JUDGMENT OF THE COURT
26 May 1993 *

In Case C-171/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesverwaltungsgericht for a preliminary ruling in the proceedings pending before that court between

Dimitrios Tsiotras

and

Landeshauptstadt Stuttgart

supported by

Oberbundesanwalt beim Bundesverwaltungsgericht

intervener,

on the interpretation of Article 48 of the EEC Treaty, Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II), p. 485) and Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402),

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse and P. J. G. Kapteyn, Judges,

* Language of the case: German.

Advocate General: M. Darmon,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Dimitrios Tsiotras, by Rolf Gutmann, Rechtsanwalt, Stuttgart,

— the German Government, by Ernst Röder, Ministerialrat at the Federal Ministry for Economic Affairs, and Joachim Karl, Regierungsdirektor at the said Ministry, acting as Agents,

— the Greek Government, by Vasileios Kontolaimos, State Legal Adviser, acting as Agent,

— the Commission of the European Communities, by its Legal Adviser, Dimitrios Gouloussis, and Jürgen Grunwald, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations submitted on behalf of Dimitrios Tsiotras, the German Government, represented by Claus-Dieter Quassowski, Regierungsdirektor at the Federal Ministry for Economic Affairs, acting as Agent, the Greek Government and the Commission at the hearing on 14 October 1992,

after hearing the Opinion of the Advocate General at the sitting on 2 December 1992,

gives the following

Judgment

1 By order of 16 April 1991, which was received at the Court on 1 July 1991, the Bundesverwaltungsgericht (Federal Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 48 of the Treaty, of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II), p. 485) and of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402).

2 Those questions arose in proceedings between Mr Tsiotras, a Greek national, and the Landeshauptstadt Stuttgart concerning its rejection of his application for the extension of his residence permit.

3 Since 1960 Mr Tsiotras has lived in Germany, where he held various positions as an employed worker until October 1978. He has been unemployed since that date and since September 1981 has received social security benefits.

4 At the time of the accession of the Hellenic Republic to the European Community, Mr Tsiotras held a residence permit in Germany, which allowed him to accept offers of employment. In December 1981 he applied for the extension of this permit, which was refused by a decision of the Landeshauptstadt Stuttgart on 1 August 1986. That decision was taken after Mr Tsiotras's application for an invalidity pension had been definitively rejected in 1983 on the ground that he was not incapable of work.

5 Mr Tsiotras's appeal against that decision was dismissed at first instance and on appeal; he then appealed on a point of law to the Bundesverwaltungsgericht, which decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Does a national of a Member State of the EEC lose the status of worker and with it the right to freedom of movement under Article 48(1) and (3)(b) and (c) of the EEC Treaty, thus rendering inapplicable Directive 68/360/EEC of 15 October 1968 (OJ, English Special Edition 1968 (II), p. 485) where, after cessation of employment in another Member State, at the time of the accession of his State of origin to the European Communities, or subsequently, he could not or cannot be found employment in spite of his readiness to work and consequently the underlying objective of freedom of movement, namely employment, can no longer be attained?

2. Does a national of a Member State of the EEC lose the right to remain in a country under Article 48(3)(d) of the EEC Treaty in conjunction with Article 2(1)(b) of Regulation (EEC) No 1251/70 of 29 June 1970 (OJ, English Special Edition 1970 (II), p. 402), where his permanent incapacity for work arises only after the occurrence of the factors mentioned in Question 1, in particular where such incapacity arises only during a further period of residence afforded to him in the State where he was formerly employed solely for the purpose of the conduct of judicial proceedings regarding the grant of a residence permit?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts, the Community provisions at issue, the procedure and the written observations submitted to the Court, which are mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

Question 1

7 By this question, the national court seeks essentially to ascertain whether Article 48(3)(b) and (c) of the Treaty and the provisions of Directive 68/360 confer a right of residence in the territory of another Member State on a Greek national who at the time of the accession of the Hellenic Republic to the Community was unemployed in the other Member State after pursuing activities as an employed person there for a number of years, who remained unemployed after the date of accession and for whom it is objectively impossible to find employment.

8 It should be noted at the outset that, in the context of freedom of movement for workers, Article 48 of the Treaty grants nationals of the Member States a right of residence in the territory of other Member States in order to pursue or to seek paid employment. As the Court indicated in Case C-292/89 *The Queen* v *The Immigration Appeal Tribunal, ex parte Antonissen* [1991] ECR I-745, the right of residence which, in the latter case, is not expressly mentioned in the Treaty, is inherent in the principle of freedom of movement.

9 As regards, first, the right to stay in a Member State for the purpose of employment, provided for in Article 48(3)(c) of the Treaty, it should be pointed out that that right refers to a national of a Member State who is employed in the territory of another Member State. A person who has never been employed since the accession to the Community of his country of origin does not therefore have a right of residence under that provision.

