

JUDGMENT OF THE COURT

28 November 1989 *

In Case C-379/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court, Dublin, for a preliminary ruling in the proceedings pending before that court between

Anita Groener

and

The Minister for Education and the City of Dublin Vocational Education Committee

on the interpretation of Article 48(3) of the EEC Treaty and Article 3 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 II, p. 475),

THE COURT

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

Advocate General: M. Darmon

Registrar: J. A. Pompe, Deputy Registrar

having regard to the observations submitted on behalf of

Anita Groener, by J. A. Reidy, solicitor, and, in the oral procedure, F. Clarke, SC,

* Language of the case: English.

the Irish Government and the City of Dublin Vocational Education Committee, by L. J. Dockery, Chief State Solicitor, acting as Agent, and at the hearing by R. Nesbitt and H. A. Whelehan,

the French Government, by R. de Gouttes and, at the hearing, by M. Giacomini, acting as Agents,

the Commission, by K. Banks, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 9 March 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 16 May 1989,

gives the following

Judgment

- ¹ By order of 3 December 1987, which was received at the Court on 21 December 1987, the High Court, Dublin, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Article 48(3) of the Treaty and Article 3 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) with a view to appraising the compatibility with those provisions of national rules making appointment to a permanent full-time post as a lecturer in public vocational education institutions conditional upon proof of an adequate knowledge of the Irish language.
- ² The questions were raised in proceedings instituted by Anita Groener, a Netherlands national, against the Irish Minister for Education (hereinafter referred to as 'the Minister') and the City of Dublin Vocational Education Committee (hereinafter referred to as 'the Education Committee'). The origin of the dispute was the Minister's refusal to appoint Mrs Groener to a permanent full-time post as

an art teacher (Lecturer 1 (Painting)) employed by the Education Committee after she had failed a test intended to assess her knowledge of the Irish language.

- 3 It is apparent from the documents before the Court that, according to Section 23(1) and (2) of the Vocational Education Act 1930, the Minister's approval is required concerning the numbers, qualifications, remuneration and appointment of all employees of each vocational education committee. Exercising his powers under that Act, the Minister adopted, *inter alia*, two administrative measures.
- 4 First, pursuant to Memorandum V7, which entered into force on 1 September 1974, the competent committee may not appoint a person to a permanent full-time post in certain areas of teaching, including in particular art, unless that person holds the Ceard-Teastas Gaeilge (certificate of proficiency in the Irish language) or has an equivalent qualification recognized by the Minister. In that memorandum, the Minister also reserved the right to exempt candidates from countries other than Ireland from the obligation to know Irish, provided that there were no other fully qualified candidates for the post.
- 5 Secondly, on 26 June 1979, the Minister issued Circular Letter 28/79. According to paragraphs 2 and 3 of that circular, for posts of Assistant Lecturer and Lecturer, Scale I, preference must be given to suitably qualified candidates who hold the Ceard-Teastas Gaeilge. Appointees who do not hold that certificate may be required to undergo a special examination in Irish consisting of an oral test (hereinafter referred to as 'the examination'). The candidates concerned may not be appointed to a temporary or permanent full-time post until they have passed the examination. Paragraph 5 of the circular confirms that the provision in Memorandum V7, under which exemption from the linguistic qualification requirement may be granted in a case where there is no fully qualified candidate, is to continue to apply.
- 6 In September 1982, Mrs Groener was engaged on a temporary basis as a part-time art teacher in the College of Marketing and Design, Dublin, which is under the

authority of the Education Committee. In July 1984, she applied for a permanent full-time post as a lecturer in art at that college. Since she did not have the Ceard-Teastas Gaeilge, Mrs Groener asked for an exemption, but that request was refused. The reason for the refusal was that there were other fully qualified candidates for the post. The Minister however gave his consent to her being appointed provided that she first passed the examination.

- 7 Mrs Groener followed a four-week beginners' course under the auspices of the Gael Linn Institute and took the examination during the last week of that course; however, she did not pass.
- 8 Steps subsequently taken both by Mrs Groener and by the College, her employer, to secure her engagement for the academic year 1985/86 as a full-time lecturer under a temporary contract or for her to be granted an exemption from the obligation to prove her knowledge of Irish were unsuccessful.
- 9 Mrs Groener then instituted proceedings for judicial review against the Minister and the Education Committee before the High Court, Dublin, maintaining that the conditions laid down by Memorandum V7 and Circular Letter 28/79 were contrary to Article 48 of the EEC Treaty and Regulation No 1612/68.
- 10 Considering that the application raised certain questions of interpretation of those provisions of Community law, the High Court, Dublin, referred the following questions to the Court for a preliminary ruling:
 - ‘1. Where provisions laid down by law, regulation or administrative action make employment in a particular post in a Member State conditional upon the applicant having a competent knowledge of one of the two official languages of that Member State, being a language which nationals of other Member States would not normally know but would have to learn for the sole purpose of complying with the condition, should Article 3 of Regulation (EEC) No 1612/68 of the Council be construed as applying to such provisions on the ground that their exclusive or principal effect is to keep nationals of other Member States away from the employment offered?

2. In considering the meaning of the phrase “the nature of the post to be filled” in Article 3 of Regulation (EEC) No 1612/68 of the Council, is regard to be had to a policy of the Irish State that persons holding the post should have a competent knowledge of the Irish language, where such knowledge is not required to discharge the duties attached to the post?

