JUDGMENT OF THE COURT (Grand Chamber)

11 December 2007 *

In Case C-291/05,

REFERENCE for a preliminary ruling under Article 234 EC, by the Raad van State (Netherlands), made by decision of 13 July 2005, received at the Court on 20 July 2005, in the proceedings

Minister voor Vreemdelingenzaken en Integratie

v

R.N.G. Eind,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and G. Arestis, Presidents of Chambers, J.N. Cunha Rodrigues (Rapporteur), R. Silva de Lapuerta, K. Schiemann, J. Makarczyk and A. Borg Barthet, Judges,

* Language of the case: Dutch.

Advocate General: P. Mengozzi,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 September 2006,

after considering the observations submitted on behalf of:

— the Minister voor Vreemdelingenzaken en Integratie, by A. van Leeuwen, advocaat,

— R.N.G. Eind, by R. Ketwaru, advocaat,

— the Netherlands Government, by H.G. Sevenster and C. Wissels and by M. de Grave, acting as Agents,

— the Czech Government, by T. Boček, acting as Agent,

— the Danish Government, by A. Jacobsen, acting as Agent,

— the German Government, by M. Lumma and C. Schulze-Bahr, acting as Agents,

— the Greek Government, by K. Georgiadis and K. Boskovits, and by Z. Chatzipavlou, acting as Agents,

— the United Kingdom Government, by E. O'Neill, acting as Agent, assisted by S. Moore, Barrister,

— the Commission of the European Communities, by G. Rozet and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 July 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 18 EC; Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1) ('Regulation No 1612/68'); and Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26).

2 The reference was made in the context of proceedings between Miss Eind, a national of Surinam, and the Minister voor Vreemdelingenzaken en Integratie (Netherlands Minister responsible for immigration, nationality and integration issues) concerning a decision of the Staatssecretaris van Justitie (State Secretary for Justice) refusing to grant her a residence permit.

Legislative background

Community provisions

3 Article 10 of Regulation No 1612/68 provides:

'1. The following shall, irrespective of their nationality, have the right to instal themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

(a) his spouse and their descendants who are under the age of 21 years or are dependants;

...'

4 Article 1 of Directive 90/364 is worded as follows:

'1. Member States shall grant the right of residence to nationals of Member States who do not enjoy this right under other provisions of Community law and to

members of their families as defined in paragraph 2, provided that they themselves and the members of their families are covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence.

...

2. The following shall, irrespective of their nationality, have the right to instal themselves in another Member State with the holder of the right of residence:

(a) his or her spouse and their descendants who are dependants;

...'

National provisions

5 Article 1(e) of the Law on Aliens (Vreemdelingenwet; 'the Law') of 23 November 2000 (Stb. 2000, No 495) states that 'Community nationals' is to be understood as meaning the following:

'1. nationals of the Member States of the European Union who, under the Treaty establishing the European Community, have the right to enter and reside on the territory of another Member State;

2. members of the families of the persons referred to in subparagraph 1 who are nationals of a third country and who, on the basis of a decision taken in implementation of the Treaty establishing the European Community, have the right to enter and reside on the territory of a Member State ...'

6 Article 1(h) of the Law defines 'temporary residence permit' as a visa for a stay of over three months which is issued, following a request in person, to a foreign national by a diplomatic mission or consulate of the Netherlands in the country of origin or permanent residence.

7 Article 14(1)(a) of the Law empowers the Minister for Justice to accept, to refuse or not to consider an application for a residence permit for a fixed period. Under Article 14(2), a residence permit for a fixed period is subject to restrictions relating to the purpose for which the stay was authorised.

8 Article 16(1)(a) of the Law provides that an application for a residence permit for a fixed period may be refused if the foreign national does not have a valid temporary residence permit which was issued for the same purpose as that for which the residence permit is being sought.

The main proceedings and the questions referred for a preliminary ruling

9 In February 2000, Mr Eind, a Netherlands national, went to the United Kingdom, where he found employment. He was subsequently joined by his daughter Rachel, born in 1989, who arrived direct from Surinam.

10 According to the order for reference, the United Kingdom authorities informed Mr Eind on 4 June 2001 that he had a right to reside in the United Kingdom by virtue of Regulation No 1612/68. By letter of the same date, his daughter was informed that she also had a right to reside in the United Kingdom in her capacity as a member of the family of a Community worker. Mr Eind accordingly received a residence permit valid from 6 June 2001 to 6 June 2006.

