JUDGMENT OF THE COURT

29 January 2002 *

In Case C-162/00,

REFERENCE to the Court under Article 234 EC by the Bundesarbeitsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between

Land Nordrhein-Westfalen

and

Beata Pokrzeptowicz-Meyer,

on the interpretation of Article 37(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Community by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1),

* Language of the case: German.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), J.-P. Puissochet, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges,

Advocate General: F.G. Jacobs,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the Land Nordrhein-Westfalen, by P.O. Wilke, Rechtsanwalt,

— the French Government, by J.-F. Dobelle and C. Bergeot, acting as Agents,

— the Commission of the European Communities, by M.-J. Jonczy and B. Martenczuk, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the French Government and the Commission at the hearing on 19 June 2001,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2001,

gives the following

Judgment

1 By order dated 22 March 2000, received at the Registry of the Court of Justice on 2 May 2000, the Bundesarbeitsgericht (Federal Labour Court) (Germany) referred two questions to the Court, under Article 234 EC, for a preliminary ruling on the interpretation of Article 37(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Community by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1, hereinafter 'the Europe Agreement').

2 Those questions have been raised in proceedings between the Land Nordrhein-Westfalen and Beata Pokrzeptowicz-Meyer concerning the validity of the term of the latter's employment contract with that authority.

The Europe Agreement

3 The Europe Agreement was signed in Brussels on 16 December 1991 and entered into force on 1 February 1994, pursuant to the second paragraph of Article 121 thereof.

4 According to Article 1(2), the aims of the Europe Agreement are, *inter alia*, to provide an appropriate framework for political dialogue, allowing the development of close political relations between the Parties, to promote the expansion of trade and harmonious economic relations, in order to foster dynamic economic development and prosperity in the Republic of Poland, and to provide an appropriate framework for its gradual integration into the Community, since, according to the 15th recital of the Europe Agreement, the ultimate objective of the Republic of Poland is to accede to the Community.

5 The provisions of the Europe Agreement relevant to the present case are to be found in Title IV thereof, entitled 'Movement of workers, establishment, supply of services'.

6 Article 37(1) of the Europe Agreement, which appears in Title IV, Chapter I, entitled 'Movement of workers', provides:

'Subject to the conditions and modalities applicable in each Member State:

— the treatment accorded to workers of Polish nationality legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals,

— the legally resident spouse and children of a worker legally employed in the territory of a Member State, with the exception of seasonal workers and of workers coming under bilateral agreements within the meaning of Article 41, unless otherwise provided by such agreements, shall have access to the labour market of that Member State, during the period of that worker's authorised stay of employment.'

7 Article 58(1) of the Europe Agreement, which appears in Title IV, Chapter IV, entitled 'General provisions', provides:

'For the purpose of Title IV of this Agreement, nothing in the Agreement shall prevent the Parties from applying their laws and regulations regarding entry and stay, work, labour conditions and establishment of natural persons, and supply of services, provided that, in so doing, they do not apply them in a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific provision of this Agreement. ...'

German legislation

8 Paragraphs 57b and 57c of the Hochschulrahmengesetz (Framework Law on Higher Education, hereinafter 'the HRG') were inserted into that law by the Gesetz über befristete Arbeitsverträge mit wissenschaftlichem Personal an Hochschulen und Forschungseinrichtungen (Law on fixed-term contracts of employment for teaching and research staff at higher-education and research institutes) of 14 June 1985 (BGBl. I, p. 1065).

9 Paragraph 57b(1) of the HRG provides that the conclusion of fixed-term contracts of employment in the cases mentioned in Paragraph 57a thereof must be justified on an objective ground. Paragraph 57b(2) lists various such objective grounds applicable to the engagement of the teaching and research staff referred to in Paragraph 53 of the HRG and of personnel with medical duties referred to in Paragraph 54, namely where:

(1) the contract serves the further training or education of the person concerned,

(2) the person concerned is to be paid out of budgetary resources allocated for activities of limited duration,

(3) the person concerned is engaged with a view to acquiring or temporarily contributing special knowledge or experience of research work or artistic activity,

(4) the funding is supplied by an external source, or

(5) it is the first engagement of the person concerned as a teacher or researcher.

10 Paragraph 57b(3) of the HRG, in the version in force at the material time, provided:

'An objective ground also exists for engaging, on fixed-term contracts, foreign-language speaking teachers for special duties where they are employed mainly in foreign-language training ("foreign-language assistants").'

