JUDGMENT OF THE COURT

20 November 2001 *

In Case C-268/99,

REFERENCE to the Court under Article 234 EC by the Arrondissementsrechtbank te 's-Gravenhage (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Aldona Malgorzata Jany and Others

and

Staatssecretaris van Justitie,

on the interpretation of Articles 44 and 58 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Communities by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1), and of Articles 45 and 59 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, concluded and approved on behalf of the Communities by Decision 94/910/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 360, p. 1),

* Language of the case: Dutch.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken and N. Colneric (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), L. Sevón, M. Wathelet, V. Skouris and C.W.A. Timmermans, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the Netherlands Government, by M.A. Fierstra, acting as Agent,

— the Belgian Government, by P. Rietjens, acting as Agent,

— the French Government, by K. Rispal-Bellanger and A. Lercher, acting as Agents,

— the Italian Government, by U. Leanza, acting as Agent, assisted by F. Quadri, avvocato dello Stato,

— the United Kingdom Government, by J.E. Collins, acting as Agent, assisted by S. Kovats, Barrister,

— the Commission of the European Communities, by M.-J. Jonczy, P.J. Kuijper and P. van Nuffel, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Jany and the other applicants, represented by G.J.K. van Andel, advocaat; of the Netherlands Government, represented by J.S. van den Oosterkamp, acting as Agent; of the United Kingdom Government, represented by J.E. Collins, assisted by S. Kovats; and of the Commission, represented by M.-J. Jonczy and W. Neirinck, acting as Agent, at the hearing on 20 February 2001,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2001,

gives the following

Judgment

1 By decision of 15 July 1999, received at the Court on 19 July 1999, the Arrondissementsrechtbank te 's-Gravenhage (District Court, The Hague) referred for a preliminary ruling under Article 234 EC five questions concerning the interpretation of Articles 44 and 58 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Communities by Decision 93/743/Euratom, ECSC, EC of the

Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1) ('the Association Agreement between the Communities and Poland'), and of Articles 45 and 59 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, concluded and approved on behalf of the Communities by Decision 94/910/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994 (OJ 1994 L 360, p. 1) ('the Association Agreement between the Communities and the Czech Republic').

2 The questions have arisen in proceedings brought by Ms Jany and Ms Szepietowska, who are Polish nationals, and Ms Padevetova, Ms Zacalova, Ms Hrubcinova and Ms Überlackerova, who are Czech nationals, against the Staatssecretaris van Justitie (the Netherlands Secretary of State for Justice) ('the Secretary of State') contesting his dismissal on the merits of their objections to his earlier decisions refusing them residence permits to enable them to work as self-employed prostitutes.

The Association Agreement between the Communities and Poland

3 The Association Agreement between the Communities and Poland was signed in Brussels on 16 December 1991 and entered into force on 1 February 1994, pursuant to the second paragraph of Article 121 thereof.

4 According to Article 1(2), the aims of the Association Agreement between the Communities and Poland are, *inter alia*, to provide an appropriate framework for political dialogue between the parties, allowing the development of close political relations between them, to promote the expansion of trade and harmonious economic relations so as to foster dynamic economic development and prosperity

in the Republic of Poland, and to provide an appropriate framework for that country's gradual integration into the Communities. According to the 15th recital in the preamble to that Association Agreement, the ultimate objective of the Republic of Poland is to accede to the Communities.

5 The provisions of the Association Agreement between the Communities and Poland relevant to the case before the national court are to be found in Title IV, entitled 'Movement of workers, establishment, supply of services'.

6 Article 37(1) of the Association Agreement between the Communities and Poland, which appears in Title IV, Chapter I, entitled 'Movement of workers', provides:

'Subject to the conditions and modalities applicable in each Member State:

— the treatment accorded to workers of Polish nationality legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals,

...'

7 Article 44(3) and (4) of the Association Agreement between the Communities and Poland, which appears in Title IV, Chapter II, entitled 'Establishment', provides:

'3. Each Member State shall grant, from entry into force of this Agreement, a treatment no less favourable than that accorded to its own companies and nationals for the establishment of Polish companies and nationals as defined in Article 48 and shall grant in the operation of Polish companies and nationals established in its territory a treatment no less favourable than that accorded to its own companies and nationals.

4. For the purposes of this Agreement:

(a) "*establishment*" shall mean

(i) as regards nationals, the right to take up and pursue economic activities as self-employed persons and to set up and manage undertakings, in particular companies, which they effectively control. Self-employment and business undertakings by nationals shall not extend to seeking or taking employment in the labour market or confer a right of access to the labour market of another Party. The provisions of this chapter do not apply to those who are not exclusively self-employed;

...

(c) "*economic activities*" shall in particular include activities of an industrial character, activities of a commercial character, activities of craftsmen and activities of the professions.'

8 Article 53(1) of the Association Agreement between the Communities and Poland provides:

'The provisions of this chapter shall be applied subject to limitations justified on grounds of public policy, public security or public health.'

9 Article 58(1) of the Association Agreement between the Communities and Poland, which appears in Title IV, Chapter IV, entitled 'General provisions', states:

'For the purpose of Title IV of this Agreement, nothing in the Agreement shall prevent the Parties from applying their laws and regulations regarding entry and stay, work, labour conditions and establishment of natural persons, and supply of services, provided that, in so doing, they do not apply them in a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific provision of this Agreement....'

