French code de procédure pénale (Code of Criminal Procedure) was compatible with Community law.

2 That question arose in a dispute between the French Trésor public (Treasury) and a British citizen, Ian William Cowan, concerning compensation for injury resulting from a violent assault suffered by him at the exit of a metro station during a brief stay in Paris.

3 Since his assailants could not be identified Mr Cowan applied to the Commission d'indemnisation des victimes d'infraction attached to the tribunal de grande instance, Paris, for compensation under Article 706-3 of the code de procédure pénale. That provision allows compensation to be obtained from the State *inter alia* when the victim of an assault which has caused physical injury with consequences of a certain severity is unable to obtain effective and adequate compensation for the harm from any other source.

4 Before the Commission d'indemnisation the Law Officer of the Treasury submitted that Mr Cowan did not satisfy the conditions for obtaining the abovementioned compensation provided for in Article 706-15 of the code de procédure pénale. That article provides that only the following persons may receive the compensation in question:

'Persons who are of French nationality or foreign nationals who prove:

(i) that they are nationals of a State which has concluded a reciprocal agreement with France for the application of the said provisions and that they satisfy the conditions laid down in the agreement; or

(ii) that they are holders of a residence permit'.

5 Mr Cowan then relied on the prohibition of discrimination laid down, in particular, in Article 7 of the EEC Treaty. He argued that the conditions set out above were discriminatory and that such conditions prevented tourists from going freely to another Member State to receive services there. The representative of the Treasury and the ministère public replied that the rules in question treated resident foreigners in the same way as French nationals and that to distinguish their situation from that of tourists was compatible with Community law, which itself makes periods spent by nationals of one Member State in another Member State subject to different conditions according to the length of the stay.

6 In those circumstances the Commission d'indemnisation considered that an interpretation of the Community rules in the light of the essential requirements and aims of Community law was necessary in order for it to be able to assess whether

the disputed provisions were compatible with the Treaty; it therefore stayed the proceedings and submitted the following question to the Court of Justice for a preliminary ruling:

'Are the provisions of Article 706-15 of the code de procédure pénale, which governs cases where a foreign national who is the victim of an offence in France may obtain compensation from the French State, compatible with the prohibition of discrimination contained *inter alia* in Article 7 of the EEC Treaty?'

7 Reference is made to the Report for the Hearing for the facts of the main proceedings, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 The preliminary question asks in essence whether the prohibition of discrimination laid down in particular in Article 7 of the EEC Treaty precludes a Member State, in respect of persons in a situation covered by Community law, from making the award of State compensation for harm caused in that State to the victim of an assault resulting in physical injury subject to the condition that he hold a residence permit or be a national of a country which has entered into a reciprocal arrangement with that Member State.

9 As a preliminary point it should be recalled that the first paragraph of Article 7 of the Treaty provides that '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'. These terms lay down both the content and the scope of the prohibition of discrimination.

The content of the prohibition of discrimination

10 By prohibiting 'any discrimination on grounds of nationality' Article 7 of the Treaty requires that persons in a situation governed by Community law be placed on a completely equal footing with nationals of the Member State. In so far as this principle is applicable it therefore precludes a Member State from making the grant of a right to such a person subject to the condition that he reside on the

territory of that State — that condition is not imposed on the State's own nationals.

11 It should also be emphasized that the right to equal treatment is conferred directly by Community law and may not therefore be made subject to the issue of a certificate to that effect by the authorities of the relevant Member State (in that respect see the judgment of 3 July 1980 in Case 157/79 *Regina* v *Pieck* [1980] ECR 2171).

12 Finally, it should be recalled, as the Court first stated in its judgment of 22 June 1972 in Case 1/72 *Frilli* v *Belgium* [1972] ECR 457, that the right to equal treatment laid down in Community law may not be made dependent on the existence of a reciprocal agreement between the relevant Member State and the country of which the person concerned is a national.

