JUDGMENT OF THE COURT (Fifth Chamber)

9 January 2003 *

In Case C-257/00,

REFERENCE to the Court under Article 234 EC by the Immigration Appeal Tribunal (United Kingdom) for a preliminary ruling in the proceedings pending before that court between

Nani Givane and Others

and

Secretary of State for the Home Department,

on the interpretation of Article 3(2) of Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402),

* Language of the case: English.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, P. Jann and A. Rosas (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the United Kingdom Government, by J.E. Collins, acting as Agent, and E. Grey, Barrister,

— the German Government, by W.-D. Plessing, acting as Agent,

— the Commission of the European Communities, by N. Yerrell, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2002,

gives the following

Judgment

1 By order of 28 April 2000, received at the Court on 26 June 2000, the Immigration Appeal Tribunal referred to the Court for a preliminary ruling under Article 234 EC five questions on the interpretation of Article 3(2) of Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402).

2 Those questions were raised in the course of proceedings brought by Mrs Givane and others, who are Indian nationals and members of the family of a deceased worker, himself a Portuguese national, against the Secretary of State for the Home Department (hereinafter 'the Secretary of State') concerning the latter's refusal to grant them indefinite leave to remain in the United Kingdom.

Legal framework

Community legislation

3 Under Article 48(1) of the EC Treaty (now, after amendment, Article 39(1) EC), freedom of movement for workers is to be secured within the Community. Article 48(3)(d) states that it is to entail the right to remain in the territory of a

Member State after having been employed in that State, subject to conditions to be embodied in implementing regulations to be drawn up by the Commission.

4 Articles 1 to 5 of Regulation No 1251/70 read as follows:

'*Article 1*

The provisions of this regulation shall apply to nationals of a Member State who have worked as employed persons in the territory of another Member State and to members of their families, as defined in Article 10 of Council Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community.

Article 2

1. The following shall have the right to remain permanently in the territory of a Member State:

(a) a worker who, at the time of termination of his activity, has reached the age laid down by the law of that Member State for entitlement to an old-age pension and who has been employed in that State for at least the last twelve months and has resided there continuously for more than three years;

(b) a worker who, having resided continuously in the territory of that State for more than two years, ceases to work there as an employed person as a result of permanent incapacity to work.

If such incapacity is the result of an accident at work or an occupational disease entitling him to a pension for which an institution of that State is entirely or partially responsible, no condition shall be imposed as to length of residence;

(c) a worker who, after three years' continuous employment and residence in the territory of that State, works as an employed person in the territory of another Member State, while retaining his residence in the territory of the first State, to which he returns, as a rule, each day or at least once a week.

Periods of employment completed in this way in the territory of the other Member State shall, for the purposes of entitlement to the rights referred to in subparagraphs (a) and (b), be considered as having been completed in the territory of the State of residence.

2. The conditions as to length of residence and employment laid down in paragraph 1(a) and the condition as to length of residence laid down in paragraph 1(b) shall not apply if the worker's spouse is a national of the Member State concerned or has lost the nationality of that State by marriage to that worker.

Article 3

1. The members of a worker's family referred to in Article 1 of this regulation who are residing with him in the territory of a Member State shall be entitled to remain there permanently if the worker has acquired the right to remain in the territory of that State in accordance with Article 2, and to do so even after his death.

2. If, however, the worker dies during his working life and before having acquired the right to remain in the territory of the State concerned, members of his family shall be entitled to remain there permanently on condition that:

— the worker, on the date of his decease, had resided continuously in the territory of that Member State for at least two years; or

— his death resulted from an accident at work or an occupational disease; or

— the surviving spouse is a national of the State of residence or lost the nationality of that State by marriage to that worker.

Article 4

1. Continuity of residence as provided for in Articles 2(1) and 3(2)... shall not be affected by temporary absences not exceeding a total of three months per year...

...

Article 5

1. The person entitled to the right to remain shall be allowed to exercise it within two years from the time of becoming entitled to such right pursuant to Article 2(1)(a) and (b) and Article 3. During such period he may leave the territory of the Member State without adversely affecting such right.

2. No formality shall be required on the part of the person concerned in respect of the exercise of the right to remain.'

