Case C-466/00

Arben Kaba

v

Secretary of State for the Home Department

(Reference for a preliminary ruling
from the Immigration Adjudicator)

(Free movement of workers — Regulation (EEC) No 1612/68 — Social advantage — Right of the spouse of a migrant worker to obtain leave to remain indefinitely in the territory of a Member State)

Summary of the Judgment

1. *Preliminary rulings — Judgment of the Court — Authority of a ruling — Option for the national court to make a further reference to the Court — Scope (Art. 234 EC)*

2. *Preliminary rulings — Reference to the Court — Determination of the questions to be referred — Exclusive competence of the national court — Possibility for the parties to alter the wording of the questions — None — Suppositions raised by the parties and reproduced in the decision making the reference — Not to be taken into consideration*
(Art. 234 EC)

3. *Freedom of movement for persons — Workers — Right of residence of family members — Indefinite leave to remain for a worker's spouse — National rules requiring a shorter period of residence for the spouses of persons present and settled in the national territory than for nationals of another Member State and members of their families not fulfilling that condition — No comparability of the respective situations of those two categories of persons under Community law — Discrimination contrary to Article 7(2) of Regulation No 1612/68 — None*
(Council Regulation No 1612/68, Art. 7(2))

1. The authority of a preliminary ruling does not preclude the national court or tribunal to which it is addressed from taking the view that it is necessary to make a further reference to the Court before giving judgment in the main proceedings. Such a course may be justified when the national court or tribunal encounters difficulties in understanding or applying the judgment, when it refers a fresh question of law to the Court, or again when it submits new considerations which might lead the Court to give a different answer to a question submitted earlier.

(see para. 39)

2. As the power to formulate the questions to be referred in the proceedings provided for under Article 234 EC is vested in the national court or tribunal alone, the parties cannot alter the wording of those questions. It follows that the Court must in principle confine its examination to the matters which the court or tribunal making the reference has decided to submit to it for consideration. The Court must therefore, as regards application of the relevant national rules, proceed on the basis of the situation which that court or tribunal considers to be established; it cannot be bound by suppositions raised by one of the parties to the main proceedings which the national court or tribunal has merely reproduced but on which it has not expressed an opinion.

(see paras 40-41)

3. Legislation of a Member State which requires spouses of migrant workers

who are nationals of other Member States to have resided in the territory of that Member State for four years before they become entitled to apply for indefinite leave to remain and to have their applications considered, but which requires residence of only 12 months for the spouses of persons who are present and settled in that territory and are not subject to any restriction on the period for which they may remain there, does not constitute discrimination contrary to Article 7(2) of Regulation No 1612/68.

is not comparable to that of a person who is, under the national legislation of a Member State, not subject to any restriction regarding the period for which he or she may reside within the territory of that Member State and need not, during his or her stay, satisfy any condition comparable to those laid down by the provisions of Community law which confer on nationals of a Member State a right to reside in another Member State.

The answer would not be different if account were to be taken of the fact that the respective situations of those two categories of persons under national law are, according to the referring tribunal, comparable in all respects except with regard to the period of prior residence which is required for the purpose of being granted indefinite leave to remain in the Member State in question.

As the rights of residence of those two categories of persons are not in all respects comparable, the same holds true with regard to the situation of their spouses, particularly so far as concerns the question of the duration of the residence period on completion of which they may be given indefinite leave to remain in the Member State in question.

In so far as the right of residence of a migrant worker who is a national of another Member State is subject to the condition that the person remains a worker or, where relevant, a person seeking employment, unless he or she derives that right from other provisions of Community law, his or her situation

In view of the fact that the situations are not comparable under Community law, the question whether a difference in treatment in regard to the duration of that period may be justified has no relevance in this regard.

(see paras 27, 46-50, 56, operative part)