Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

24 April 2012 *

(Area of Freedom, Justice and Security — Article 34 of the Charter of Fundamental Rights of the European Union — Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Right to equal treatment with regard to social security, social assistance and social protection — Derogation from the principle of equal treatment for social assistance and social protection measures — Exclusion of 'core benefits' from the scope of that derogation — National legislation providing for housing benefit for low income tenants — Amount of funds for third-country nationals determined on the basis of a different weighted average — Rejection of an application for housing benefit owing to the exhaustion of the funds for third-country nationals)

In Case C-571/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Tribunale di Bolzano (Italy), made by decision of 24 November 2010, received at the Court on 7 December 2010, in the proceedings

Servet Kamberaj

v

Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES),

Giunta della Provincia autonoma di Bolzano,

Provincia autonoma di Bolzano,

intervening parties:

Associazione Porte Aperte/Offene Türen,

Human Rights International,

Associazione Volontarius,

Fondazione Alexander Langer,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J. Malenovský and U. Lõhmus, Presidents of Chambers, A. Rosas, E. Levits, A. Ó Caoimh (Rapporteur), L. Bay Larsen, T. von Danwitz, A. Arabadjiev and E. Jarašiūnas, Judges,

Advocate General: Y. Bot,

Registrar: A. Impellizzeri, Administrator,

* Language of the case: Italian.

having regard to the written procedure and further to the hearing on 18 October 2011,

after considering the observations submitted on behalf of:

— Mr Kamberaj, by F. Pinton and D. Simonato, avvocati,

— the Provincia autonoma di Bolzano, by R. von Guggenberg, S. Beikircher, C. Bernardi and D. Ambach, Rechtsanwälte,

— the Belgian Government, by J-C. Halleux and C. Pochet, acting as Agents,

— the French Government, by E. Belliard, G. de Bergues and B. Beaupère-Manokha, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the European Commission, by M. Condou-Durande and C. Cattabriga, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 December 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 2 TEU, 6 TEU, 18 TFEU, 45 TFEU and 49 TFEU, 21 and 34 of the Charter of Fundamental Rights of the European Union ('the Charter') and the provisions of Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) and Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44). The referring court also raises questions concerning Articles 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 ('the ECHR'), and Article 1 of Protocol No 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 2000 ('Protocol No 12').

2 The reference has been made in proceedings between Mr Kamberaj and the Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (the Social Housing Institute of the Autonomous Province of Bolzano; 'the IPES'), the Giunta della Provincia autonoma di Bolzano (Government of the Autonomous Province of Bolzano; 'the Giunta') and the Provincia autonoma di Bolzano (Autonomous Province of Bolzano) on account of the rejection by the IPES of his application for housing benefit for the year 2009, on the ground that the Autonomous Province of Bolzano's budget for the grant of that benefit to third-country nationals was exhausted.

Legal context

European Union legislation

Directive 2000/43

3 Article 1 of Directive 2000/43 states that the 'purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment'.

4 Article 2(1) and (2) of that directive provides:

‘1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.’

5 Article 3(2) of Directive 2000/43 provides that it ‘does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.’

6 Article 15 of Directive 2000/43 provides:

‘Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 19 July 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.’

Directive 2003/109

7 Recitals 2 to 4, 6, 12 and 13 in the preamble to Directive 2003/109 are worded as follows:

‘(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States’ nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.

(3) This Directive respects the fundamental rights and observes the principles recognised in particular by the [ECHR] and the [Charter].

(4) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the [EC] Treaty.

…

(6) The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. …

…

(12) In order to constitute a genuine instrument for the integration of long-term residents into the society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.

(13) With regard to social assistance, the possibility of limiting the benefits for long-term residents to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care. The modalities for granting such benefits should be determined by national law.'

8 Chapter II of Directive 2003/109 concerns the grant of long-term resident status in a Member State.

9 According to Article 4(1) of Directive 2003/109, which is part of Chapter II, Member States are to grant long-term resident status to third-country nationals who have resided legally and continuously within their territory for five years immediately prior to the submission of the relevant application.