The Association Agreement between the Communities and the Czech Republic

10 The Association Agreement between the Communities and the Czech Republic was signed in Luxembourg on 4 October 1993 and, in accordance with the second paragraph of Article 123 thereof, entered into force on 1 February 1995.

11 Articles 1(2), 38(1), 45(3), 45(4)(a)(i) and 45(4)(c), 54(1) and 59(1) of the Association Agreement between the Communities and the Czech Republic contain provisions that are similar to those set out in, respectively, Articles 1(2), 37(1), 44(3), 44(4)(a)(i) and 44(4)(c), 53(1) and 58(1) of the Association Agreement between the Communities and Poland, the wording of which is summarised or reproduced in paragraphs 4 and 6 to 9 above.

The national legislation

12 Under Article 11(5) of the Wet houdende nieuwe regelen betreffende: a. de toelating en uitzetting van vreemdelingen; b. het toezicht op vreemdelingen die in Nederland verblijf houden; c. de grensbewaking (Vreemdelingenwet) (Netherlands Law containing new rules on (a) entry and expulsion of foreigners (b) monitoring of foreigners residing in the Netherlands (c) border controls) (Law on Aliens)) of 13 January 1965 (*Staatsblad* 1965, p. 40), as amended ('the Law on Aliens'), residence permits for the Netherlands may be refused to any foreigner on grounds of public interest.

13 Under the policy followed by the Secretary of State in applying that provision, as set out in 1994 in Chapter B 12 of the Vreemdelingencirculaire ('the Circular on Aliens'), nationals of non-member countries are entitled to a residence permit only if their presence within national territory is such as to serve an essential national economic interest or if compelling humanitarian reasons or obligations arising under international agreements require that such a permit be granted.

14 Under section 4.2.3 of Chapter B 12 of the Circular on Aliens, nationals of a non-member country with which the European Communities or their Member States have concluded an association agreement, such as the Republic of Poland or the Czech Republic, must, in order to be allowed to become established in terms of those agreements as self-employed persons in the Netherlands:

(a) satisfy the conditions generally governing access to an activity as a self-employed person and any special conditions applicable to the exercise of the planned activity;

(b) have sufficient financial resources;

(c) not represent a danger to public peace, public order or national security.

15 Under the Circular on Aliens, an application to become established must be rejected if the activity planned by the person concerned is normally performed in an employed capacity. For the purposes of his application, that person may submit documentation originating, so far as possible, from independent persons or bodies and describing the function which the person concerned intends to perform, such as evidence of registration in a register of the chamber of commerce or with a professional organisation, a certificate from the tax authorities confirming that the person concerned is liable to pay value added tax, a copy of an agreement to purchase or lease premises used for professional purposes or financial accounts prepared by an accountant or auditing firm. If there is a suspicion that the information submitted by the person concerned constitutes a fictitious arrangement, the application for establishment must also be submitted to the Ministry of Economic Affairs, which will check whether the person concerned genuinely intends to carry on an activity as a self-employed person.

The dispute in the main proceedings

16 Ms Jany, Ms Szepietowska, Ms Padevetova, Ms Zacalova, Ms Hrubcinova and Ms Überlackerova declare that they established their residence in the Netherlands at various dates between May 1993 and October 1996 on the basis of the Law on Aliens. All of them work in Amsterdam as 'window prostitutes'.

17 According to the decision making the reference:

— Ms Jany pays rent to the owner of the premises where she carries on her activity. Her net monthly income is approximately between NLG 1 500 and NLG 1 800. She has an accountant who draws up her tax return;

— Ms Szepietowska carries on her activity three to four times a week in rented premises. She claims that her net monthly income amounts approximately to between NLG 1 500 and NLG 1 800. Her accountant drew up her first tax return in 1997;

— Ms Padevetova submitted accounts relating to income and expenditure for the 1997 financial year drawn up by her accountant;

— Ms Hrubcinova pays rent to the proprietress of the premises where she carries on her activity. Her accountant ensures that she satisfies her tax obligations. She returns to the Czech Republic two or three times each year;

— Ms Überlackerova pays rent to the proprietress of the premises where she carries on her activity. According to the estimates which her accountant has submitted to the tax authorities, her annual turnover amounts to NLG 35 000. Since she works for 10 days each month in Amsterdam and resides in the Czech Republic for the remainder of the time, the Netherlands authorities doubt whether she is genuinely resident in the Netherlands.

18 The six applicants in the main proceedings applied to the commissioner of the Amsterdam-Amstelland regional police for residence permits to enable them to work as self-employed prostitutes for 'compelling humanitarian reasons'. Those applications were rejected by the Secretary of State. The applicants in the main proceedings then lodged objections with the Secretary of State against those decisions. By decisions of 6 February 1997, those objections were also declared to be unfounded on the ground that prostitution is a prohibited activity or at least not a socially acceptable form of work and cannot be regarded as being either a regular job or a profession.

