JUDGMENT OF THE COURT
18 May 1989 *

In Case 249/86

Commission of the European Communities, represented by its Legal Adviser Jörn Pipkorn and by Julian Currall, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by Dietmar Knopp, Rechtsanwalt, Cologne, acting as Agent of the Government of the Federal Republic of Germany, with an address for service in Luxembourg at the Chancery of the German Embassy, 20-22 avenue Émile-Reuter, L-2420 Luxembourg,

defendant,

APPLICATION for a declaration that by adopting and retaining provisions in its national legislation which make renewal of the residence permit of members of the family of Community migrant workers conditional on their living in appropriate housing, not only at the time when they come to live with the migrant worker concerned but for the entire duration of their residence, the Federal Republic of Germany has failed to fulfil its obligations under Article 48 of the EEC Treaty and Article 10(3) of Regulation No 1612/68 of the Council of 15 October 1968 (Official Journal, English Special Edition 1968 (II), p. 475),

* Language of the case: German.

THE COURT

composed of: O. Due, President, T. F. O'Higgins and F. Grévisse (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, F. A. Schockweiler, J. C. Moitinho de Almeida, M. Diez de Velasco and M. Zuleeg, Judges,

Advocate General: J. Mischo
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 24 November 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 17 January 1989,

gives the following

Judgment

1 By application lodged at the Court Registry on 29 December 1986, the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that by adopting and retaining provisions in its national legislation which make renewal of the residence permit of members of the family of Community migrant workers conditional on their living in appropriate housing, not only at the time when they install themselves with the migrant worker concerned but for the entire duration of their residence, the Federal Republic of Germany has failed to fulfil its obligations under Article 48 of the EEC Treaty and Article 10(3) of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).

2 The Commission states in its application that according to Paragraph 7(1) of the Aufenthaltsgesetz EWG (Law on the residence of EEC nationals) in the version in force from 31 January 1980 (*Bundesgesetzblatt* I, 6.2.1980, p. 117), 'a residence permit shall be granted on demand to members of the family (Paragraph 1(2)) of a

person who has such a permit and has housing for himself and the members of his family of a nature considered appropriate according to the criteria applied in that regard in the place of residence'. The penultimate sentence of Paragraph 7(5) provides that 'a residence permit granted to members of the family of workers shall be extended on demand for a period of at least five years if the conditions for the issue thereof continue to be fulfilled' and Paragraph 7(9) provides that 'the period of validity of a residence permit may subsequently be reduced if the conditions required for its issue are no longer fulfilled'. The Commission received complaints to the effect that the Federal Republic of Germany had refused in certain cases to renew residence permits for members of the family of migrant workers and threatened them with administrative measures such as expulsion to their country of origin where the housing occupied by the worker and his family no longer corresponded to the prevailing conditions in the place of residence.

3 The Commission considered that Paragraph 7 of the Aufenthaltsgesetz EWG was incompatible with Article 48 of the EEC Treaty and Article 10(3) of Regulation No 1612/68; it therefore gave the Federal Republic of Germany formal notice under the first paragraph of Article 169 by letter of 11 September 1984. After considering the Federal Republic of Germany's observations, contained in a letter of 6 November 1984, the Commission delivered a reasoned opinion on 9 September 1985. Since it considered that the Federal Republic of Germany's observations in reply to the reasoned opinion, contained in a letter of 4 December 1985, were unsatisfactory, the Commission brought this action.

4 Reference is made to the Report for the Hearing for a fuller account of the Community and national provisions at issue, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 Article 10(1) and (2) of Regulation No 1612/68 essentially permits members of the family of a migrant worker who is a national of a Member State to install themselves with the worker in the territory of the Member State in which he is employed. Article 10(3) provides that 'for the purposes of paragraphs 1 and 2, the worker must have available for his family housing considered as normal for

national workers in the region where he is employed; this provision, however, must not give rise to discrimination between national workers and workers from the other Member States'. The parties differ as to the interpretation of that provision.