10 Article 5 of Directive 2003/109 provides for the conditions for acquiring long-term resident status. Pursuant to Article 5(1)(a) and (b), Member States are to require third-country nationals to provide evidence that they have, for themselves and for dependent family members, first, stable and regular resources sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned and, second, sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

11 Article 5(2) of Directive 2003/109 provides that Member States may require third-country nationals to comply with integration conditions, in accordance with national law.

12 Although Member States may, under Article 6(1) of Directive 2003/109, refuse to grant long-term resident status on grounds of public policy or public security, Article 6(2) states that such a refusal may not be founded on economic considerations.

13 Pursuant to Article 7(1) Directive 2003/109, to acquire long-term resident status, the third-country national concerned is to lodge an application with the competent authorities of the Member State in which he/she resides, accompanied by documentary evidence to be determined by national law that he/she meets the conditions set out in Articles 4 and 5 of that directive.

14 Article 11(1) of Directive 2003/109 is worded as follows:

'Long-term residents shall enjoy equal treatment with nationals as regards:

…

(d) social security, social assistance and social protection as defined by national law;

…

(f) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;

…'

15 Under Article 11(4) of Directive 2003/109 'Member States may limit equal treatment in respect of social assistance and social protection to core benefits'.

16 Article 12(1) of Directive 2003/109 provides that Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security. Article 12(2) lays down that the expulsion decision may not be founded on economic considerations.

17 According to the first paragraph of Article 26 of Directive 2003/109, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 23 January 2006 at the latest.

National legislation

The Italian constitution

18 According to Article 117 of the Italian constitution, the State has exclusive power to legislate in the field of social assistance only in order to determine the minimum level of benefits concerning the civil and social rights which must be guaranteed throughout the national territory. Competence is reserved to the regions in relation to matters extending beyond that objective.

Legislative decree No 286/1998

19 Legislative decree No 3 of 8 January 2007, transposing Directive 2003/109 concerning the status of third-country nationals who are long-term residents (GURI No 24 of 30 January 2007, p. 4) incorporated the provisions of that directive into the provisions of Legislative Decree No 286 of 25 July 1998, consolidating the provisions regulating immigration and the rules relating to the status of foreign national (Ordinary Supplement to GURI No 191 of 18 August 1998; 'legislative decree No 286/1998').

20 Article 9(1) of legislative decree No 286/1998 provides:

'A foreign national who, for at least five years, has held a valid residence permit, who shows that he has an income of not less than the annual amount of the social benefits and, regarding an application concerning members of his family, a sufficient income … and appropriate accommodation satisfying the minimum conditions [of national law], may request the prefect of police to issue him with a long-term EC residence permit for himself and his family members …'

21 Article 9(12) of legislative decree No 268/1998 provides:

'In addition to the provisions laid down with respect to foreign nationals lawfully residing in Italy in national territory, the holder of a long-term residence permit may:

…

(c) be entitled to social assistance and social security benefits and to those relating to subsidies for health, education and social matters, and those relating to access to goods and services made available to the public, including access to the procedure for obtaining accommodation managed by the public authorities, unless otherwise provided and on condition that it is shown that the foreign national actually resides in national territory …'

Presidential decree No 670/1972

22 Under the third paragraph of Article 3 of the Presidential Decree of 31 August 1972, concerning the special status laid down for the *Trentino-South Tyrol* region (GURI No 301 of 20 November 1972; 'presidential decree No 670/1972'), which has constitutional status, the Autonomous Province of Bolzano, on account of the specific composition of its population which is divided into three linguistic groups (Italian-, German- and Ladin-speaking) ('the three linguistic groups') enjoys specific conditions of autonomy.

23 Under Article 8(25) of presidential decree No 670/1972, that autonomy includes the power to adopt legislative provisions concerning public assistance and allowances.

24 The second paragraph of Article 15 of presidential decree No 670/1972 provides that the Autonomous Province of Bolzano is to use its funds, apart from exceptional cases, for welfare, social and cultural aims, in direct proportion to the size of each linguistic group and in accordance with the extent of the needs of each group.

Provincial law

25 A housing benefit is provided for in Article 2(1)(k) of Provincial Law No 13 of 17 December 1998, in the version in force at the date of the facts in the main proceedings ('the provincial law'). That benefit, which is a contribution to the payment of the rent for low income tenants to enable them to meet those costs, is allocated among the three linguistic groups in accordance with Article 15(2) of presidential decree No 670/1972.

