

WOOD

JUDGMENT OF THE COURT (Second Chamber)

5 June 2008*

In Case C-164/07,

REFERENCE for a preliminary ruling under Article 234 EC, by the Commission d'indemnisation des victimes d'infractions du Tribunal de Grande Instance de Nantes (France), made by decision of 16 March 2007, received at the Court on 27 March 2007, in the proceedings

James Wood

v

Fonds de garantie des victimes des actes de terrorisme et d'autres infractions,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, K. Schiemann, J. Makarczyk (Rapporteur), J.-C. Bonichot and C. Toader, Judges,

* Language of the case: French.

Advocate General: J. Kokott,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 31 January 2008,

after considering the observations submitted on behalf of:

— Mr Wood, by J.-E. Robiou du Pont, avocat,

— the Fonds de garantie des actes de terrorisme and d'autres infractions, by M. Bonnely, avocat,

— the French Government, by G. de Bergues, B. Messmer and O. Christmann, acting as Agents,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by D. Del Gaizo, avvocato dello Stato,

— the Portuguese Government, by L. Fernandes and I. Azevedo, acting as Agents,

— the Commission of the European Communities, by D. Maidani, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2008,

gives the following

Judgment

- 1 The reference for a preliminary ruling concerns the interpretation of the first paragraph of Article 12 EC. The reference was made in the course of proceedings brought by Mr Wood, a British national, against the Fonds de garantie des victimes des actes de terrorisme et d'autres infractions (Guarantee Fund for the Victims of Acts of Terrorism and Other Crimes 'Guarantee Fund') concerning the latter's refusal to grant him compensation, on the ground of his nationality, to make good damage caused by a crime committed outside French territory.

National legal context

- 2 Article 706-3 of the code de procédure pénale (French Code of Criminal Procedure) provides:

'Any person who has suffered harm caused by intentional or unintentional acts which constitute the actus reus of an offence may obtain full compensation for the damage deriving from offences against the person where the following cumulative conditions are met:

- 1 These offences do not fall within the scope of Article 53 of the Law for the financing of social security for 2001 (No 2000-1257 of 23 December 2000), Article L. 126-1 of the Insurance Code, or of Chapter I of Law No 85-677 of 5 July 1985 for the improvement of the situation of traffic accident victims and the acceleration of compensation procedures, and were not the result of hunting or the destruction of vermin;

- 2 These acts:
 - either have brought about death, permanent incapacity or total incapacity for work for more than one month;

 - or are defined and penalised by articles 222-22 to 222-30, 225-4-1 to 225-4-5 and 227-25 to 227-27 of the Criminal Code;

- 3 The person injured is a French national; or if this is not the case, the acts were committed on the national territory and the person injured is:
 - either a citizen of one of the Member States of the European Economic Community;

 - or, subject to the provisions of international treaties and agreements, lawfully resident in France on the day of the offence or of the application.

Compensation may be refused or its amount reduced if the victim is at fault.’

The main proceedings and the question referred

- 3 Helena Wood, a student in London, died in a road traffic accident on 9 June 2004 while on a traineeship in Australia.

- 4 Her parents, James Wood and Evelyne Arraitz, brought a claim, on 3 July 2006, before the Commission d’indemnisation des victimes d’infractions du Tribunal de Grande Instance de Nantes (Compensation Board for Victims of Crime of the Regional Court, Nantes, ‘the Compensation Board’) seeking, in addition to their material losses of EUR 398, compensation for their non-pecuniary losses in the sum of EUR 10 000 for each of them and EUR 7 500 for each of their younger children, Julia and Hugo Wood.

- 5 An agreement was reached with the Guarantee Fund and approved on 24 November 2006 by the President of the Compensation Board on the amount of the compensation to be paid to the persons entitled in connection with the late Helena Wood, with the exception, however, of her father, on the ground of his British nationality.

- 6 Mr Wood lodged his submissions before the referring court on 11 January 2007, basing his claim on the overriding provisions of the first paragraph of Article 12 EC which prohibit all discrimination on grounds of nationality.

- 7 According to Mr Wood, who states that he lives, works and pays taxes in France where he has lived for 20 years with his partner, a French national, that discrimination, which consists in the fact that he was not awarded compensation, which was, however, paid to the other members of his family is contrary to the principle of non-discrimination laid down by the first paragraph of Article 12 EC.
- 8 For its part, the Guarantee Fund opposed the claim on the ground that Mr Wood failed to meet the criteria laid down in Article 706-3 of the Code de procédure pénale and relied on traditional case-law of the Cour de cassation favourable to its view.
- 9 It is against that background that the Compensation Board decided to stay proceedings and refer the following question to the Court of Justice:

‘In the light of the general principle of non-discrimination on grounds of nationality, set out in Article [12 EC], are the provisions of Article 706-3 of the French Code de procédure pénale compatible or not with Community law in that a citizen of the European Community, residing in France, the father of a child having French nationality who died outside [French] territory, does not have a right to compensation paid by the Fonds de Garantie on the sole ground of his nationality?’

The question referred for a preliminary ruling

- 10 By the question referred the referring court essentially seeks to know whether Community law may be interpreted as meaning that it precludes legislation of a Member State which excludes nationals of other Member States who live and work in its territory from the grant of compensation intended to make good losses resulting from

offences against the person where the crime in question was not committed on the territory of that State, on the sole ground of their nationality.

- 11 In the main proceedings, according to the order for reference, Mr Wood, a British national, has exercised his right to freedom of movement for workers within the meaning of Article 39 EC or freedom of establishment within the meaning of Article 43 EC by living and working in France for more than 20 years.
- 12 Therefore, Mr Wood's situation falls within the scope of application of the Treaty and he may rely on his right not to suffer discrimination by reason of his nationality.
- 13 It is in this regard settled case-law that the principle of non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way. Such treatment may be justified only if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the objective being legitimately pursued (see Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraph 31, and the case-law cited).
- 14 In the main proceedings, Mr Wood, a British national, has lived for more than 20 years in France and lost his daughter in an accident which occurred outside the territory of the Community. As regards the loss of his daughter and the resulting damage, Mr Wood is in a comparable situation to that of a person like his partner, Mrs Arraitz. Thus, under the national provision at issue in the main proceedings, the only aspect of their position regarding their right to compensation which differs is their nationality. Only Mrs Arraitz, because of her French nationality, has received compensation for the damage.
- 15 Thus, this difference in treatment, based expressly and solely on the nationality of Mr Wood, constitutes direct discrimination. The French Government itself admits

that in a case such as this there are no reasons capable of justifying such difference in treatment.

- 16 Having regard to the foregoing considerations, the answer to the question referred must be that Community law precludes legislation of a Member State which excludes nationals of other Member States who live and work in its territory from the grant of compensation intended to make good losses resulting from offences against the person where the crime in question was not committed in the territory of that State, on the sole ground that they do not have the nationality of that State.

Costs

- 17 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 (Second Chamber) hereby rules:

Community law precludes legislation of a Member State which excludes nationals of other Member States who live and work in its territory from the grant of compensation intended to make good losses resulting from offences against the person where the crime in question was not committed in the territory of that State, on the sole ground that they do not have the nationality of that State.

[Signatures]