6 The Federal Republic of Germany contends first that the purpose of that provision is to regulate the right of residence during the entire period of the stay in the host Member State and that the requirement of appropriate housing applies to the entire stay. It must, consequently, be verified both upon the arrival of each new family member and during the stay in the territory of the host Member State, in particular on each occasion that a residence permit is to be renewed. Paragraph 7 of the Aufenthaltsgesetz EWG therefore does not infringe Community law.

7 The Commission, on the other hand, claims that Article 10(3) of Regulation No 1612/68 relates only to the moment when the members of the migrant worker's family install themselves with him. The condition concerning housing contained in that paragraph must therefore be interpreted as meaning that it may be required by the Member States only when the members of the worker's family are first admitted to their territory.

8 It should first of all be pointed out that Regulation No 1612/68 of the Council defines more precisely the principle of freedom of movement for workers as formulated in Articles 48 and 49 of the EEC Treaty. Consequently, that regulation must be interpreted in the light of those provisions of the Treaty, which call for the adoption of the measures required to bring about, by progressive stages, freedom of movement for workers.

9 Furthermore, as the Court held in its judgment of 8 April 1976 in Case 48/75 *Royer* [1976] ECR 497, the right of nationals of a Member State to enter the territory of another Member State and reside there for the purposes intended by the Treaty — in particular to look for or pursue an occupation or activities as employed or self-employed persons, or to rejoin their spouse or family — is a right conferred directly by the Treaty or, as the case may be, by the provisions adopted

for its implementation, and that right is acquired independently of the issue of a residence permit by the competent authority of a Member State.

10 Regulation No 1612/68 must also be interpreted in the light of the requirement of respect for family life set out in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. That requirement is one of the fundamental rights which, according to the Court's settled case-law, restated in the preamble to the Single European Act, are recognized by Community law.

11 Finally, Article 10(3) of Regulation No 1612/68 must be interpreted in the context of the overall structure and purpose of that regulation. It is apparent from the provisions of the regulation, taken as a whole, that in order to facilitate the movement of members of workers' families the Council took into account, first, the importance for the worker, from a human point of view, of having his entire family with him and, secondly, the importance, from all points of view, of the integration of the worker and his family into the host Member State without any difference in treatment in relation to nationals of that State.

12 It follows from the foregoing that Article 10(3) must be interpreted as meaning that the requirement to have available housing considered as normal applies solely as a condition under which each member of the worker's family is permitted to come to live with him and that once the family has been brought together, the position of the migrant worker cannot be different in regard to housing requirements from that of a worker who is a national of the Member State concerned.

13 Consequently, if the housing regarded as normal at the time of the arrival of members of the migrant worker's family no longer fulfils that requirement as a result of a new event, such as the birth or arrival at the age of majority of a child, the measures which may be adopted in regard to members of the worker's family cannot be different from those required in regard to nationals of that Member State and cannot lead to discrimination between those nationals and nationals of other Member States.

14 A different solution would be compatible with the objectives which Article 10(3) of Regulation No 1612/68 seeks to achieve only if the migrant worker had obtained suitable housing solely in order to obtain the right to have members of his family living with him and had left that housing once he had obtained such authorization.

15 The German legislation is therefore incompatible with the obligations arising under Community law in so far as it provides for non-renewal of a residence permit or a reduction *a posteriori* of the period of validity of a residence permit for a member of the family of a migrant worker by virtue of the fact that the family's housing can no longer be regarded as suitable according to the criteria applied in that regard in the place of residence, whereas sanctions of comparable severity are not provided for in regard to German nationals.

16 The Federal Republic of Germany contends that the right to free movement must be limited where public security and public policy are threatened. The lack of suitable housing is contrary to public security and public policy, concepts which, in the view of the Federal Republic of Germany, must be determined on the basis of national criteria. Paragraph 7 of the Aufenthaltsgesetz EWG is not essentially repressive but preventive; it is an indispensable means of inducing workers to comply with the housing requirement. Consequently, that provision is justified under Article 48 of the Treaty.