11 According to Paragraph 57c(2) of the HRG, such fixed-term contracts of employment may be concluded for a maximum period of five years, that limit also being applicable where several contracts have been concluded between the same foreign-language assistant and the same university.

The main proceedings and questions referred for a preliminary ruling

12 Mrs Pokrzeptowicz-Meyer, a Polish national, has lived in Germany since mid-1992. By a contract made on 5 October 1992 with the Land Nordrhein-Westfalen, she was engaged by that authority as a teacher performing special duties in a half-time post as Polish-language assistant at the University of Bielefeld (Germany).

13 Under Article 2 of her contract of employment, Mrs Pokrzeptowicz-Meyer was engaged for a fixed term, from 8 October 1992 to 30 September 1996, in accordance with Paragraph 57b(3) of the HRG, because her duties consisted principally of teaching a foreign language.

14 By an action commenced in the Arbeitsgericht Bielefeld (Labour Court, Bielefeld) on 16 January 1996, Mrs Pokrzeptowicz-Meyer applied for a declaration that her contract of employment would not be terminated at the end of its fixed term on 30 September 1996. In support of her claim, she argued that Paragraph 57b(3) of the HRG could not justify the imposition of a limit on the duration of that contract. Since the Court had held that this provision could not be applied to Community nationals because of its discriminatory character (Case C-272/92 *Spotti* [1993] ECR I-5185), the same approach should be applied in the case of nationals of a non-member country such as the Republic of Poland. The Land Nordrhein-Westfalen sought the dismissal of the claim, arguing that a fixed term was justified by an objective reason in accordance with Paragraph 57b(3) of the HRG.

15 The Arbeitsgericht dismissed the applicant's claim, but the Landesarbeitsgericht Hamm (Higher Labour Court, Hamm) (Germany), to which Mrs Pokrzeptowicz-Meyer appealed, allowed her appeal. The Land Nordrhein-Westfalen appealed on a point of law to the Bundesarbeitsgericht.

16 Since it considered that the determination of the dispute depended on the interpretation of Community law, the Bundesarbeitsgericht decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does Article 37(1) of the Europe Agreement of 16 December 1991 establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, preclude the application — to Polish nationals — of national law according to which posts for foreign-language assistants may be filled by means of fixed-term contracts of employment whereas, for other teaching staff performing special duties, recourse to such contracts must be individually justified by an objective reason?

2. If the Court of Justice answers the first question in the affirmative:

does Article 37(1) of the Europe Agreement also preclude the application of national law where the fixed-term employment contract was concluded before the Europe Agreement entered into force and the agreed term comes to an end after its entry into force?'

The first question

17 By its first question the referring Court is asking essentially whether the first indent of Article 37(1) of the Europe Agreement should be construed as precluding the application to Polish nationals of a national provision according to which positions for foreign-language assistants may be filled by means of

fixed-term contracts of employment, whereas, for other teaching staff performing special duties, recourse to such contracts must be individually justified by an objective reason?

18 In order to answer the question as so rephrased, it is necessary to consider, at the outset, whether the first indent of Article 37(1) of the Europe Agreement may be relied upon by an individual before a national court and, if so, to determine the scope of the principle of non-discrimination laid down by that provision.

The direct effect of the first indent of Article 37(1) of the Europe Agreement

19 It should be noted first of all that, according to settled case-law, a provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, having regard to its wording and to the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see, *inter alia*, Case C-262/96 *Sürül* [1999] ECR I-2685, paragraph 60, and Case C-63/99 *Gloszczuk* [2001] ECR I-6369, paragraph 30).

20 In order to ascertain whether the first indent of Article 37(1) of the Europe Agreement meets those criteria, it is first necessary to consider the wording of that provision.

21 In this regard, it must be held that the limb of the sentence which appears in the first indent of Article 37(1) of the Europe Agreement lays down, in clear, precise and unconditional terms, a prohibition preventing each Member State from discriminating in relation to its own nationals, on grounds of their nationality,

against Polish nationals covered by that provision as far as their conditions of employment, remuneration and dismissal are concerned. The Polish nationals who are entitled to the benefit of that provision are those who, having been previously granted the right to stay in a Member State, are legally employed there.

