In Case 180/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the Arbeitsgericht [Labour Court] Reutlingen, Federal Republic of Germany, for a preliminary ruling in the proceedings pending before that court between

HANS MOSER,

plaintiff,

and

LAND BADEN-WÜRTTEMBERG,

defendant,

on the interpretation of Article 48 of the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, A. O'Keeffe, G. Bosco, O. Due and U. Everling, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

Under the legislation in force in the Federal Republic of Germany, access to the post of teacher at primary and

secondary school level is conditional upon success in two State examinations. Candidates must undertake postgraduate training in order to be admitted to the second of those examinations.

Article 5 of the Grund- und Hauptschullehrer-Prüfungsordnung II [Regulation concerning the second State examination for teaching at primary and secondary school level] provides that:

"1. A candidate admitted to postgraduate training shall be appointed a trainee teacher with the status of probationary official by the Oberschulamt in whose district the College to which he is assigned is situated.

. . ."

On 9 September 1982, Hans Moser, a German national who had passed the first teaching examination and sought to become a teacher, applied to the Land Baden-Württemberg authoriteis (hereinafter referred to as "the *Land*") to be allowed to undertake postgraduate training with the status of probationary official or, alternatively, as an employee under contract.

The *Land* refused to allow Mr Moser to undertake postgraduate training on the ground that an investigation carried out pursuant to the Decision of the Landesregierung Baden-Württemberg of 2 October 1983 concerning the duties of loyalty to the Constitution in Public Service (Declaration of the Ministry of Culture, Education and Church Affairs of 2 November 1983, Amtsblatt [Official Journal] p. 1674) had revealed that Mr Moser was a member of the German Communist party. However, the *Land* did not dispute Mr Moser's professional and educational skills.

On 7 February 1983 Mr Moser brought an action before the Arbeitsgericht Reutlingen contesting the *Land*'s refusal to allow him to undertake postgraduate training.

The Arbeitsgericht considered that the *Land*'s refusal to allow Mr Moser to undertake postgraduate training made it impossible for him to apply for a post of teacher in, for example, a private school in another Member State since admission to such a post would be conditional upon success in the second State examination. The national court therefore raised the question whether the German legislation is compatible with Article 48 of the EEC Treaty. In those circumstances, by order of 18 August 1983 it stayed the proceedings and submitted the following questions to the Court:

"(a) Does the term 'workers' within the meaning of Article 48 (2) of the EEC Treaty include persons who, having taken the first State examination for primary and secondary school teachers, apply to complete post-graduate training for the second State examination for primary and secondary school teachers in a capacity other than that of an official and who have already been assigned to a training college for teaching practice?

(b) If Question (a) is answered in the affirmative:

Does the defendant's refusal to employ a trainee teacher for postgraduate training for the second State examination for primary and secondary school teachers on a contractual basis outside the sphere of the public administration constitute discrimination based on nationality as regards other conditions of work and employment within the meaning of Article 48 (2) of the EEC Treaty?

(c) If question (b) is answered in the negative:

Does the defendant's refusal to employ a trainee teacher on a contractual basis outside the sphere

of the public administration in order to enable him to complete the second State examination for primary and secondary school teachers on the ground that he is a member of the German Communist Party constitute an infringement of Article 48 (3) (a) and (b) of the EEC Treaty?"

The order making the reference was received at the Court Registry on 22 August 1983.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice, written observations were submitted by Hans Moser, represented by Messrs Gutmann and Wohlfarth, Rechtsanwälte, Stuttgart, by the Government of the Federal Republic of Germany, represented by Martin Seidel and Ernst Röder, acting as Agents, and by the Commission of the European Communities, represented by Manfred Beschel, a member of its Legal Department, acting as Agent.

II — Written observations of the parties

A — Admissibility of the reference for a preliminary ruling

The *Government of the Federal Republic of Germany* doubts whether the reference for a preliminary ruling is admissible since an answer to the questions submitted by the national court is not necessary to enable it to give judgment in this case. In that respect it refers to the decisions of the Court according to which, whilst it is for the national court alone to decide whether a preliminary ruling is necessary for the judgment which it is to give, the Court is not bound by that decision if it is clear that the basis of the reference to it is incorrect.

