OPINION OF ADVOCATE GENERAL LENZ
delivered on 14 November 1996 *

A — Introduction

1. In these proceedings for failure of a Member State to fulfil its obligations under the Treaty, the Commission claims that the defendant Member State has infringed Article 48 of the Treaty as well as Directive 68/360/EEC [1] in several respects in framing the right of residence of employed persons or self-employed persons from other Member States in the Law of 15 December 1980 on the entry, residence, establishment and expulsion of foreigners [2] and in the Royal Decree of 8 October 1981 [3] by which that Law was implemented (hereinafter 'the Royal Decree').

2. According to the Commission, the infringements are as follows:

1) Nationals of other Member States who are in Belgium to look for work are obliged to leave Belgian territory after a period of three months, without being able to extend this period in order to continue to seek employment.

2) (a) During the first six months of their stay workers holding employment for at least one year are issued with two successive registration certificates before they are finally granted a 'Residence Permit for a National of a Member State of the EEC'.

(b) In addition, a fee is payable both upon submission of an application and upon the issue of a registration certificate and of a 'Residence Permit for a National of a Member State of the EEC', so that the total amount of these charges exceeds by several times (sometimes by as much as four times) the dues and taxes charged for the issue of identity cards to Belgian nationals.

3) Employed persons and seasonal workers, where their activity is not expected to last for more than three months, are

* Original language: German.

1 — Council Directive 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, as last amended in OJ 1994 L 1, p. 325, 572).

2 — Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, as amended by the Law of 6 May 1993.

3 — As amended several times.

issued with a residence document, for which a fee is likewise charged.

3. The Commission claims that the Court should:

1) Declare that the Kingdom of Belgium has failed to fulfil its obligations under Article 48 of the EC Treaty and Council Directive 68/360/EEC,

— by requiring nationals of other Member States who seek employment in Belgium to leave its territory after a period of three months;

— by issuing, during the first six months of their residence, to persons employed for a period of at least one year two successive registration certificates instead of a Residence Permit for a National of a Member State of the EEC and by requiring payment for those certificates;

— by issuing to employed persons and to seasonal workers whose activity is not expected to last for more than three months a document relating to their residence and by requiring payment for that document;

2) Order the Kingdom of Belgium to pay the costs.

4. In the proceedings before the Court, the Kingdom of Belgium no longer disputes the content of the individual objections. It has announced a change in the law which would take into account all the points raised by the Commission. The Commission has indicated that it was willing to abandon its action, but no legislative amendments had been communicated to it by the time the written procedure came to an end. That is why a judgment is still required.

B — Analysis

5. Although the Belgian Government no longer disputes the claim — contrary to the position it was still taking in its written reply to the reasoned opinion — the legal basis of the Commission's case should be examined.

6. *1.* As regards the situation of persons seeking work, the Commission argues that, as Community law now stands following the judgment of the Court of Justice of 26 February 1991 in the *Antonissen* case, [4] nationals of Member States have the right to stay in the territory of other Member States in order to seek employment there. As far as the duration of that right of residence is concerned, it may be made subject to a 'reasonable time-limit', the expiry of which does not automatically bring that right to an end, provided that the person seeking employment can produce evidence that he is continuing to seek employment and has genuine chances of being engaged. In *Antonissen*, six months was seen to be a 'reasonable time'.

7. The Commission has set out the current legal position correctly. Contrary to that position, the Belgian rules in question provide for automatic termination of the period at the end of three months, with no opportunity of extending it. These restrictive rules are therefore contrary to the freedom, granted in Article 48(3)(a) and (b) of the Treaty, to move freely within the territory of Member States in search of genuine offers of employment.

8. *2. (a)* As regards the obtaining of registration certificates as a necessary preliminary for obtaining a 'Residence Permit for a National of a Member State of the EEC', the Commission argues that, whereas the Member State is obliged by Article 4 of Directive 68/360/EEC to grant such a residence permit, the migrant worker receives in a six-month period two successive registration certificates which have the nature of only a temporary residence permit. This is an additional difficulty, over and above the difficulties facing a migrant worker when he moves to another Member State. Since the Belgian rules in question thus constitute a real obstacle to the free movement of workers, they are contrary to Article 48 of the Treaty.

9. On the question of what would be required to make the legislation in question compatible with Article 48, the Commission does not contend that the residence permit has to be issued on the same day as an application, accompanied by supporting documentation, is submitted. The practical effect of Article 4 of Directive 68/360/EEC requires instead that this application be dealt with within a short time; a period of three months, let alone six months, for dealing with a simple administrative formality is excessive.

10. In my opinion, the successive issue of two registration certificates before a final residence permit is issued, irrespective of whether the migrant worker has already produced all the documents required to obtain a residence permit under Article 4(3) of the Directive, including a confirmation of engagement from the employer or a certificate of employment, is disproportionately

4 — Case C-292/89 [1991] ECR I-745.

formalistic. Even though the authorities must be allowed to check the documents, the type of documentation involved (the worker's identity papers and confirmation of engagement or certificate of employment) cannot justify a verification period lasting up to six months. As a general rule, the waiting period before the residence permit is issued, together with the need for numerous administrative actions, is excessive.