22 This rule of equal treatment lays down a precise obligation to produce a specific result and, by its nature, can be relied on by an individual to apply to a national court to set aside the discriminatory provisions of a Member State's legislation, without any further implementing measures being required for that purpose.

23 This interpretation is not affected by the argument of the Land Nordrhein-Westfalen, according to which the first indent of Article 37(1) of the Europe Agreement is not unconditional, since the principle set forth in that provision is put into effect '[s]ubject to the conditions and modalities applicable in each Member State'.

24 That proviso may not be interpreted in such a way as to allow the Member States to subject the principle of non-discrimination set forth in the first indent of Article 37(1) of the Europe Agreement to conditions or discretionary limitations. Such an interpretation would render that provision meaningless and deprive it of any practical effect.

25 Nor is the conclusion that the principle of non-discrimination laid down in the first indent of Article 37(1) of the Europe Agreement is capable of directly governing the situation of individuals invalidated by an examination of the purpose and nature of that agreement, of which that provision forms part.

26 The purpose of the Europe Agreement, according to the 15th recital in its preamble and Article 1(2) thereof, is to establish an association designed to promote the expansion of trade and harmonious economic relations between the Parties, in order to foster dynamic economic development and prosperity in the Republic of Poland, with a view to facilitating its accession to the Community.

27 Moreover, the fact that the Europe Agreement is intended essentially to promote the economic development of Poland and therefore involves an imbalance in the obligations assumed by the Community towards the non-member country concerned is not such as to prevent recognition by the Community of the direct effect of certain provisions of that Agreement (see *Gloszczuk*, cited above, paragraph 36).

28 Nor is the finding that the first indent of Article 37(1) of the Europe Agreement is directly applicable invalidated by an examination of Article 58(1) thereof. All that follows from that provision is that the authorities of the Member States remain competent to apply, while respecting the limits laid down by the Europe Agreement, *inter alia* their own national laws and regulations regarding entry, stay, employment and working conditions of Polish nationals. Consequently, Article 58(1) does not concern the Member States' implementation of the provisions of the Europe Agreement relating to the free movement of workers and is not intended to make implementation or the effects of the principle of non-discrimination laid down in the first indent of Article 37(1) of the Europe Agreement subject to the adoption of further national measures (see, as regards the provisions of the Europe Agreement concerning establishment, the judgment in *Gloszczuk*, paragraph 37).

29 Finally, as Advocate General Jacobs observes in paragraph 39 of his Opinion, in contrast to other provisions of the Europe Agreement, implementation of the first indent of Article 37(1) is not subject to the adoption by the Association Council, set up by that Agreement, of additional measures to define the modalities for its application.

30 In view of the foregoing considerations, the first indent of Article 37(1) of the Europe Agreement must be held to have direct effect, so that Polish nationals who assert it may also rely on it before the national courts of the host Member State.

The meaning of the first indent of Article 37(1) of the Europe Agreement

31 To determine the meaning of the first indent of Article 37(1) of the Europe Agreement, it must be considered whether, as Mrs Pokrzeptowicz-Meyer argued before the referring court, the interpretation by the Court of Article 48(2) of the EC Treaty (now, after amendment, Article 39(2) EC) can be transposed to that provision of the Europe Agreement.

32 According to settled case-law, a mere similarity in the wording of a provision of one of the Treaties establishing the Communities and of an international agreement between the Community and a non-member country is not sufficient to give to the wording of that agreement the same meaning as it has in the Treaties (see Case 270/80 *Polydor and RSO* [1982] ECR 329, paragraphs 14 to 21; Case 104/81 *Kupferberg* [1982] ECR 3641, paragraphs 29 to 31; Case C-312/91 *Metalsa* [1993] ECR I-3751, paragraphs 11 to 20, and *Gloszczuk*, paragraph 48).

33 According to that case-law, the extension of the interpretation of a provision in the Treaty to a comparably, similarly or even identically worded provision of an agreement concluded by the Community with a non-member country depends on, *inter alia*, the aim pursued by each provision in its own particular context. A comparison between the objectives and context of the agreement and those of the Treaty is of considerable importance in that regard (see *Metalsa*, cited above, paragraph 11, and *Gloszczuk*, paragraph 49).

34 In its judgment in *Spotti*, cited above, the Court held that Article 48(2) of the Treaty precludes the application of national law according to which posts for foreign-language assistants must or may be the subject of employment contracts of limited duration, whereas for other teaching staff performing special duties, recourse to such contracts must be individually justified by an objective reason.