13 It follows that in so far as the prohibition of discrimination is applicable it precludes a Member State from making the award of a right to a person in a situation governed by Community law subject to the condition that he hold a residence permit or be a national of a country which has entered into a reciprocal agreement with that Member State.

The scope of the prohibition of discrimination

14 Under Article 7 of the Treaty the prohibition of discrimination applies 'within the scope of application of this Treaty' and 'without prejudice to any special provisions contained therein'. This latter expression refers particularly to other provisions of the Treaty in which the application of the general principle set out in that article is given concrete form in respect of specific situations. Examples of that are the provisions concerning free movement of workers, the right of establishment and the freedom to provide services.

15 On that last point, in its judgment of 31 January 1984 in Joined Cases 286/82 and 26/83 *Luisi and Carbone* v *Ministero del Tesoro* [1984] ECR 377, the Court held that the freedom to provide services includes the freedom for the recipients of

services to go to another Member State in order to receive a service there, without being obstructed by restrictions, and that tourists, among others, must be regarded as recipients of services.

16 At the hearing the French Government submitted that as Community law now stands a recipient of services may not rely on the prohibition of discrimination to the extent that the national law at issue does not create any barrier to freedom of movement. A provision such as that at issue in the main proceedings, it says, imposes no restrictions in that respect. Furthermore, it concerns a right which is a manifestation of the principle of national solidarity. Such a right presupposes a closer bond with the State than that of a recipient of services, and for that reason it may be restricted to persons who are either nationals of that State or foreign nationals resident on the territory of that State.

17 That reasoning cannot be accepted. When Community law guarantees a natural person the freedom to go to another Member State the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. It follows that the prohibition of discrimination is applicable to recipients of services within the meaning of the Treaty as regards protection against the risk of assault and the right to obtain financial compensation provided for by national law when that risk materializes. The fact that the compensation at issue is financed by the Public Treasury cannot alter the rules regarding the protection of the rights guaranteed by the Treaty.

18 The French Government also submitted that compensation such as that at issue in the main proceedings is not subject to the prohibition of discrimination because it falls within the law of criminal procedure, which is not included within the scope of the Treaty.

19 Although in principle criminal legislation and the rules of criminal procedure, among which the national provision in issue is to be found, are matters for which

the Member States are responsible, the Court has consistently held (see *inter alia* the judgment of 11 November 1981 in Case 203/80 *Casati* [1981] ECR 2595) that Community law sets certain limits to their power. Such legislative provisions may not discriminate against persons to whom Community law gives the right to equal treatment or restrict the fundamental freedoms guaranteed by Community law.

20 In the light of all the foregoing the answer to the question submitted must be that the prohibition of discrimination laid down in particular in Article 7 of the EEC Treaty must be interpreted as meaning that in respect of persons whose freedom to travel to a Member State, in particular as recipients of services, is guaranteed by Community law that State may not make the award of State compensation for harm caused in that State to the victim of an assault resulting in physical injury subject to the condition that he hold a residence permit or be a national of a country which has entered into a reciprocal agreement with that Member State.

Costs

21 The costs incurred by the French Government and by the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action 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 Commission d'indemnisation des victimes d'infraction attached to the tribunal de grande instance, Paris, by order of 5 June 1987, hereby rules:

The prohibition of discrimination laid down in particular in Article 7 of the EEC Treaty must be interpreted as meaning that in respect of persons whose freedom to travel to a Member State, in particular as recipients of services, is guaranteed by Community law that State may not make the award of State compensation for harm caused in that State to the victim of an assault resulting in physical injury subject to the condition that he hold a residence permit or be a national of a country which has entered into a reciprocal agreement with that Member State.

Due Koopmans Joliet O'Higgins

Slynn Mancini Kakouris Schockweiler

Moitinho de Almeida Rodríguez Iglesias Díez de Velasco

Delivered in open court in Luxembourg on 2 February 1989.

J.-G. Giraud
Registrar

O. Due
President