JUDGMENT OF THE COURT (Third Chamber)
5 June 1997 *

In Joined Cases C-64/96 and C-65/96,

REFERENCES to the Court under Article 177 of the EC Treaty by the Landesarbeitsgericht Hamm, Germany, for a preliminary ruling in the proceedings pending before that c ourt between

Land Nordrhein-Westfalen

and

Kari Uecker

and between

Vera Jacquet

and

Land Nordrhein-Westfalen

on the interpretation of Article 48(2) of the EC Treaty and Articles 7(1) and 11 of 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),

* Language of the case: German.

THE COURT (Third Chamber),

composed of: J. C. Moitinho de Almeida (Rapporteur), President of the Chamber, C. Gulmann and J.-P. Puissochet, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Land Nordrhein-Westfalen, plaintiff in the main proceedings in Case C-64/96, by Freiherr von Boeselager, Rechtsanwalt, Hamm,

— Ms Jacquet, plaintiff in the main proceedings in Case C-65/96, by Manfred Nagel II, Rechtsanwalt, Bochum,

— Ms Uecker, defendant in the main proceedings in Case C-64/96, by Erhard Hesselink and Reinhold Brandt, Rechtsanwälte, Münster,

— Land Nordrhein-Westfalen, defendant in the main proceedings in Case C-65/96, by Jörg Wünnenberg, Rechtsanwalt, Bochum,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of the Economy, and Sabine Maaß, Regierungsrätin zur Anstellung in the same ministry, acting as Agents,

— the French Government, by Catherine de Salins, Head of Subdirectorate in the Legal Directorate of the Ministry of Foreign Affairs, and Claude Chavance, Foreign Affairs Secretary in the same directorate, acting as Agents, and

— the Commission of the European Communities, by Peter Hillenkamp, Legal Adviser, and Pieter van Nuffel, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 6 February 1997,

gives the following

Judgment

1 By orders of 26 January 1996 (Case C-64/96) and 1 March 1996 (Case C-65/96), received at the Court on 8 March 1996, the Landesarbeitsgericht (Higher Labour Court) Hamm referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions, identical in the two cases, on the interpretation of Article 48(2) of the EC Treaty and Articles 7(1) and 11 of 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).

2 Those questions were raised in two sets of proceedings in which Ms Uecker and Ms Jacquet are in dispute with the Land Nordrhein-Westfalen.

3 Ms Uecker, a Norwegian national, and Ms Jacquet, a Russian national, teach Norwegian and Russian respectively in German universities, are married to German nationals and live in Germany. It appears from the files in the main proceedings that their husbands exercise a professional or trade activity in Germany.

4 Ms Uecker and Ms Jacquet entered into contracts of employment with the Land Nordrhein-Westfalen on 24 September 1990 and on 14 March 1994 respectively to work as foreign-language assistants, in Ms Uecker's case at the University of Münster and in Ms Jacquet's case at the University of Bochum. For various reasons, and in particular in pursuance of Paragraph 57b(3) of the Hochschulrahmengesetz (Framework Law on Higher Education, hereinafter 'the HRG'), those contracts were for a limited period, expiring on 30 September 1994 in Ms Uecker's case and on 30 September 1996 in Ms Jacquet's.

5 Paragraph 57b(3) of the HRG provides:

'An objective ground also exists for the engagement on a fixed-term contract of an instructor performing special duties who is a speaker of a foreign language where the instructor is mainly engaged to teach foreign languages (as a "foreign language assistant").'

6 Ms Uecker and Ms Jacquet brought proceedings before the Arbeitsgericht (Labour Court) Münster and the Arbeitsgericht Bochum respectively. Ms Uecker sought a declaration that the clause limiting the duration of the contract was invalid and Ms Jacquet sought a finding that there was an employment relationship not limited in duration between the parties.

7 Referring to Case C-272/92 *Spotti* v *Freistaat Bayern* [1993] ECR I-5185, Ms Uecker submitted in support of her action that Paragraph 57b(3) of the HRG was incompatible with Article 28 of the Agreement on the European Economic Area of 2 May 1992, which entered into force on 1 January 1994 ('the EEA Agreement'), and Article 48(2) of the Treaty. The fact that her contract of employment was concluded before the EEA Agreement entered into force was, she argued, irrelevant since it had to be interpreted in accordance with the case-law of the Court of Justice.

8 Ms Jacquet also put forward the argument that, according to the case-law of the Court of Justice, Paragraph 57b(3) of the HRG is no longer applicable and further based her case on the right to equal treatment provided for in Article 11 of Regulation No 1612/68 and Article 7 of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402).

9 Ms Uecker's application was allowed by judgment of the Arbeitsgericht Münster of 23 September 1994, which also relied on Article 11 of Regulation No 1612/68. The Land Nordrhein-Westfalen appealed against that decision to the Landesarbeitsgericht Hamm.

10 Ms Jacquet's action, however, was dismissed by judgment of the Arbeitsgericht Bochum of 28 April 1995, on the basis of Paragraph 57b(3) of the HRG. Ms Jacquet appealed against that decision to the Landesarbeitsgericht Hamm.

11 The Landesarbeitsgericht Hamm states in its orders for reference that it does not share the view taken by the Oberverwaltungsgericht (Higher Administrative Court) Münster on 12 February 1990 (12 A 2363/87 NVwZ 1990, p. 889), that Article 11 of Regulation No 1612/68 does not apply where a foreign national not having the nationality of a Member State resides in a Member State with his or her spouse who is a national of that State and who exercises a professional or trade activity there, since it presupposes that the national of a Member State exercises a professional or trade activity and lives with his or her spouse in a Member State other than his or her State of origin. The Landesarbeitsgericht Hamm does not accept the assumption, underlying that view, that a national of a Member State cannot rely on the provisions of Community law on freedom of movement against his or her own State because the legal relations between a Member State and its nationals are irrelevant to Community law.