35 It is important to point out that the judgment in *Spotti* was given by the Court in a case in which the main proceedings concerned, in particular, the compatibility with the Treaty of Paragraph 57b(3) of the HRG, the very provision at issue in the present case.

36 In this respect, the Court first of all noted, at paragraph 14 of its judgment in *Spotti*, that it had held in Case 33/88 *Allué and Another* [1989] ECR 1591, that Article 48(2) of the Treaty precludes the application of a provision of national law imposing a limit on the duration of the employment relationship between universities and foreign-language assistants where there is, in principle, no such limit with regard to other workers.

37 The Court then based its interpretation on the consideration that, since the great majority of foreign-language assistants were foreign nationals, the difference of treatment between them and other teachers with special duties, in so far as the reasons for allowing the making of fixed-term employment contracts were concerned, was such as to place the foreign nationals at a disadvantage compared with German nationals and, consequently, constituted indirect discrimination, prohibited by Article 48(2) of the Treaty, unless it was justified by objective reasons (*Spotti*, paragraphs 16 to 18).

38 The Court finally considered that, as it had already decided in *Allué*, cited above, the need to ensure up-to-date instruction cannot justify the imposition of a time-limit on the employment contracts of foreign-language assistants (*Spotti*, paragraph 20).

39 As regards the first indent of Article 37(1) of the Europe Agreement, it follows from a comparison of the aims and context of the Europe Agreement, on the one hand, with those of the EC Treaty, on the other hand, that there is no ground for giving to the aforementioned provision a meaning different from that which it was found to have by the Court in *Spotti* so far as Article 48(2) of the Treaty is concerned.

40 As the French Government has observed, the first indent of Article 37(1) of the Europe Agreement does not in fact lay down a principle of freedom of movement for Polish workers within the Community, whilst Article 48 of the Treaty establishes for the benefit of nationals of the Member States the principle of freedom of movement for workers.

41 However, the first indent of Article 37(1) of the Europe Agreement establishes, in favour of workers of Polish nationality, once they are legally employed within the territory of a Member State, a right to equal treatment as regards conditions of employment of the same extent as that conferred in similar terms by Article 48(2) of the Treaty on Member State nationals.

42 In particular, it follows from the wording of the first indent of Article 37(1) of the Europe Agreement, as well as from its aims, which seek to create an appropriate framework for the progressive integration of the Republic of Poland into the Community, that the prohibition of any kind of discrimination against Polish

workers based on their nationality applies as much to direct discrimination as to indirect discrimination which might affect their conditions of employment.

43 Besides, no argument providing objective justification for the difference in treatment between German nationals and Polish nationals resulting from Paragraph 57b of the HRG and affecting the latter's conditions of employment has been advanced in the observations submitted to the Court.

44 In those circumstances, the interpretation of Article 48(2) of the Treaty adopted by the Court in *Spotti* can be transposed to the first indent of Article 37(1) of the Europe Agreement.

45 It follows from the foregoing considerations that the answer to the first question must be that the first indent of Article 37(1) of the Europe Agreement, which has direct effect, precludes the application to Polish nationals of a national provision according to which positions for foreign-language assistants may be filled by means of fixed-term contracts of employment, whereas, for other teaching staff performing special duties, recourse to such contracts must be individually justified by an objective reason.

The second question

46 By its second question, the referring court is asking, in essence, whether the first indent of Article 37(1) of the Europe Agreement applies to a fixed-term contract of employment made prior to the date of the Europe Agreement's entry into force but due to expire after that date.

47 The Europe Agreement, which, in accordance with the second subparagraph of Article 121 thereof, entered into force on 1 February 1994, contains no transitional provisions for application of Title IV, Chapter 1, entitled 'Free Movement of Workers'.

48 The question of the temporal effect of the first indent of Article 37(1) of the Europe Agreement must therefore be determined in the light of the Court's case-law on the temporal application of Community law provisions, which can be applied by analogy to the provisions of the Europe Agreement.

49 According to settled case-law, in order to ensure observance of the principles of legal certainty and the protection of legitimate expectations, the substantive rules of Community law must be interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, their objectives or their general scheme that such effect must be given to them (see, in particular, Case 21/81 *Bout* [1982] ECR 381, paragraph 13, and Case C-34/92 *GruSa Fleisch* [1993] ECR I-4147, paragraph 22).

