JUDGMENT OF THE COURT (Third Chamber)
5 February 1991 *

In Case C-363/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by interlocutory order of the President of the Tribunal de première instance (Court of First Instance), Liège, for a preliminary ruling in the proceedings pending before that court between

Danielle Roux

and

Belgian State,

on the interpretation of several provisions of Community law relating to freedom of movement for workers, the right of establishment and the freedom to provide services, and in particular Articles 3(c), 7, 48, 52, 56 and 66 of the EEC Treaty, 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), Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Members States and their families (OJ, English Special Edition 1968(II), p. 485), Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14), and Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1964, p. 117),

THE COURT (Third Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, F. Grévisse and M. Zuleeg, Judges,

* Language of the case: French.

Advocate General: G. Tesauro
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of:

Danielle Roux, plaintiff in the main proceedings, by L. Misson, of the Liège Bar,

the Commission of the European Communities, by É. Lasnet, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing argument on behalf of the plaintiff, represented by Messrs Misson, Lucas and Dupont, of the Liège Bar, the defendant, represented by M. Rimaux, acting as Agent, and by the Commission, at the hearing on 2 October 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on the same day,

gives the following

Judgment

1 By an interlocutory order of 29 November 1989, which was received at the Court on 30 November 1989, the Tribunal de première instance (Court of First Instance), Liège, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions on the interpretation of certain provisions of Community law relating to freedom of movement for workers, the right of establishment and the freedom to provide services, and in particular Articles 3(c), 7, 48, 52, 56 and 66 of the EEC Treaty, 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), 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), Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14), and Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ, English Special Edition 1964, p. 117).

2 Those questions arose in the course of proceedings brought by the plaintiff in the main proceedings, Mrs Danielle Roux, a French national, against the Belgian State's refusal to grant her a permit for residence in Belgium.

3 Mrs Danielle Roux arrived in Belgium at the end of 1988 and, on 10 January 1989, applied to the Liège municipal authorities for the grant of a residence permit stating that she was working as a self-employed waitress.

4 By an administrative decision notified to Mrs Roux on 12 April 1989, the Office des étrangers (Aliens Office) turned down her request on the ground that she was not working as a self-employed waitress but was working in an employed capacity for an employer. That employment was not being carried on in conformity with the social legislation in force in Belgium. Consequently, the Belgian authorities ordered Mrs Roux to leave the country.

5 Mrs Roux challenged that decision before the Tribunal de première instance, Liège, and in interlocutory proceedings sought the grant of a provisional residence permit and the suspension of the expulsion order.

6 By interlocutory order of 29 November 1989, the President of the Tribunal de première instance, Liège, directed the Belgian State to issue Mrs Roux with a provisional permit to reside in Belgium pending the outcome of the interlocutory proceedings. Noting also that the competent Belgian authorities did not dispute that Mrs Roux was in fact engaged in economic activity in Belgium and having

regard to the fact that there were two separate types of residence permit in Belgium depending on whether the person concerned was engaged in activity as an employed person or as a self-employed person, the President of the Tribunal de première instance, Liège, in the same order requested the Court of Justice to give a preliminary ruling on the following four questions:

'(1) Under Articles 3(c), 7, 48 et seq. and 52 et seq. of the EEC Treaty and Council Directives 68/360, 73/148 and 64/221, must prior registration of a worker who is a national of a Member State of the Community in a social security scheme set up by the legislation of the host State be regarded as constituting a condition of his right of residence in that State and of his right to obtain a residence or establishment permit in that State?

In particular, if there is a dispute as to the classification of the economic activity of the person concerned, though not as to the actual pursuit thereof, may his registration with the social security scheme for self-employed persons rather than that for employed persons or vice versa afford justification for a measure requiring him to leave the territory, or for refusing to issue him with a residence or establishment permit?

(2) Do Article 4 of Directive 68/360 and Article 6 of Directive 73/148 (or any other provision of Community law) preclude a Member State from requiring as a condition for the issue of a residence or establishment permit either a certificate from an employer or a certificate of employment showing that the employer is registered with the national body responsible for managing the social security scheme for employed persons, or evidence of registration with a social insurance scheme for self-employed persons, depending on whether the person concerned is regarded as an employed person or a self-employed person, to the exclusion of any other evidence of the economic activity carried on?

