JUDGMENT OF THE COURT (Sixth Chamber)
5 March 1991 *

In Case C-376/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesverwaltungsgericht for a preliminary ruling in the proceedings pending before that court between

Panagiotis Giagounidis

and

Stadt Reutlingen

on the interpretation of Article 4 of 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),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, T. F. O'Higgins, C. N. Kakouris, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: M. Darmon,
Registrar: V. Di Bucci, Administrator,

after considering the written observations submitted on behalf of:

the City of Reutlingen, by Jürgen Baum, Rechtsanwalt, Reutlingen;

the Commission, by Friedrich-Wilhelm Albrecht and Antonio Caeiro, Members of its Legal Department, acting as Agents;

* Language of the case: German.

having regard to the Report for the Hearing,

after hearing oral argument on behalf of Panagiotis Giagounidis, represented by Ingrid Laitenberger-Schierle, Rechtsanwältin, Tübingen, and the Commission, represented by H. Etienne, Legal Adviser, acting as Agent, at the hearing on 13 November 1990,

after hearing the Opinion of the Advocate General at the sitting on 16 January 1991,

gives the following

Judgment

1 By order of 17 October 1989, which was received at the Court on 18 December 1989, the Bundesverwaltungsgericht (Federal Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 4(1) of 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).

2 The questions were raised in proceedings between Panagiotis Giagounidis, a Greek national, and the City of Reutlingen (Federal Republic of Germany) relating to the City of Reutlingen's refusal to issue a residence entitlement ('Aufenthaltsberechtigung') to him.

3 Pursuant to Article 1 of Directive 68/360/EEC, the Member States are to abolish restrictions on the movement and residence of nationals of the said States and of members of their families to whom 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) applies.

4 Article 2(1), Article 3(1) and Article 4(1), (2) and (3), first indent, of Directive 68/360/EEC are worded as follows:

'Article 2

1. Member States shall grant the nationals referred to in Article 1 the right to leave their territory in order to take up activities as employed persons and to pursue such activities in the territory of another Member State. Such right shall be exercised simply on production of a valid identity card or passport. Members of the family shall enjoy the same right as the national on whom they are dependent.

Article 3

1. Member States shall allow the persons referred to in Article 1 to enter their territory simply on production of a valid identity card or passport.

Article 4

1. Member States shall grant the right of residence in their territory to the persons referred to in Article 1 who are able to produce the documents listed in paragraph 3.

2. As proof of the right of residence, a document entitled "Residence Permit for a National of a Member State of the EEC" shall be issued . . .

3. For the issue of a Residence Permit for a National of a Member State of the EEC, Member States may require only the production of the following documents:

— by the worker:

(a) the document with which he entered their territory;

...'.

5 Paragraph 8(1) of the Ausländergesetz (Aliens Law) of 28 April 1965 (Bundesgesetzblatt 1965, I, p. 353) provides *inter alia* that aliens who have been lawfully resident for at least five years in the territory of the Federal Republic of Germany may be issued with a residence entitlement. That entitlement is issued without restrictions as to time or space and may not have conditions attached to it.

6 Under Paragraph 10 of the of the Gesetz über Einreise und Aufenthalt von Staatsangehörigen der EWG (Law on Entry and Residence of Nationals of EEC Member States, hereinafter referred to as the 'Aufenthaltsgesetz EWG', Bundesgesetzblatt 1980, I, p. 116), right of entry and residence is conditional on the alien being able to prove his identity by means of a passport or an official identity card.

7 In 1967 the Greek authorities issued Mr Giagounidis with a national identity card valid for an unlimited period containing details of the holder's identity and nationality. Under Greek law, such an identity card does not allow its holder to leave national territory. However, that restriction was not indicated on Mr Giagounidis's identity card.

8 In 1973 Mr Giagounidis entered the territory of the Federal Republic of Germany upon presentation of a valid Greek passport. He completed his university studies in Germany and since that time has been teaching in schools in Germany. In 1984 Mr Giagounidis, who held the 'residence permit for a national of a Member State of the EEC', within the meaning of Article 4(2) of Directive 68/360/EEC, applied to the City of Reutlingen for a residence entitlement as provided for by Paragraph 8 of the Ausländergesetz. The authorities in Reutlingen refused his application on the ground that Mr Giagounidis was not in possession of a valid passport for the period between 12 March 1984 and 18 June 1984 since the Greek authorities had refused to extend the validity of his passport for that period. Consequently, he had

not been lawfully resident in the territory of the Federal Republic within the meaning of Paragraph 8(1) of the Ausländergesetz.

9 Mr Giagounidis's action against the City of Reutlingen's refusal was successful at first instance before the Verwaltungsgericht (Administrative Court) Sigmaringen, but on appeal was dismissed by the Verwaltungsgerichtshof (Higher Administrative Court) Baden-Württemberg. The Verwaltungsgerichtshof held the grant of a residence entitlement to be ruled out because for a certain period the applicant could not furnish proof of his identity in breach of the provisions of the Ausländergesetz and Paragraph 10 of the Aufenthaltsgesetz EWG. The Bundesverwaltungsgericht (Federal Administrative Court), which heard the appeal on a point of law, took the view that the dispute raised questions on the interpretation of Directive 68/360/EEC. It therefore stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'Is Article 4(1) of Directive 68/360/EEC to be interpreted as meaning that a Member State may or must grant the right of residence in its territory to the class of persons referred to in Article 1 of that directive on production of an identity card, the validity of which has been restricted by the issuing State to its own territory?