50 It also follows from settled case-law that new rules apply immediately to the future effects of a situation which arose under the old rules (see, among other cases, Case 270/84 *Licata* v *Economic and Social Committee* [1986] ECR 2305, paragraph 31). In application of that principle the Court has held, in particular, that since the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21,

and OJ 1995 L 1, p. 1) contains no specific conditions whatsoever with regard to the application of Article 6 of the EC Treaty (now, after amendment, Article 12 EC), that provision must be regarded as being immediately applicable and binding on the Republic of Austria from the date of its accession, with the result that it applies to the future effects of situations arising prior to that new Member State's accession to the Communities (Case C-122/96 *Saldanha and MTS* [1997] ECR I-5325, paragraph 14).

51 It is appropriate therefore, in order to reply to the second question, to determine whether the situation in which a fixed-term contract of employment was concluded prior to the date of the Europe Agreement's entry into force, for a term expiring after that date, constitutes a situation arising prior to the Europe Agreement, to which the Europe Agreement could therefore apply retrospectively only if it was clearly intended to have that effect, or whether it concerns, on the contrary, a situation which arose prior to the entry into force of that agreement but whose future effects are governed by it from the date of its entry into force, in accordance with the principle that new rules immediately apply to current situations.

52 The conclusion of a fixed-term contract of employment does not exhaust its legal effects on the date of its signature, but, on the contrary, continues regularly to produce its effects throughout the duration of that contract. Therefore, the application of a new rule, such as the first indent of Article 37(1) of the Europe Agreement, from the date of its entry into force, to a contract of employment concluded prior to its entry into force, cannot be regarded as affecting a situation arising prior to that date.

53 It follows from the foregoing that the first indent of Article 37(1) of the Europe Agreement constitutes a new rule which applies immediately to contracts of employment still running at the date of the entry into force of that agreement.

54 That interpretation is not undermined by the defendant's argument that, in order to determine the validity of a clause limiting the duration of a contract of employment, it would be appropriate to take into consideration, in accordance with the principle of legal certainty and to ensure the protection of the legitimate expectations of the persons concerned, only the matters of law and fact which existed at the time of the conclusion of that contract, save where subsequent provisions validly prescribed their retrospective application.

55 It follows from settled case-law that the scope of the principle of the protection of legitimate expectations cannot be extended to the point of generally preventing new rules from applying to the future effects of situations which arose under the earlier rules (see, among other cases, Case 278/84 *Germany* v *Commission* [1987] ECR 1, paragraph 36, and Case C-60/98 *Butterfly Music* [1999] ECR I-3939, paragraph 25).

56 Such an approach applies particularly to a situation such as that in the main proceedings, in which the new rule introduced by the first indent of Article 37(1) of the Europe Agreement consists of a principle of equality of treatment as regards conditions of employment, which, by its nature, is apt to apply indiscriminately to all workers of Polish nationality legally employed within the territory of a Member State, from the entry into force of that agreement, without any need to consider whether they are employed under a contract of employment concluded before or after that entry into force.

57 Therefore, the second question must be answered to the effect that the first indent of Article 37(1) of the Europe Agreement applies, from the date of entry into force of that agreement, to a fixed-term contract of employment which was concluded prior to the date of its entry into force but which is due to expire after that date.

Costs

58 The costs incurred by the French Government and by the Commission, 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 proceedings pending 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 Bundesarbeitsgericht by order of 22 March 2000, hereby rules:

1. The first indent of Article 37(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Community by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993, which has

direct effect, precludes the application to Polish nationals of a national provision according to which positions for foreign-language assistants may be filled by means of fixed-term contracts of employment, whereas, for other teaching staff performing special duties, recourse to such contracts must be individually justified by an objective reason.

2. The first indent of Article 37(1) of the Europe Agreement applies, from the date of entry into force of that agreement, to a fixed-term contract of employment which was concluded prior to the date of its entry into force but which is due to expire after that date.

Rodríguez Iglesias Jann Macken

Colneric von Bahr Gulmann

Edward La Pergola Puissochet

Cunha Rodrigues Timmermans

Delivered in open court in Luxembourg on 29 January 2002.

R. Grass G.C. Rodríguez Iglesias

Registrar President