3. (1) Is the term “public policy” in Article 48(3) of the EEC Treaty to be construed as applying to the policy of the Irish State to support and foster the position of the Irish language as the first official language?

(2) If it is, is the requirement that persons seeking appointment to posts as lecturer in vocational education institutions in Ireland, who do not possess “An Ceard-Teastas Gaeilge”, shall undergo a special examination in Irish with the view to satisfying the Department of Education of their competency in Irish, a limitation justified on the grounds of such policy?

11 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

12 It should be borne in mind first of all that the second indent of Article 3(1) of Regulation No 1612/68 provides that national provisions or administrative practices of a Member State are not to apply where, ‘though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered’. The last subparagraph of Article 3(1) provides that that provision is not to ‘apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled’.

13 It is apparent from the documents before the Court that the obligation to prove a knowledge of the Irish language imposed by the national provisions in question

applies without distinction to Irish and other Community nationals, except as regards the exemptions which may be allowed for nationals of other Member States.

- 14 Since the second indent of Article 3(1) is not applicable where linguistic requirements are justified by the nature of the post, it is appropriate to consider first the second question submitted by the national court, which is essentially whether the nature of a permanent full-time post of lecturer in art in public vocational education institutions is such as to justify the requirement of a knowledge of the Irish language.
- 15 According to the documents before the Court, the teaching of art, like that of most other subjects taught in public vocational education schools, is conducted essentially or indeed exclusively in the English language. It follows that, as indicated by the terms of the second question submitted, knowledge of the Irish language is not required for the performance of the duties which teaching of the kind at issue specifically entails.
- 16 However, that finding is not in itself sufficient to enable the national court to decide whether the linguistic requirement in question is justified 'by reason of the nature of the post to be filled', within the meaning of the last subparagraph of Article 3(1) of Regulation No 1612/68.
- 17 To apprehend the full scope of the second question, regard must be had to the special linguistic situation in Ireland, as it appears from the documents before the Court. By virtue of Article 8 of the 'Bunreacht na hEireann' (Irish Constitution):

'(1) The Irish language as the national language is the first official language.

(2) The English language is recognized as a second official language.

(3) Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof.'

- 18 As is apparent from the documents before the Court, although Irish is not spoken by the whole Irish population, the policy followed by Irish governments for many years has been designed not only to maintain but also to promote the use of Irish as a means of expressing national identity and culture. It is for that reason that Irish courses are compulsory for children receiving primary education and optional for those receiving secondary education. The obligation imposed on lecturers in public vocational education schools to have a certain knowledge of the Irish language is one of the measures adopted by the Irish Government in furtherance of that policy.
- 19 The EEC Treaty does not prohibit the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and the first official language. However, the implementation of such a policy must not encroach upon a fundamental freedom such as that of the free movement of workers. Therefore, the requirements deriving from measures intended to implement such a policy must not in any circumstances be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other Member States.
- 20 The importance of education for the implementation of such a policy must be recognized. Teachers have an essential role to play, not only through the teaching which they provide but also by their participation in the daily life of the school and the privileged relationship which they have with their pupils. In those circumstances, it is not unreasonable to require them to have some knowledge of the first national language.
- 21 It follows that the requirement imposed on teachers to have an adequate knowledge of such a language must, provided that the level of knowledge required is not disproportionate in relation to the objective pursued, be regarded as a condition corresponding to the knowledge required by reason of the nature of the

post to be filled within the meaning of the last subparagraph of Article 3(1) of Regulation No 1612/68.

- 22 It must also be pointed out that where the national provisions provide for the possibility of exemption from that linguistic requirement where no other fully qualified candidate has applied for the post to be filled, Community law requires that power to grant exemptions to be exercised by the Minister in a non-discriminatory manner.
- 23 Moreover, the principle of non-discrimination precludes the imposition of any requirement that the linguistic knowledge in question must have been acquired within the national territory. It also implies that the nationals of other Member States should have an opportunity to retake the oral examination, in the event of their having previously failed it, when they again apply for a post of assistant lecturer or lecturer.
- 24 Accordingly, the reply to the second question must be that a permanent full-time post of lecturer in public vocational education institutions is a post of such a nature as to justify the requirement of linguistic knowledge, within the meaning of the last subparagraph of Article 3(1) of Regulation No 1612/68 of the Council, provided that the linguistic requirement in question is imposed as part of a policy for the promotion of the national language which is, at the same time, the first official language and provided that that requirement is applied in a proportionate and non-discriminatory manner.
- 25 In view of the answer given to the second question, it is unnecessary to give an answer to the first and third questions.

Costs

- 26 The costs incurred by the Irish and French Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since 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 reply to the questions submitted to it by the High Court, Dublin, by order of 3 December 1987, hereby rules:

A permanent full-time post of lecturer in public vocational education institutions is a post of such a nature as to justify the requirement of linguistic knowledge, within the meaning of the last subparagraph of Article 3(1) of Regulation No 1612/68 of the Council, provided that the linguistic requirement in question is imposed as part of a policy for the promotion of the national language which is, at the same time, the first official language and provided that that requirement is applied in a proportionate and non-discriminatory manner.

Due Slynn Kakouris Schockweiler Zuleeg

Koopmans Mancini Joliet O'Higgins Moitinho de Almeida Grévisse

Delivered in open court in Luxembourg on 28 November 1989.

J.-G. Giraud
Registrar

O. Due
President