Is it relevant in that connection that

(a) the identity card was issued prior to the accession of the issuing State to the European Communities and before freedom of movement for its nationals entered into force;

(b) a passport was presented at the time of entry, not the identity card;

(c) the restriction to the territory of the issuing State was not expressly mentioned on the identity card itself?'

10 Reference is made to the Report for the Hearing for a fuller account of the legal background, the facts of the case, the course of the procedure 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.

The first question

11 From the facts of the case before the national court it is clear that by this question the national court is essentially seeking to ascertain whether Article 4(1) of Directive 68/360/EEC is to be interpreted as meaning that a Member State may or must grant the right of residence in its territory to the workers referred to in Article 1 of that directive when they produce an identity card which does not entitle its holder to leave the national territory.

12 In replying to that question it must be borne in mind that the right of nationals of a Member State to enter the territory of another Member State and reside there for the purposes intended by the EEC Treaty is a right conferred directly by that Treaty or, as the case may be, by the provisions adopted for its implementation (see on this point the judgment in Case 249/86 *Commission* v *Germany* [1989] ECR 1263, paragraph 9).

13 The provisions of Directive 68/360/EEC are intended to facilitate the exercise of the worker's right to freedom of movement, as laid down in Articles 48 and 49 of the EEC Treaty. Consequently, that directive must be interpreted in the light of those provisions of the Treaty, which require the adoption of the measures needed to bring about, by progressive stages, freedom of movement for workers (see on this point the judgment in Case 249/86 *Commission* v *Germany*, cited above).

14 Under Article 4 of Directive 68/360/EEC the Member States are obliged to issue a residence permit to any person who provides proof, by means of the appropriate documents, that he belongs to one of the categories mentioned in Article 1 of the directive (see the judgment in Case 48/75 *Royer* [1976] ECR 497). In particular, proof must be provided of the worker's identity and nationality.

15 Since a national identity card contains all the information for proving the holder's identity and nationality, it fulfils that requirement, even if it does not authorize the person concerned to leave the territory of the issuing Member State.

16 The answer to the first question must therefore be that Article 4(1) of Directive 68/360/EEC must be interpreted as meaning that a Member State is obliged to recognize the right of residence within its territory of the workers referred to in Article 1 of that directive when they produce a valid identity card, even if that card does not authorize its holder to leave the territory of the State in which it was issued.

The second question

17 By this question the national court seeks to ascertain whether it makes any difference to the answer to the first question that the identity card was issued before the accession to the European Communities of the issuing Member State, does not mention that its validity is limited to the national territory and its holder was admitted to the host Member State solely on the basis of his passport.

18 As stated above, for the purposes of recognition of the right of residence, the function of an identity card is only to provide evidence of the identity and nationality of its holder.

19 Consequently, an identity card does not lose its function, for the purposes of Article 4(1) of Directive 68/360/EEC, by virtue of being issued by the Member State before its accession to the Communities; nor does it matter whether or not it mentions that its holder may not leave the territory of the issuing Member State with the identity card alone.

20 With regard to the requirement laid down in Article 4(3)(a) of Directive 68/360/EEC, according to which the host Member State may require, for the purposes of the issue of a residence permit for a Community subject, only production of the document with which he entered its territory, it must be noted first of all that the Court has consistently held that 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, most recently, Case C-292/89 *The Queen* v *Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen* [1991] ECR I-727).

21 Secondly, the purpose of the abovementioned provision of Directive 68/360/EEC is to preclude the host Member State from imposing disproportionate conditions on the exercise of the right of residence and thus requiring the production of documents other than those which the worker is assumed to possess because he has already used them in order to enter the territory of that Member State.

22 It must also be considered that at the time when the worker applies for a residence permit pursuant to Directive 68/360/EEC he might no longer be in possession of the document with which he entered the territory of the host Member State. It would therefore be contrary to the principle of freedom of movement for workers if that Member State could make the issue of the residence permit conditional on production of that same document.

23 It follows from the foregoing considerations that the Member States are obliged to grant the right of residence within their territory to the workers referred to in Article 1 of Directive 68/360 who can produce either a valid identity card or a valid passport, regardless of the document with which they entered their territory.

24 The answer to be given to the national court must therefore be that it makes no difference to the answer to its first question that the identity card was issued before the accession to the Communities of the issuing Member State, that the card does not mention that its validity is limited to the national territory or, finally, that the holder of the card was admitted to the host Member State upon production of his passport alone.

Costs

25 The costs incurred by the Commission of the European Communities, which has 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 pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions submitted to it by the Bundesverwaltungsgericht by order of 17 October 1989, hereby rules:

(1) Article 4(1) of 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 must be interpreted as meaning that a Member State is obliged to recognize the right of residence within its territory of the workers referred to in Article 1 of that directive when they produce a valid identity card, even if that card does not authorize its holder to leave the territory of the Member State in which it was issued;

(2) It makes no difference to the answer to the first question that the identity card was issued before the accession to the Communities of the issuing Member State, that the card does not mention that its validity is limited to the national territory or, finally, that the holder of the card was admitted to the host Member State upon production of his passport alone.

Mancini O'Higgins

Kakouris Schockweiler Kapteyn

Delivered in open court in Luxembourg on 5 March 1991.

J.-G. Giraud
Registrar

G. F. Mancini
President of the Sixth Chamber