minimum or is satisfied with means of support lower than the said minimum, provided that he pursues an activity as an employed person which is effective and genuine.

3. The motives which may have prompted a worker of a Member State to seek employment in another Member State are of no account as regards his right to enter and reside in the territory of the latter State provided that he there pursues or wishes to pursue an effective and genuine activity.

In Case 53/81

REFERENCE to the Court under Article 177 of the EEC Treaty by the Judicial Division of the Netherlands Raad van State [State Council] for a preliminary ruling in the case pending before that court between

D. M. LEVIN, Amsterdam,

and

STAATSSECRETARIS VAN JUSTITIE [Secretary of State for Justice]

on the interpretation of Article 48 of the EEC Treaty and of certain provisions of Community directives and regulations on the free movement of persons within the Community,

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: Sir Gordon Slynn
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

1. Mrs D. M. Levin, a British subject and the wife of a national of a non-member country, applied for a residence permit in the Netherlands on 13 January 1978. Her application was rejected on 20 March 1979 by decision of the head of the local Amsterdam police on the basis of the Netherlands law, in this case the [Netherlands] Aliens Order [Vreemdelingenbesluit], on the ground *inter alia* that the grant of a residence permit was not in the public interest because the appellant had not been in work since the beginning of 1978 and therefore could not be regarded as a "favoured EEC citizen" within the meaning of the above-mentioned order.

By letter of 9 April 1979 the appellant applied to the Staatssecretaris van Justitie for the decision to be reconsidered claiming *inter alia* that the fact that she had not pursued an occupation in the Netherlands for a certain period did not of itself constitute a relevant argument for refusing her a residence permit since she and her husband had sufficient property and income for their maintenance and, what was more, she had in the meantime taken up employment.

No decision was taken by the Staatssecretaris van Justitie on that application within the period prescribed by Netherlands law and so Mrs Levin appealed against the notional decision rejecting her application by a letter of 20 July 1979 to the Judicial Division of the Raad van State.

She claimed that she must be regarded as a "favoured EEC citizen" within the meaning of the Netherlands Aliens Order because she was the national of another Member State and was employed in the Netherlands. In any case, she and her husband had property and income arising therefrom with which she was able to support herself.

The Staatssecretaris van Justitie, on the other hand, submitted in this case that the appellant could not be regarded as a "favoured EEC citizen" since her employment did not provide sufficient means for her support, equal at least to the minimum legal wage prevailing in the Netherlands. Nor was the condition met, which was to be inferred from Netherlands law, that the EEC citizen must have the *subjective* will to pursue an occupation since the appellant took up employment in the Netherlands in order to enable her husband, who is not a

national of a Member State, to be deemed a "favoured EEC citizen".

Taking the view that the case raised questions of Community law, the Judicial Division of the Raad van State stayed the proceedings and referred the following questions to the Court of Justice pursuant to Article 177 of the EEC Treaty:

"1. Should the concept of "favoured EEC citizen", which in the Netherlands legislation is taken to mean a national of a Member State as described in Article 1 of Directive 64/221/EEC of the Council of the European Communities of 25 February 1964 and is used in that legislation to determine the category of persons to whom Article 48 of the Treaty establishing the European Economic Community, Regulation (EEC) No 1612/68 of 15 October 1968 and Directives 64/221/EEC of 25 February 1964 and 68/360/EEC of 15 October 1968 adopted by the Council of the European Communities in application of Article 48 apply, also be taken to mean a national of a Member State who in the territory of another Member State pursues an activity, whether paid or not, as an employed person or provides services to such a limited extent that in so doing he earns income which is less than that which in the last-mentioned Member State is considered as the minimum necessary to enable him to support himself?

2. In the answer to Question 1, should a distinction be drawn between, on the one hand, persons who apart from or in addition to their income derived from limited employment have other income (for example from property or from the employment of their spouses living with them who are not nationals of a Member State) as a result of which they have sufficient means of support as referred to in Question 1 and, on the other hand, persons who do not have such additional income at their disposal and yet for reasons of their own wish to make do with an income less than what is generally considered to be the minimum required?

3. Assuming that Question 1 is answered in the affirmative, can the right of such a worker to free admission into and establishment in the Member State in which he pursues or wishes to pursue an activity or provides or wishes to provide services to a limited extent still be relied upon if it is demonstrated or seems likely that his chief motive for residing in that Member State is for a purpose other than the pursuit of an activity or provision of services to a limited extent?"