19 By judgments of 1 July 1997, the Arrondissementsrechtbank te 's-Gravenhage ruled that the appeals brought against the Secretary of State's decisions of 6 February 1997 were well founded, and it set those decisions aside on the ground of failure to provide reasons. The Arrondissementsrechtbank pointed out that in 1988 the Secretary of State had granted a residence permit to an Italian prostitute in order to allow her to work and had thus recognised prostitution as an economic activity. It could not accept the reasoning in the annulled decisions that the expression 'economic activities as self-employed persons' used in the Association Agreements between the Communities, on the one hand, and Poland and the Czech Republic, on the other, did not have the same meaning as the expression 'activities as self-employed persons' in Article 52 of the EC Treaty (now, after amendment, Article 43 EC).

20 However, the referring court ruled in its judgments of 1 July 1997 that the applicants could not invoke the direct effect of Article 44(3) of the Association Agreement between the Communities and Poland or of Article 45(3) of the

Association Agreement between the Communities and the Czech Republic. It took the view that the replies to the questions raised in that regard by the applicants could not give rise to any reasonable doubt, so that it was not necessary to refer their cases to the Court for a preliminary ruling.

21 In the same judgments, the Arrondissementsrechtbank also pointed out that certain forms of prostitution, such as window prostitution and street prostitution, are permitted in the Netherlands and even regulated at communal level by provisions establishing 'soliciting areas'.

22 By decisions of 12 June, 23 June, 3 July and 9 July 1998, the Secretary of State, ruling afresh on the objections lodged by the applicants in the main proceedings, declared all of them to be unfounded.

23 The actions brought before the referring court by the applicants in the main proceedings seek the annulment of those new decisions taken by the Secretary of State.

The questions submitted for preliminary ruling

24 Since it formed the view that, in those circumstances, the cases required an interpretation of the two Association Agreements between the Communities and

Poland and the Czech Republic, the Arrondissementsrechtbank te 's-Gravenhage decided to stay proceedings and to refer the following five questions to the Court for a preliminary ruling:

'1. Can Polish and Czech nationals rely directly on the Agreements in the sense that they are entitled, *vis-à-vis* a Member State, to claim that they derive a right of entry and residence from the right laid down in Article 44 of the Agreement with Poland and Article 45 of the Agreement with the Czech Republic in order to take up and pursue economic activities as self-employed persons and to set up and manage undertakings, irrespective of the policy which the Member State in question pursues in this regard?

2. If the answer to that question is in the affirmative: is a Member State free under Article 58 of the Agreement with Poland and Article 59 of the Agreement with the Czech Republic to make the right of entry and residence subject to specific conditions, such as those contained in the policy followed by the Netherlands, which include the condition that the alien must, in carrying on his business, have adequate means of support (in accordance with Chapter A 4/4.2.1. of the 1994 Vreemdelingencirculaire, this means a net income which is at least equal to the subsistence level within the meaning of the Algemene Bijstandswet (General Law on Welfare))?

3. Do Article 44 of the Agreement with Poland and Article 45 of the Agreement with the Czech Republic allow prostitution to be excluded from the notion of "economic activities as self-employed persons" on the ground that prostitution does not come within the description in Article 44(4), opening words, and (c), of the Agreement with Poland and Article 45(4), opening words, and (c), of the Agreement with the Czech Republic, for reasons of a moral nature, on the ground that prostitution is prohibited in (a majority of) the associate countries, and on the ground that it gives rise to problems concerning the freedom of action of prostitutes and their independence which are difficult to monitor?

4. Do Article 43 (ex Article 52) of the EC Treaty and Article 44 of the Agreement with Poland and Article 45 of the Agreement with the Czech

Republic permit a distinction to be drawn between the notions of "activities as self-employed persons" and "economic activities as self-employed persons" contained in those respective provisions so that the activities carried out by a prostitute in a self-employed capacity come within the term used in Article 43 (ex Article 52) of the EC Treaty but not within that used in those articles of the Agreements?

5. If the answer to the previous question is that the distinction therein referred to is permissible:

(a) Is it compatible with Article 44 of the Agreement with Poland and Article 45 of the Agreement with the Czech Republic and the freedom of establishment which those provisions are intended to realise to impose minimum conditions on the self-employed persons referred to in paragraph (3) of those articles in regard to the range of their activities and also to impose restrictions such as that:

— the business operator must perform skilled work;

— a business plan must exist;

— the business operator must (also) attend to the management of the business and not (exclusively) to executive (production) activities;

— the business operator must strive to ensure continuity of the undertaking, which means *inter alia* that he must have his principal place of residence in the Netherlands;

— there must be investment, and long-term commitments must be entered into?

(b) Do Article 44 of the Agreement with Poland and Article 45 of the Agreement with the Czech Republic provide justification for not regarding as self-employed any person who is dependent on and indebted to the person who recruited her and/or placed her in work, even though it is established that, as between the person concerned and that third party, there is no question of an employment relationship, against which the term "self-employed" in paragraph 4 of Articles 44 and 45 of the Agreements seeks to establish a barrier?'

The first and second questions

25 It should be noted at the outset that on 27 September 2001 the Court delivered its judgments in Case C-63/99 *Gloszczuk* [2001] ECR I-6369 and in Case C-257/99 *Barkoci and Malik* [2001] ECR I-6557, which in part concerned questions similar to the first and second questions raised in the present case.