5 With regard to the definition of 'members of [the] family', Article 1 of Regulation No 1251/70 refers to Article 10 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition Chapter 1968 (II), p. 475). Paragraph 1 of the latter

provision provides that the following, irrespective of their nationality, are to have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

(a) his spouse and their descendants who are under the age of 21 years or are dependants;

(b) dependent relatives in the ascending line of the worker and his spouse.

United Kingdom legislation

6 The relevant provisions of national law are the Immigration Act 1971 and the Immigration Act 1988, the Immigration (European Economic Area) Order 1994 and the United Kingdom Immigration Rules adopted by the United Kingdom Parliament in 1994 (House of Commons Paper 395) (hereinafter 'the Immigration Rules'), in their version in force at the material date in the main proceedings, which govern entry to, and residence in the United Kingdom.

7 Under the Immigration Act 1971 and the Immigration Rules a person who is not a British citizen may, as a general rule, enter or stay in the United Kingdom only if he has obtained leave to do so.

8 Section 7(1) of the Immigration Act 1988, which creates an express exception from the general regime requiring the grant of leave, in favour of persons exercising enforceable Community rights, reads as follows:

'A person shall not under the [Immigration Act 1971] require leave to enter or remain in the United Kingdom in any case in which he is entitled to do so by virtue of an enforceable Community right or of any other provision made under Section 2(2) of the European Communities Act 1972.'

9 Rule 257(v) of the Immigration Rules provides that the members of the family of a national of the European Economic Area (as defined in the Immigration (European Economic Area) Order 1994) who dies during his working life after having resided continuously in the United Kingdom for at least 2 years, or whose death results from an accident at work or an occupational disease, are to be permitted to remain in the United Kingdom indefinitely.

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 Mr Givane, a Portuguese national, entered the United Kingdom on 15 April 1992 to work there as a chef. He obtained a five-year residence permit. He was continuously resident in the United Kingdom until 10 April 1995, the date on which he went to India to stay for 10 months.

11 On 16 February 1996, Mr Givane returned to the United Kingdom accompanied by his spouse, Mrs Givane, and their three children, Vashuben, Vinodbhai and Subashkumar, all four being of Indian nationality and the appellants in the main proceedings (hereinafter 'the appellants'). Mr Givane was in possession of an EU residence permit valid until 21 July 2002, whereas the others had obtained an entry clearance granted to family members of nationals of the European Economic Area ('EEA Family Permit').

12 On 11 November 1997, Mr Givane died as a result of kidney failure and chronic liver disease, which were not regarded as occupational diseases in this particular case. The Secretary of State was informed of that death in June 1998.

13 The appellants applied for indefinite leave to remain in the United Kingdom under Article 3(2) of Regulation No 1251/70, relying on the right of residence of family members of a deceased worker. On 21 August 1998, the Secretary of State refused their application on the ground that, at the date of his death, Mr Givane did not satisfy the test, laid down by that provision, of continuous residence in the host Member State for at least two years. According to the Secretary of State, that period of residence must immediately precede the worker's death.

14 The appellants appealed against that decision to the Immigration Adjudicator. That appeal was rejected by decision of 26 June 1999, on the ground that Article 3(2) of Regulation No 1251/70 required, in Mr Givane's case, residence in the United Kingdom for a continuous period of two years immediately preceding his death.

15 The appellants appealed against that decision to the Immigration Appeal Tribunal. They claim that Article 3(2) of Regulation No 1251/70 requires only that Mr Givane resided continuously in the United Kingdom for two years at any time prior to his death. He satisfied that requirement between April 1992 and April 1995.

16 Since it considered that the dispute before it required the interpretation of Article 3(2) of Regulation No 1251/70, the Immigration Appeal Tribunal decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Whether Article 3(2) of Regulation (EEC) No 1251/70 requires that two-year period of continuous residence to be established in the period immediately prior to a worker's death, or whether it may be established by a period of continuous residence which occurs at an earlier point in the worker's life?

2. If the said two-year period is not required to be established immediately prior to the worker's death, then, once such a two-year period of residence has been established by the worker, can the benefit of the accrued rights deriving from that period be retained after periods of absence from the host EU State in excess of the three months specified in Article 4(1) (which have the effect of breaking the period of continuous residence in the host State in question)?

3. If the answer to question 2 is in the affirmative, whether the consequential right to retain the benefit of past periods of continuous residence, despite subsequent breaks in residence, is subject to any limitations?