26 Article 5(1) of the provincial law provides that the funds for the actions referred to in Article 2(1)(k) thereof must be allocated among the applicants from the three linguistic groups in proportion to the weighted average of their numbers and the needs of each group. According to Article 5(2) of the provincial law, the needs of each linguistic group are determined annually on the basis of the applications submitted in the last ten years.

27 It is apparent from the order for reference that the calculation of the numerical size of each linguistic group is made on the basis of the latest general population census and declarations of belonging to one of the three linguistic groups that all Italian nationals over the age of 14 and residing in the Autonomous Province of Bolzano are required to make.

28 Citizens of the Union who reside and work in the provincial territory, and who satisfy the other conditions to which the grant of housing benefit is subject must, in accordance with Article 5(6) of the provincial law, produce a declaration that they belong to or elect to join one of the three linguistic groups.

29 Pursuant to Article 5(7) of the provincial law, the Government determines each year the amount of funds reserved for third-country nationals and stateless persons who, on the date of submission of their application, have resided permanently and lawfully in the provincial territory for at least five years and who have worked there for at least three years. The number of rented dwellings which may be allocated to those nationals and stateless persons is also determined in proportion to the weighted average between, first, the number of third-country nationals and stateless persons who satisfy the abovementioned criteria and second, their needs.

Decision No 1885

30 It is apparent from Decision No 1885 of the Government of 20 July 2009 relating to the amount of funds for third-country nationals and stateless persons for 2009 ('decision No 1885') that, with respect to the weighted average, their numerical importance was accorded a multiplier of 5, whereas their needs were given a multiplier of 1.

The dispute in the main proceedings and the questions referred for a preliminary ruling

31 Mr Kamberaj is an Albanian national who has resided and been employed in the Autonomous Province of Bolzano since the year 1994. According to the order for reference, he is the holder of a residence permit for an indefinite period.

32 The applicant in the main proceedings received, in respect of the years 1998 to 2008, the housing benefit provided for under Article 2(1)(k) of the provincial law.

33 By letter of 22 March 2010, the IPES informed the applicant in the main proceedings that his application for benefit for the year 2009 had been rejected, on the ground that the funds for third-country nationals, determined in accordance with decision No 1885, were exhausted.

34 By action brought on 8 October 2010, the applicant in the main proceedings sought a declaration from the Tribunale di Bolzano that the rejection decision amounted to discrimination against him by the defendants in the main proceedings. According to him, national legislation such as that contained in the provincial law and decision No 1885 is incompatible inter alia with Directives 2000/43 and 2003/109, to the extent that the treatment of third-country nationals who are long-term residents is less favourable than that granted to citizens of the Union with regard to housing benefit.

35 Before the referring court, the Autonomous Province of Bolzano argues that a proportionate allocation of benefit to the province's linguistic groups is necessary in order to preserve social peace among persons seeking social assistance.

36 The referring court explains that, under the provincial law, the resident population of the Autonomous Province of Bolzano is divided into two categories, that is to say, citizens of the Union (whether Italians or not) who, without distinction, must, in order to obtain the housing benefit, produce the declaration that they belong to one of the three linguistic groups, and third-country nationals, who do not have to make that declaration.

37 The national court states that, in 2009, in order to satisfy all needs for access to rented or owner-occupied housing, grants in the total sum of EUR 90 812 321.57, of which EUR 21 546 197.57 was housing benefit and EUR 69 266 124 allowances for the purchase, construction or renovation of dwellings for primary housing need, were approved for the first category abovementioned, that is citizens of the Union (whether Italians or not), and grants totalling EUR 11 604 595, of which EUR 10 200 000 was housing benefit and EUR 1 404 595 allowances for the purchase, construction or renovation of dwellings for primary housing need, were approved for the second category, that is to say third-country nationals.

38 According to the order for reference, the Tribunale di Bolzano acknowledged that the applicant in the main proceedings was, provisionally, entitled to receive the housing benefit applied for in respect of the period from October 2009 to June 2010, that is to say, EUR 453.62 per month.

