JUDGMENT OF THE COURT
11 July 1985 *

In Case 137/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel [Court of Appeal] (Sixth Chamber), Liège, for a preliminary ruling in the proceedings pending before that court between

Ministère Public [Public Prosecutor's Office]

and

Robert Heinrich Maria Mutsch, residing in Saint Vith,

on the interpretation of the EEC Treaty, in particular Article 220 thereof,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and O. Due (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: C. O. Lenz
Registrar: P. Heim

after considering the observations submitted on behalf of:

the defendant in the main proceedings, by B. Moutrier, replacing Mr Ortmann;

the Government of the Italian Republic, by A. Squillante, President of Chamber at the Consiglio di Stato, Head of Diplomatic Contentious Affairs, Treaties and Legislative Matters at the Ministry for Foreign Affairs, acting as Agent, assisted by O. Fiumara and F. Caramazza, Avvocati dello Stato;

* Language of the Case: French.

the Commission of the European Communities, by F. Benyon and H. Van Lier, members of its Legal Department, acting as Agents;

after hearing the Opinion of the Advocate General delivered at the sitting on 28 March 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By a judgment of 26 April 1984, which was received at the Court on 23 May 1984, the Cour d'Appel, Liège, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 220 of the EEC Treaty.

2 That question was raised in the course of criminal proceedings against Robert Mutsch, a Luxembourg national who resides in Belgium in Saint Vith, a German-speaking municipality situated within the territorial jurisdiction of the Tribunal Correctionnel [Criminal Court], Verviers.

3 On 2 November 1982 Mr Mutsch was fined in absentia by the Tribunal Correctionnel, Verviers. He applied to have that judgment set aside and at the same time sought to rely on the third paragraph of Article 17 of the Law of 15 June 1935 on the use of languages in the courts, according to which 'where an accused person of Belgian nationality resides in a German-speaking municipality within the jurisdiction of the Tribunal Correctionnel, Verviers, and so requests in accordance with Article 16, the proceedings before that court . . . shall take place in German'.

4 In a judgment of 23 November 1982 the Tribunal upheld Mr Mutsch's request; the Ministère Public appealed against that judgment on the ground that the accused was not of Belgian nationality and could not therefore claim the benefit of the third paragraph of Article 17 of the Law of 15 June 1935.

5 The Cour d'Appel, Liège, was uncertain whether the fact that only Belgian citizens were permitted to rely on the third paragraph of Article 17, referred to above, was compatible with Community law. It therefore stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Does the third paragraph of Article 17 of the Law of 15 June 1935 on the use of languages in the courts, which allows an accused person of Belgian nationality who resides in a German-speaking municipality situated within the territorial jurisdiction of the Tribunal Correctionnel, Verviers to require that the proceedings take place in German, comply with the principles referred to in Article 220 of the Treaty, which is intended to secure the protection of persons and the enjoyment and protection of rights under the same conditions as those accorded by each Member State to its own nationals, that is to say, in the case in point, is it or is it not necessary, in a criminal case, to grant to a German-speaking EEC national, and in particular, as in the present case, a Luxembourg national residing in Saint Vith, a German-speaking municipality, the right to require that the proceedings take place in German?'

6 In the form in which it is stated the question concerns the conformity of national law with Community law. In that respect it must be pointed out that under Article 177 the Court has no power to apply a rule of Community law to a particular case or to judge a provision of national law by reference to that rule. In pursuance of the judicial cooperation provided for by that article it may, however, on the basis of the material presented to it, provide a national court with information on the interpretation of Community law which may be useful to it in assessing the effects of the provision.

7 It appears from the documents before the Court that the question referred by the Cour d'Appel seeks to ascertain whether, according to the principles of Community law as reflected in particular by Article 220 of the EEC Treaty, the benefit of legislation in a Member State intended to promote the use of the language of a group of nationals of that State, especially in the courts, must be extended without discrimination based on nationality to nationals of other Member States who fulfil all the conditions laid down for the use of a particular language by the members of the population group concerned.

8 The Commission points out in that regard that the first indent of Article 220 of the EEC Treaty merely provides that so far as is necessary the Member States are to enter into negotiations with each other with a view to securing for the benefit of their nationals the enjoyment and protection of rights under the same conditions as those accorded by each State to its own nationals. So long as a convention to that effect is not in force it is not possible for individuals to avail themselves of the rights referred to in that provision. The right to use a particular language in a Member State, particularly in the courts, under the same conditions as the nationals of that State may, however, be relied on by a migrant worker who is a national of another Member State as a 'social advantage' within the meaning of Article 7 (2) of Regulation No 1612/68 of the Council, which was adopted pursuant to Article 49 of the Treaty.