26 As regards the first question, which concerns the direct effect and scope of Article 44(3) of the Association Agreement between the Communities and Poland and of Article 45(3) of the Association Agreement between the Communities and the Czech Republic, the Court ruled, in paragraph 1 of the operative part of the judgments in *Gloszczuk* and *Barkoci and Malik*, that those provisions must be construed as establishing, within the respective scopes of application of the two Agreements, a precise and unconditional principle which is sufficiently operational to be applied by a national court and which is therefore capable of governing the legal position of individuals. The direct effect which those provisions must therefore be recognised as having means that Polish and Czech nationals relying on those provisions have the right to invoke them before the courts of the host Member State, notwithstanding the fact that the authorities of that State remain competent to apply to those nationals their own national laws and regulations regarding entry, stay and establishment, in accordance with

Article 58(1) of the Association Agreement between the Communities and Poland and Article 59(1) of the Association Agreement between the Communities and the Czech Republic.

27 The Court also ruled, in paragraph 2 of the operative part of the judgments in *Gloszczuk* and *Barkoci and Malik*, that the right of establishment, as defined by Article 44(3) of the Association Agreement between the Communities and Poland and by Article 45(3) of the Association Agreement between the Communities and the Czech Republic, means that rights of entry and residence, as corollaries of the right of establishment, are conferred respectively on Polish and Czech nationals wishing to pursue activities of an industrial or commercial character, activities of craftsmen or activities of the professions in a Member State. However, it follows from Article 58(1) of the Association Agreement between the Communities and Poland and from Article 59(1) of the Association Agreement between the Communities and the Czech Republic that those rights of entry and residence are not absolute privileges, inasmuch as their exercise may, in some circumstances, be limited by the rules of the host Member State governing the entry, stay and establishment of Polish and Czech nationals.

28 It follows that the answer to the first question must be that:

— Article 44(3) of the Association Agreement between the Communities and Poland and Article 45(3) of the Association Agreement between the Communities and the Czech Republic must be construed as establishing, within the respective scopes of application of those two Agreements, a precise and unconditional principle which is sufficiently operational to be applied by a national court and which is therefore capable of governing the legal position of individuals.

The direct effect which those provisions must therefore be recognised as having means that Polish and Czech nationals relying on those provisions

have the right to invoke them before the courts of the host Member State, notwithstanding the fact that the authorities of that State remain competent to apply to those nationals their own national laws and regulations regarding entry, stay and establishment, in accordance with Article 58(1) of the Association Agreement between the Communities and Poland and Article 59(1) of the Association Agreement between the Communities and the Czech Republic.

— The right of establishment, as defined by Article 44(3) of the Association Agreement between the Communities and Poland and by Article 45(3) of the Association Agreement between the Communities and the Czech Republic, means that rights of entry and residence, as corollaries of the right of establishment, are conferred on Polish and Czech nationals wishing to pursue activities of an industrial or commercial character, activities of craftsmen or activities of the professions in a Member State.

However, it follows from Article 58(1) of the Association Agreement between the Communities and Poland and from Article 59(1) of the Association Agreement between the Communities and the Czech Republic that those rights of entry and residence are not absolute privileges, inasmuch as their exercise may, in some circumstances, be limited by the rules of the host Member State governing the entry, stay and establishment of Polish and Czech nationals.

29 As regards the second question, concerning the compatibility of restrictions imposed on the right of establishment by the immigration legislation of the host Member State, in particular the requirement of adequate financial resources, with the express condition set out in Article 58(1) of the Association Agreement between the Communities and Poland and in Article 59(1) of the Association Agreement between the Communities and the Czech Republic, it should be noted that, in paragraph 3 of the operative part of the judgments in *Gloszczuk* and *Barkoci and Malik*, the Court ruled that Articles 44(3) and 58(1) of the Association Agreement between the Communities and Poland, read together, and Articles 45(3) and 59(1) of the Association Agreement between the Communities

and the Czech Republic, read together, do not in principle preclude a system of prior control which makes the issue by the competent immigration authorities of leave to enter and remain subject to the condition that the applicant must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources and has reasonable chances of success.

30 The very purpose of substantive requirements such as those set out in section 4.2.3 of Chapter B 12 of the Circular on Aliens, in particular the requirement that Polish and Czech nationals wishing to become established in the host Member State must from the outset have sufficient financial resources to pursue the activity in question as self-employed persons, is to enable the competent authorities of that State to carry out such checks and they are appropriate for ensuring that such an objective is attained.

31 The answer to the second question must therefore be that Articles 44(3) and 58(1) of the Association Agreement between the Communities and Poland, read together, and Articles 45(3) and 59(1) of the Association Agreement between the Communities and the Czech Republic, read together, do not in principle preclude a system of prior control which makes the issue by the competent immigration authorities of leave to enter and remain subject to the condition that the applicant must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources for carrying out the activity in question as a self-employed person and has reasonable chances of success.

Substantive requirements such as those set out in section 4.2.3 of Chapter B 12 of the Circular on Aliens, in particular the requirement that Polish and Czech nationals wishing to become established in the host Member State must from the outset have sufficient financial resources to carry on the activity in question in a self-employed capacity, are designed precisely to enable the competent authorities of that State to carry out such checks and are appropriate for ensuring that such an objective is attained.

