provisions concerning the first grant of a work permit to a Greek national to be made more restrictive after the entry into force of that Act.

O'Keeffe Pescatore Bosco

Koopmans Bahlmann

Delivered in open court in Luxembourg on 23 March 1983.

P. Heim
Registrar

A. O'Keeffe
President of the Fourth Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 23 FEBRUARY 1983

My Lords,

Mrs Peskeloglou is a Greek national. On 28 November 1980 she went to the Federal Republic of Germany to join her husband, apparently also a Greek national working in Germany. On 31 May 1981 she applied for a work permit in order to take up employment as a kitchen assistant in Stuttgart. That was refused. It seems that the initial decision was taken on 30 June 1981 and a complaint against it dismissed on 28 August 1981.

She brought proceedings in the Sozialgericht, Stuttgart against the Federal Employment Office (Bundesanstalt für Arbeit) for the annulment of the refusal of a work permit. Before the Court it was pointed out that:

(a) Article 19 of the Law on the Promotion of Employment (Arbeitsförderungsgesetz as amended by the Law of 19 June 1969 Bundesgesetzblatt I, p. 582) provided that non-German nationals required a work permit, the issue of which was to depend on the state of the labour market and individual circumstances; but that

(b) with effect from 14 August 1981 the issue of a permit for first employment might for certain groups of persons be made subject to a prior period of residence and that,

(c) by a "Sixth Order" dated 24 September 1981 amending the Works Permits Order, a works permit order might be granted to the spouses of alien employees, if they had resided for four years, unless there was a serious shortage of workers in a particular sector when the qualifying period might be reduced to two years.

The Federal Employment Office contended that as she had not resided for the necessary period she was not, as the spouse of an alien employee, entitled to a permit, even though the law had been changed after her application, and after the date of the initial refusal.

The Sozialgericht accepted that the law did apply even to applications made before it came into effect, and that there was no possibility of construing it restrictively in such a way that the applicant would qualify.

Whether the changes in the law introduced in August and September 1981 were compatibile with Article 45 (1) of the "Act concerning the accession of the Hellenic Republic and the adjustments to the Treaties" (Official Journal 1979, L 291 at p. 27) was a question which the Sozialgericht found not free from doubt and necessary to refer to the Court. The Sozialgericht accordingly asks the Court, pursuant to Article 177 of the EEC Treaty, to rule whether the second subparagraph of Article 45 (1) of the Act is to be interpreted as permitting the rules in force before 14 August 1981 to be made more stringent by the addition of a further residence requirement.

Although the work permit now has been granted in this particular case, the Sozialgericht has not withdrawn the reference since proceedings for a declaration that the original decision was unlawful remain to be decided.

Article 45 (1) provides that Articles 1 to 6 and 13 to 23 of Regulation EEC No 1612/68 (Journal Officiel L 257, 19. 10. 1968, p. 2, English Special Edition 1968, p. 475) dealing with eligibility for employment and clearance of vacancies, shall only apply in the other Member States with regard to Hellenic nationals as from 1 January 1988. In the intervening period, Member States other than Greece "may maintain in force ... with regard to Hellenic nationals, national provisions submitting to prior authorization immigration undertaken with a view to pursuing an activity as an employed person and/or the taking up and pursuit of paid employment".

There is an additional provision in Article 45 (2) in regard to workers' families. Article 11 of Regulation No 1612/68 (giving a right to a worker's spouse and children to take up employment) is not to apply to Hellenic nationals in other Member States until 1 January 1986. There is, again, an interim provision. Members of a worker's family are given the right to be employed in the territory of the Member State where they have settled with the worker

if they are resident for at least three years there, a period shortly to be reduced to 18 months. It is, however, expressly provided that the rules of paragraph 2 in relation to workers' families, "shall not prejudice more favourable national provisions".

The Commission and the Greek Government contend that Article 45 (1) prevents restrictions on work permits being increased after the date of the Act. It is said that this flows not just from the proper construction of the Article, but also on the ground that the alternative would violate a fundamental principle of the Community, would be excessive in the intervening period when Member States should either be moving towards free circulation of workers or doing nothing to make conditions more restrictive, that it would breach acquired rights and also the European Convention on Human Rights.

It seems to me that the word "maintain" (in French the text has "maintenir") was chosen specifically to enable Member States to preserve the *status quo* during the transitional period. As a matter of literal construction, the power to "maintain" national provisions, with no express power to amend, means no more than "to keep in force existing provisions". It does not include a discretion to add further restrictive conditions to already existing provisions.

The right to freedom of movement for workers given by Article 48 of the EEC Treaty has been recognized by the Court as being one of the foundations of the Community so that any derogations from the principle must be strictly construed (see eg Case 36/75 *Rutili* v *Minister of the Interior* [1975] ECR 1219 at pp. 1229 and 1231). Since the accession of a new Member State adds suddenly to the total work force in the Community, and could result in a large-scale movement with the possibility of economic, social and industrial relations problems, it may well be necessary and justified to postpone the grant of such a right during a transitional period whilst existing measures are kept in force. To permit further restrictions to be introduced would, however, conflict with Article 48 and such a power should not be implied in the absence of clear words.

Accordingly, in my opinion, Article 45 (1) as a matter of construction entitles existing rules to be maintained but does not permit further restrictions to be imposed.

I dot not consider that Article 45 (2) affects that construction. By that Article a spouse is given an additional right to be employed after three year's residence, whatever national legislation may provide. If this provision is more favourable than national rules, the spouse can rely on it. On the other hand, if the national rule is more favourable to the spouse, she can rely on that. The national rule cannot (by virtue of paragraph 1 of Article 45) be made less favourable than at the date of the Act.

I conclude therefore that the result contended for by the Commission and the Greek Government is achieved for these reasons, and it is not necessary to consider whether there is any breach of "acquired rights" or the European Convention on Human Rights.

I would accordingly answer the question referred on the lines that:

The second subparagraph of Article 45 (1) of "the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties" is not to be interpreted as permitting national provisions submitting to prior authorization immigration undertaken with a view to pursuing an activity as an employed person and or the taking up and pursuit of paid employment, to be made more restrictive in respect of Hellenic nationals in the period between the date of the Act and 1 January 1988, and in particular is not to be interpreted as permitting the grant of a work permit under Article 19 of the Law on the Promotion of Employment (Arbeitsförderungsgesetz) of the Federal Republic of Germany, to be made subject to the additional requirement of completion of a period of residence of at least two years.