39 Taking the view that resolution of the dispute before it called for an interpretation of European Union law, the Tribunale di Bolzano decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the principle of the primacy of European Union law oblige a national court to give full and immediate effect to provisions of European Union law having direct effect, by disapplying provisions of domestic law in conflict with European Union law, even if they were adopted in accordance with fundamental principles of the Member State's constitutional system?

(2) When there is a conflict between a provision of domestic law and the ECHR, does the reference to the ECHR in Article 6 TEU oblige the national court to apply Articles 14 ECHR and Article 1 of [Protocol No 12] directly, disapplying the incompatible source of domestic law, without having first to raise the issue of constitutionality before the national constitutional court?

(3) Does European Union law, in particular, Articles 2 [TEU] and 6 TEU, Articles 21 and 34 of the Charter and Directives 2000/43 … and 2003/109, preclude a provision of national [more correctly: regional] law, such as that contained in Article 15[2] of presidential decree

No 670/1972 read in conjunction with Articles 1 and 5 of the provincial law … and in [Decision No 1865], inasmuch as that provision, with regard to the allowances concerned, and in particular the so-called 'housing benefit', attaches importance to nationality by treating long-term resident workers not belonging to the European Union or stateless persons worse than resident Community nationals (whether or not Italian)?

If the foregoing questions should be answered in the affirmative:

(4) In the case of an infringement of general principles of the European Union, such as the prohibition of discrimination and the requirement of legal certainty, when there exists national implementing legislation permitting the court to "order the cessation of the damaging conduct and adopt any other suitable measure, according to the circumstances, [to put an end to] the effects of the discrimination", requiring the court to "order the discriminatory conduct, behaviour or action, if still subsisting, to cease and its effects to be eliminated" and permitting the court to order "a plan for the suppression of the discrimination found to exist, in order to prevent its repetition, within the period fixed in the measure", must Article 15 of Directive 2000/43 …, in so far as it provides that sanctions must be effective, proportionate and dissuasive, be interpreted as including, in discrimination found to exist and effects to be eliminated, and in order to avoid unjustified reverse discrimination, all infringements affecting the persons discriminated against, even if they are not parties to the dispute?

If the previous question (4) is answered in the affirmative:

(5) Is it contrary to European Union law, in particular, to Articles 2 [TEU] and 6 TEU, Articles 21 and 34 of the Charter and Directives 2000/43 … and 2003/109 …, for a provision of national [more correctly: provincial] law to require non-Community nationals only and not Community nationals also (whether or not Italian) — who receive equal treatment merely in respect of the obligation to have resided for more than 5 years in the territory of the province — to satisfy the further condition that they should have completed three years of work in order to be eligible for housing benefit?

(6) Is it contrary to European Union law, in particular, to Articles 2 [TEU] and 6 TEU, and Articles 18 [TFEU], 45 [TFEU] and 49 [TFEU], read in conjunction with Articles 1, 21 and 34 of the Charter, for a provision of national [more correctly: provincial] law to require Community nationals (whether or not Italian) to declare that they ethnically belong to or elect to join one of the three linguistic groups of Alto Adige/South Tyrol in order to be eligible for housing benefit?

(7) Is it contrary to European Union law, in particular, to Articles 2 [TEU] and 6 TEU, and to Articles 18 [TFEU], 45 [TFEU] and 49 TFEU, read in conjunction with Articles 21 and 34 of the Charter, for a provision of national [more correctly: provincial] law to impose on Community nationals (whether or not Italian) the obligation to have resided or worked in the territory of the province for at least five years in order to be eligible for housing benefit?

Consideration of the questions referred

Admissibility of the first and of the fourth to seventh questions

40 It should be recalled as a preliminary point that, according to settled case-law, within the framework of the cooperation between the Court and national courts and tribunals established by Article 267 TFEU, it is solely for the national court before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver

judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle bound to give a ruling (see, inter alia, Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 41 and case-law cited).

41 However, the Court must examine the circumstances in which cases are referred to it by the national court in order to assess whether it has jurisdiction. The spirit of cooperation which must prevail in the preliminary ruling procedure requires the national court for its part to have regard to the function entrusted to the Court of Justice, which is to contribute to the administration of justice in the Member States and not to give advisory opinions on general or hypothetical questions (see *Adeneler and Others*, paragraph 42).