4. If the answer to question 3 is in the affirmative, what those limitations are; and what factors must be considered by the national court in seeking to establish whether breaks in the continuity of residence have broken the entitlement to rely on past periods of residence?

5. Whether the benefit of Article 3(2) may be claimed by the deceased worker's family members, in circumstances in which the worker's 10-month period of absence represents less than a third of the period of continuous residence prior to the absence, and less than a fifth of the total time spent by the worker in the host State prior to his death?'

The first question

17 By its first question, the referring court is asking, in essence, whether the first indent of Article 3(2) of Regulation No 1251/70 is to be interpreted as meaning that the period of two years' residence required by that provision must immediately precede the worker's date of death or whether it is sufficient that he has completed such a period of residence at some time in the more remote past.

Observations submitted to the Court

18 The appellants did not take part in the proceedings before the Court. Their arguments are taken from the order for reference.

19 It is apparent therefrom that they submit that their application for indefinite leave to remain in the United Kingdom should be granted given that Mr Givane resided continuously in the United Kingdom between April 1992 and April 1995, that is for a period exceeding two years. The words 'on condition that the worker, on the date of his decease, had resided continuously', in the first indent of Article 3(2) of Regulation No 1251/70, do not impose any additional requirement as to when such continuous residence is to take place.

20 The appellants submit that such interpretation is in accordance with the objectives both of Article 48 of the EC Treaty and of Regulation No 1251/70. They submit that, had Mr Givane considered, when he finally left India, that he might die of natural causes within the next two years and that an interpretation of the type adopted by the Secretary of State would be applied, he would have been discouraged from exercising his right to freedom of movement because of the unfavourable consequences for the welfare of his family members.

21 The appellants admit, none the less, that, where the two years of continuous residence predate an absence of the worker of more than three months from the host State, such an absence should be subject to some form of reasonable and proportional limitation.

22 The United Kingdom and German Governments, and the Commission, submit that the first indent of Article 3(2) of Regulation No 1251/70 is to be interpreted as meaning that a period of two years' continuous residence must immediately precede the worker's death.

23 Those Governments rely on the wording of the first indent of Article 3(2) of Regulation No 1251/70 and particularly on the words 'on the date of his decease' and 'resided continuously'. The continuous residence commences at the moment when the worker enters the Member State concerned and ends, in accordance with Article 4 of that regulation, if that worker is absent for more than three months. The United Kingdom Government maintains that such interpretation is strengthened by the French ('depuis au moins 2 années') and German ('seit mindestens 2 Jahren') versions of that provision. Moreover, the German Government points out that the word 'continuous' is used in other places in Regulation No 1251/70, for example in Article 2(1)(a) and (b), provisions which refer to minimum periods of residence immediately prior to the operative event.

24 Those Governments also rely upon the objectives of Regulation No 1251/70. That regulation is intended to ensure that the right to reside in the host Member State, provided for by Article 48(3)(d) of the EC Treaty, may be exercised only if the persons concerned have established a significant link with that State and if there has been a certain 'putting down of roots' in it. According to those Governments, the necessity for a certain stability of residence is shown, in this case, by the requirement, at the date of the worker's death, of a continuous period of residence for at least two years in the Member State concerned.

25 The German and United Kingdom Governments submit, further, that the appellants' interpretation introduces uncertain and additional tests that do not flow from Regulation No 1251/70.

26 The Commission argues that it is entirely possible to interpret Article 3(2) of Regulation No 1251/70 in either way without distorting the meaning of the words of that provision. It maintains that, according to the English, Spanish, Portuguese and Swedish versions, the fact that the worker had been continuously resident in the host Member State for a period of two years at some point in relation to the date of his death could certainly be considered sufficient to justify a right to remain, whereas the German, French and Italian versions of that

provision require that the period of residence continues up to the time of his death. According to the Commission, only the interpretation reflected by the latter group of language versions examined is compatible with all language versions of Regulation No 1251/70. It should, therefore, prevail in order to ensure a uniform interpretation of the provision in question.

27 The Commission states that such interpretation is also supported by the express linking of the two-year period to the worker's situation 'on the date of his decease'. If the two-year period could have been completed at any point in the past, the link to that particular date would have been superfluous, since it is self-evident that a deceased worker's period of residence cannot continue beyond his death.