The fourth question

32 By its fourth question, which is best examined before the third, the national court is essentially asking whether, on a proper construction of Article 44(4)(a)(i) of the Association Agreement between the Communities and Poland and Article 45(4)(a)(i) of the Association Agreement between the Communities and the Czech Republic, the 'economic activities as self-employed persons' there referred to are different in meaning and scope from the 'activities as self-employed persons' referred to in Article 52 of the Treaty, so that the activity of prostitution carried on in a self-employed capacity falls within the latter expression but not the former.

33 According to settled case-law, the pursuit of an activity as an employed person or the provision of services for remuneration must be regarded as an economic activity within the meaning of Article 2 of the EC Treaty (now, after amendment, Article 2 EC), provided that the work performed is genuine and effective and not such as to be regarded as purely marginal and ancillary (see, *inter alia*, Joined Cases C-51/96 and C-191/97 *Deliège* [2000] ECR I-2549, paragraphs 53 and 54).

34 Since the essential characteristic of an employment relationship within the meaning of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) is the fact that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration, any activity which a person performs outside a relationship of subordination must be classified as an activity pursued in a self-employed capacity for the purposes of Article 52 of the Treaty (see Case C-107/94 *Asscher* [1996] ECR I-3089, paragraphs 25 and 26).

35 With regard to the interpretation of Article 44(4)(a)(i) of the Association Agreement between the Communities and Poland and of Article 45(4)(a)(i) of the Association Agreement between the Communities and the Czech Republic, it is

important to point out that, according to well-established case-law, an international treaty must be interpreted not solely by reference to the terms in which it is worded but also in the light of its objectives. Article 31 of the Vienna Convention of 23 May 1969 on the Law of Treaties stipulates in that respect that a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose (see, *inter alia*, to that effect, Opinion 1/91 [1991] ECR I-6079, paragraph 14, Case C-312/91 *Metalsa* [1993] ECR I-3751, paragraph 12, and Case C-416/96 *Eddline El-Yassini* [1999] ECR I-1209, paragraph 47).

36 So far as the Association Agreement between the Communities and Poland is concerned, it is important to bear in mind that, according to the 15th recital in its preamble and Article 1(2) thereof, the purpose of that Agreement is to establish an association designed to promote the expansion of trade and harmonious economic relations between the Contracting Parties in order to foster dynamic economic development and prosperity in the Republic of Poland, with a view to facilitating its accession to the Communities. The object of the Association Agreement between the Communities and the Czech Republic is similar, as demonstrated by the 18th recital in its preamble and Article 1(2) thereof.

37 There is nothing in the context or purpose of the Association Agreements between the Communities, on the one hand, and Poland and the Czech Republic, on the other, to suggest that they intended to give the expression 'economic activities as self-employed persons' any meaning other than its ordinary meaning of economic activities carried on by a person outside any relationship of subordination with regard to the conditions of work or remuneration and under his own personal responsibility.

38 Consequently, no difference in meaning can be distinguished between the 'activities as self-employed persons' referred to in Article 52 of the Treaty and the 'economic activities as self-employed persons' referred to in Article 44(4)(a)(i) of the Association Agreement between the Communities and Poland and in Article 45(4)(a)(i) of the Association Agreement between the Communities and the Czech Republic.

39 Besides, there is nothing in those Agreements to suggest that the Contracting Parties intended to limit the freedom of establishment which they conferred on Polish and Czech nationals to one or more categories of activities pursued in a self- employed capacity.

40 This finding is not contradicted by the fact that, in paragraph 52 of *Gloszczuk* and paragraph 55 of *Barkoci and Malik*, the Court ruled that the interpretation of Article 52 of the Treaty, as reflected in its case-law, cannot be extended to Article 44(3) of the Association Agreement between the Communities and Poland or Article 45(3) of the Association Agreement between the Communities and the Czech Republic.

41 In paragraphs 47 to 53 of *Gloszczuk* and paragraphs 50 to 56 of *Barkoci and Malik*, the Court addressed the question of the compatibility of the restrictions which the immigration legislation of the host Member State imposes on the right of establishment, and not the question of the interpretation of the expression 'economic activities as self-employed persons' used in those Association Agreements. The Court there rejected the argument that, since the right of establishment provided for by those Agreements is equivalent to the right of establishment governed by Article 52 of the Treaty, application by the competent authorities of the host Member State of the national immigration rules requiring Polish and Czech nationals to obtain leave to enter or reside is in itself liable to render ineffective the rights granted to such persons by Article 44(3) of the Association Agreement between the Communities and Poland or Article 45(3) of the Association Agreement between the Communities and the Czech Republic.

42 Consequently, far from drawing a distinction between the 'economic activities as self-employed persons' referred to in Article 44(4)(a)(i) of the Association Agreement between the Communities and Poland and in Article 45(4)(a)(i) of the Association Agreement between the Communities and the Czech Republic and the 'activities as self-employed persons' referred to in Article 52 of the Treaty, the analysis which the Court carried out in *Gloszczuk* and *Barkoci and Malik* was based implicitly on the premiss that those expressions have the same meaning and scope.

43 In order to give a useful answer to the fourth question, it is also necessary to examine whether prostitution carried on in a self-employed capacity can be regarded as an economic activity within the meaning of Article 44(4)(a)(i) of the Association Agreement between the Communities and Poland and Article 45(4)(a)(i) of the Association Agreement between the Communities and the Czech Republic. The Governments of the Netherlands and Belgium argue that it cannot. The United Kingdom Government, on the other hand, takes the view that prostitution is manifestly an activity of a commercial character.