11 On 17 October 2001, Mr Eind and his daughter entered the Netherlands. Miss Eind registered with the Amsterdam police and applied for a residence permit pursuant to Article 14 of the Law.

12 Before the administrative committee assigned to deal with that request, Mr Eind stated that, since his return to the Netherlands, he had been in receipt of social assistance and that, because of ill health, he had not been employed, nor had he sought employment. He also stated, however, that he had had an interview at the Banenmarkt (Employment Office) with a view to his re-entering the employment market and that he was awaiting a second interview. It also appears from the case-file that Mr Eind is covered by sickness insurance in the Netherlands.

13 By decision of 2 January 2002, the Staatssecretaris van Justitie refused Miss Eind's application on the ground that she did not hold a temporary residence permit. The decision further stated that she could not be granted a residence permit on the basis of her status as a member of the family of a Community national. Although her father had resided in a Member State other than the Netherlands, he had not, since his return to the Netherlands, been engaged in effective and genuine activities and was not economically non-active for the purposes of the EC Treaty. In those circumstances, Mr Eind could no longer be regarded as a Community national for the purposes of the Law.

14 The objection lodged by Miss Eind against that decision was rejected by decision of the Staatssecretaris van Justitie of 5 July 2002. However, by judgment of 20 October 2004, the Rechtbank te 's-Gravenhage (District Court of The Hague), referring to the judgments in Case C-370/90 *Singh* [1992] ECR I-4265 and Case C-292/89 *Antonissen* [1991] ECR I-745, set aside the decision of the Staatssecretaris van Justitie of 5 July 2002 and referred the case back to the Minister voor Vreemdelingenzaken en Integratie for the objection to be reconsidered.

15 The Minister voor Vreemdelingenzaken en Integratie appealed against that judgment to the Raad van State (Council of State), which, on the view that Community law does not give an unequivocal answer to the issues raised by the case before it, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) (a) If a third-country national is regarded by a host Member State as a member of the family of a worker, within the meaning of Article 10 of Regulation ... No 1612/68 of 15 October 1968 ... and if the validity of the residence permit granted by that Member State has not yet expired, does this mean that the Member State of which the worker is a national may not, for that very reason, deny the third-country national the right of entry and residence on the return of the worker?

(b) If the previous question has to be answered in the negative, is that Member State itself permitted, where that third-country national arrives in its territory, to determine on the basis of national law whether that person satisfies the conditions for entry and residence, or must that Member State first determine whether the third-country national still derives rights from Community law as a member of the worker's family?

(2) Does it make any difference to the answers to the two preceding questions if, prior to his stay in the host Member State, the third-country national had no right of residence, under national law, in the Member State of which the worker is a national?

(3) (a) If the Member State of which the worker ("the reference person") is a national is permitted, on the worker's return, to determine whether the conditions laid down in Community law for the issue of a residence permit as a family member are still fulfilled, does a third-country national who is a member of the family of the reference person who has returned from the host Member State to the Member State of which he is a national in order to seek employment there have a right of residence in the latter Member State and, if so, for how long?

(b) Does that right also exist if the reference person does not carry on any effective and genuine activities in the ... Member State [of which he is a national] and cannot, or can no longer, be regarded as seeking employment, in the context of ... Directive 90/364 ..., in view of the fact that the reference person is in receipt of welfare benefit by virtue of his Netherlands nationality?

(4) What significance for the answers to the previous questions is to be attached to the fact that the third-country national is a member of the family of a citizen of the Union who has exercised his right under Article 18 of the Treaty establishing the European Community and who has returned to the Member State of which he is a national?'

Preliminary observations

16 In its written observations and at the hearing, the United Kingdom Government pointed out that the residence permit obtained by Miss Eind in the United Kingdom was issued pursuant to national law and not on the basis of Article 10 of Regulation No 1612/68. The United Kingdom Government made it clear that that residence permit did not reflect a Community law obligation but rather a policy choice made in the light of the national legislation.

17 The order for reference, by contrast, indicates that, by letter of 4 June 2001, the United Kingdom authorities informed Miss Eind that, in her capacity as a member of a Community worker's family, she had a right to reside in the United Kingdom pursuant to Regulation No 1612/68.

18 In that regard, it must be borne in mind that, in the procedure of cooperation established by Article 234 EC, it is not for the Court of Justice but for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver (see, inter alia, Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 32, and Case C-510/99 *Tridon* [2001] ECR I-7777, paragraph 28).

