

JUDGMENT OF THE COURT

30 May 1991 *

In Case C-68/89,

Commission of the European Communities, represented by A. Caeiro, Legal Adviser, and by B. J. Drijber, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Guido Berardis, also a member of the Commission's Legal Department, Centre Wagner, Kirchberg,

applicant,

v

Kingdom of the Netherlands, represented by J. W. de Zwaan and M. Fierstra, Assistant Legal Advisers in the Ministry for Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the Netherlands Embassy, 5 Rue C. M. Spoo,

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by J. E. Collins, Treasury Solicitor, and David Pannick, acting as Agents, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

intervener,

APPLICATION for a declaration that, by maintaining in force and by applying legislation by virtue of which citizens of a Member State may be required to

* Language of the case: Dutch.

answer questions put by border officials regarding the purpose and duration of their journey and the financial means at their disposal for it before they are permitted to enter Netherlands territory, the Kingdom of the Netherlands has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of: O. Due, President, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesaurò

Registrar: D. Lousterman, Principal Administrator

having regard to the Report for the Hearing,

after hearing oral argument presented by the parties at the hearing on 22 January 1991, at which the Commission of the European Communities was represented by B. J. Drijber and P. van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 February 1991,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 6 March 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by maintaining in force and by applying legislation by virtue of which citizens of a Member State may be required to answer questions put by border officials regarding the purpose and duration of their journey and the financial means at their disposal for it before they are permitted to enter Netherlands territory, the Kingdom of the Netherlands has failed to fulfil the obli-

gations imposed on it by Council Directive 68/360/EEC 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) and Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (Official Journal 1973 L 172, p. 14) and by the second paragraph of Article 5, in conjunction with Articles 3(c), 48, 52 and 59, of the EEC Treaty.

- 2 Aliens' right of entry and frontier supervision are governed in the Netherlands by the Vreemdelingenwet (Law on aliens) of 13 January 1965. Detailed provisions under that law were laid down by the Vreemdelingenbesluit (Aliens Order) of 19 September 1966, Article 23 of which provides:

'1. If so requested by an official responsible for frontier supervision, aliens entering the Netherlands shall be required:

- (a) to produce and hand over the document held by them in order to cross the frontier;
- (b) to provide information concerning the purpose and duration of their stay in the Netherlands;
- (c) to show what means are available to them with a view to their entry into the Netherlands.

2.

3. The provisions of the opening subparagraph and subparagraph (c) of paragraph (1) shall not apply to the nationals of a Member State who are seeking employment.'

- 3 Considering that the abovementioned legislation was contrary to Community law, the Commission initiated against the Netherlands the procedure under Article 169 of the Treaty.
- 4 By order of 4 October 1989, the Court granted leave to the United Kingdom of Great Britain and Northern Ireland to intervene in support of the Netherlands.
- 5 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 6 The Commission claims that Article 23 of the Aliens Order is contrary to Community law since, by virtue of Article 3(1) of each of Directives 68/360 and 73/148, the wording of which is identical in both cases, only production of a valid identity card or passport may be required of a national of one Member State going to another.
- 7 The Commission states, however, that its action is concerned solely with the control to which nationals of a Member State may be subjected at the Netherlands frontier for reasons other than those of public policy, public security or public health and that the inspection of luggage or other goods is likewise not in issue.
- 8 It is therefore necessary to exclude entirely cases where the controls carried out by the authorities are prompted by the above grounds or relate to the abovementioned articles. The Court, hearing an action brought by the Commission against the Netherlands for failure to fulfil its obligations, cannot therefore rule, in the present proceedings, on the preoccupations expressed by the United Kingdom, which wishes to have questions dealt with which take account of the requirements of public policy.

- 9 The Netherlands Government contends that Directives 68/360 and 73/148 apply only to people who may have a right of residence by virtue of the Treaty. It submits that the Member States are therefore empowered to carry out spot checks at the frontiers in order to check whether or not the nationals of other Member States have such a right of residence.

- 10 It must be stated in the first place that, as the Commission has rightly emphasized, nationals of the Member States of the Community generally have the right to enter the territory of the other Member States in the exercise of the various freedoms recognized by the Treaty and in particular the freedom to provide services which, according to now settled case-law, is enjoyed both by providers and by recipients of services (see most recently the judgment in Case 186/87 *Cowan* [1989] ECR 195).

- 11 Secondly, as the Court held in its judgment in Case 321/87 *Commission v Belgium* [1989] ECR 997, the only precondition which Member States may impose on the right of entry into their territory of the persons covered by the abovementioned directives is the production of a valid identity document or passport.

- 12 That condition, which is the only one laid down by Article 3 of the two directives, cannot be supplemented by the requirement of proving inclusion in one of the classes of persons mentioned in those directives. It is apparent from the system established by those directives, and in particular from Article 4 of Directive 68/360 and Article 6 of Directive 73/148, that it is only upon the issue of a residence card or permit that the authorities of a Member State may ask the persons concerned, under the conditions laid down in those articles, to furnish evidence of their right of residence.

- 13 More generally, the obligation to answer questions put by frontier officials cannot be a precondition for the entry of a national of one Member State into the territory of another.

- 14 The United Kingdom, however, insists that it is necessary to ask questions in order to verify the validity of the identity documents produced.
- 15 In that connection, it need merely be observed that the lawfulness of controls as to the validity of the document produced derives from the requirement laid down in Article 3 of both directives that the identity card or passport should be 'valid'.
- 16 It follows from the foregoing that, by maintaining in force and by applying legislation by virtue of which citizens of a Member State may be required to answer questions put by border officials regarding the purpose and duration of their journey and the financial means at their disposal for it before they are permitted to enter Netherlands territory, the Kingdom of the Netherlands has failed to fulfil the obligations imposed on it by Directives 68/360 and 73/148.
- 17 It is not appropriate to make any finding as to infringement of the Treaty provisions referred to in the Commission's claims. Firstly, only Article 3(c) is expressly mentioned in the reasoned opinion and, secondly, the Commission made no separate plea in law as to the infringement of those provisions.

Costs

- 18 Pursuant to Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of the Netherlands has failed in its submissions, it must be ordered to pay the costs. The United Kingdom of Great Britain and Northern Ireland must be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

- (1) Declares that, by maintaining in force and by applying legislation by virtue of which citizens of a Member State may be required to answer questions put by border officials regarding the purpose and duration of their journey and the financial means at their disposal for it before they are permitted to enter Netherlands territory, the Kingdom of the Netherlands has failed to fulfil the obligations imposed on it by Council Directive 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 and Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services;
- (2) Orders the Kingdom of the Netherlands to pay the costs and the United Kingdom of Great Britain and Northern Ireland to bear its own costs.

Due	Rodríguez Iglesias	Díez de Velasco	Slynn
Kakouris	Joliet	Grévisse	Zuleeg
			Kapteyn

Delivered in open court in Luxembourg on 30 May 1991.

J.-G. Giraud
Registrar

O. Due
President