42 In that regard, a reference from a national court may be refused only if it is quite obvious that the interpretation of European Union law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical or the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (Case C-238/05 *Asnef-Equifax and Administración del Estado* [2006] ECR I-11125, paragraph 17).

43 It is in the light of those principles that the Court must examine the admissibility of some of the questions referred by the referring court.

The first question

44 By its first question, the national court asks whether the principle of the primacy of European Union law obliges a national court to apply provisions of European Union law having direct effect, disapplying provisions of domestic law in conflict with those European Union law provisions even if the national law provisions were adopted in accordance with fundamental principles of the constitutional system of the Member State concerned.

45 That question concerns the principle of the protection of linguistic minorities which, according to the referring court, is a fundamental principle of the constitutional system of that Member State. That principle is, however, only relevant in the main proceedings in relation to Italian nationals and citizens of the European Union who, as is apparent from paragraphs 26 to 28 above, in order to obtain the housing benefit, must merely declare that they belong to one of the three linguistic groups, whereas third-country nationals, such as the applicant in the main proceedings, do not have to make that declaration.

46 Since the first question seeks, in reality, to obtain from the Court an advisory opinion on a general question which bears no relation to the actual facts or purpose of the proceedings pending before the national court, that question must be regarded as inadmissible.

The fourth question

47 By its fourth question, the national court asks, in essence, whether Article 15 of Directive 2000/43, which provides that the sanctions for infringement of the principle of non-discrimination on grounds of racial or ethnic origin must be effective, proportionate and dissuasive, requires the national court, when finding such an infringement, to put an end to all the infringements affecting the persons discriminated against, even if they are not parties to the dispute.

48 In the present case, it is clear both from the order for reference and the observations submitted to the Court that the discrimination of which the applicant in the main proceedings claims to be victim compared to Italian nationals is based on his status as a third-country national.

49 Under Articles 1 and 2(1) and (2) of Directive 2000/43, the directive applies only to direct or indirect discrimination based on racial or ethnic origin. Article 3(2) of the Directive states that it does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of third-country nationals or stateless persons.

50 Accordingly the discrimination claimed by the applicant in the main proceedings does not fall within the scope of Directive 2000/43 and the fourth question is inadmissible.

The fifth question

51 By its fifth question, the referring court asks, in essence, whether the provisions of European Union law and, in particular, of Directives 2000/43 and 2003/109, preclude national or provincial legislation which requires of third-country nationals only and not of citizens of the Union (whether or not Italian), the further condition — going beyond the condition of having resided for more than 5 years in the Autonomous Province of Bolzano — that they should have completed three years of work in order to be eligible for housing benefit.

52 According to the order for reference, the dispute in the main proceedings concerns discrimination alleged by the applicant in the main proceedings arising from the mechanism for allocation of the funds for housing benefit provided for under the provincial law and decision No 1885.

53 It is not in dispute that, in the main proceedings, the condition imposed on third-country nationals under Article 5(7) of the provincial law, that is to have completed at lease three years of work in the Autonomous Province of Bolzano, was satisfied by the applicant in the main proceedings and that his application for housing benefit was not rejected on the ground that he did not satisfy such a condition.

54 Accordingly, it must be held that the fifth question, which bears no relation to the actual facts or to the purpose of the proceedings pending before the referring court, must be rejected as inadmissible.

The sixth and seventh questions

55 By its sixth and seventh questions, which should be examined together, the referring court asks, in essence, whether European Union law and, in particular, Articles 2 TEU, 6 TEU, 18 TFEU, 45 TFEU and 49 TFEU, read in conjunction with Articles 1, 21 and 34 of the Charter, must be interpreted as precluding national or regional legislation which requires citizens of the European Union, in order to be eligible for the housing benefit provided for under that legislation, first, to have resided or worked in the territory of the Autonomous Province of Bolzano for at least five years and, second, to have declared that they belong to or elect to join one of the three linguistic groups present on that territory.