12 It observes, moreover, that it is doubtful whether the fundamental principles of a Community moving towards European Union continue to permit a rule of national law incompatible with Article 48(2) of the EC Treaty still to be applied by a Member State against its own nationals.

13 Taking the view that its decision would be dependent on the interpretation of provisions of Community law, the Landesarbeitsgericht Hamm stayed proceedings and referred the following questions to the Court for a preliminary ruling:

'1) May the spouse — not being a national of a Member State — of a national of that Member State in which the spouses live and in which the spouse who is a national is employed also rely on the right under Article 11 of Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community?

2) If Question 1 is answered in the affirmative:

Does that right of the spouse who is not a national of a Member State to "take up any activity as an employed person" throughout the territory of the Member State concerned include the right, with respect to the conditions of employment and work, in particular with respect to the conditions for an effective temporal limitation of an employment relationship, to be treated by an employer in the Member State concerned in the same way as that employer would have to treat the spouse who is a national of the Member State?

3) If Question 2 is also answered in the affirmative:

Does Article 7(1) of the said Regulation (EEC) No 1612/68 in conjunction with Article 48(2) of the EEC Treaty confer on a worker in a Member State of which he is a national the right to the same treatment as is due to workers who are nationals of another Member State, and is a national provision which has

been held by the Court of Justice to be inapplicable against the latter persons therefore also inapplicable against the relevant Member State's own nationals and their spouses who are not nationals of a Member State?'

14 By order of the President of the Court of 21 March 1996, these two cases were joined for the purposes of the written and oral procedure and of the judgment.

The first question

15 The national court's first question is, in substance, whether a national of a non-member country married to a worker having the nationality of a Member State can rely on the right conferred by Article 11 of Regulation No 1612/68 within that same Member State when the worker exercises a professional or trade activity there.

16 It has consistently been held that the Treaty rules governing freedom of movement and regulations adopted to implement them cannot be applied to cases which have no factor linking them with any of the situations governed by Community law and all elements of which are purely internal to a single Member State (Joined Cases 35/82 and 36/82 *Morson and Jhanjan* v *State of the Netherlands* [1982] ECR 3723, paragraph 16; Case 147/87 *Zaoui* v *Cramif* [1987] ECR 5511, paragraph 15; Case C-332/90 *Steen* v *Deutsche Bundespost* [1992] ECR I-341, paragraph 9; Case C-153/91 *Petit* v *Office National des Pensions* [1992] ECR I-4973, paragraph 8; and Case C-206/91 *Koua Poirrez* v *Caisse d'Allocations Familiales* [1992] ECR I-6685, paragraph 11).

17 Consequently, Community legislation regarding freedom of movement for workers cannot be applied to the situation of workers who have never exercised the right to freedom of movement within the Community.

18 According to the orders for reference, however, the husbands of Ms Uecker and Ms Jacquet are German nationals who reside and work in Germany and have never exercised the right to freedom of movement within the Community.

19 In those circumstances, a member of the family of a worker who is a national of a Member State cannot rely on Community law to challenge the validity of a limitation on the duration of his or her contract of employment within that same State when the worker in question has never exercised the right to freedom of movement within the Community.

20 The fact that the German version of Article 11 of Regulation No 1612/68, unlike other language versions (English, Danish, Spanish, Swedish and Finnish), does not mention that it concerns the spouse and dependent children of a national of a Member State pursuing an activity as an employed or self-employed person 'in the territory of another Member State' but merely refers to 'the territory of a Member State' cannot affect that conclusion.

21 To grant the spouse of a worker who is a national of a Member State the right to be employed in that State, in which the worker exercises a professional or trade activity, would not correspond to the objective of Article 48 of the Treaty which Regulation No 1612/68 seeks to implement, namely in particular that of enabling a worker to move freely within the territory of the other Member States and to stay there for the purpose of employment.

22 Finally, the national court asks whether the fundamental principles of a Community moving towards European Union still permit a rule of national law which is incompatible with Community law because it is in breach of Article 48(2) of the Treaty to continue to be applied by a Member State against its own nationals and their spouses from non-member countries.

23 In that regard, it must be noted that citizenship of the Union, established by Article 8 of the EC Treaty, is not intended to extend the scope *ratione materiae* of the Treaty also to internal situations which have no link with Community law. Furthermore, Article M of the Treaty on European Union provides that nothing in that Treaty is to affect the Treaties establishing the European Communities, subject to the provisions expressly amending those treaties. Any discrimination which nationals of a Member State may suffer under the law of that State fall within the scope of that law and must therefore be dealt with within the framework of the internal legal system of that State.

24 The answer to be given must therefore be that a national of a non-member country married to a worker having the nationality of a Member State cannot rely on the right conferred by Article 11 of Regulation No 1612/68 when that worker has never exercised the right to freedom of movement within the Community.

25 In view of the answer given to the first question, there is no need to answer the second and third questions, which were submitted only in the event of the first question being answered in the affirmative.

Costs

26 The costs incurred by the German 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, for the parties to the main proceedings, a step in the actions pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Landesarbeitsgericht Hamm by orders of 26 January and 1 March 1996, hereby rules:

A national of a non-member country married to a worker having the nationality of a Member State cannot rely on the right conferred by Article 11 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community when that worker has never exercised the right to freedom of movement within the Community.

Moitinho de Almeida Gulmann Puissochet

Delivered in open court in Luxembourg on 5 June 1997.

R. Grass

Registrar

J. C. Moitinho de Almeida

President of the Third Chamber