JUDGMENT OF THE COURT (Sixth Chamber)
5 October 1988 *

In Case 196/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Raad van State (Council of State) of the Netherlands for a preliminary ruling in the proceedings pending before that court between

Udo Steymann, residing in Amsterdam,

and

Staatssecretaris van Justitie (State Secretary for Justice),

on the interpretation of the EEC Treaty, in particular Articles 2, 59 and 60 thereof,

THE COURT (Sixth Chamber)

composed of: O. Due, President of Chamber, T. Koopmans, K. Bahlmann, C. N. Kakouris and T. F. O'Higgins, Judges,

Advocate General: M. Darmon
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

the Netherlands Government, by E. F. Jacobs, Secretary-General in the Ministry of Foreign Affairs, in the written procedure, and, at the hearing, by A. Fierstra, both acting as Agents,

the Commission of the European Communities, by E. Lasnet, Legal Adviser, and by P. J. Kuyper, a member of its Legal Department, acting as Agents,

* Language of the Case: Dutch.

having regard to the Report for the Hearing and further to the hearing on 4 May 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 5 July 1988,

gives the following

Judgment

1 By order dated 3 June 1987, which was received at the Court on 24 June 1987, the Raad van State (Council of State) of the Netherlands referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Articles 2, 59 and 60 of the EEC Treaty.

2 The questions, which arose in a dispute between Udo Steymann and the Staatssecretaris van Justitie, seek essentially to establish to what extent activities performed as a member of a religious community may be regarded as economic activities or services within the meaning of the abovementioned provisions of the Treaty.

3 The plaintiff in the main proceedings, Mr Steymann, a German national, settled in the Netherlands on 26 March 1983. For a short period he was in paid employment as a plumber. Subsequently, he became a member of the religious community known as 'De Stad Rajneesh Neo-Sannyas Commune' (hereinafter referred to as 'the Bhagwan Community') which supplies its material needs by means of commercial activities, which include running a discothèque, a bar and a launderette.

4 Mr Steymann's contribution to the life of the Bhagwan Community consists in the performance of plumbing work on the community's premises and general household duties. He also takes part in the community's commercial activity. The community provides for the material needs of its members in any event, irrespective of the nature and the extent of their activities.

5 On 28 August 1984 Mr Steymann applied for a Netherlands residence permit in order to pursue an activity as an employed person. The chief of the local police turned down his application, whereupon Mr Steymann applied to the Staatssecretaris van Justitie for review of the decision refusing him the permit. By decision of 20 December 1985 his application was dismissed on the ground, *inter alia*, that he was not pursuing an activity as an employed person and consequently was not a favoured EEC national within the meaning of the Netherlands legislation on aliens.

6 On 8 January 1986 Mr Steymann appealed to the Raad van State against that decision of the Staatssecretaris van Justitie on the ground that as a member of the Bhagwan Community he was both a recipient of services from, and a provider of services to, that community. The national court stayed the proceedings and referred the following questions to the Court:

'(1) Can activities which consist in, and are entirely centred around, participating in a community based on religion or on another form of philosophy and in following the rules of life of that community, whose members provide each other with benefits, be regarded as an economic activity or as a service for the purposes of the Treaty establishing the European Economic Community?

(2) Must Articles 59 and 60 of the EEC Treaty be interpreted as meaning that there is no provision of services for the purposes of the Treaty if a national of a Member State goes to reside in another Member State for an indefinite period, thereby establishing his principal residence in that other Member State, when his residence there is not limited in time by the nature of the service to be provided?

(3) Must Articles 59 and 60 be interpreted as meaning that services are not received for the purposes of the Treaty if a national of a Member State goes to reside in another Member State for an indefinite period, thereby establishing his principal residence in that other Member State, when his residence there is not limited in time by the nature of the services to be received?'

7 Reference is made to the Report for the Hearing for a fuller account of the relevant legal provisions, the facts and the written observations submitted to the Court, which are mentioned and discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first question

8 The first question seeks essentially to establish to what extent activities performed by members of a community based on religion or another form of philosophy as part of the activities of such a community may be regarded as economic activities within the meaning of the EEC Treaty.

9 It must be observed *in limine* that, in view of the objectives of the European Economic Community, participation in a community based on religion or another form of philosophy falls within the field of application of Community law only in so far as it can be regarded as an economic activity within the meaning of Article 2 of the Treaty.

10 As the Court held in its judgment of 14 July 1976 in Case 13/76 (*Donà* v *Mantaro* [1976] ECR 1333), 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 Treaty.

11 As regards the activities in question in this case, it appears from the documents before the Court that they consist of work carried out within and on behalf of the Bhagwan Community in connection with the Bhagwan Community's commercial activities. It appears that such work plays a relatively important role in the way of life of the Bhagwan Community and that only in special circumstances can the members of the community avoid taking part therein. In turn, the Bhagwan Community provides for the material needs of its members, including pocket-money, irrespective of the nature and the extent of the work which they do.

12 In a case such as the one before the national court it is impossible to rule out *a priori* the possibility that work carried out by members of the community in question constitutes an economic activity within the meaning of Article 2 of the Treaty. In so far as the work, which aims to ensure a measure of self-sufficiency for the Bhagwan Community, constitutes an essential part of participation in that community, the services which the latter provides to its members may be regarded as being an indirect quid pro quo for their work.

13 However, it must be observed, as the Court held in its judgment of 23 March 1982 in Case 53/81 (*Levin* v *Staatssecretaris van Justitie* [1982] ECR 1035), that the work must be genuine and effective and not such as to be regarded as purely marginal and ancillary. In this case the national court has held that the work was genuine and effective.

14 Accordingly, the answer given to the first question must be that Article 2 of the EEC Treaty must be interpreted as meaning that activities performed by members of a community based on religion or another form of philosophy as part of the commercial activities of that community constitute economic activities in so far as the services which the community provides to its members may be regarded as the indirect quid pro quo for genuine and effective work.

The second and third questions

15 In essence the second and third questions ask whether Articles 59 and 60 of the Treaty cover the situation where a national of a Member State goes to the territory of another Member State and establishes his principal residence there in order to provide or receive services there for an indefinite period.

16 In that connection, the Netherlands Government and the Commission rightly observed that Articles 59 and 60 of the Treaty do not apply in such a case. It is clear from the actual wording of Article 60 that an activity carried out on a permanent basis or, in any event, without a foreseeable limit to its duration does not fall within the Community provisions concerning the provision of services. On the other hand, such activities may fall within the scope of Articles 48 to 51 or Articles 52 to 58 of the Treaty, depending on the case.

17 Consequently, the answer given to the second and third questions must be that Articles 59 and 60 of the Treaty do not cover the situation where a national of a Member State goes to reside in the territory of another Member State and establishes his principal residence there in order to provide or receive services there for an indefinite period.

Costs

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

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Raad van State of the Netherlands by order of 3 June 1987, hereby rules:

(1) Article 2 of the EEC Treaty must be interpreted as meaning that activities performed by members of a community based on religion or another form of philosophy as part of the commercial activities of that community constitute economic activities in so far as the services which the community provides to its members may be regarded as the indirect quid pro quo for genuine and effective work.

(2) Articles 59 and 60 of the Treaty do not cover the situation where a national of a Member State goes to reside in the territory of another Member State and establishes his principal residence there in order to provide or receive services there for an indefinite period.

Due Koopmans

Bahlmann Kakouris O'Higgins

Delivered in open court in Luxembourg on 5 October 1988.

J.-G. Giraud
Registrar

O. Due
President of the Sixth Chamber