

Case C-70/95

Sodemare SA and Others

v

Regione Lombardia

(Reference for a preliminary ruling
from the Tribunale Amministrativo Regionale per la Lombardia)

(Freedom of establishment — Freedom to provide services —
Old people's homes — Non-profit-making)

Opinion of Advocate General Fennelly delivered on 6 February 1997	I - 3398
Judgment of the Court, 17 June 1997	I - 3422

Summary of the Judgment

1. *Member States — Obligations — Obligation to state reasons for national rules of general scope falling within the sphere of Community law — None*
(*EC Treaty, Art. 190*)
2. *Freedom of movement for persons — Freedom of establishment — National rules reserving participation in a social welfare system to non-profit-making economic operators — Permissible*
(*EC Treaty, Arts 52 and 58*)

3. *Freedom to provide services — Treaty provisions — Scope — Company established in a Member State as a provider of services to pensioners residing permanently or for an indefinite period in old people's homes — Excluded*
(EC Treaty, Art. 59)

4. *Competition — Community rules — Obligations of the Member States — National rules reserving participation in a social welfare system to non-profit-making economic operators — Whether compatible — Conditions*
(EC Treaty, Arts 3(g), 5, 85, 86 and 90)

1. Community law, and Article 190 of the Treaty in particular, does not lay down conditions concerning the statement of reasons for national rules of general scope which fall within the sphere of Community law.

the public authorities for the costs of providing social welfare services of a health-care nature.

Apart from the fact that the obligation to state reasons laid down in Article 190 of the Treaty concerns only acts of the institutions, the obligation to state reasons for national decisions affecting the exercise of a fundamental right conferred on individuals by the Treaty concerns, in view of its purpose, only individual decisions adversely affecting individuals against which the latter must have some remedy of a judicial nature, and not national measures of general scope.

As Community law stands at present, a Member State may, in the exercise of the powers it retains to organize its social security system, consider that attainment of the objectives pursued by a social welfare system which, being based on the principle of solidarity, is designed as a matter of priority to assist those in need, necessarily implies that the admission of private operators to that system as providers of social welfare services is to be made subject to the condition that they are non-profit-making.

2. Articles 52 and 58 of the Treaty do not preclude a Member State from allowing only non-profit-making private operators to participate in the running of its social welfare system by concluding contracts which entitle them to be reimbursed by

Moreover, that condition is not liable to place profit-making companies from other Member States in a less favourable factual or legal situation than profit-

making companies from the Member State in which they are established.

3. Article 59 of the Treaty does not cover the situation of a company which, having established itself in a Member State in order to run old people's homes there, provides services to residents who, for that purpose, reside in those homes permanently or for an indefinite period.

Although the right freely to provide services may be relied on by an undertaking as against the State in which it is established if the services are provided for persons established in another Member State, Article 59 does not cover the situation where a national of one Member State goes to the territory of another and establishes his principal residence there in order to receive services there for an indefinite period.

4. Articles 85 and 86, read in conjunction with Articles 3(g), 5 and 90 of the Treaty, do not apply to national rules which allow only non-profit-making private operators to participate in the running of a social welfare system by concluding contracts which entitle them to be reimbursed by the public authorities for the costs of providing social welfare services of a health-care nature.

Such rules do not require or favour the adoption, or reinforce the effects, of agreements, decisions or concerted practices by the undertakings permitted to enter into contractual arrangements with the social security system and do not delegate to private operators responsibility for decisions affecting the economic sphere. Nor do they place individual undertakings permitted to enter into contractual arrangements of that kind in a dominant position or lead to the creation of sufficiently strong economic links between them as to give rise to a collective dominant position.