19 Accordingly, the answers to the questions referred by the national court must be predicated on the same assumption as that on which that court based itself, namely that Miss Eind resided in the United Kingdom on the basis of Article 10 of Regulation No 1612/68.

The questions referred for a preliminary ruling

Question 1(a)

20 By this question, the national court asks, essentially, whether, in the event of a Community worker returning to the Member State of which he is a national, Community law requires the authorities of that State to grant a right of entry and residence to a third-country national who is a member of that worker's family, because of the mere fact that, in the Member State where the worker was gainfully employed, that third-country national held a valid residence permit issued on the basis of Article 10 of Regulation No 1612/68.

21 It must be borne in mind that, according to the wording of Article 10(1)(a) of Regulation No 1612/68, where a worker is a national of one Member State and is employed in the territory of another Member State, his spouse and the descendants who are under the age of 21 years or are dependants have the right, irrespective of their nationality, to install themselves with that worker.

22 It follows, inter alia, from the fifth recital in the preamble to Regulation No 1612/68 that that regulation is intended to eliminate barriers to the mobility of workers, 'in particular as regards the worker's right to be joined by his family and the conditions for the integration of that family into the host country'.

23 The right to family reunification under Article 10 of Regulation No 1612/68 does not entail for members of the families of migrant workers any autonomous right to free movement, since that provision benefits the migrant worker whose family includes a national of a third country (see, in respect of Article 11 of Regulation No 1612/68, Case C-10/05 *Mattern and Cikotic* [2006] ECR I-3145, paragraph 25).

24 It follows that the right of a third-country national who is a member of the family of a Community worker to install himself with that worker may be relied on only in the Member State where that worker resides.

25 Under Regulation No 1612/68, the effects of the residence permit issued by the authorities of a Member State to a third-country national who is a member of a Community worker's family are confined to the territory of that Member State.

26 In the light of the foregoing, the answer to Question 1(a) must be that, in the event of a Community worker returning to the Member State of which he is a national, Community law does not require the authorities of that State to grant a right of entry and residence to a third-country national who is a member of that worker's family because of the mere fact that, in the host Member State where that worker was gainfully employed, that third-country national held a valid residence permit issued on the basis of Article 10 of Regulation No 1612/68.

Questions 2 and 3(b)

27 By these questions, which it is appropriate to consider together, the national court asks, essentially, whether, when a worker returns to the Member State of which he is a national, after being gainfully employed in another Member State, a third-country national who is a member of his family has a right under Community law to reside in the Member State of which the worker is a national, even where that worker does not carry on effective and genuine economic activities. The national court also asks whether the fact that, before residing in the host Member State where the worker

was employed, the third-country national did not have a right, under national law, to reside in the Member State of which the worker is a national may have a bearing on that national's right of residence.

28 As a preliminary point, it must be borne in mind that the right of nationals of one Member State to reside in the territory of another Member State without being engaged in any activity, whether on an employed or a self-employed basis, is not unconditional. Under Article 18(1) EC, the right of every citizen of the Union to reside in the territory of the Member States is recognised subject to the limitations and conditions imposed by the Treaty and by the measures adopted for its implementation (see, to that effect, Case C-456/02 *Trojani* [2004] ECR I-7573, paragraphs 31 and 32, and Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, paragraph 26).

29 Among those limitations and conditions is the provision made in the first subparagraph of Article 1(1) of Directive 90/364, under which the Member States may require citizens of the Union who are not economically active and wish to enjoy the right to reside in their territory, to ensure that they themselves and the members of their families are covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence.

30 The right of residence enjoyed by the members of the family of an economically non-active citizen of the Union under Article 1(2) of Directive 90/364 is linked to the right enjoyed by that citizen under Community law.

31 In the main proceedings, since Mr Eind is a Netherlands national, his right to reside in the territory of the Netherlands cannot be refused or made conditional.

32 As was rightly pointed out by the Advocate General in points 101 to 106 of his Opinion, the right of the migrant worker to return and reside in the Member State of which he is a national, after being gainfully employed in another Member State, is conferred by Community law, to the extent necessary to ensure the useful effect of the right to free movement for workers under Article 39 EC and the provisions adopted to give effect to that right, such as those laid down in Regulation No 1612/68. That interpretation is substantiated by the introduction of the status of citizen of the Union, which is intended to be the fundamental status of nationals of the Member States.