According to the Government of the Federal Republic of Germany the present case is one of the exceptional cases mentioned in the decisions of the Court (cf. judgment of 16 December 1981 in Case 244/80 *Foglia* v *Novello* [1981] ECR 3045). The plaintiff in the main proceedings is of German nationality, has lived and studied in the Federal Republic of Germany and has never transferred his residence outside the territory of that country. The German Government therefore sees no connection between the questions submitted by the national court dealing with the main proceedings and the provisions of the EEC Treaty in general or those of Article 48 in particular. According to the German Government, the order making the reference is based on a manifest error regarding the subject-matter and scope of the provisions of Community law referred to therein.

The *Commission*, whilst acknowledging that no aspect of the main proceedings falls within the sphere of application of Community law, considers nevertheless that it would be manifestly contrary to the nature and function of the procedure for preliminary rulings if the Court failed to bring to the attention of the national court certain clearly important matters regarding the field of application of Community law, even though no question has been submitted expressly in relation thereto. Therefore, the Commission suggests that the Court should draw the attention of the national court to the limitations to which the principle of the free movement of persons is subject.

B — The questions submitted by the national court

Mr Moser considers that he is certainly a worker within the meaning of Article 48 (2) of the Treaty, since Article 48 applies

inter alia to conditions for training with a view to obtaining employment. The existence of an employment relationship must be acknowledged in any case, according to Mr Moser, if the country where the activity is carried on classifies a particular relationship as an employment relationship.

Moreover, in Mr Moser's opinion, the case of "referendars" or trainees in the German public administration is not covered by the exception contained in article 48 (4) in the absence of any direct connection with the interests of the State.

In his case, his freedom of movement is restricted by the practice followed by the *Land* since as a result of the refusal to allow him to undertake postgraduate training and obtain the diploma relating thereto he is precluded from exercising in the other Member State the profession which he has learned and for which he has completed his studies.

According to the *Government of the Federal Republic of Germany*, a person wishing to undertake postgraduate training for the second State examination for access to the profession of teacher in primary and secondary education does not fall within the field of application of Article 48. It contends in that connection that that article is not intended to benefit the nationals of a Member State in relation to the legislation of that same State.

It has in fact been held that:

"The provisions of the Treaty on freedom of movement for workers cannot ... be applied to situations which are wholly internal to a Member State, in others words, where there is no factor connecting them to any of the situations envisaged by Community law" (judgment of 28 March 1979 in Case 175/78 *Regina* v *Saunders* [1979] ECR 1129),"

and that

"Such is undoubtedly the case with workers who have never exercised the right to freedom of movement within the Community" (judgment of 27 October 1982 in Joined Cases 35 and 36/82 *Morson* [1982] ECR 3723).

The Government of the Federal Republic of Germany points out that in this case Mr Moser has never exercised his right to freedom of movement under Article 48.

As regards the practical difficulties of finding employment in another Member State without having obtained the vocational-training diploma required by the legislation of a Member State, they do not constitute discrimination towards foreigners of the kind prohibited by Article 48.

The *Commission* also considers that in this case there is not the slightest trace of discrimination based on nationality since Mr Moser's nationality clearly played no part in the *Land*'s contested decision.

The Commission points out that according to the case-law of the Court Article 48 of the EEC Treaty places no limit on the powers of Member States to establish on the basis of general laws — rather than laws creating distinctions based on nationality — rules applicable to all persons over whom they have authority.

According to the Commission, the fact that a person denied access to postgraduate training is prevented from exercising the profession which he wishes to exercise in another Member State is not such as to establish the necessary connection with the provisions of the EEC Treaty on freedom of movement for workers or of the legislation adopted in implementation thereof.

III — Oral procedure

At the sitting on 10 April 1984 oral argument was presented for Hans Moser by Hans-Dieter Wohlfarth, for the Government of the Federal Republic of Germany by its Agent, Martin Seidel, and for the Commission of the European Communities by Manfred Beschel, a member of its Legal Department, acting as Agent.

The Advocate General delivered his opinion at the same sitting.