9 The Government of the Italian Republic puts forward three main arguments. First, it submits that national provisions adopted for the benefit of an officially recognized minority can only concern persons who are members of that minority and reside in the area where that minority is established. Secondly, it argues that Article 220 cannot create rights and duties so long as the Member States have not made an appropriate convention. Finally, it points out that the Court has held that a 'social advantage' within the meaning of Article 7 of Regulation No 1612/68 must be connected, at least indirectly, with an employment relationship and must be granted in an area which can be said to fall within that of social affairs; these conditions are not met in this case.

10 The question referred by the Cour d'Appel, Liège, must be resolved in the light of all the provisions of the Treaty and of secondary legislation which may be relevant to the problem.

11 It must be pointed out that Article 220, which was mentioned in the question submitted by the Cour d'Appel, is not intended to lay down a legal rule directly applicable as such, but merely defines a number of matters on which the Member States are to enter into negotiations with each other 'so far as is necessary'. Its only effect is to define as an objective the extension by each Member State to the nationals of the other Member States of the relevant guarantees accorded by it to

its own nationals. In the context of a Community based on the principles of free movement of persons and freedom of establishment the protection of the linguistic rights and privileges of individuals is of particular importance.

12 Article 7 of the Treaty provides that 'within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited'. That provision must be applied in every respect and in all circumstances governed by Community law to any person established in a Member State. Similarly, it should be pointed out that Article 48, on the status of workers, is likewise based on the principle that nationals of any Member State lawfully established in another Member State for the purpose of employment must be treated in the same way as nationals of that State.

13 It is therefore necessary to determine whether the right to require that legal proceedings take place in a specific language falls within the scope of the Treaty and must therefore be assessed in the light of the probibition of discrimination set out in the provisions referred to above.

14 Since it appears from the documents before the Court that the accused is a worker (in his application to set aside the judgment of 2 November 1982 he describes himself as a roofer working in his father's firm), that question must be examined more particularly in the light of Articles 48 and 49 of the Treaty and of the provisions of secondary legislation implementing them, especially Regulation No 1612/68 of the Council.

15 As is stated in the fifth recital in the preamble to Regulation No. 1612/68, 'the right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires that equality of treatment shall be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing, and also that obstacles to the mobility of workers shall be eliminated, in particular as regards the worker's

right to be joined by his family and the conditions for the integration of that family into the host country'.

16 The right to use his own language in proceedings before the courts of the Member State in which he resides, under the same conditions as national workers, plays an important rôle in the integration of a migrant worker and his family into the host country, and thus in achieving the objective of free movement for workers.

17 In those circumstances that right must be held to fall within the meaning of the term 'social advantage' as used in Article 7 (2) of Regulation No 1612/68, according to which a worker who is a national of another Member State is entitled, in the host Member State, to 'the same social and tax advantages as national workers'. As the Court stated in its judgment of 31 May 1979 in Case 207/78 (*Ministère Public* v *Even*, [1979] ECR 2019), that term covers all advantages 'which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory'.

18 The answer to the question referred for a preliminary ruling must therefore be that the principle of free movement of workers, as laid down in Article 48 of the Treaty and more particularly in Regulation No. 1612/68 of the Council, requires that a worker who is a national of one Member State and habitually resides in another Member State be entitled to require that criminal proceedings against him take place in a language other than the language normally used in proceedings before the court which tries him if workers who are nationals of the host Member State have that right in the same circumstances.

Costs

19 The costs incurred by the Commission of the European Communities and by the Government of the Italian Republic, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Cour d'Appel, Liège, by a judgment of 26 April 1984, hereby rules:

The principle of free movement of workers, as laid down in Article 48 of the Treaty and more particularly in Regulation No. 1612/68 of the Council, requires that a worker who is a national of one Member State and habitually resides in another Member State be entitled to require that criminal proceedings against him take place in a language other than the language normally used in proceedings before the court which tries him, if workers who are nationals of the host Member State have that right in the same circumstances.

Mackenzie Stuart Bosco Due Pescatore

Koopmans Everling Bahlmann Galmot Joliet

Delivered in open court in Luxembourg on 11 July 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President