JUDGMENT OF THE COURT OF 28 MARCH 1979 [1]

Regina v Vera Ann Saunders (preliminary ruling requested by the Crown Court at Bristol)

Case 175/78

Freedom of movement for workers — Restrictions in pursuance of penal legislation — Situations domestic to a Member State — Community law — Not applicable (EEC Treaty, Art. 48)

The application by an authority or court of a Member State to a worker who is a national of that same State of measures which deprive or restrict the freedom of movement of the person concerned within the territory of that State as a penal measure provided for by national law by reason of acts committed within the territory of that State is a wholly domestic situation which falls outside the scope of the rules contained in the EEC Treaty on freedom of movement for workers.

In Case 175/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Crown Court at Bristol for a preliminary ruling in the action pending before that court between

REGINA

and

VERA ANN SAUNDERS on the interpretation of Article 48 of the EEC Treaty

1 — Language of the Case: English.

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The order for reference and the written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. On 21 December 1977 the Crown Court at Bristol, hearing criminal proceedings brought against Vera Ann Saunders, a British subject, on a charge of theft to which she had pleaded guilty, merely bound her over, in accordance with its powers in this connexion under section 6 (4) of the Courts Act 1971, to come up for judgment if called upon to do so, it being a condition of her recognizance — this was, moreover, in accordance with the desire which she had herself expressed — that she should proceed to Northern Ireland an not return to England or Wales within three years.

2. Miss Saunders broke that undertaking; the Crown Court at Bristol before which her case was brought once more wished to know before giving judgment whether its Order of 21 December 1977 was invalid in that it was in derogation of the rights conferred by Article 48 of the Treaty on freedom of movement for workers.

The Crown Court in fact considers first that the defendant must be considered as a worker within the meaning of the Treaty and secondly that its Order of 21 December 1977 did not fall within any of the limitations set out in Article 48 (3) of the Treaty.

3. By Order of 31 July 1978, received at the Court on 16 August 1978, the Crown Court at Bristol requested the Court of Justice to give a preliminary ruling on the following question:

"Whether the Order of this court made in the case of Vera Ann Saunders on

21 December 1977 may constitute a derogation from the right given to a worker under Aricle 48 of the Treaty establishing the European Economic Community, having regard in particular to the right specified in Article 48 (b) of the said Treaty, and the fact that she appears to be an English national".

4. The Government of the United Kingdom and the Commission of the European Communities submitted written observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

5. After hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory enquiry.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

A — Observations submitted by the United Kingdom

The Government of the United Kingdom emphasizes first of all that in submitting observations pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC it does not intend in any way to interfere with the course of justice but wishes to state its point of view on the points of principle arising from the reference.

Proceeding to a legal analysis of the effect of the Order made on 21 December 1977 by the Crown Court at Bristol, the Government of the United Kingdom observes that the power given to the court, though stemming from the common law, is expressly preserved in section 6 (4) of the Courts Act 1971. The effect of the order is that the offender is released without sentence being passed and will not be called upon to be sentenced provided that, during the relevant period, he behaves himself and does not contravene any condition that may be imposed. A duty to reside in a part of the national territory for a specified time is a condition frequently laid down in the case of nationals. The Government of the United Kingdom emphasizes however that an order of this kind is not made if the offender objects to the conditions laid down. It is not imposed on him and if he prefers not to consent to it voluntarily the Court proceeds to deal with him in the ordinary way.

The Government of the United Kingdom once more draws attention to the fact that the above-mentioned procedure should be distinguished from the various procedures referred to first by section 1 and secondly by section 22 of the Powers of Criminal Courts Act 1973. The power to bind over to come up for judgment, coupled with a residential condition, is considered by the Government of the United Kingdom as still capable of serving a valid and useful purpose in the administration of criminal justice, *inter alia* in specific cases, in other words in the case of alien offenders normally resident outside the territory of the State in which they have committed a criminal offence and the case of first offenders from rural environments who have been seduced into crime as a result of undesirable urban influences.