(3) Do Articles 3(c), 48 et seq. and 52 et seq. of the EEC Treaty, Regulation No 1612/68 and Directives 68/360, 73/148 and 64/221 require Member States to issue a worker who is a national of another Member State of the EEC a residence or establishment permit valid for five years, or at the very least for a period sufficient not to constitute an obstacle to the pursuit of his occupation, where there is no dispute as to the actual pursuit thereof and/or where it has been found to fall under either Article 48 or Article 52, but there is a dispute as to its classification under those two categories?

(4) Do Articles 48(3), 56 and 66 of the EEC Treaty, Council Directive 64/221, Article 10 of Council Directive 68/360 and Article 8 of Council Directive 73/148 permit Member States to refuse to a Community national claiming the right to freedom of movement a residence or establishment permit on the ground that he is not pursuing his economic activity in accordance with the social legislation in force, although the social legislation applicable to employed persons in the host Member State imposes an obligation to register and a corresponding penalty only on the employer of the person concerned?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or 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 ascertain whether the right of residence and, thus, the grant of a residence permit pursuant to the applicable Community rules is conditional on the prior registration of a national of a Member State of the Community with a social security scheme established by the legislation of the host State and, in particular, whether the fact that the national is registered with one social security scheme whereas he should have been registered with another may justify a refusal to grant the residence permit and an expulsion order.

9 It should be pointed out that the Court has already held on several occasions that the right of residence is a right conferred directly by the Treaty subject only to the condition that the person concerned is carrying on an economic activity within the meaning of Articles 48, 52 or 59 of the Treaty (see in particular the judgment in Case 48/75 *Royer* [1976] ECR 497, at paragraph 31).

10 Accordingly the registration of a national of another Member State of the Community with a social security scheme established by the legislation of the host State cannot be imposed as a condition precedent to the exercise of the right of residence.

11 Consequently, non-compliance with national provisions on registration with a social security scheme cannot justify a deportation order. Such a decision entirely negates the right of residence conferred and guaranteed by the EEC Treaty.

12 As the Court held in the *Royer* judgment, cited above (at paragraph 33), the grant of a residence permit is to be regarded not as a measure giving rise to rights but as a measure by a Member State serving to prove the individual position of a national of another Member State with regard to provisions of Community law.

13 The detailed rules governing the issue of the residence permit are laid down for employed persons by Directive 68/360 and for self-employed persons by Directive 73/148.

14 Under Article 4 of Directive 68/360 a Member State may not make the issue of a residence permit subject to conditions other than the production of the document (passport or identity card) with which the person concerned entered its territory and of a confirmation of engagement from the employer or a certificate of employment. The prior registration of an employed person with the social security scheme cannot therefore in any event be imposed as a condition for issue of the residence permit.

15 Moreover, under Article 6 of Directive 73/148 the Member States may not require, for the issue of a residence permit to a self-employed person, anything other than the production of one of the abovementioned identity documents, and proof that the person concerned 'comes within one of the classes of person referred to in Articles 1 and 4'.

16 Since the means of proof admissible in that respect are not specified, it must be concluded that evidence may be adduced by any appropriate means. Consequently, prior registration of a self-employed person in the social security scheme cannot be regarded as a condition of the issue of a residence permit.

17 It follows from the foregoing that failure to comply with national provisions on registration with a social security scheme and, in particular, the fact that the person concerned is registered in the social security scheme for self-employed persons rather than the one for employed persons cannot justify the refusal to issue a residence permit.

18 Accordingly the reply to the first question must be that the prior registration of a national of a Member State of the Community with a social security scheme established by the legislation of the host State cannot be imposed as a condition either for obtaining the right of residence or the issue of the corresponding permit, and that registration in one social security scheme rather than another may justify neither a refusal to issue a residence permit nor a deportation order.

The second question

19 The second question is whether Community rules, in particular Article 4 of Directive 68/360 and Article 6 of Directive 73/148, preclude Member States from accepting solely prior registration in a social security scheme as proof that the person concerned comes within one of the classes of persons entitled to freedom of movement, and must therefore be issued a residence permit.

20 In that respect, it should be noted that the only condition imposed on a national of a Member State of the Community for issue of a residence permit is that he proves that he comes within one of the classes of person entitled to freedom of movement. However, neither Article 4 of Directive 68/360 nor Article 6 of Directive 73/148 makes the recognition of the rights granted thereby dependent on proof of prior registration of such a person with a social security scheme.

21 Accordingly, the reply to the second question must be that Article 4 of Directive 68/360 and Article 6 of Directive 73/148 preclude Member States from accepting only prior registration in a social security scheme as proof that the person concerned comes within one of the classes of person entitled to freedom of movement, and must therefore be issued a residence permit.