44 It should be noted in this regard that, according to the wording of Article 44(4)(a)(i) of the Association Agreement between the Communities and Poland and Article 45(4)(a)(i) of the Association Agreement between the Communities and the Czech Republic, the principle of non-discrimination set out in paragraph (3) of each of those articles covers both the right to take up and pursue economic activities as self-employed persons and the right to set up and manage undertakings.

45 Article 44(4)(c) of the Association Agreement between the Communities and Poland and Article 45(4)(c) of the Association Agreement between the Communities and the Czech Republic define economic activities as 'activities of an industrial character, activities of a commercial character, activities of craftsmen and activities of the professions'.

46 However, with the exception of the Spanish and French versions, all the language versions of those provisions, including the Polish and the Czech versions, add to the definition given in the preceding paragraph words signifying 'in particular', '*inter alia*', or 'especially', which express the unequivocal intention of the Contracting Parties not to limit the notion of 'economic activities' solely to the activities listed.

47 According to settled case-law, one language version of a multilingual text of Community law cannot alone take precedence over all other versions, since the uniform application of Community rules requires that they be interpreted in

accordance with the actual intention of the person who drafted them and the objective pursued by that person, in particular in the light of the versions drawn up in all languages (see, *inter alia*, Case 29/69 *Stauder* [1969] ECR 419, paragraph 3, and Case C-219/95 P *Ferriere Nord* v *Commission* [1997] ECR I-4411, paragraph 15). The same conclusion must also be drawn where, as in the present case, two language versions diverge from all the others, *a fortiori* since Article 120 of the Association Agreement between the Communities and Poland and Article 122 of the Association Agreement between the Communities and the Czech Republic provide that those Agreements are also valid in each of the languages in which they have been drawn up.

48 That being so, and without it being necessary to go into the question whether, as the United Kingdom Government submits, prostitution can be regarded as a commercial activity, it is sufficient to hold that prostitution is an activity by which the provider satisfies a request by the beneficiary in return for consideration without producing or transferring material goods.

49 Consequently, prostitution is a provision of services for remuneration which, as indicated in paragraph 33 above, falls within the concept of 'economic activities'.

50 It follows that the answer to the fourth question must be that Article 44(4)(a)(i) of the Association Agreement between the Communities and Poland and Article 45(4)(a)(i) of the Association Agreement between the Communities and the Czech Republic must be construed to the effect that the 'economic activities as self-employed persons' referred to in those provisions have the same meaning and scope as the 'activities as self-employed persons' referred to in Article 52 of the Treaty.

The activity of prostitution pursued in a self-employed capacity can be regarded as a service provided for remuneration and is therefore covered by both those expressions.

The third question

51 By its third question, the national court is asking in substance whether Article 44 of the Association Agreement between the Communities and Poland and Article 45 of the Association Agreement between the Communities and the Czech Republic must be construed as meaning that prostitution does not come under those provisions on the ground that it cannot be regarded as an economic activity pursued in a self-employed capacity, as defined in those provisions:

— in view of its illegal nature;

— for reasons of public morality;

— on the ground that it would be difficult to control whether persons pursuing that activity are able to act freely and are therefore not, in reality, parties to disguised employment relationships.

52 According to the Commission, the third question is in part based on a false premiss. In most Member States, prostitution is not prohibited as such, and prohibitions relate more to certain wider phenomena such as soliciting, white-slaving, prostitution of minors, procuring and the clandestine residence of workers.

53 As regards the question of disguised employment relationships, the Commission observes that Article 58 of the Association Agreement between the Communities and Poland and Article 59 of the Association Agreement between the Commu-

nities and the Czech Republic authorise the host Member State to impose substantive requirements allowing rigorous checks to determine whether prostitutes wishing to become established within its territory are genuinely self-employed workers and whether they remain so after being admitted there.

54 In contrast, the Netherlands and Belgian Governments argue that prostitution cannot be treated as an activity performed in a self-employed capacity within the meaning of the Association Agreements between the Communities and Poland and the Czech Republic because it is not possible to determine whether a prostitute has voluntarily moved to the host Member State or pursues her activities there freely. Although prostitution lends itself to an 'appearance of independence' since the criminal prohibition of procuring means that any employment relationships must be organised illegally, prostitutes are normally in a subordinate position in relation to a pimp.

55 As already found in paragraph 50 of the present judgment, prostitution is an economic activity within the meaning of Article 44(4)(a)(i) of the Association Agreement between the Communities and Poland and Article 45(4)(a)(i) of the Association Agreement between the Communities and the Czech Republic.

56 So far as concerns the question of the immorality of that activity, raised by the referring court, it must also be borne in mind that, as the Court has already held, it is not for the Court to substitute its own assessment for that of the legislatures of the Member States where an allegedly immoral activity is practised legally (see, with regard to abortion, Case C-159/90 *Society for the Protection of Unborn Children Ireland* [1991] ECR I-4685, paragraph 20, and, with regard to lotteries, Case C-275/92 *Schindler* [1994] ECR I-1039, paragraph 32).