56 In that regard, it should be noted that, as is apparent from paragraphs 31 and 52 above, the applicant in the main proceedings is a third-country national who has resided, for a number of years, in the territory of the Autonomous Province of Bolzano and that the dispute in the main proceedings relates to the rejection of his application for housing benefit on the ground that the budget for third-country nationals was exhausted leaving no funds available to pay that benefit to them.

57 The referring court has not established why the annulment, on the basis of European Union law, of the residence or linguistic conditions imposed on citizens of the European Union in order to be entitled to the housing benefit provided for under the legislation established by the Autonomous Province of Bolzano could bear any relation to the actual facts or purpose of the proceedings pending before it.

58 Accordingly, the sixth and seventh questions referred by that court must be declared inadmissible.

Substance

The second question

59 By its second question, the referring court asks in essence whether, in case of conflict between the provision of domestic law and the ECHR, the reference to the latter in Article 6 TEU obliges the national court to apply the provisions of the ECHR — in the present case Article 14 ECHR and Article 1 of Protocol No 12 — directly, disapplying the incompatible source of domestic law, without having first to raise the issue of constitutionality before the Corte costituzionale (Constitutional Court).

60 According to Article 6(3) TEU, fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, are to constitute general principles of the Union's law.

61 That provision of the Treaty on European Union reflects the settled case-law of the Court according to which fundamental rights form an integral part of the general principles of law the observance of which the Court ensures (see, inter alia, Case C-521/09 P *Elf Aquitaine* v *Commission* [2011] ECR I-8947, paragraph 112).

62 However, Article 6(3) TEU does not govern the relationship between the ECHR and the legal systems of the Member States and nor does it lay down the consequences to be drawn by a national court in case of conflict between the rights guaranteed by that convention and a provision of national law.

63 The answer to the second question must therefore be that the reference made by Article 6(3) TEU to the ECHR does not require the national court, in case of conflict between a provision of national law and the ECHR, to apply the provisions of that convention directly, disapplying the provision of national law incompatible with the convention.

The third question

64 By its third question, the referring court asks, in essence, whether European Union law, inter alia Directives 2000/43 and 2003/109, must be interpreted as precluding national or regional legislation such as that at issue in the main proceedings which provides, with regard to the grant of housing benefit, different treatment for long-term third-country nationals compared to that accorded to citizens of the Union (whether Italian or not) residing in the territory of the Autonomous Province of Bolzano.

65 For the reasons already given in paragraphs 48 to 50 above, the discrimination alleged by the applicant in the main proceedings does not fall within the scope of Directive 2000/43.

66 With regard to Directive 2003/109, it should be noted, as a preliminary point, that the system put in place by that directive clearly makes the acquisition of the status of long-term resident conferred by that directive subject to a specific procedure and, in addition, to fulfilment of all the conditions set out in Chapter II of that directive.

67 Thus, Article 4 of Directive 2003/109 provides that the Member States are to grant long-term resident status to third-country nationals who have resided legally and continuously on their territory for five years immediately prior to the submission of the relevant application. Article 5 of the directive makes the acquisition of long-term resident status conditional upon evidence that the third-country nationals who wish to enjoy that status have sufficient resources and sickness insurance. Finally, Article 7 of the directive lays down the procedural requirements for acquisition of that status.

68 Accordingly, it is for the national court to determine whether the applicant in the main proceedings enjoys the status of long-term resident, enabling him to claim, pursuant to that directive, equal treatment with nationals of the Member State concerned in accordance with Article 11(1) thereof.

69 It must therefore be examined whether a mechanism for allocation of funds for housing benefit such as that in question in the main proceedings is in conformity with the principle of equal treatment enshrined in Article 11 of Directive 2003/109.

– The difference in treatment and the comparability of the situations at issue

70 It must be observed, first, that in the main proceedings, both for citizens of the Union (whether Italians or not) and third-country nationals, the provincial law allocates the funds for housing benefit on the basis of a weighted average determined with reference to the numerical size and needs of each category.

71 However, whereas for Italian citizens and citizens of the Union — for whom, as is apparent from paragraphs 26 to 28 above, access to housing benefit is subject without distinction to production of a declaration of belonging to one of the three linguistic groups — the two factors taken into account when determining the weighted average are subject to the same multiplier, that is 1, for third-country nationals, pursuant to Decision No 1885, the element relating to their numerical size is subject to a multiplier of 5, whereas their needs are subject to a multiplier of 1.