17 As the Court held in its judgment of 27 October 1977 in Case 30/77 *Regina* v *Bouchereau* [1977] ECR 1999, recourse to the concept of public policy presupposes the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat affecting one of the fundamental interests of society.

18 Furthermore, in regard to Article 3(1) and (2) of Directive 64/221/EEC of the Council 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 (Official Journal, English Special Edition 1963-64, p. 117), according to which 'measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned', the Court held in its judgment of 26 January

1975 in Case 67/74 *Bonsignore* v *Stadt Köln* [1975] ECR 297 that 'measures adopted on grounds of public policy and for the maintenance of public security against the nationals of Member States of the Community cannot be justified on grounds extraneous to the individual case' or be based 'on reasons of a "general preventive nature"'.

19 The Court also held in its judgment of 10 May 1982 in Joined Cases 115 and 116/81 *Adoui and Cornuaille* v *Belgium* [1982] ECR 1665 that although Community law does not impose upon the Member States a uniform scale of values as regards the assessment of conduct which may be considered contrary to public policy, conduct may not be regarded as being of a sufficiently serious nature to justify restrictions on the admission to or residence within the territory of a Member State of a national of another Member State in a case where the former Member State does not adopt, with respect to the same conduct on the part of its own nationals, repressive measures or other genuine and effective measures intended to combat such conduct. Consequently, that Member State may not, by virtue of the reservation relating to public policy contained in Articles 48 and 56 of the Treaty, expel a national of another Member State from its territory or refuse him access to its territory by reason of conduct which, when attributable to the former State's own nationals, does not give rise to repressive measures or other genuine and effective measures intended to combat such conduct.

20 Finally, as the Court has consistently held, in particular in its judgment of 7 July 1976 in Case 118/75 *Watson and Belmann* [1976] ECR 1185, deportation negates the very right conferred and guaranteed by the Treaty, and the imposition of such a penalty is not justified if it is so disproportionate to the gravity of the infringement that it becomes an obstacle to the free movement of persons.

21 The Federal Republic of Germany also claims that the application in practice by the German authorities of Paragraph 7 of the Aufenthaltsgesetz EWG does not entail any discrimination against the families of migrant workers and that no member of a worker's family has been deported.

22 As the Court has consistently held, mere administrative practices which can be modified as and when the administration pleases cannot be regarded as constituting proper fulfilment of the obligations contained in the Treaty.

23 In the light of the foregoing it must be held that by adopting and retaining provisions in its national legislation which make renewal of the residence permit of members of the family of Community migrant workers conditional on their living in appropriate housing, not only at the time when they install themselves with the migrant worker concerned but for the entire duration of their residence, the Federal Republic of Germany has failed to fulfil its obligations under Article 10(3) of Regulation No 1612/68 of the Council of 15 October 1968.

24 Since the German legislation is incompatible with Article 10(3) of Regulation No 1612/68 of the Council, there is no need to consider the Commission's claim that the legislation is also incompatible with Article 48 of the EEC Treaty.

Costs

25 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the Federal Republic of Germany has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by adopting and retaining provisions in its national legislation which make renewal of the residence permit of members of the family of Community migrant workers conditional on their living in appropriate housing, not only at the time when they install themselves with the migrant worker concerned but for the entire duration of their residence, the Federal Republic of Germany has failed to fulfil its obligations under Article 10(3) of Regulation No 1612/68 of the Council of 15 October 1968;

(2) Orders the Federal Republic of Germany to pay the costs.

Due O'Higgins Grévisse Mancini

Kakouris Schockweiler Moitinho de Almeida Diez de Velasco Zuleeg

Delivered in open court in Luxembourg on 18 May 1989.

J.-G. Giraud
Registrar

O. Due
President