28 Furthermore, the Commission argues that, even if the two-year period of residence did not have immediately to precede the worker's death, Article 3(2) of Regulation No 1251/70 does not assist the appellants. It observes, in that regard, that Article 3(1) expressly refers to the members of a worker's family 'who are residing with him in the territory of a Member State'. The intention of the Community legislature was to ensure that the family members had established a sufficient link to the host Member State in their own right before obtaining a permanent right to reside there.

Reply of the Court

29 At the outset, it is appropriate to recall that, in the context of the freedom of movement for workers, Article 48(3)(d) of the EC Treaty grants nationals of Member States the right to remain in the territory of a Member State after having been employed in that State, subject to conditions which are to be embodied in implementing regulations to be drawn up by the Commission. The conditions of entitlement to the worker's right to remain in the host Member State are set out in Article 2 of Regulation No 1251/70. The fundamental condition for the

acquisition of that right is, in the usual situation provided for by Article 2(1)(a), a degree of established connection with the host State, which is evidenced by a three-year period of continuous residence and a period of employment during the last 12 months preceding the end of a worker's working life due to his reaching the age laid down by the law of that Member State for entitlement to an old-age pension.

30 The right to reside in that State granted to a worker's family members arises from the rights conferred on him by Article 48 of the EC Treaty. Article 3(1) of Regulation No 1251/70 states that the members of a worker's family who are residing with him in the territory of a Member State are entitled to remain there permanently, if the worker has acquired the right to remain in the territory of that State in accordance with Article 2 of that regulation.

31 The worker's death transforms his family members' right of residence into a right of their own. Article 3(2) of Regulation No 1251/70 provides that, if the worker dies during his working life and before having acquired the right to remain in the territory of the host Member State under Article 2 of that regulation, members of his family are to be entitled to remain there permanently on condition that the worker, on the date of his decease, had resided continuously in the territory of that Member State for at least two years.

32 In the main proceedings, Regulation No 1251/70 applies since Mr Givane resided in the United Kingdom as a worker within the meaning both of Article 48 of the EC Treaty and of Regulation No 1251/70.

33 It is not disputed before the Court that the appellants are members of Mr Givane's family within the meaning of Article 1 of Regulation No 1251/70, read in conjunction with Article 10 of Regulation No 1612/68.

34 In order to reply to the first question, it is necessary, first of all, to examine the wording of the first indent of Article 3(2) of Regulation No 1251/70 and, more particularly, the words 'for at least two years'. The parties to the main proceedings reach opposing conclusions with regard to the literal interpretation of that provision.

35 In that regard, it must be noted that, while the wording of the first indent of Article 3(2) of Regulation No 1251/70, in the French ('depuis au moins 2 années'), German ('seit mindestens 2 Jahren') and Italian ('da almeno due anni') versions, that is most of the language versions in existence at the date of its adoption, implies that the two-year period of continuous residence must continue until the death of the worker, the wording of the other language versions of that provision is more vague. The Spanish ('un minimo de dos años'), Danish ('i mindst 2 aar'), Greek ('επί δύο τουλάχιστον έτη'), English ('for at least two years'), Dutch ('gedurende ten minste 2 jaren'), Portuguese ('pelo menos 2 anos'), Finnish ('vähintään kaksi vuotta') and Swedish ('under minst två år') versions seem more neutral with regard to the chronological connection between the two years' continuous residence and the date of the worker's death.

36 As the Court held in Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 36, all the language versions must, in principle, be recognised as having the same weight and this cannot vary according to the size of the population of the Member States using the language in question.

37 According to settled case-law, the various language versions of a provision of Community law must be uniformly interpreted, and thus, in the case of divergence between those versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14; Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28; and Case C-236/97 *Skatteministeriet* v *Codan* [1998] ECR I-8679, paragraph 28; and Case C-420/98 *W.N.* [2000] ECR I-2847, paragraph 21).

38 Since a literal interpretation of the words 'for at least two years' in the first indent of Article 3(2) of Regulation No 1251/70 does not provide an unequivocal answer to the question referred, it is necessary to place that expression in its context and to interpret it in relation to the spirit and purpose of the provision in question.

39 The interpretation according to which the period of two years must immediately precede the worker's death is supported by the general scheme of Article 3 of Regulation No 1251/70, read in conjunction with Article 4(1) thereof.