10 The right of a national of a Member State to reside for the purpose of employment in another Member State is recorded by the residence permit issued in accordance with Article 4 of Directive 68/360. Pursuant to Article 7(1) of that directive, the fact that a person with such a right is temporarily incapable of work as a result of illness or accident, or because he is involuntarily unemployed, this being duly confirmed by the competent employment office, is not to lead to the withdrawal of the residence permit. Under Article 7(2), however, when the residence permit is renewed for the first time, the period of validity may be restricted to not less than twelve months where the worker has been involuntarily unemployed in the host Member State for more than twelve consecutive months.

11 Those provisions show that the right of residence conferred by Community law on workers who are nationals of the Member States and who are unemployed in the host Member State presupposes that those workers have previously been employed in the host Member State in the exercise of the right of freedom of movement.

12 Moreover, there is no provision in the Act of Accession of the Hellenic Republic to the Community, or in secondary legislation, which treats a post occupied by a national of that Member State before its accession to the Community in the same way as a post occupied by a national of a Member State under the provisions of Community law on freedom of movement for workers. Consequently, a Greek national in the situation described by the court of reference has no right to stay under Article 48(3)(c) of the Treaty and Article 7 of Directive 68/360.

13 As regards the right to remain for the purpose of seeking employment, the Court observed in paragraph 16 of the *Antonissen* judgment, cited above, that the effectiveness of Article 48 is secured in so far as Community legislation or, in its absence, the legislation of a Member State gives persons concerned a reasonable time in which to apprise themselves, in the territory of the Member State concerned, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged. In that judgment, the Court stated that a period of six months did not appear to be insufficient for that purpose, but that if, after the expiry of that period, the person concerned provided evidence that he was continuing to seek employment and that he had genuine chances of being engaged, he could not be required to leave the territory of the host Member State (paragraph 21).

14 Accordingly, even if it were established that a person in Mr Tsiotras's position has been seeking employment in another Member State since the accession of the Hellenic Republic to the Community, he would no longer have a right to remain for that purpose under Community law, inasmuch as a number of years have passed since the accession of that State and, according to the national court, it is objectively impossible for the person concerned to find employment.

15 The answer to the first question must therefore be that Article 48(3)(b) and (c) of the Treaty and Article 7 of Directive 68/360 must be interpreted as not conferring any right of residence in the territory of another Member State upon a Greek national who, on the accession of the Hellenic Republic to the Community, was

unemployed in that other Member State after being employed there for several years, who remained unemployed after the date of accession and for whom it is objectively impossible to find employment.

Question 2

16 This question seeks to ascertain whether Article 48(3)(d) of the Treaty and Article 2(1)(b) of Regulation No 1251/70 must be interpreted as meaning that a person in the situation described above has the right envisaged in those provisions to remain in the territory of a Member State when he suffers from permanent incapacity for work which arose during a further period of residence authorized on account of the judicial proceedings which he brought in that State for the purpose of obtaining a residence permit.

17 According to Article 48(3)(d) of the Treaty freedom of movement for workers entails the right 'to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission'. Those conditions were laid down by Regulation No 1251/70.

18 Like the right of residence in the event of unemployment, referred to in Article 7 of Directive 68/360, the right to remain in the territory of the host Member State presupposes that the person concerned has previously been employed there in pursuance of freedom of movement for workers. That does not apply in the case of a person in the situation described by the court of reference.

19 The answer to the second question must therefore be that Article 48(3)(d) of the Treaty and Article 2(1)(b) of Regulation No 1251/70 must be interpreted as

meaning that a person in the situation described above does not enjoy the right provided for therein to remain in the territory of a Member State when he suffers from permanent incapacity for work which arose during a further period of residence authorized on account of the judicial proceedings brought by that person in that State for the purpose of obtaining a residence permit.

Costs

20 The costs incurred by the Federal Republic of Germany, the Hellenic Republic and the Commission of the European Communities, 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 Bundesverwaltungsgericht, by order of 16 April 1991, hereby rules:

1. **Article 48(3)(b) and (c) of the EEC Treaty and Article 7 of Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families must be interpreted as not conferring any right of residence in the territory of another Member State upon a Greek national who, on the accession of the Hellenic Republic to the Community, was unemployed in that other Member State after having been employed there for several years, who remained unemployed after the date of accession and for whom it is objectively impossible to find employment.**

2. **Article 48(3)(d) of the EEC Treaty and Article 2(1)(b) of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to**

remain in the territory of a Member State after having been employed in that State must be interpreted as meaning that a person in the situation described above does not enjoy the right provided for therein to remain in the territory of a Member State when he suffers from permanent incapacity for work which arose during a further period of residence authorized on account of the judicial proceedings brought by that person in that State for the purpose of obtaining a residence permit.

Due Kakouris Rodríguez Iglesias Zuleeg

Murray Mancini Joliet

Schockweiler Moitinho de Almeida Grévisse Kapteyn

Delivered in open court in Luxembourg on 26 May 1993.

J.-G. Giraud — O. Due

Registrar — President