72 As is apparent from the order for reference, starting from 2009, the determination of the part of the funds granted, as housing benefit, to citizens of the Union on the one hand and third-country nationals on the other hand, has been made subject to different methods of calculation. The effect of applying different multipliers is to disadvantage the category of third-country nationals, since the budget available to satisfy their demands for housing benefit is smaller than that for Union citizens and thus likely to be used up more quickly than theirs.

73 Thus, the difference between the multipliers concerning the numbers of third-country nationals, on the one hand, and of Union citizens (whether Italian or not), belonging to the three linguistic groups, on the other, creates a difference in treatment between the two categories of beneficiaries.

74 With regard to the comparison between citizens of the Union (whether Italian or not) and third-country nationals, the Autonomous Province of Bolzano contends that the use of different methods in order to determine the numerical size of those two categories and to quantify their needs shows that they are not in a comparable situation.

75 However, even assuming the existence of statistical or administrative difficulties, as claimed by the Autonomous Province of Bolzano, in managing the applications for housing benefit made in particular by third-country nationals, those difficulties do not explain the reason why the situation of such nationals — where they have acquired the status conferred by Directive 2003/109, complied both with the procedure and the conditions provided for under that directive and do not have sufficient resources to cover housing costs — is not comparable to that of a citizen of the Union with the same economic need.

– The difference in treatment in the light of Article 11(1) of Directive 2003/109

76 Second, it must be established whether, as the Autonomous Province of Bolzano contests, the difference in treatment thus determined falls within the scope of Directive 2003/109, in particular its Article 11(1)(d), which provides that long-term residents are to enjoy equal treatment with nationals as regards social security, social assistance and social protection, as those concepts are defined by national law.

77 In that regard, it must be noted that, when the European Union legislature has made an express reference to national law, as in Article 11(1)(d) of Directive 2003/109, it is not for the Court to give the terms concerned an autonomous and uniform definition under European Union law (see, to that effect, Case 327/82 *Ekro* [1984] ECR 107, paragraph 14). Such a reference means that the European Union legislature wished to respect the differences between the Member States concerning the meaning and exact scope of the concepts in question.

78 However, the absence of such an autonomous and uniform definition under European Union law of the concepts of social security, social assistance and social protection and the reference to national law in Article 11(1)(d) of Directive 2003/109 concerning those concepts do not mean that the Member States may undermine the effectiveness of Directive 2003/109 when applying the principle of equal treatment provided for in that provision.

79 According to recital 3 in the preamble to Directive 2003/109, the directive respects the fundamental rights and observes the principles recognised, inter alia, by the Charter which, according to the first subparagraph of Article 6(1) TEU, is to have the same legal value as the Treaties. Pursuant to Article 51(1) of the Charter, the Charter's provisions are addressed to the Member States when they are implementing European Union law.

80 It follows that, when determining the social security, social assistance and social protection measures defined by their national law and subject to the principle of equal treatment enshrined in Article 11(1)(d) of Directive 2003/109, the Member States must comply with the rights and observe the principles provided for under the Charter, including those laid down in Article 34 thereof. Under Article 34(3) of the Charter, in order to combat social exclusion and poverty, the Union (and thus the Member States when they are implementing European Union law) 'recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by European Union law and national laws and practices'.

81 Since both Article 11(1)(d) of Directive 2003/109 and Article 34(3) of the Charter refer to national law, it is for the referring court, taking into account the integration objective pursued by that directive, to assess whether housing benefit such as that provided for under the provincial law falls within one of the categories referred to in Article 11(1)(d), the Autonomous Province of Bolzano arguing that that is not the case.

– Article 11(4) of Directive 2003/109

82 Since the national court may consider that the housing benefit in question in the main proceedings falls under Article 11(1)(d) of Directive 2003/109, it must be examined, third, whether the Autonomous Province of Bolzano would be justified, as it argues, in limiting the application of the principle of equal treatment enshrined in Article 11(1), by applying Article 11(4).