33 In their written observations, the Netherlands and Danish Governments contended that a Community national is unlikely to be deterred from moving to the host Member State in order to take up gainful employment there by the prospect of not being able, on returning to his Member State of origin, to continue a family life which may have been established in the host Member State. In particular, the Netherlands Government emphasised the fact that Mr Eind could not have been deterred from exercising that freedom, through moving to the United Kingdom, by the fact that it would be impossible for his daughter to reside with him once he returned to his Member State of origin, given that at the time of the initial move Miss Eind did not have a right to reside in the Netherlands.

34 That approach cannot be accepted.

35 A national of a Member State could be deterred from leaving that Member State in order to pursue gainful employment in the territory of another Member State if he does not have the certainty of being able to return to his Member State of origin, irrespective of whether he is going to engage in economic activity in the latter State.

36 That deterrent effect would also derive simply from the prospect, for that same national, of not being able, on returning to his Member State of origin, to continue living together with close relatives, a way of life which may have come into being in the host Member State as a result of marriage or family reunification.

37 Barriers to family reunification are therefore liable to undermine the right to free movement which the nationals of the Member States have under Community law, as the right of a Community worker to return to the Member State of which he is a national cannot be considered to be a purely internal matter.

38 It follows that, in circumstances such as those in the case before the referring court, Miss Eind has the right to install herself with her father, Mr Eind, in the Netherlands, even if the latter is not economically active.

39 That right remains subject to the conditions laid down in Article 10(1)(a) of Regulation No 1612/68, which apply by analogy.

40 Thus, a person in the situation of Miss Eind may enjoy that right so long as she has not reached the age of 21 years or remains a dependant of her father.

41 This finding is not affected by the fact that, before residing in the host Member State where her father was gainfully employed, Miss Eind did not have a right of residence, under national law, in the Member State of which Mr Eind is a national.

42 Contrary to the contentions of the Netherlands, Danish and German Governments, the inability to rely on such a right has no bearing on the recognition of a right of entry and residence for such a child, in her capacity as a member of a Community worker's family, in the Member State of which he is a national.

43 First of all, the basis for requiring such a right is not laid down, expressly or by implication, in any provision of Community law relating to the right of residence in the Community of third-country nationals who are members of the families of Community workers. According to settled case-law of the Court of Justice, secondary Community legislation on movement and residence cannot be interpreted restrictively (see, inter alia, in respect of Regulation No 1612/68, Case 267/83 *Diatta* [1985] ECR 567, paragraphs 16 and 17, and Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 74).

44 Secondly, such a requirement would run counter to the objectives of the Community legislature, which has recognised the importance of ensuring protection for the family life of nationals of the Member States in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the Treaty (Case C-60/00 *Carpenter* [2002] ECR I-6279, paragraph 38, and Case C-459/99 *MRAX* [2002] ECR I-6591, paragraph 53).

45 In the light of all the above considerations, the answer to Questions 2 and 3(b) must be that, when a worker returns to the Member State of which he is a national, after being gainfully employed in another Member State, a third-country national who is a member of his family has a right under Article 10(1)(a) of Regulation No 1612/68, which applies by analogy, to reside in the Member State of which the worker is a national, even where that worker does not carry on any effective and genuine economic activities. The fact that a third-country national who is a member of a Community worker's family did not, before residing in the Member State where the worker was employed, have a right under national law to reside in the Member State

of which the worker is a national has no bearing on the determination of that national's right to reside in the latter State.

Question 1(b), Question 3(a) and Question 4

46 In view of the answers given to Question 1(a), Question 2 and Question 3(b), there is no need to answer the other questions referred by the national court.

Costs

47 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. In the event of a Community worker returning to the Member State of which he is a national, Community law does not require the authorities of that State to grant a right of entry and residence to a third-country national

who is a member of that worker's family because of the mere fact that, in the host Member State where that worker was gainfully employed, that third-country national held a valid residence permit issued on the basis of Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992.

2. **When a worker returns to the Member State of which he is a national, after being gainfully employed in another Member State, a third-country national who is a member of his family has a right under Article 10(1)(a) of Regulation No 1612/68 as amended by Regulation No 2434/92, which applies by analogy, to reside in the Member State of which the worker is a national, even where that worker does not carry on any effective and genuine economic activities. The fact that a third-country national who is a member of a Community worker's family did not, before residing in the Member State where the worker was employed, have a right under national law to reside in the Member State of which the worker is a national has no bearing on the determination of that national's right to reside in the latter State.**

[Signatures]