2. The judgment making the reference was lodged at the Court Registry on 11 March 1981.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by D. M. Levin, represented by W. J. van Bennekom of the Amsterdam Bar, by the Netherlands Government, represented by F. Italianer, acting for the Ministry of Foreign Affairs, by the Danish Government, represented by Laurids Mikaelsen, its Legal Adviser, by the French Government, represented by Thierry Le Roy, acting for the Secretary General of the Inter-Departmental Committee for Questions of European Economic

Cooperation, and by the Commission of the European Communities, represented by John Forman and Pieter-Jan Kuyper, members of its Legal Department, acting as Agents.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations

1 (a) Mrs *Levin* submits with regard to the *first and second questions* that Article 48 of the EEC Treaty covers not only employed persons but also self-employed persons and employers. That is clear from Article 1 of Council Directive 64/221 of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (Official Journal, English Special Edition 1963-1964, p. 117). That article defines the persons to whom Article 48 of the Treaty applies.

Community law does not exclude from the scope of Article 48 of the Treaty persons whose work does not provide them with income which is at least equal to the minimum income in the host country.

Such a restriction would be incompatible with the aim of the free movement of workers since it would place the persons concerned in a position which would be less favourable than that of the nationals of the host country who have the option of working part-time for an income below the subsistence level. Moreover, it cannot be justified by the concern to prevent the depletion of the host country's national resources because that objective is already sufficiently guaranteed by legislative provisions authorizing the withdrawal of or refusal to extend the residence permit of those persons who do not have or no longer have adequate means of support.

That thesis is also confirmed by a proposal for a Council directive on a right of residence for nationals of Member States in the territory of another Member State, under the terms of which nationals of Member States are to enjoy permanent right of residence in other Member States provided that they can provide proof of adequate means of support.

The right of residence must therefore be granted both to persons who derive from their work at least part of the minimum income but also have sufficient independent means and to persons who do not have sufficient additional income but are content with an income which is lower than the official minimum wage, provided that no call is made on public funds.

(b) The appellant's reply to the *third question* is that the subjective will to pursue an occupation cannot be decisive since full recognition is shortly to be given to any form of residence. Moreover, in general, working is not an aim in itself but serves other aims which cannot be the subject of appraisal by the authorities.

2. (a) The *Netherlands Government* points out that the *first question* asks whether Article 48 provides freedom of movement for persons in general or merely for workers who by performing work in the fullest sense of the word contribute to the economic development of the Community and seek to improve their own standard of living.

The view must be taken by virtue of Article 48 (3) (c) of the Treaty that freedom of movement for workers entails the right "to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action". Those provisions also take account of the Netherlands legislation which guarantees a minimum wage to a worker in full-time employment.

Consequently, freedom of movement for workers entails the right of a worker to move within the Community in order to pursue in one of the Member States an activity which is full and complete in both the social and economic spheres and which enables the worker at least to provide himself with means of support.

(b) The distinction contained in the *second question* is not relevant.

(c) As far as the *third question* is concerned, the Netherlands Government maintains that the Community legislature had in mind primarily a migrant worker intending to settle in another Member State in response to an actual offer of employment.

Support for that argument is to be found in the following provisions of Community law: subparagraphs (a) and (b) of Article 48 (3) of the Treaty provide for the right of workers to accept offers of employment actually made and to move freely within the territory of Member States "for this purpose"; the first recital in the preamble to Regulation No 1612/68 acknowledges the right of workers to move freely within the Community "in order to pursue activities as employed persons"; finally, Directive 64/221 applies under the terms of Article 1 to any national of a Member State who resides in or travels to another Member State 'in order to pursue an activity as an employed or self-employed person'. The words 'in order to' appearing in those provisions place emphasis on the intention of the national concerned.

However, in order to determine the extent to which account must be taken of the intention of the person concerned, it is important to establish whether that person is pursuing or will pursue an occupation. Where a worker pursues an occupation enabling him to support himself, there is no point in attaching any significance to the question whether his main purpose in settling in a Member State was to pursue employment or whether he really had other intentions. The situation is different where, as in this case, a national of a Member State moves to another Member State in order to pursue an activity devoid of economic interest with the sole aim of thus being able to enjoy the advantages conferred upon persons to whom the provisions on freedom of movement for workers apply.