83 In that regard, it should be recalled that that provision states that Member States may limit the application of that principle in respect of social assistance and social protection to core benefits. Article 11(4) of Directive 2003/109 does not, by contrast, make it possible to derogate from that principle with regard to benefits falling under social security as defined by national law.

84 It is apparent from recital 13 in the preamble to that directive that the concept of core benefits covers at least minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care. The modalities for granting such benefits are to be determined, in accordance with that recital, by national law.

85 It must, first, be observed that the list set out in recital 13 which illustrates the concept of 'core benefits' stated in Article 11(4) of Directive 2003/109 is not exhaustive, as is clear from the use of the wording 'at least'. The fact that no express reference is made in that recital to housing benefits does not therefore mean that they do not constitute core benefits to which the principle of equal treatment must in any event be applied.

86 Second, it must be noted that, since the integration of third-country nationals who are long-term residents in the Member States and the right of those nationals to equal treatment in the sectors listed in Article 11(1) of Directive 2003/109 is the general rule, the derogation provided for in Article 11(4) thereof must be interpreted strictly (see, by analogy, Case C-578/08 *Chakroun* [2010] ECR I-1839, paragraph 43).

87 In that regard, it should be held that a public authority, at national, regional or local level, can rely on the derogation provided for in Article 11(4) of Directive 2003/109 only if the bodies in the Member State concerned responsible for the implementation of that directive have stated clearly that they intended to rely on that derogation.

88 It is not apparent from the file before the Court that the Italian Republic stated that it intended to rely on the derogation from the principle of equal treatment provided for under Article 11(4) of Directive 2003/109.

89 Finally, it must be noted that the reference to national law in recital 13 in the preamble to Directive 2003/109 is limited to the modalities of the grant of the benefits in question, that is the laying down of the conditions of access and of the level of such benefits and of the procedures relating thereto.

90 The meaning and scope of the concept of 'core benefits' in Article 11(4) of Directive 2003/109 must therefore be sought taking into account the context of that article and the objective pursued by that directive, namely the integration of third-country nationals who have resided legally and continuously in the Member States.

91 Article 11(4) of Directive 2003/109 must be understood as allowing Member States to limit the equal treatment enjoyed by holders of the status conferred by Directive 2003/109, with the exception of social assistance or social protection benefits granted by the public authorities, at national, regional or local level, which enable individuals to meet their basic needs such as food, accommodation and health.

92 In that regard, it should be recalled that, according to Article 34 of the Charter, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources. It follows that, in so far as the benefit in question in the main proceedings fulfils the purpose set out in that article of the Charter, it cannot be considered, under European Union law, as not being part of core benefits within the meaning of Article 11(4) of Directive 2003/109. It is for the referring court to reach the necessary findings, taking into consideration the objective of that benefit, its amount, the conditions subject to which it is awarded and the place of that benefit in the Italian system of social assistance.

93 In the light of the foregoing considerations, the answer to the third question is that Article 11(1)(d) of Directive 2003/109 must be interpreted as precluding a national or regional law, such as that at issue in the main proceedings, which provides, with regard to the grant of housing benefit, for different treatment for third-country nationals enjoying the status of long-term resident conferred pursuant to the provisions of that directive compared to that accorded to nationals residing in the same province or region when the funds for the benefit are allocated, in so far as such a benefit falls within one of the three categories referred to in that provision and Article 11(4) of that directive does not apply.

Costs

94 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **The first and fourth to seventh questions referred by the Tribunale di Bolzano in Case C-571/10 are inadmissible.**

2. **The reference made by Article 6(3) TEU to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, does not require the national court, in case of conflict between a provision of national law and that convention, to apply the provisions of that convention directly, disapplying the provision of domestic law incompatible with the convention.**

3. **Article 11(1)(d) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as precluding a national or regional law, such as that at issue in the main proceedings, which provides, with regard to the grant of housing benefit, for different treatment for third-country nationals enjoying the status of long-term resident conferred pursuant to the provisions of that directive compared to that accorded to nationals residing in the same province or region when the funds for the benefit are allocated, in so far as such a benefit falls within one of the three categories referred to in that provision and Article 11(4) of that directive does not apply.**

[Signatures]