11. A distinction according to whether or not a confirmation of engagement or a certificate of employment exists at the time of the application is quite capable of affecting the course of the procedure. But where no such distinction is made, the form of the procedure and the time entailed before a residence permit is issued must be regarded as too burdensome and therefore as a genuine obstacle to the free movement of workers, contrary to Article 48 of the EC Treaty.

12. *(b)* Although it is raised as a separate matter, the question of charges is directly related to the question of registration certificates. Article 9(1) of Directive 68/360/EEC provides:

'The residence documents granted to nationals of a Member State of the EEC referred to in this Directive shall be issued and renewed *free of charge* or *on payment of an amount not exceeding the dues and taxes charged for the issue of identity cards to nationals.*' [5]

In my opinion, this means that the sum of the charges demanded for the issue of a residence permit must not exceed the dues and taxes charged for the issue of identity cards to nationals.

13. Even if it is a matter for district authorities to fix the amount of the charges on each occasion, it can be seen and illustrated by figures from five representative communes provided by the Belgian Government that a charge arises for each of the administrative actions described, beginning with a charge for opening the file [6] on the issue of the registration certificates and finishing with the issue of the residence permit. Even if each individual charge does not, on its own,

5 — My emphasis.

6 — Frais d'ouverture de dossier.

exceed the fee payable for the issue of an identity card, the total amount of the charges regularly exceeds the identity-card fee by several times. As the system of registration certificates is structured, a worker who is entitled to a residence permit within the meaning of Article 4(2) of Directive 68/360/EEC cannot avoid going through each administrative step and paying a charge each time. The way in which the administrative charges for obtaining a residence permit are levied must therefore be regarded as an infringement of Article 9(1) of Directive 68/360/EEC.

14. *3.* As regards the last separate objection, concerning the situation of workers staying in Belgium for less than three months, the Commission points out that the persons concerned are required, for a fee, to apply for a document which amounts to more than mere confirmation of the fact that the worker has reported his presence on Belgian territory: the document is, it says, akin to a residence permit and this requirement is contrary to Article 8 of Directive 68/360/EEC.

15. Article 8 of the Directive defines the groups of workers whose right of residence the Member States are to recognize without issuing a residence permit. Article 8(1) defines this group of persons as follows:

under (a): 'a worker pursuing an activity as an employed person, where the activity is not expected to last for more than three months ...'

and under (c): 'a seasonal worker who holds a contract of employment stamped by the competent authority of the Member State on whose territory he has come to pursue his activity'.

16. But Article 8(2) provides:

'In all cases referred to in paragraph 1, the competent authorities of the host Member State *may require* the worker to *report* his presence in the territory.' [7]

17. A contact with the authorities whereby a worker in one of the groups concerned reports his presence is therefore in accordance with the Directive. Anything going

7 — My emphasis.

beyond this, however, and assuming the nature of an authorization or a residence permit, is not permissible.

18. Article 47 of the Belgian Royal Decree provides that, where a person reports his presence in the territory, a document based on one of the models appearing in the annexes to the Royal Decree [8] is to be issued.

19. The Belgian Government considers that the issue of this document for a fee does no more than provide written confirmation that the immigrant worker's duty to report his presence has been fulfilled.

20. The Commission disagrees: Article 5 of the Law of 15 December 1980 and Articles 18 to 20 of the Royal Decree of 8 October 1981 already require all foreigners to report their presence in the territory of the Member State. These persons will be given a document based on the model appearing in Annex 3 to the Royal Decree. Article 47 of the Royal Decree does more than merely require a worker to report his presence because the worker is required to produce confirmation of engagement from the employer or a certificate of employment. These documents are required in order to obtain a residence permit within the meaning of Article 4 of the Directive.

8 — See Annex 22.

21. Any formality imposed on a worker mentioned in Article 8(1) of the Directive and going beyond a duty to report one's presence is contrary to that provision, in that a worker within the meaning of point (a) proves that he belongs to this group of persons by means of 'the document with which the person concerned entered the territory and a statement by the employer on the expected duration of the employment'.

22. Since reporting one's presence to the authorities is a unilateral act which is accomplished by the worker and which necessitates no further action on the authorities' part, the imposition of a charge upon this notification also represents an unnecessary obstacle.

23. In conclusion, it may be stated that, where Directive 68/360/EEC does not provide for the issue of a residence permit, the issue, for a fee, of a document for proving lawful residence in Belgian territory is incompatible with Article 8 of the Directive.

Costs

24. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has succeeded in having its claim upheld, the Kingdom of Belgium must be ordered to pay the costs.

C — Conclusion

25. In view of the foregoing considerations, I propose that the Court should rule as follows:

(1) The Kingdom of Belgium has failed to fulfil its obligations under Article 48 of the EC Treaty and Council Directive 68/360/EEC

— by requiring nationals of other Member States who seek employment in Belgium to leave its territory after a period of three months;

— by issuing, during the first six months of their residence, to persons employed for a period of at least one year two successive registration certificates instead of a Residence Permit for a National of a Member State of the EEC and by requiring payment for those certificates;

— by issuing to employed persons and to seasonal workers whose activity is not expected to last for more than three months a document relating to their residence and by requiring payment for that document.

(2) The Kingdom of Belgium is ordered to pay the costs.