57 Far from being prohibited in all Member States, prostitution is tolerated, even regulated, by most of those States, notably the Member State concerned in the present case.

58 Admittedly, as follows from Article 53 of the Association Agreement between the Communities and Poland and Article 54 of the Association Agreement between the Communities and the Czech Republic, which were not referred to by the national court in its questions, the host Member State may derogate from application of the provisions of those Agreements governing establishment on grounds of, *inter alia*, public policy.

59 However, as the United Kingdom Government and the Commission have correctly pointed out, under the Court's case-law a national authority's use of a public-policy derogation presupposes that there is a genuine and sufficiently serious threat affecting one of the fundamental interests of society (see Joined Cases 115/81 and 116/81 *Adoui and Cornuaille* [1982] ECR 1665, paragraph 8, Case C-348/96 *Calfa* [1999] ECR I-11, paragraph 21, and, on the interpretation of the provisions adopted within the context of the association arrangements between the European Economic Community and Turkey, Case C-340/97 *Nazli* [2000] ECR I-957, paragraphs 56 to 61).

60 Although Community law does not impose on Member States a uniform scale of values as regards the assessment of conduct which may be considered to be contrary to public policy, conduct may not be considered to be of a sufficiently serious nature to justify restrictions on entry to, or residence within, the territory of a Member State of a national of another Member State where the former Member State does not adopt, with respect to the same conduct on the part of its own nationals, repressive measures or other genuine and effective measures intended to combat such conduct (*Adoui and Cornuaille*, cited above, paragraph 8).

61 Consequently, conduct which a Member State accepts on the part of its own nationals cannot be regarded as constituting a genuine threat to public order within the context of the Association Agreement between the Communities and Poland and that between the Communities and the Czech Republic. Applicability of the public-policy derogation set out in Articles 53 and 54 of those Agreements respectively is thus subject, in the case of Polish and Czech nationals wishing to pursue the activity of prostitution within the territory of the host Member State, to the condition that that State has adopted effective measures to monitor and repress activities of that kind when they are also pursued by its own nationals.

62 That condition is not met in the present case. As pointed out in paragraph 21 of this judgment, window prostitution and street prostitution are permitted in the Netherlands and are regulated there at communal level.

63 In its third question, the referring court also alludes to the difficulties in monitoring the conditions under which prostitution is practised and the consequent risk that the establishment provisions of the Association Agreements between the Communities and Poland and the Czech Republic may be abused in their application to Polish or Czech nationals who might in fact wish to use them as a way to gain access to the labour market of the host Member State.

64 In this regard, the Association Agreements between the Communities, on the one hand, and Poland and the Czech Republic, on the other, do not confer on nationals of the Contracting Parties any right of access to the labour market of another party. Further, those Agreements expressly stipulate that no right to seek or take employment is conferred on self-employed workers. As the Commission rightly points out, the Association Agreements are thus different from the Treaty, which confers several fundamental freedoms on nationals of the Member States at the same time, including the freedoms to work in both an employed and a self-employed capacity, and in relation to which it is thus not so important to look at the status of a worker in detail.

65 Since Article 44(3) of the Association Agreement between the Communities and Poland and Article 45(3) of the Association Agreement between the Communities and the Czech Republic apply only to persons who are exclusively self-employed, in accordance with the final sentence of Article 44(4)(a)(i) and of Article 45(4)(a)(i) of those Agreements respectively, it is necessary to determine whether the activity planned in the host Member State by persons benefiting from those provisions is an activity performed in an employed or a self-employed capacity (see *Gloszczuk*, paragraph 57, and *Barkoci and Malik*, paragraph 61).

66 It is clear, in this regard, from the answer to the second question, provided in paragraph 31 of the present judgment, that Articles 44(3) and 58(1) of the Association Agreement between the Communities and Poland, read together, and Articles 45(3) and 59(1) of the Association Agreement between the Communities and the Czech Republic, read together, do not in principle preclude a system of prior control which makes the issue by the competent immigration authorities of leave to enter and remain subject to the condition that the applicant must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment, and that substantive requirements such as those set out in section 4.2.3 of Chapter B 12 of the Circular on Aliens are designed precisely to enable the competent authorities of the host Member State to carry out such checks and are appropriate for ensuring that such an objective is attained.

67 In those circumstances, as the Advocate General states in points 137 and 138 of his Opinion, the difficulties which the competent authorities of the host Member State may encounter when carrying out checks on Polish and Czech nationals wishing to become established in that State for the purpose of engaging in the activity of prostitution there cannot permit those authorities to assume conclusively that all activity of that kind implies that the person concerned is in a disguised employment relationship and consequently to reject an application for establishment solely on the ground that the planned activity is generally exercised in an employed capacity.

68 The Netherlands Government has not otherwise provided support for the presumption that a person engaged in prostitution whose personal and working freedom is restricted by her pimp — a situation which is covered, where appropriate, by the criminal law of the host Member State — is to be treated as a person in an employment relationship.

69 Further, the general presumption that the relationship of dependency between certain persons engaged in prostitution and their pimps is equivalent to employment, even supposing that it were valid under national law, would put an economic activity entirely beyond the freedom of establishment arrangements introduced by the Association Agreements between the Communities and Poland and the Czech Republic when it is not disputed that prostitution may be conducted without any element of procuring at all. As follows from paragraph 39 of this judgment, such a result would be at variance with the intention of the Contracting Parties to those Agreements.