40 In the first place, the period of two years is expressly linked to the words 'on the date of his decease'. If it could terminate at any date when the worker was in the host Member State, it would have been superfluous to establish such a link with that date.

41 Secondly, the period of two years must be 'continuous'. Under Article 4(1) of Regulation No 1251/70, the continuity of residence required by the first indent of Article 3(2) thereof is not affected by temporary absences not exceeding a total of three months per year. Conversely, it follows that longer absences terminate the period of continuous residence.

42 Thirdly, in Article 2(1)(a) and (b) of Regulation No 1251/70, the word 'continuous' refers also to a minimum period of residence taking place immediately before the event which gives rise to the worker's right to remain in the territory of the host Member State.

43 The period of two years prescribed by Article 5(1) of Regulation No 1251/70 is not relevant in this case. That provision merely lays down the period within which the person concerned must exercise his right of permanent residence in the host Member State by reference to the date on which that right arose. It is, in fact, a limitation period. Moreover, at least with regard to the period preceding Mr Givane's death, the right of permanent residence in the United Kingdom did not arise either for Mr Givane or for the appellants.

44 The interpretation by which the period of two years must have immediately preceded the worker's death is also compatible with the objectives of Article 48 of the EC Treaty and of Regulation No 1251/70.

45 Those provisions are intended to ensure freedom of movement for workers by enabling their family members to join them. As the Court has noted in its case-law, the importance of ensuring the protection of the family life of nationals of the Member States and the right of residence of the members of their family has been recognised by the Community legislature (see, to that effect, particularly, Case C-60/00 *Carpenter* [2002] ECR I-6279, paragraph 38). It is in the interest of the worker and his family that, should that worker die prematurely, his family members should, as a rule, be entitled to reside in the territory of the host Member State.

46 The exercise of the right of residence is, none the less, subject to the limitations and conditions laid down by the EC Treaty and by the measures adopted for its application. In relation to continuation of the right of residence of the family members of a worker who has died during his working life, the first indent of Article 3(2) of Regulation No 1251/70 envisages that the worker must, on the date of his decease, have resided continuously in the territory of the host Member State for at least two years. That condition is intended to establish a significant

connection between, on the one hand, that Member State, and on the other hand, that worker and his family, and to ensure a certain level of their integration in the society of that State.

47 The existence of a significant connection between the host Member State and the worker concerned could not be ensured if the right of residence in the territory of a Member State provided for by the first indent of Article 3(2) of Regulation No 1251/70 were to be acquired as soon as a worker had resided for at least two years in that State at some stage of his life, even in the distant past.

48 To resolve that problem as the appellants propose (see paragraph 21 above), by requiring that the departure of the worker from the host Member State for a period exceeding three months should be subjected to some form of limitation, would introduce into Regulation No 1251/70 criteria which do not flow expressly from it. The existence and application of such additional, and even unclear criteria, could create uncertainty as to the legal position of workers and members of their family, whereas that regulation must enable their rights to be clarified and established with certainty.

49 Furthermore, if the Community legislature had wished that periods of residence further removed from the date of the worker's death could be taken into consideration, it would have been appropriate to include, in the wording of Regulation No 1251/70, an express time-limit in that regard as well as conditions relating to the family members of the worker, such as the date of his marriage. The documents in the file also show that the appellants did not reside with Mr

Givane during his first period of employment and residence of almost three years in the United Kingdom.

50 In view of all the foregoing considerations, the answer to the first question must be that on a proper construction of the first indent of Article 3(2) of Regulation No 1251/70 the period of two years' continuous residence required by that provision must immediately precede the worker's death.

51 Having regard to the answer to the first question, it is not necessary to reply to the second, third, fourth and fifth questions.

Costs

52 The costs incurred by the United Kingdom and German Governments, 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 (Fifth Chamber),

in answer to the question referred to it by the Immigration Appeal Tribunal by order of 28 April 2000, hereby rules:

On a proper construction of the first indent of Article 3(2) of Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State the period of two years' continuous residence required by that provision must immediately precede the worker's death.

Wathelet Timmermans Edward

Jann Rosas

Delivered in open court in Luxembourg on 9 January 2003.

R. Grass

Registrar

M. Wathelet

President of the Fifth Chamber