JUDGMENT OF THE COURT
30 April 1996 *

In Case C-214/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesarbeitsgericht, Germany, for a preliminary ruling in the proceedings pending before that court between

Ingrid Boukhalfa

and

Bundesrepublik Deutschland

on the interpretation of Article 48(2) of the EC Treaty and Article 7(1) and (4) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968(II), p. 475),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. N. Kakouris (Rapporteur), J.-P. Puissochet and G. Hirsch (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, J. L. Murray, P. Jann, H. Ragnemalm and L. Sevón, Judges,

* Language of the case: German.

Advocate General: P. Léger,
Registrar: H. von Holstein, Assistant Registrar,

after considering the written observations submitted on behalf of:

— Ms Boukhalfa, by Wilfried Mosebach, Rechtsanwalt, Kassel,

— the Federal Republic of Germany, by Axel Groeger, Rechtsanwalt, Cologne, and

— the Commission of the European Communities, by Christopher Docksey, of its Legal Service, and Horstpeter Kreppel, a national official on secondment to its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Federal Republic of Germany and the Commission at the hearing on 19 September 1995,

after hearing the Opinion of the Advocate General at the sitting on 14 November 1995,

gives the following

Judgment

1 By order of 23 June 1994, received at the Court on 25 July 1994, the Bundesarbeitsgericht (Federal Labour Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article

48(2) of the Treaty and Article 7(1) and (4) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968(II), p. 475).

2 That question was raised in proceedings between Ms Boukhalfa and the Federal Republic of Germany.

3 The Gesetz über den Auswärtigen Dienst (German Law on the Diplomatic Service, *Bundesgesetzblatt* I, p. 1842, hereinafter the 'GAD') governs, *inter alia*, the status of staff of diplomatic representations, comprising staff on posting from the Foreign Ministry and non-posted (local) staff. With regard to the latter, it distinguishes between local staff having German nationality and those not having German nationality.

4 Under Paragraph 32 of the GAD, the legal status of local staff having German nationality is determined by German collective agreements and other provisions of German law. Their conditions of employment are governed in particular by the German collective agreement of 28 September 1973.

5 Under Paragraph 33 of the GAD, the conditions of employment of local staff not having German nationality are determined in accordance with the law of the host country and local custom. The same paragraph provides that they are to be guaranteed appropriate social conditions, taking the local situation into account.

6 Ms Boukhalfa is a Belgian national. Since 1 April 1982, she has been employed on the local staff of the German Embassy in Algiers, in the passports section. Her contract of employment was concluded in Algiers. Prior to entering into that

contract, Ms Boukhalfa was already established in Algeria, where she also has her permanent residence. In accordance with Paragraph 33 of the GAD, the contract is subject to Algerian law.

7 By letter of 19 November 1991, Ms Boukhalfa asked to receive the same treatment as local staff of German nationality subject to Paragraph 32 of the GAD. The Federal Republic of Germany did not accede to that request.

8 Ms Boukhalfa then brought proceedings before the Arbeitsgericht (Labour Court) Bonn, in which she relied on Article 48(2) of the Treaty and Article 7(1) and (4) of Regulation No 1612/68, which prohibit any discrimination based on nationality between workers who are nationals of Member States.

9 The Federal Republic of Germany argued that Community law was not applicable to the present case because its sphere of application is limited, under Article 227 of the EC Treaty, to the territory of the Member States of the European Union and Ms Boukhalfa was not in the situation of a national of a Member State employed in another Member State but had always worked in a non-member country.

10 The Arbeitsgericht ruled in her favour, but its judgment was overturned on appeal to the Landesarbeitsgericht (Regional Labour Court), Cologne.

11 Following an application for review on a point of law, the Bundesarbeitsgericht referred the following question to the Court for a preliminary ruling:

'Must Article 48(2) of the EC Treaty and Article 7(1) and (4) of Regulation No 1612/68 be interpreted as meaning that there must be no difference in treatment based on nationality in respect of conditions of employment in the case of a Belgian national permanently resident in Algiers, employed in the passport section of the German Embassy in Algiers, if the employment relationship was entered into there and the work is exclusively and permanently performed there?'