3. (a) The *Danish Government* points out with regard to the *first and second questions* that the EEC Treaty is

concerned solely with regulating economic activity in the Member States, as is clear from Article 2 of the Treaty. That fundamental limitation on the power of the Community was confirmed by the Court in its judgment of 14 July 1976 in Case 13/76 *Donà* [1976] ECR 1333, in which it held that "the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty".

Consequently, the right to freedom of movement is conferred only on those persons who play a rôle in the economic life of the Member States, whereas persons who do not or have not pursued an occupation have under the Community rules applicable at present no right of residence in another Member State, even if they are able to provide for their personal needs in another way.

That distinction, moreover, is at the root of the proposal for a Council directive on a right of residence for nationals of Member States in the territory of another Member State, which correctly assumes that the existing legal measures do not guarantee the free movement of persons not pursuing an occupation.

A citizen of the Community is therefore entitled to travel and stay three months in another State of the Community with a view to finding work there but has no right to receive the residence permit valid for five years referred to in Article 6 of Council Directive No 68/360 of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (Official Journal, English Special Edition 1968 (II), p. 485), if he pursues an occupation only for a relatively limited period.

The term migrant worker covers persons who acquire the means to provide for their own needs and those of their family, whether they have employment which is not merely sporadic or pursue some other activity. The term also implies that the persons concerned work a normal number of hours, which in Denmark is a minimum of 30 hours per week.

The Danish Government therefore proposes that the first two questions be answered as follows:

"Any national of a Member State pursuing an activity of an economic nature as an employed or self-employed person falls within the scope of the provisions of the Treaty, and in particular the rules on freedom of movement. So long as the Council has not laid down any specific criteria enabling the respective categories of employed or self-employed persons entitled to obtain a residence permit valid for five years to be defined, the Member States may themselves lay down certain minimum rules concerning the period of work and income relating to the pursuit of an occupation which a foreign national must satisfy in order to be granted a residence permit. Such minimum rules must not have the effect of excluding foreign employed and self-employed persons who for the sector in question work a normal number of hours or attain the normal level of income. On the other hand, a State may refrain from taking into account any other sources of income which the person concerned may have and his personal needs in terms of living expenses."

(b) The third question has no purpose in view of the negative reply to be given to the first question.

Nevertheless, the Danish Government observes in the alternative that a Community citizen staying in another Member State under a general residence authorization, for example for the purpose of study, does not have the right to obtain the residence permit valid for five years merely because he has obtained part-time work. However, he is entitled to a residence permit if he obtains full-time employment even if he continues to attend an educational course during his spare time. Consequently, if the objective occupational conditions are fulfilled, his claim to the grant of a residence permit cannot be called in question because of the possible subjective intent of his conduct.

4. (a) The *French Government* takes the view that the *first question* should be answered in the affirmative because it is not permissible for a Member State in which a national of another Member State works or comes to work either as an employed person or otherwise to impose upon him, by requiring an income from such work which is at least equal to the minimum wage, a set of rules or an administrative practice which is more restrictive than those which apply to nationals of that State. That is clear in particular from Article 3 (1) of Regulation No 1612/68 which makes no reference to any notion of income or minimum wage as a condition of entry into and residence in the Member States for Community citizens.

(b) Consequently, the *second question* does not require any special observations.

(c) The *third question* seeks to determine whether the right of a worker who is a national of a Member State to free admission and establishment in another Member State in which he pursues or wishes to pursue an occupation may equally well be relied upon if it is shown or seems likely that his chief motive for settling in that Member State is for a purpose other than the pursuit of an occupation.

The reply which must be given is that by virtue of Article 48 (3) of the EEC Treaty and Directive 64/221 adopted in application thereof each Member State retains the right to restrict the free admission and establishment of nationals of Member States "on grounds of public policy, public security and public health".

However, the mere fact that a Community citizen does not fulfil certain conditions concerning his means or does not show that he is pursuing or intends to pursue an occupation in a Member State cannot entitle that State to rely to his disadvantage on those provisions

5. (a) The *Commission* commences with a review of the provisions of Community law on the right of residence. It points out that under Article 3 (1) of Directive 68/360 the Member States are to allow nationals of other Member States "to

enter their territory simply on production of a valid identity card or passport".

