JUDGMENT OF THE COURT
26 February 1991 *

In Case C-292/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Justice, Queen's Bench Division, London, for a preliminary ruling in proceedings pending before that Court between

The Queen

and

The Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen,

on the interpretation of the provisions of Community law governing the free movement of workers as regards the scope of the right of residence of nationals of Member States seeking employment in another Member State,

THE COURT,

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

Advocate General: M. Darmon,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of

the applicant in the main proceedings, by Richard Plender, QC, and Geraldine Clark, Barrister, instructed by Winstanley-Burgess & Co.,

* Language of the case: English.

the United Kingdom of Great Britain and Northern Ireland, by J. E. Collins, of the Treasury Solicitor's Department, acting as Agent, assisted by David Pannick, Barrister,

the Federal Republic of Germany, by Ernst Röder and Joachim Karl, Regierungsdirektor and Oberregierungsdirektor, respectively, in the Federal Ministry of Economic Affairs, acting as Agents,

the Council of the European Communities, by Marta Arpio, a member of its Legal Department, acting as Agent,

the Commission of the European Communities, by António Caeiro, Legal Adviser, and Nicholas Khan, a member of the Commission's Legal Department, acting as Agents,

having regard to the Report for the Hearing,

after hearing oral argument presented by the applicant in the main proceedings, the United Kingdom of Great Britain and Northern Ireland, the Council and the Commission at the hearing on 25 September 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 8 November 1990,

gives the following

Judgment

1 By an order of 14 June 1989, which was received at the Court on 21 September 1989, the High Court of Justice, Queen's Bench Division, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of the provisions of Community law governing the free movement of workers as regards the scope of the right of residence of nationals of Member States seeking employment in another Member State.

2 The questions arose in proceedings between Mr Gustaff Desiderius Antonissen, a Belgian national, and the Secretary of State for Home Affairs, who on 27 November 1987 decided to deport him from the United Kingdom.

3 Mr Antonissen arrived in the United Kingdom in October 1984. He had not yet found work there when, on 30 March 1987, he was sentenced by the Liverpool Crown Court to two terms of imprisonment for unlawful possession of cocaine and possession of that drug with intent to supply. He was released on parole on 21 December 1987.

4 The decision to order Mr Antonissen's deportation was based on section 3(5)(b) of the Immigration Act 1971 ('the 1971 Act'), which authorizes the Secretary of State to deport foreign nationals if he considers that it would be 'conducive to the public good'.

5 Mr Antonissen lodged an appeal against the Secretary of State's decision with the Immigration Appeal Tribunal. Before the Tribunal Mr Antonissen argued that since he was a Community national he must qualify for the protection afforded by Council Directive 64/221/EEC 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). The Tribunal took the view that, since he had been seeking employment in the United Kingdom for more than six months, he could no longer be treated as a Community worker and claim that the directive should apply in his case. The Tribunal based this part of its decision on paragraph 143 of the Statement of Changes in Immigration Rules (HC169), adopted pursuant to the 1971 Act, under which a national of a Member State may be deported if, after six months from admission to the United Kingdom, he has not yet found employment or is not carrying on any other occupation.

6 His appeal being dismissed, Mr Antonissen made an application for judicial review to the High Court of Justice, Queen's Bench Division, which stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. For the purpose of determining whether a national of a Member State is to be treated as a "worker" within the meaning of Article 48 of the EEC Treaty when seeking employment in the territory of another Member State so as to be immune from deportation save in accordance with Council Directive 64/221 of 25 February 1964, may the legislature of the second Member State provide that such a national may be required to leave the territory of that State (subject to appeal) if after six months from admission to that territory he has failed to enter employment?

2. In answering the foregoing question what weight if any is to be attached by a court or tribunal of a Member State to the declaration contained in the minutes of the meeting of the Council when the Council adopted Directive 68/360?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case before the national court, the applicable legislation and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 By means of the questions submitted to the Court for a preliminary ruling the national court essentially seeks to establish whether it is contrary to the provisions of Community law governing the free movement of workers for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months.

9 In that connection it has been argued that, according to the strict wording of Article 48 of the Treaty, Community nationals are given the right of move freely within the territory of the Member States for the purpose only of accepting offers of employment actually made (Article 48(3)(a) and (b)) whilst the right to stay in the territory of a Member State is stated to be for the purpose of employment (Article 48(3)(c)).