Decision

1 By order dated 18 August 1983, which was received at the Court on 22 August 1983, the Arbeitsgericht [Labour Court] Reutlingen referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Article 48 of the EEC Treaty.

2 The questions were raised in proceedings between Hans Moser, a German national, and the authorities of the Land Baden-Württemberg (hereinafter referred to as "the *Land*") regarding the latter's refusal to allow Mr Moser to undertake the post-graduate training necessary to secure entry, after passing the second State examination, to the post of teacher at primary- and secondary-school level.

3 It is apparent from the order making the reference that the *Land* based its refusal on the fact that, contrary to the requirements of the *Land*'s legislation regarding access to employment in the public service, there was insufficient certainty as regards Mr Moser's loyalty to the Basic Law of the Federal Republic of Germany, by reason of his membership of the German Communist Party.

4 The matter was brought before the Arbeitsgericht Reutlingen, which took the view that the *Land*'s refusal might deprive Mr Moser of the possibility of applying for teaching posts in schools in Member States other than the Federal Republic of Germany. According to the national court, the allocation of such a post might be excluded in the case of persons who, like Mr Moser, had been unable to complete the prescribed post-graduate training. The Arbeitsgericht therefore raised the question whether the *Land*'s legislation was compatible with the principle of free movement of workers contained in Article 48 of the Treaty. In those circumstances, it stayed the proceedings and referred the following questions to the Court:

"(a) Does the term 'workers' within the meaning of Article 48 (2) of the EEC Treaty include persons who, having taken the first State examination for primary and secondary school teachers, apply to complete post-graduate training for the second State examination for primary and secondary school teachers in a capacity other than that of an official and who have already been assigned to a training college for teaching practice?

(b) If Question (a) is answered in the affirmative:

Does the defendant's refusal to employ a trainee teacher for post-graduate training for the second State examination for primary and secondary school teachers on a contractual basis outside the sphere of the public administration constitute discrimination based on nationality as regards other conditions of work and employment within the meaning of Article 48 (2) of the EEC Treaty?

(c) If Question (b) is answered in the negative:

Does the defendant's refusal to employ a trainee teacher on a contractual basis outside the sphere of the public administration in order to enable him to complete the second State examination for primary and secondary school teachers on the ground that he is a member of the German Communist Party constitute an infringement of Article 48 (3) (a) and (b) of the EEC Treaty?"

5 In the observations which it has submitted to the Court, the Government of the Federal Republic of Germany expresses doubts as to the jurisdiction of the Court to give a ruling on the questions submitted by the Arbeitsgericht since, in its opinion, a reply to those questions is not required for determination of the dispute.

6 As the Court has consistently held, in particular in its judgment of 14 February 1980 (*ONPTS* v *Damiani,* Case 53/79 [1980] ECR 273), as regards the division of jurisdiction between national courts and the Court of Justice under Article 177 of the Treaty, it is for the national court, which is alone in having a direct knowledge of the facts of the case and of the arguments put forward by the parties and which must assume the responsibility of giving judgment in the case, to assess, with full knowledge of the matter before it, the relevance of the questions of law raised by the dispute before it and the need for a preliminary ruling so as to enable it to give judgment.

7 The German Government points out, however, that in its judgment of 16 December 1981 (Case 244/80 *Foglia* v *Novello* [1981] ECR 3045) the Court held that it did not consider itself to have jurisdiction to reply to questions of interpretation submitted by a national court within the context of procedural devices arranged by the parties in order to induce the Court to give its views on certain problems of Community law which did not correspond to an objective requirement inherent in the resolution of a dispute.

8 In this instance, however, nothing has emerged to support the conclusion that the present case is one of the exceptional cases referred to in the above-mentioned decision.

9 The German Government also stated that the order making the reference is based on a manifest error regarding the purpose and the scope of the provisions of Community law referred to therein. In that connection it emphasizes that Mr Moser is a German national and has never worked or resided in a Member State other than the Federal Republic of Germany. Consequently, his situation falls entirely outside the scope of Article 48 of the Treaty, of which an interpretation is sought.