70 It is for the national court to determine in each case, in the light of the evidence adduced before it, whether the conditions allowing it to be concluded that prostitution is being carried on by the person concerned in a self-employed capacity are satisfied, that is to say:

— outside any relationship of subordination concerning the choice of that activity, working conditions and conditions of remuneration;

— under that person's own responsibility; and

— in return for remuneration paid to that person directly and in full.

71 It follows that the answer to the third question must be that Article 44 of the Association Agreement between the Communities and Poland and Article 45 of the Association Agreement between the Communities and the Czech Republic must be construed to the effect that prostitution is an economic activity pursued by a self-employed person as referred to in those provisions, where it is established that it is being carried on by the person providing the service:

— outside any relationship of subordination concerning the choice of that activity, working conditions and conditions of remuneration;

— under that person's own responsibility; and

— in return for remuneration paid to that person directly and in full.

It is for the national court to determine in each case, in the light of the evidence adduced before it, whether those conditions are satisfied.

The fifth question

72 In view of the negative reply to the fourth question, it is unnecessary to reply to the fifth question. The referring court has requested a reply to that question only in the event of an affirmative answer to the fourth question.

Costs

73 The costs incurred by the Netherlands, Belgian, French, Italian and United Kingdom 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 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 Arrondissementsrechtbank te 's-Gravenhage by decision of 15 July 1999, hereby rules:

1. Article 44(3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, concluded and approved on behalf of the Communities by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993, and Article 45(3) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part, concluded and approved on behalf of the Communities by Decision 94/910/ECSC, EC, Euratom of the Council and the Commission of

19 December 1994, must be construed as establishing, within the respective scopes of application of those two Agreements, a precise and unconditional principle which is sufficiently operational to be applied by a national court and which is therefore capable of governing the legal position of individuals.

The direct effect which those provisions must therefore be recognised as having means that Polish and Czech nationals relying on those provisions have the right to invoke them before the courts of the host Member State, notwithstanding the fact that the authorities of that State remain competent to apply to those nationals their own national laws and regulations regarding entry, stay and establishment, in accordance with Article 58(1) of the above Agreement with the Republic of Poland and Article 59(1) of the above Agreement with the Czech Republic.

2. The right of establishment, as defined by Article 44(3) of the above Agreement with the Republic of Poland and by Article 45(3) of the above Agreement with the Czech Republic, means that rights of entry and residence, as corollaries of the right of establishment, are conferred on Polish and Czech nationals wishing to pursue activities of an industrial or commercial character, activities of craftsmen or activities of the professions in a Member State.

However, it follows from Article 58(1) of the above Agreement with the Republic of Poland and from Article 59(1) of the above Agreement with the Czech Republic that those rights of entry and residence are not absolute privileges, inasmuch as their exercise may, in some circumstances, be limited by the rules of the host Member State governing the entry, stay and establishment of Polish and Czech nationals.

3. Articles 44(3) and 58(1) of the above Agreement with the Republic of Poland, read together, and Articles 45(3) and 59(1) of the above Agreement with the Czech Republic, read together, do not in principle preclude a system of prior control which makes the issue by the competent immigration authorities of leave to enter and remain subject to the condition that the applicant must show that he genuinely intends to take up an activity as a self-employed person without at the same time entering into employment or having recourse to public funds, and that he possesses, from the outset, sufficient financial resources for carrying out the activity in question as a self-employed person and has reasonable chances of success.

Substantive requirements such as those set out in section 4.2.3 of Chapter B 12 of the Netherlands Vreemdelingencirculaire (Circular on Aliens), in particular the requirement that Polish and Czech nationals wishing to become established in the host Member State must from the outset have sufficient financial resources to carry on the activity in question in a self-employed capacity, are designed precisely to enable the competent authorities of that State to carry out such checks and are appropriate for ensuring that such an objective is attained.

4. Article 44(4)(a)(i) of the above Agreement with the Republic of Poland and Article 45(4)(a)(i) of the above Agreement with the Czech Republic must be construed to the effect that the 'economic activities as self-employed persons' referred to in those provisions have the same meaning and scope as the 'activities as self-employed persons' referred to in Article 52 of the EC Treaty (now, after amendment, Article 43 EC).

The activity of prostitution pursued in a self-employed capacity can be regarded as a service provided for remuneration and is therefore covered by both those expressions.

5. Article 44 of the above Agreement with the Republic of Poland and Article 45 of the above Agreement with the Czech Republic must be construed to the effect that prostitution is an economic activity pursued by a self-employed person as referred to in those provisions, where it is established that it is being carried on by the person providing the service:

— outside any relationship of subordination concerning the choice of that activity, working conditions and conditions of remuneration;

— under that person's own responsibility; and

— in return for remuneration paid to that person directly and in full.

It is for the national court to determine in each case, in the light of the evidence adduced before it, whether those conditions are satisfied.

Rodríguez Iglesias Jann Macken

Colneric Gulmann Edward

La Pergola Sevón Wathelet

Skouris Timmermans

Delivered in open court in Luxembourg on 20 November 2001.

R. Grass G.C. Rodríguez Iglesias

Registrar President