10 Such an interpretation would exclude the right of a national of a Member State to move freely and to stay in the territory of the other Member States in order to seek employment there, and cannot be upheld.

11 Indeed, as the Court has consistently held, freedom of movement for workers forms one of the foundations of the Community and, consequently, the provisions laying down that freedom must be given a broad interpretation (see, in particular, the judgment of 3 June 1986 in Case 139/85 *Kempf* v *Staatssecretaris van Justitie* [1986] ECR 1741, paragraph 13).

12 Moreover, a strict interpretation of Article 48(3) would jeopardize the actual chances that a national of a Member State who is seeking employment will find it in another Member State, and would, as a result, make that provision ineffective.

13 It follows that Article 48(3) must be interpreted as enumerating, in a non-exhaustive way, certain rights benefiting nationals of Member States in the context of the free movement of workers and that that freedom also entails the right for nationals of Member States to move freely within the territory of the other Member States and to stay there for the purposes of seeking employment.

14 Moreover, that interpretation of the Treaty corresponds to that of the Community legislature, as appears from the provisions adopted in order to implement the principle of free movement, in particular Articles 1 and 5 of Regulation No 1612/68/EEC 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), which presuppose that Community nationals are entitled to move in order to look for employment, and hence to stay, in another Member State.

15 It must therefore be ascertained whether the right, under Article 48 and the provisions of Regulation No 1612/68 (cited above), to stay in a Member State for the purposes of seeking employment can be subjected to a temporal limitation.

16 In that regard, it must be pointed out in the first place that the effectiveness of Article 48 is secured in so far as Community legislation or, in its absence, the legislation of a Member State gives persons concerned a reasonable time in which to apprise themselves, in the territory of the Member State concerned, of offers of

employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged.

17 The national court referred to the declaration recorded in the Council minutes at the time of the adoption of the aforesaid Regulation No 1612/68 and of Council Directive 68/360/EEC (of the same date) 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). That declaration reads as follows:

'Nationals of a Member State as referred to in Article 1 [of the directive] who move to another Member State in order to seek work there shall be allowed a minimum period of three months for the purpose; in the event of their not having found employment by the end of that period, their residence on the territory of this second State may be brought to an end.

However, if the abovementioned persons should be taken charge of by national assistance (social welfare) in the second State during the aforesaid period they may be invited to leave the territory of this second State.'

18 However, such a declaration cannot be used for the purpose of interpreting a provision of secondary legislation where, as in this case, no reference is made to the content of the declaration in the wording of the provision in question. The declaration therefore has no legal significance.

19 For their part, the United Kingdom and the Commission argue that, under Article 69(1) of Council Regulation No 1408/71/EEC on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (version consolidated by Council Regulation No 2001/83/EEC of 2 June 1983, Official Journal 1983 L 230, p. 6), the Member States may limit to three months the period during which nationals from other Member States may stay in their territory in order to seek employment. According to the provision in question, an unemployed person who has acquired entitlement to benefits in a Member State and goes to another Member State to seek employment there retains entitlement to those benefits for a maximum period of three months.

20 That argument cannot be upheld. As the Advocate General has rightly observed, there is no necessary link between the right to employment benefit in the Member State of origin and the right to stay in the host State.

21 In the absence of a Community provision prescribing the period during which Community nationals seeking employment in a Member State may stay there, a period of six months, such as that laid down in the national legislation at issue in the main proceedings, does not appear in principle to be insufficient to enable the persons concerned to apprise themselves, in the host Member State, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged and, therefore, does not jeopardize the effectiveness of the principle of free movement. However, if after the expiry of that period the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged, he cannot be required to leave the territory of the host Member State.

22 It must therefore be stated in reply to the questions submitted by the national court that it is not contrary to the provisions of Community law governing the free movement of workers for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged.

Costs

23 The costs incurred by the United Kingdom, the Federal Republic of Germany and the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since the proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 submitted to it by the High Court of Justice, Queen's Bench Division, by order of 14 June 1989, hereby rules:

It is not contrary to the provisions of Community law governing the free movement of workers for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged.

Due Mancini Moitinho de Almeida Rodríguez Iglesias

Díez de Velasco Slynn Kakouris

Joliet Schockweiler Grévisse Zuleeg

Delivered in open court in Luxembourg on 26 February 1991.

J.-G. Giraud
Registrar

O. Due
President