10 It must however be stated that the circumstances relied upon by the German Government relate to the substance of the questions submitted by the national court. Consequently, whilst they may be relevant to an answer to those questions, they are not relevant in determining whether the Court has jurisdiction to rule on the request for a preliminary ruling.

11 The objections raised by the German Government regarding the jurisdiction of the Court cannot therefore be upheld.

12 In the three questions submitted to the Court the Arbeitsgericht asks essentially whether Article 48 of the Treaty covers a situation such as that in which Mr Moser finds himself and, more particularly, whether a person in such a situation may rely on Article 48 to prevent the application to him of legislation, such as that in force in the *Land,* by virtue of which persons as regards whose loyalty to the Basic Law there is insufficient certainty are denied access to the vocational training necessary to enable them to become teachers in primary and secondary education.

13 The reply to those questions depends, in the first place, on the determination of the scope of Article 48 of the Treaty.

14 In that connection it must be pointed out that, as the Court held in its judgment of 28 March 1979 (Case 175/78 *Saunders* [1979] ECR 1128), that provision aims, in implementation of the general principle laid down in Article 7, to abolish in the legislation of the Member States provisions regarding employment, remuneration and other conditions of work and employment by virtue of which a worker who is a national of another Member State is subject to more severe treatment or is placed in an unfavourable situation in law or in fact as compared with the situation of a national in the same circumstances.

15 It follows that the provisions of the Treaty concerning the free movement of workers and particularly Article 48 cannot be applied to situations which are wholly internal to a Member State, in other words where there is no factor connecting them to any of the situations envisaged by Community law.

16 The case described by the national court concerns, as the German Government has correctly pointed out, a German national who has always lived and maintained his residence in the Federal Republic of Germany and who contests the refusal by the German authorities to allow him access, under the legislation of that State, to a particular kind of vocational training.

17 In order to establish a connection with the Community provisions, Mr Moser claimed in the observations which he submitted to the Court that the application to him of the German legislation in question, by making it impossible for him to complete his training as a teacher, entails the result that he is precluded from applying for teaching posts in schools in the other Member States.

18 That argument cannot be upheld. A purely hypothetical prospect of employment in another Member State does not establish a sufficient connection with Community law to justify the application of Article 48 of the Treaty.

19 It follows that there is no factor connecting a personal situation of the kind referred to by the national court with the provisions of Community law on the free movement of workers.

20 It must therefore be held in reply to the questions submitted by the national court that Article 48 of the EEC Treaty does not apply to situations which are wholly internal to a Member State, such as that of a national of a Member State who has never resided or worked in another Member State, and that such a person cannot rely on Article 48 to prevent the application to him of the legislation of his own country.

Costs

21 The costs incurred by the Government of the Federal Republic of Germany and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, so far as the parties to the main proceedings are concerned, in the nature of a step in the action 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 Arbeitsgericht Reutlingen by order of 18 August 1983, hereby rules:

Article 48 of the EEC Treaty does not apply to situations which are wholly internal to a Member State, such as that of a national of a Member State who has never resided or worked in another Member

State. Such a person may not rely on Article 48 to prevent the application to him of the legislation of his own country.

Mackenzie Stuart Koopmans Bahlmann Galmot

Pescatore O'Keeffe Bosco Due Everling

Delivered in open court in Luxembourg on 28 June 1984.

P. Heim
Registrar

A. J. Mackenzie Stuart
President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 10 APRIL 1984

My Lords

Mr Moser is a German national who resides in the Federal Republic. He wishes to qualify as a school teacher. To that end he took and passed the first prescribed State examination. But he cannot qualify unless he undertakes a course of post-graduate training and passes the second examination. He applied to do this with the status of a probationary official, or under a contract of employment as an employee. The authorities of the Land Baden-Württemberg refused his application on the ground that his loyalty to the democratic principles of the Federal Republic were in doubt. That was because, it is said, he is a member of the German Communist Party and has, for a long time and quite openly, been active in its affairs.

He then brought proceedings before the Labour Court to challenge the refusal. He says first that the refusal is in breach of domestic law and of the European Convention on Human Rights. A question was raised, however, as to whether the refusal by the authorities violated Community law. The Labour Court took the view that it needed a ruling on this question from this Court in order to enable it to give judgment.