Article 4 (2) of the directive provides that as proof of the right of residence the "Residence Permit for a National of a Member State of the EEC" is to be issued which, under Article 6 (1) of the directive is to be valid throughout the territory of the Member State which issued it and is to be valid for at least five years.

A temporary residence permit is to be issued to a worker who is employed for a period exceeding three months but not exceeding a year in the host State (Article 6 (3) of the directive).

The Member States adopted an interpretative declaration at the meeting of the Council at which Regulation No 1612/68 and Directive 68/360 were adopted. Under the terms of that declaration,

"the persons referred to by Article 1 (of Directive 68/360), that is to say nationals of a Member State who move to another Member State in order to find employment, have a minimum period of three months in which to do so; if at the end of that period they have not found employment, their stay in the territory of that other State may be terminated. However, if during that period the above-mentioned persons become dependent on public support (social assistance) in that other State they may be requested to leave its territory".

Pursuant to the interpretation contained in that declaration by the Member States a worker has a "free period" of three months during which he is allowed lo seek employment, make contact with employers and conclude a contract of employment. If his attempts are unsuccessful or if during the period the worker becomes dependent on public assistance he may according to that interpretation be requested to leave the territory of the host Member State. On the other hand, if he is successful in his attempts, Articles 4 et seq. of Directive 68/360 apply in the normal way.

(b) The *first question* asks in substance whether a national of a Member State, who in the territory of another Member State undertakes work or provides services to such a limited extent that in so doing he earns an income which is less than that which in the last-mentioned Member State is regarded as the minimum necessary to enable him to support himself, may avail himself of the right of workers to freedom of movement and, more particularly, of the right of residence referred to in Article 4 of Directive 68/360. Although the question raised concerns not only employed persons but also persons providing services and self-employed persons, the Commission's reply is confined to the right of workers to freedom of movement since this case concerns an employed person.

In the Commission's opinion the reply should be in the affirmative. That is clear from Article 48 (3) (c) of the Treaty and from Articles 1 (1) and 7 (1) of Regulation No 1612/68, by virtue of which an EEC worker may not be treated differently from national workers as far as the pursuance of "employment" or an "activity as an employed person" or

"any conditions of employment or work" are concerned.

That conclusion holds true both where the employer does not comply with the legislative provisions on the minimum wage and where the failure to attain the minimum wage level is attributable to the fact that the working hours are less than those of normal employment in the sector in question. In the former case, the Member State should encourage the worker to enforce his right under civil law against the employer. In the latter case, an EEC citizen is just as free as Netherlands nationals to have recourse to part-time work as long as he is actually employed.

Moreover, that thesis is consistent with the Community nature of the concept of "worker" as recognized by the Court in its judgment of 19 March 1964 in Case 75/63 *Hoekstra (née Unger)* [1964] ECR 177 because it is inconceivable that each Member State should be able to modify the meaning of that concept and to eliminate at will the protection afforded by the Treaty to certain categories of person by laying down minimum incomes.

Finally, the acceptance in the territory of another Member State of part-time work providing an income which is lower than the minimum wage constitutes for many persons, particularly in a difficult economic situation, an improvement in their standard of living and social advancement, considering that they would be wholly unemployed in their countries of origin.

The Commission therefore suggests that the Court should reply as follows to the first question:

"A national of a Member State, who in the territory of another Member State undertakes employment to such a limited extent that in so doing he earns income which is less than that which in the last-mentioned Member State is regarded as the minimum necessary to enable him to support himself, may avail himself of the right of workers to freedom of movement provided for in Article 48 of the EEC Treaty and implemented by Regulation No 1612/68 and Directives 68/360 and 64/221. In particular, the right of residence referred to in Article 4 of Directive 68/360 may not be refused to such a national."

(c) The distinction contained in the *second question* is not relevant.

(d) As regards the *third question*, the Commission, whilst acknowledging that the intention of the worker, a national of another Member State, to seek and pursue an occupation in the host Member State does have a certain rôle to play in relation to freedom of movement, submits that that intention exists where an occupation is pursued even if the work is merely part-time and produces earnings which are less than the minimum wage. Under Article 4 (3) (b) of Directive 68/360, *prima facie* proof of that intention for the authorities of the host Member State is the confirmation of engagement from the employer.

