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.

And so it asks the Court three questions. The first is whether someone who is in Mr Moser's position is a worker for the purposes of Article 48 (2) of the EEC Treaty. The second is whether, if he is such a worker, any refusal to employ him constitutes discrimination based on nationality, as regards other conditions of work and employment within the meaning of that paragraph of that article. And the third question is whether the refusal to employ him because he is a member of the Communist Party is an infringement of paragraphs (a) and (b) of Article 48 (3) of the Treaty.

It is suggested, at the outset, by the Federal Republic that this reference may not be admissible because the Labour Court clearly misunderstood the ambit of Community law, so that it is unnecessary for this Court to answer the questions. Reliance is placed on Case 13/68 *Salgoil* [1968] ECR 453 and on Case 244/80 *Foglia* v *Novello* [1981] ECR 3045.

In my view the reference should not be rejected for these reasons. The Court's judgment in *Foglia* v *Novello* cannot be read as covering a case like the present, even if, as counsel for the Federal Republic has just submitted to the Court, the question proceeds upon a misapprehension or is a question capable of a short answer and only in one direction. It does not seem to me that that is a reason for refusing to answer the question if the national judge has said that he finds it necessary for such an answer to be given. To answer a question which the judge finds necessary is the basic purpose of Article 177.

In the present case it is, in my opinion, possible and desirable to deal, by way of an answer, with the basic assumption underlying the questions in such a way as to dispose of the Community law issues.

Counsel for Mr Moser recognizes that some of the decisions of the Court have been concerned with a situation where a worker had sought to exercise the right of freedom of movement. He submits, however, that Member States are bound to make it possible for their nationals to enjoy domestically the freedoms which are contained in the Treaty. In my view, that contention cannot be accepted in this case.

Article 48 is concerned with the freedom of movement of workers within the Community. It prohibits discrimination by one Member State against workers who wish to work in that State on the grounds of their nationality. It is of relevance only where a worker has exercised, or sought to exercise, the right to freedom of movement within the Community. It is not concerned with situations which are purely internal to a Member State and where there is no factor connecting them to any of the situations envisaged by Community law.

The judgments of the Court in Case 175/78 *Regina* v *Saunders* [1979] ECR 1129, in Case 115/78 *Knoors* v *Secretary of State* [1979] ECR 399 and in the recent case of *Morson* and *Jhanjan* v *Netherlands* (Cases 35 and 36/82 [1982] ECR 3723) make this abundantly clear. It follows, in my view, that a national of one Member State who has not sought to rely on the right of freedom of

movement as a worker within the Community is not entitled, as against that State where he resides, to claim rights under Article 48 of the Treaty.

On the facts stated in the reference, that appears to be the position of Mr Moser, assuming, for these purposes, that he is to be regarded as a worker. His present claims spring from the refusal to allow him, in his own Member State where he resides, to take employment and to follow a course of education. Despite the distinctions which counsel for Mr Moser sought to draw between someone in his position and someone like the night bread workers, to whom he referred, it seems to me that that is a purely internal matter not involving Community law. It is none the less so because of the fact, if it be a fact, that Mr Moser would not subsequently be able to obtain employment as a teacher in another Member State on the basis that he had qualified in the Federal Republic.

In so far as the questions raised involve a detailed consideration of Articles 48 (2) and 48 (3) they do not, in these circumstances, arise.

Accordingly, I conclude that the reference should be answered on the lines that Article 48 of the EEC Treaty cannot be relied on by a national of one Member State against that State in which he resides, where he has not sought to exercise any right of freedom of movement within the Community.

The costs of the parties to the main action fall to be dealt with by the referring court and, in my view, no order should be made as to the costs of the Commission or the Federal Republic.