12 By its question, the national Court seeks to ascertain whether the prohibition of discrimination based on nationality, laid down in Article 48(2) of the Treaty and Article 7(1) and (4) of Regulation No 1612/68, applies to a national of a Member State who is permanently resident in a non-member country, who is employed by another Member State in its embassy in that non-member country and whose contract of employment was entered into and is permanently performed there.

13 It must be borne in mind that not only Article 48 of the Treaty but also regulations, as institutional acts adopted on the basis of the Treaty, apply in principle to the same geographical area as the Treaty itself (Case 61/77 *Commission* v *Ireland* [1978] ECR 417, paragraph 46).

14 The geographical application of the Treaty is defined in Article 227. That article does not, however, preclude Community rules from having effects outside the territory of the Community.

15 The Court has consistently held that provisions of Community law may apply to professional activities pursued outside Community territory as long as the employment relationship retains a sufficiently close link with the Community (see, in particular, Case 237/83 *Prodest* v *Caisse Primaire d'Assurance Maladie de Paris* [1984] ECR 3153, paragraph 6, Case 9/88 *Lopes da Veiga* v *Staatssecretaris van Justitie* [1989] ECR 2989, paragraph 15, and Case C-60/93 *Aldewereld* v *Staatssecretaris van Financiën* [1994] ECR I-2991, paragraph 14). That principle must be deemed to extend also to cases in which there is a sufficiently close link between the employment relationship, on the one hand, and the law of a Member State and thus the relevant rules of Community law, on the other.

16 In the present case, it is clear from the documents before the Court that the plaintiff's situation is subject to rules of German law in several respects. First, her contract of employment was entered into in accordance with the law of the Member State which employs her and it is only pursuant to that law that it was stipulated that her conditions of employment were to be determined in accordance with Algerian law. Secondly, that contract contains a clause giving jurisdiction over any dispute between the parties concerning the contract to the courts in Bonn and, ultimately, Berlin. Thirdly, the plaintiff in the main proceedings is affiliated for pension purposes to the German State social security system and is subject, though to a limited extent, to German income tax.

17 In situations such as that of the plaintiff in the main proceedings, Community law and thus the prohibition of discrimination based on nationality contained in the abovementioned Community provisions are applicable to all aspects of the employment relationship which are governed by the law of a Member State.

18 The German Government maintains, however, that Ms Boukhalfa's conditions of employment are governed by Algerian law and that the abovementioned Community provisions prohibiting discrimination based on nationality are therefore inapplicable.

19 As has been pointed out in paragraph 16 above, however, it is only pursuant to Paragraph 33 of the GAD that Algerian law determines Ms Boukhalfa's conditions of employment and it is the compatibility of that paragraph with Community law which is in issue in the main proceedings.

20 The German Government further objects that, even before the contract was entered into, the plaintiff in the main proceedings was resident not in one of the Member States but in Algeria. The national court points out, moreover, that the contract of employment was entered into and is permanently performed in Algeria.

21 Those circumstances are not, however, such as to call into question the links with Community law noted above.

22 The answer to the national court's question must therefore be that the prohibition of discrimination based on nationality, laid down in Article 48(2) of the Treaty and Article 7(1) and (4) of Regulation No 1612/68, applies to a national of a Member State who is permanently resident in a non-member country, who is employed by another Member State in its embassy in that non-member country and whose contract of employment was entered into and is permanently performed there, as regards all aspects of the employment relationship which are governed by the legislation of the employing Member State.

Costs

23 The costs incurred by the German Government 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 question referred to it by the Bundesarbeitsgericht by order of 23 June 1994, hereby rules:

The prohibition of discrimination based on nationality, laid down in Article 48(2) of the EC Treaty and Article 7(1) and (4) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, applies to a national of a Member State who is permanently resident in a non-member country, who is employed by another Member State in its embassy in that non-member country and whose contract of employment was entered into and is permanently performed there, as regards all aspects of the employment relationship which are governed by the legislation of the employing Member State.

Rodríguez Iglesias Kakouris Puissochet Hirsch Mancini

Schockweiler Moitinho de Almeida Murray Jann

Ragnemalm Sevón

Delivered in open court in Luxembourg on 30 April 1996.

R. Grass G. C. Rodríguez Iglesias

Registrar President