It would be impermissible and inconsistent with the nature of the fundamental right which the free movement of workers entails to deprive of the benefits of free movement a worker who clearly demonstrates his intention to work by actually pursuing an occupation, on the ground that his

primary motives in so doing may be different. Moreover, the fact that a reduced amount of work is performed is not necessarily of itself an indication that there is no intention to pursue an occupation.

Consequently, the Commission suggests that the third question be answered as follows:

"Without prejudice to the provisions of Article 48 of the EEC Treaty and Directive 64/221 on public health, public policy and public security, the right of admission to and residence in the territory of a Member State which is directly derived from the right of workers to freedom of movement may be denied to a national of another Member State only if his conduct shows that he had no intention of pursuing an occupation."

III — Oral procedure

At the sitting on 25 November 1981, Mrs D. M. Levin, represented by W. J. van Bennekom of the Amsterdam Bar, the Netherlands Government, represented by Adriaan Bos and Mr Donner, acting as Agents, the Danish Government, represented by Laurids Mikaelsen, acting as Agent, the French Government, represented by A. Carnelutti, acting as Agent, the Italian Government, represented by A. Caramazza, acting as Agent, and the Commission of the European Communities, represented by John Forman and Pieter-Jan Kuyper, acting as Agents, presented oral argument and answered questions put to them by the Court.

The Advocate General delivered his opinion at the sitting on 20 January 1982.

Decision

1 By interlocutory judgment of 28 November 1980, received at the Court on 11 March 1981, the Raad van State [State Council] of the Netherlands referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions relating to the interpretation of Article 48 of the Treaty and of certain provisions of Community regulations and directives on the free movement of persons within the Community.

2 The appellant in the main proceedings, Mrs Levin, of British nationality and the wife of a national of a non-member country, applied for a permit to reside in the Netherlands. The permit was refused, on the basis of Netherlands legislation, on the ground, amongst others, that Mrs Levin was not engaged in a gainful occupation in the Netherlands and therefore could not be described as a "favoured EEC citizin" within the meaning of that legislation.

3 Mrs Levin applied to the Staatssecretaris van Justitie [Secretary of State for Justice] for the decision to be reconsidered. Her application was rejected and she appealed to the Raad van State claiming that in the meantime she had taken up an activity as an employed person in the Netherlands and that, in any event, she and her husband had property and income more than sufficient to support themselves, even without pursuing such an activity.

4 Since the Raad van State considered that the judgment to be given depended on the interpretation of Community law it referred the following three questions to the Court for a preliminary ruling:

"1. Should the concept of 'favoured EEC citizen', which in the Netherlands legislation is taken to mean a national of a Member State as described in Article 1 of Directive 64/221/EEC of the Council of the European Communities of 25 February 1964 and is used in that legislation to determine the category of persons to whom Article 48 of the Treaty establishing the European Economic Community, Regulation (EEC) No 1612/68 of 15 October 1968 and Directives 64/221/EEC of 25 February 1964 and 68/360/EEC of 15 October 1968 adopted by the Council of the European Communities in application of Article 48 apply, also be taken to mean a national of a Member State who in the territory of another Member State pursues an activity, whether paid or not as an employed person, or provides services to such a limited extent that in so doing he earns income which is less than that which in the last-mentioned Member State is considered as the minimum necessary to enable him to support himself?

2. In the answer to Question 1, should a distinction be drawn between, on the one hand, persons who apart from or in addition to their income derived from limited employment have other income (for example from property or from the employment of their spouses living with them who are not nationals of a Member State) as a result of which they have sufficient means of support as referred to in Question 1 and, on the other hand, persons who do not have such additional income at their disposal and yet for reasons of their own wish to make do with an income less than what is generally considered to be the minimum required?

3. Assuming that Question 1 is answered in the affirmative, can the right of such a worker to free admission into and establishment in the Member State in which he pursues or wishes to pursue an activity or provides or wishes to provide services to a limited extent still be relied upon if it is demonstrated or seems likely that his chief motive for residing in that Member State is for a purpose other than the pursuit of an activity or provision of services to a limited extent?"

5 Although these questions, as worded, are concerned not only with freedom of movement for workers but also with freedom of establishment and freedom to provide services, it is apparent from the particulars of the dispute in the main procceedings that the national court really has in mind only the issue of freedom of movement for workers. The answers to be given should therefore be confined to those aspects which have a bearing on that freedom.