Examining the situation referred to by the national court in its relationship to Community law in the light of the

above-mentioned considerations, the Government of the United Kingdom, having recalled the fact that Article 48 is directly applicable, asks whether the order involved in the reference for a preliminary ruling must be regarded as a "measure" for the purposes of Directive No 64/221/EEC as interpreted by the Court of Justice in its judgment of 27 October 1977 in Case 30/77, *Regina* v *Pierre Bouchereau* [1977] ECR 1999 when the Court considered that that expression extends to sentences imposed by a court of a Member State.

The difference between the present case and the *Bouchereau* case lies in the fact that in the case at issue which is before the Crown Court at Bristol the residential condition is the result of consent of Miss Sanders and the contravention by her of her undertaking does not moreover automatically involve the imposition of a penalty.

Furthermore, since sentences to a term of imprisonment imposed by the courts of the Member States are incontestably compatible with the right of freedom of movement, this should apply *a fortiori* to lesser restrictions on the right of movement.

It follows from these considerations that the rules of Community law on freedom of movement for workers are not applicable to a procedure such as that which forms the subject-matter of the question referred to the Court of Justice for a preliminary ruling.

In the alternative, if the Court considers that the rules of Community law on freedom of movement for workers are applicable where a person is bound over to come up for judgment, the Government of the United Kingdom claims, in the light of the judgment given by the Court of Justice on 28 October 1975 in Case 36/75, *Roland Rutili* v *Minister for the Interior* [1975] ECR 1219, that the absence of any element of discrimination based on nationality must lead to the conclusion that procedures of a similar kind to that which is the subject-matter of the reference for a preliminary ruling are compatible with Article 48 of the Treaty.

B — Observations submitted by the Commission of the European Communities

According to the Commission the reference to the Court for a preliminary ruling raises two questions, in other words:

1. Whether and to what extent, Community law is concerned with the free movement of workers within the territory of the Member State of which the worker in question is a national;
2. If so, whether and to what extent derogations are permitted by Community law as regards the nationals of the Member States concerned from the rules which, according to the provisions of the Treaty, apply to the treatment of nationals of other Member States.

After recalling that the Court of Justice, in its judgment in the Rutili case (quoted above) had held that residential orders based on grounds of public policy are compatible with Article 48 of the Treaty provided that in applying them no discrimination is made between the nationals of the Member State imposing them and those of the other Member States, the Commission emphasizes that although Community law is *primarily* concerned to lessen discrimination to which nationals of other Member States may be subject in each Member State, it has nevertheless *also* been relied upon in cases in which the victim of discrimination was a national of the Member

State in question. The Commission quotes in this respect the judgment of 26 November 1975 in Case 39/75, *Robert Gerardus Coenen and Others* v *The Sociaal-Economische Raad* [1975] ECR 1547 and the *Knoors* case (Case 115/78) and the *Auer* case (Case 136/78) which are at present pending.

The common factor in all these other cases is however the existence of elements which prevent a given situation being treated in purely national terms. On the other hand, the Commission considers that in the present case the facts do not show any element of that type and that consequently the situation does not enter within the scope of application of Community law. Therefore the further question of possible derogations does not arise.

In conclusion, the Commission considers that it is necessary to reply to the question raised by the Crown Court at Bristol "that the imposition, in appropriate circumstances, of measures by a Member State restricting the right of residence of its own nationals to part only of the national territory is not contrary to Community law unless the grounds for such restriction be linked with, or related to, events localized in another Member State".

III — Oral procedure

At the hearing on 13 February 1979 the prosecution, represented by Mr P. Chadd Q.C. and Mr Rupert Bursell, Barrister, of Lincoln's Inn, London, the accused, represented by Mr Paul Fallon Q.C. and Mr Simon Darwall-Smith, Barrister, of Grey's Inn, London, the Government of the United Kingdom, represented by Mr L. Blom-Cooper Q.C. of the Middle Temple, London, and Mr Peter Gibson, Barrister, of the Inner Temple, London, and the Commission of the European Communities, represented by its Agent, J. Forman, presented oral argument and replied to questions put by the Judges and the Advocate General.

