

## Case C-456/02

**Michel Trojani**

v

**Centre public d'aide sociale de Bruxelles (CPAS)**

(Reference for a preliminary ruling from  
the Tribunal du travail de Bruxelles)

(Freedom of movement for persons — Citizenship of the European Union — Right of residence — Directive 90/364/EEC — Limitations and conditions — Person working in a hostel in return for benefits in kind — Entitlement to social assistance benefits)

Opinion of Advocate General Geelhoed delivered on 19 February 2004 . . . . 1 - 7576  
Judgment of the Court (Grand Chamber), 7 September 2004 . . . . . 1 - 7595

### Summary of the Judgment

1. *Freedom of movement for persons — Freedom of establishment — Freedom to provide services — Provisions of the Treaty — Scope — National of a Member State performing services for a hostel for about 30 hours a week in return for benefits in kind and in cash — Excluded*  
(Arts 43 EC and 49 EC)

2. *Freedom of movement for persons — Workers — Definition — Existence of a work relationship — Carrying out of real and genuine activity — National of a Member State performing services for a hostel for about 30 hours a week in return for benefits in kind and in cash — Assessment by the national court*  
(Art. 39 EC)
3. *Citizenship of the European Union — Right to move and reside freely within the territory of the Member States — Right of residence — Direct application of Article 18(1) EC — Limitations and conditions — Application in compliance with the general principles of Community law, in particular the principle of proportionality — Citizen of the Union not economically active and holding a residence permit issued by the host Member State — Entitlement to equal treatment concerning a social assistance benefit providing a minimum subsistence allowance*  
(Arts 12 EC and 18(1) EC)

1. A national of a Member State who, in another Member State, performs for a hostel and under its direction various jobs for approximately 30 hours a week, as part of a personal reintegration programme, in return for which he receives benefits in kind and in cash, is not covered by Articles 43 EC and 49 EC.

Second, an activity carried out on a permanent basis, or at least without a foreseeable limit to its duration, does not fall within the Community provisions concerning the provision of services.

(see paras 20, 22, 27-29, operative part 1)

First, the freedom of establishment provided for in Articles 43 EC to 48 EC includes only the right to take up and pursue all types of self-employed activity, to set up and manage undertakings, and to set up agencies, branches or subsidiaries. Paid activities are therefore excluded.

2. A national of a Member State who, in another Member State, performs for a hostel and under its direction various jobs for approximately 30 hours a week, as part of a personal reintegration programme, in return for which he receives benefits in kind and in cash, can claim, can claim a right of residence as a worker within the meaning of Article 39 EC only if the paid activity he carries out is real and genuine. It is

for the national court to carry out the examinations of fact necessary to determine whether that is so in the case pending before it. To do so it must use objective criteria and make an overall assessment of all the circumstances of the case relating to the nature both of the activities concerned and of the work relationship at issue. It must ascertain in particular whether the services actually performed by the person concerned are capable of being regarded as forming part of the normal labour market. For that purpose, account may be taken of the status and practices of the hostel, the content of the social reintegration programme, and the nature and details of performance of the services.

(see paras 17, 20, 22, 24, 29,  
operative part 1)

3. A citizen of the European Union who does not enjoy a right of residence in the host Member State under Article 39 EC, 43 EC or 49 EC may, simply as a citizen of the Union, enjoy a right of residence there by direct application of Article 18 (1) EC. The exercise of that right is subject to the limitations and conditions referred to in that provision, including the requirement of having sufficient resources, but the competent authorities must ensure that those limitations and conditions are applied in compliance with the general principles of Community law, in particular the principle of proportionality. However, once it is ascertained that a citizen of the Union who is not economically active is in possession of a residence permit, he may rely on Article 12 EC in order to be granted a social assistance benefit such as the minimum subsistence allowance.

(see paras 33, 43, 46,  
operative part 2)