First and second questions

6 In its first and second questions, which should be considered together, the national court is essentially asking whether the provisions of Community law relating to freedom of movement for workers also cover a national of a Member State whose activity as an employed person in the territory of another Member State provides him with an income less than the minimum required for subsistence within the meaning of the legislation of the second Member State. In particular the court asks whether those provisions cover such a person where he either supplements his income from his activity as an employed person with other income so as to arrive at that minimum or is content with means of support which fall below it.

7 Under Article 48 of the Treaty freedom of movement for workers is to be secured within the Community. That freedom is to entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and is to include the right, subject to limitations justified on grounds of public policy, public security or public health, to accept offers of employment actually made, to move freely within the territory of Member States for this purpose,

to stay in a Member State for the purpose of employment and to remain there after the termination of that employment.

8 That provision was implemented *inter alia* by 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) and Council Directive 68/360/EEC of the same date on the abolition of restrictions on movement and residence within the Community for workers of the Member States and their families (Official Journal, English Special Edition 1968 (II), p. 485). Under Article 1 of Regulation (EEC) No 1612/68 any national of a Member State is, irrespective of his place of residence, to have the right to take up activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State.

9 Although the rights deriving from the principle of freedom of movement for workers and more particularly the right to enter and stay in the territory of a Member State are thus linked to the status of a worker or of a person pursuing an activity as an employed person or desirous of so doing, the terms "worker" and "activity as an employed person" are not expressly defined in any of the provisions on the subject. It is appropriate, therefore, in order to determine their meaning, to have recourse to the generally recognized principles of interpretation, beginning with the ordinary meaning to be attributed to those terms in their context and in the light of the objectives of the Treaty.

10 The Netherlands and Danish Governments have maintained that the provisions of Article 48 may only be relied upon by persons who receive a wage at least commensurate with the means of subsistence considered as necessary by the legislation of the Member State in which they work, or who work at least for the number of hours considered as usual in respect of full-time employment in the sector in question. In the absence of any provisions to that effect in Community legislation, it is suggested that it is necessary to have recourse to national criteria for the purpose of defining both the minimum wage and the minimum number of hours.

11 That argument cannot, however, be accepted. As the Court has already stated in its judgment of 19 March 1964 in Case 75/63 *Hoekstra (née Unger)* [1964] ECR 1977 the terms "worker" and "activity as an employed person" may not be defined by reference to the national laws of the Member States but have a Community meaning. If that were not the case, the Community rules on freedom of movement for workers would be frustrated, as the meaning of those terms could be fixed and modified unilaterally, without any control by the Community institutions, by national laws which would thus be able to exclude at will certain categories of persons from the benefit of the Treaty.

12 Such would, in particular, be the case if the enjoyment of the rights conferred by the principle of freedom of movement for workers could be made subject to the criterion of what the legislation of the host State declares to be a minimum wage, so that the field of application *ratione personae* of the Community rules on this subject might vary from one Member State to another. The meaning and the scope of the terms "worker" and "activity as an employed person" should thus be clarified in the light of the principles of the legal order of the Community.

13 In this respect it must be stressed that these concepts define the field of application of one of the fundamental freedoms guaranteed by the Treaty and, as such, may not be interpreted restrictively.

14 In conformity with this view the recitals in the preamble to Regulation (EEC) No 1612/68 contain a general affirmation of the right of all workers in the Member States to pursue the activity of their choice within the Community, irrespective of whether they are permanent, seasonal or frontier workers or workers who pursue their activities for the purpose of providing services. Furthermore, although Article 4 of Directive 68/36/EEC grants the right of residence to workers upon the mere production of the document on the basis of which they entered the territory and of a confirmation of engagement from the employer or a certificate of employment, it does not subject this right to any condition relating to the kind of employment or to the amount of income derived from it.

15 An interpretation which reflects the full scope of these concepts is also in conformity with the objectives of the Treaty which include, according to Articles 2 and 3, the abolition, as between Member States, of obstacles to freedom of movement for persons, with the purpose *inter alia* of promoting throughout the Community a harmonious development of economic activities and a raising of the standard of living. Since part-time employment, although it may provide an income lower than what is considered to be the minimum required for subsistence, constitutes for a large number of persons an effective means of improving their living conditions, the effectiveness of Community law would be impaired and the achievement of the objectives of the Treaty would be jeopardized if the enjoyment of rights conferred by the principle of freedom of movement for workers were reserved solely to persons engaged in full-time employment and earning, as a result, a wage at least equivalent to the guaranteed minimum wage in the sector under consideration.