The Advocate General delivered his opinion at the hearing on 8 March 1979.

Decision

1 By order of 31 July 1978, received at the Court on 16 August 1978, the Crown Court at Bristol referred to the Court of Justice under Article 177 of the EEC Treaty a question on the interpretation of Article 48 of the Treaty and in particular of Article 48 (3) (b).

2 This question has arisen within the context of criminal proceedings concerning in particular the consequences of the infringement, by a person of British nationality who had pleaded guilty to a charge of theft at a previous stage in those proceedings, of an undertaking accepted by her to proceed to Northern Ireland and not to return to England or Wales within three years.

3 The national court, on the basis that the accused was a worker within the meaning of Article 48 of the Treaty, wishes to know whether the rules of the Treaty on freedom of movement for workers prohibit measures in the nature of those by which the accused was bound.

4 For this purpose the national court asks whether "the Order of this court made in the case of Vera Ann Saunders on 21 December 1977 may constitute a derogation from the right given to a worker under Article 48 of the Treaty establishing the European Economic Community, having regard in particular to the right specified in Article 48 (b) of the said Treaty, and the fact that she appears to be an English national".

5 This question asks in substance whether the principle of the freedom of movement for workers as laid down in Article 48 of the Treaty, in particular in so far as it entails the right for a worker, subject to limitations justified *inter alia* on grounds of public policy and public security, to move freely within the territory of Member States so as to accept offers of employment actually made and to stay there for the purpose of employment, may be relied upon by a national of a Member State residing in that Member State for the purpose of opposing the application of measures which restrict his freedom of movement within the territory of that Member State or his freedom to establish himself in that State in any place he chooses.

6 It therefore also concerns the question whether Article 48 of the Treaty confers rights upon a person in the same situation as Miss Saunders and, if the answer is in the affirmative, what the extent of those rights is.

7 The reply to that question depends, first, on the determination of the scope of that provision in conjunction in particular with the general principle expressed in Article 7 of the Treaty.

8 Under Article 7, any discrimination on grounds of nationality is prohibited within the scope of application of the Treaty and without prejudice to any special provisions contained therein.

9 In application of that general principle, Article 48 aims to abolish in the legislation of the Member States provisions as regards employment, remuneration and other conditions of work and employment — including the rights and freedoms which that freedom of movement involves pursuant to Article 48 (3) — according to 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.

10 Although the rights conferred upon workers by Article 48 may lead the Member States to amend their legislation, where necessary, even with respect to their own nationals, this provision does not however aim to restrict the power of the Member States to lay down restrictions, within their own territory, on the freedom of movement of all persons subject to their jurisdiction in implementation of domestic criminal law.

11 The provisions of the Treaty on freedom of movement for workers cannot therefore 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.

12 The application by an authority or court of a Member State to a worker who is a national of that same State of measures which deprive or restrict the freedom of movement of that worker within the territory of that State as a penal measure provided for by national law by reason of acts committed within the territory of that State is a wholly domestic situation which falls outside the scope of the rules contained in the Treaty on freedom of movement for workers.

Costs

13 The costs incurred by the Government of the United Kingdom and the Commission of the European Communities which submitted observations to the Court are not recoverable.

14 As these proceedings are, in so far as the parties to the main action are concerned, 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 question referred to it by the Crown Court at Bristol by order of 31 July 1978 hereby rules:

The application by an authority or court of a Member State to a worker who is a national of that same State of measures which deprive or restrict the freedom of movement of the person concerned within the territory of that State as a penal measure provided for by national law by reason of acts committed within the territory of that State is a wholly domestic situation which falls outside the scope of the rules contained in the EEC Treaty on freedom of movement for workers.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 28 March 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 8 MARCH 1979

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Crown Court at Bristol. It raises questions as to the impact of Community law, and more particularly of Article 48 of the EEC Treaty, on a power that the