The third question

22 The third question is whether the applicable Community rules require the Member States to issue a residence permit to a national of another Member State where it is not disputed that the person concerned is carrying on an economic activity, the only point at issue being whether it falls to be classified as employment within the meaning of Article 48 of the Treaty or activity as a self-employed person within the meaning of Article 52 of the Treaty.

23 On that point it should be observed that Articles 48 and 52 of the EEC Treaty afford the same legal protection and that therefore the classification of an economic activity is without significance.

24 The reply to the third question should therefore be that the Member States are obliged to issue a residence permit to a national of another Member State where it is not disputed that he is carrying on an economic activity, without there being any need in that respect to classify that activity as employment or activity as a self-employed person.

The fourth question

25 The fourth question essentially seeks to ascertain whether the Member States are entitled under Community rules to refuse to issue a residence permit to a Community national claiming entitlement to freedom of movement for persons on the ground that he is not pursuing his activity in conformity with the social legislation in force.

26 On that point it should be borne in mind that the issue of the residence permit recording the existence of a right conferred and guaranteed by the Treaty itself is of a declaratory nature only, and may be made subject only to the conditions expressly provided for by the applicable Community rules. However, as is plain

from the reply to the first question, compliance with national social security provisions is not a condition for obtaining a residence permit.

27 Accordingly, the national authorities are not authorized to penalize non-compliance with social legislation by refusing to issue a residence permit to a Community national to whom the rules on freedom of movement for persons apply.

28 On the other hand, as the Court has consistently held, Community law does not preclude the application of sanctions or other enforcement measures attaching to the failure to comply with national social security provisions, which are comparable to sanctions also applying to nationals of the host State (see the judgments of the Court in Case 118/75 *Watson and Belmann* [1976] ECR 1185, at paragraph 21, in Case 157/79 *R.* v *Pieck* [1980] ECR 2171, at paragraph 19, and in Case C-265/88 *Criminal proceedings against Lothar Messner* [1989] ECR 4209, at paragraph 14).

29 At the hearing the Belgian Government argued that compliance with social security provisions, particularly those governing registration in a social security scheme, was a matter of public policy and did therefore constitute a condition for the grant of the right of residence and the issue of the corresponding permit.

30 That argument cannot be accepted. The reservation provided for in Articles 48(3) and 56(1) of the EEC Treaty concerning limitations justified on grounds of public policy must be construed not as a condition precedent to the acquisition of the right of entry and residence, but as affording the possibility of placing restrictions, in specific cases and where the circumstances justify it, on the exercise of a right directly conferred by the Treaty.

31 Accordingly the public policy reservation may on no account justify administrative measures requiring in general for the issue of a residence permit conditions other than those expressly provided for in the Community rules concerning freedom of movement for persons.

32 The reply to the fourth question must therefore be that the Member States are not permitted under Community rules on freedom of movement for persons to refuse to issue a residence permit to a Community national on the ground that he is not carrying on his activity in conformity with the social legislation in force.

Costs

33 The costs incurred by the Belgian 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, in the nature of 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 (Third Chamber),

in answer to the questions referred to it by the Tribunal de première instance, Liège, by order of 29 November 1989, hereby rules:

(1) The prior registration of a national of a Member State of the Community with a social security scheme established by the legislation of the host State cannot be imposed as a condition either for obtaining the right of residence, or the issue of the corresponding permit. Registration in one social security scheme rather than another may justify neither a refusal to issue a residence permit nor a deportation order.

(2) Article 4 of Directive 68/360/EEC and Article 6 of Directive 73/148/EEC preclude Member States from accepting only prior registration in a social security scheme as proof that the person concerned comes within one of the classes of person entitled to freedom of movement, and must therefore be issued a residence permit.

(3) Member States are obliged to issue a residence permit to a national of another Member State where it is not disputed that he is carrying on an economic

activity, without there being any need in that respect to classify that activity as employment or activity as a self-employed person.

(4) **Member States are not permitted under Community rules on freedom of movement for persons to refuse to issue a residence permit to a Community national on the ground that he is not carrying on his activity in conformity with the social legislation in force.**

Moitinho de Almeida Grévisse Zuleeg

Delivered in open court in Luxembourg on 5 February 1991.

J.-G. Giraud
Registrar

J. C. Moitinho de Almeida
President of the Third Chamber