16 It follows that the concepts of "worker" and "activity as an employed person" must be interpreted as meaning that the rules relating to freedom of movement for workers also concern persons who pursue or wish to pursue an activity as an employed person on a part-time basis only and who, by virtue of that fact obtain or would obtain only remuneration lower than the minimum guaranteed remuneration in the sector under consideration. In this regard no distinction may be made between those who wish to make do with their income from such an activity and those who supplement that income with other income, whether the latter is derived from property or from the employment of a member of their family who accompanies them.

17 It should however be stated that whilst part-time employment is not excluded from the field of application of the rules on freedom of movement for workers, those rules cover only the pursuit of effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary. It follows both from the statement of the principle of freedom of movement for workers and from the place occupied by the rules relating to that principle in the system of the Treaty as a whole that those rules guarantee only the free movement of persons who pursue or are desirous of pursuing an economic activity.

18 The answer to be given to the first and second questions must therefore be that the provisions of Community law relating to freedom of movement for workers also cover a national of a Member State who pursues, within the territory of another Member State, an activity as an employed person which yields an income lower than that which, in the latter State, is considered as the minimum required for subsistence, whether that person supplements the income from his activity as an employed person with other income so as to arrive at that minimum or is satisfied with means of support lower than the said minimum, provided that he pursues an activity as an employed person which is effective and genuine.

Third question

19 The third question essentially seeks to ascertain whether the right to enter and reside in the territory of a Member State may be denied to a worker whose main objectives, pursued by means of his entry and residence, are different from that of the pursuit of an activity as an employed person as defined in the answer to the first and second questions.

20 Under Article 48 (3) of the Treaty the right to move freely within the territory of the Member States is conferred upon workers for the "purpose" of accepting offers of employment actually made. By virtue of the same provision workers enjoy the right to stay in one of the Member States "for the purpose" of employment there. Moreover, it is stated in the preamble to Regulation (EEC) No 1612/68 that freedom of movement for workers entails the right of workers to move freely within the Community "in order to" pursue activities as employed persons, whilst Article 2 of Directive 68/360/EEC requires the Member States to grant workers the right to leave their territory "in order to" take up activities as employed persons or to pursue them in the territory of another Member State.

21 However, these formulations merely give expression to the requirement, which is inherent in the very principle of freedom of movement for workers,

that the advantages which Community law confers in the name of that freedom may be relied upon only by persons who actually pursue or seriously wish to pursue activities as employed persons. They do not, however, mean that the enjoyment of this freedom may be made to depend upon the aims pursued by a national of a Member State in applying for entry upon and residence in the territory of another Member State, provided that he there pursues or wishes to pursue an activity which meets the criteria specified above, that is to say, an effective and genuine activity as an employed person.

22 Once this condition is satisfied, the motives which may have prompted the worker to seek employment in the Member State concerned are of no account and must not be taken into consideration.

23 The answer to be given to the third question put to the Court by the Raad van State must therefore be that the motives which may have prompted a worker of a Member State to seek employment in another Member State are of no account as regards his right to enter and reside in the territory of the latter State provided that he there pursues or wishes to pursue an effective and genuine activity.

Costs

The costs incurred by the Danish, French, Italian and Netherlands Governments and by the Commission, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Judicial Division of the Raad van State of the Netherlands by interlocutory judgment of 28 November 1980, hereby rules:

1. **The provisions of Community law relating to freedom of movement for workers also cover a national of a Member State who pursues, within the territory of another Member State, an activity as an employed person which yields an income lower than that which, in the latter State, is considered as the minimum required for subsistence, whether that person supplements the income from his activity as an employed person with other income so as to arrive at that minimum or is satisfied with means of support lower than the said minimum, provided that he pursues an activity as an employed person which is effective and genuine.**

2. **The motives which may have prompted a worker of a Member State to seek employment in another Member State are of no account as regards his right to enter and reside in the territory of the latter State provided that he pursues or wishes to pursue an effective and genuine activity.**

Mertens de Wilmars Bosco Touffait
Due Pescatore Mackenzie Stuart O'Keeffe
Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 23 March 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President