JUDGMENT OF THE COURT (Sixth Chamber)
27 September 1989 *

In Case 9/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the Raad van State (State Council) of the Netherlands for a preliminary ruling in the proceedings pending before that court between

Mário Lopes da Veiga

and

Staatssecretaris van Justitie (State Secretary of Justice)

on the interpretation of Articles 216(1) and 218 of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties,

THE COURT (Sixth Chamber)

composed of: T. Koopmans, President of Chamber, G. F. Mancini, C. N. Kakouris, F. A. Schockweiler and M. Diez de Velasco, Judges,

Advocate General: M. Darmon
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of

Mário Lopes da Veiga, the applicant in the main proceedings, by R. J. Wybenga, of the Rotterdam Bar,

the Government of the Kingdom of the Netherlands, by E. F. Jacobs, Secretary-General of the Ministry of Foreign Affairs, and A. Fierstra, Deputy Legal Adviser to that Ministry,

* Language of the case: Dutch.

the Government of the Portuguese Republic, by Luís Fernandes, Director of the Legal Department in the General Directorate for European Affairs, and Maria Luísa Duarte, Legal Adviser in the General Directorate for European Affairs,

the Commission of the European Communities, by A. Caeiro and B. J. Drijber, members of its Legal Department,

having regard to the Report for the Hearing and further to the hearing on 29 June 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 13 July 1989,

gives the following

Judgment

1 By a decision of 22 December 1987, which was received at the Court on 13 January 1988, the Raad van State (State Council) of the Netherlands referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 216(1) and 218 of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties, annexed to the Treaty between the 10 States which were already members of the European Communities and the Kingdom of Spain and the Portuguese Republic concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community, signed on 12 June 1985 (Official Journal 1975, L 302, p. 23) (hereinafter referred to as 'the Act of Accession').

2 Those questions were raised in proceedings between a Portuguese national employed on vessels flying the Dutch flag and the Staatssecretaris van Justitie (State Secretary of Justice) concerning the grant of a residence permit.

3 The Netherlands Vreemdelingenwet (Law on Aliens) draws a distinction, with regard to conditions governing entry into and residence in the Netherlands, between EEC nationals, who enjoy preferential status, and aliens who are subject to the general provisions. An alien who is a national of a State which has acceded to the EEC, in respect of which the Treaty of Accession or the provisions implementing that Treaty provide for transitional arrangements, is treated as a favoured EEC national only in so far as that status ensues from the transitional provisions.

4 Aliens employed on board vessels flying the Dutch flag are not obliged to hold residence permits since the presence on board a Dutch vessel sailing on the high seas is not considered to constitute residence in the Netherlands for the purposes of the Law on Aliens. Aliens who come within that category are permitted to spend their periods of leave in the Netherlands.

5 The applicant in the main proceedings, Mário Lopes da Veiga, a Portuguese national, has worked since 1974 as a seaman on board vessels registered in the Netherlands in the employ of a shipping company established under the law of the Netherlands and having its registered office in that State. The applicant was hired in the Netherlands, where he is insured under the social security system and where his earnings are subject to tax. The vessel on board which Mr Lopes da Veiga is employed calls regularly at ports in the Netherlands and it is there that he spends his periods of leave.

6 After Mr Lopes da Veiga had registered himself on the population register of the municipality of The Hague, he applied for a residence permit. His application was refused by the head of the local police and that refusal was confirmed by a decision of the Staatssecretaris van Justitie.

7 The applicant appealed against the refusal to grant him a residence permit to the Raad van State, which, by a decision of 22 November 1987, stayed the proceedings until the Court had given a preliminary ruling on the following questions:

'(1) Must Article 216(1) of the Act of Accession be interpreted as meaning that Article 7 *et seq.* of Regulation (EEC) No 1612/68 of 15 October 1968 apply to a Portuguese national who works on board a Dutch vessel as the employee of an employer established in the Netherlands and who has not been granted possession of a residence document for the carrying on of an activity as an employed person in the territory of the Netherlands pursuant to the policy on entry generally applied to aliens or on any other basis?

(2) In the event that Question 1 is answered in the affirmative: must Article 218 of the Act of Accession be interpreted as meaning that Article 4 of Directive 68/360/EEC of 15 October 1968 is also applicable to the Portuguese national referred to in Question 1?'

8 Reference is made to the Report for the Hearing for a fuller account of the facts in the main proceedings, the course of 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

9 Article 216(1) of the Act of Accession provides that Articles 1 to 6 of Regulation (EEC) 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) is to apply in Portugal with regard to nationals of the other Member States and in the other Member States with regard to Portuguese nationals only as from 1 January 1993. It follows from an *a contrario* interpretation of that provision that Article 7 *et seq.* of the regulation, which are not covered by that derogating provision, apply as from 1 January 1986, the date on which the Act of Accession came into force.

10 That interpretation is consistent with the ratio of the transitional arrangements, which suspend, until 1 January 1993, the application of the provisions of Title I of Regulation No 1612/68 dealing with eligibility for employment, in order to prevent disruption of the labour markets of the old Member States through a massive influx of Portuguese nationals seeking employment. There is no reason, however, to refuse to allow the provisions of Title II of Regulation No 1612/68 dealing with employment and equality of treatment to be applied to Portuguese

workers who were already employed in the territory of one of the old Member States.

11 With regard to the similar provisions of the Act concerning the Conditions of Accession of the Hellenic Republic to the European Communities, the Court has in fact ruled, in its judgment of 30 May 1989 in Case 305/87 *Commission* v *Hellenic Republic* [1989] ECR 1461, that, although the transitional arrangements suspended the application of a number of provisions of Regulation No 1612/68 defining the rights guaranteed under Articles 48 and 49 of the Treaty, they did not suspend the application of those articles, in particular in regard to workers from other Member States who were lawfully employed in the Hellenic Republic before 1 January 1981 and continued to be employed there after that date or those who were lawfully employed there for the first time after that date.

12 It is necessary to examine next whether a person in the situation of the applicant in the main proceedings may be regarded as a worker/national of a Member State who is employed in the territory of another Member State, within the meaning of Articles 7, 8 and 9 of Regulation No 1612/68.

13 The Court has consistently held that the term 'worker' has a meaning specific to Community law and must be given a broad interpretation (see, in particular, the judgment of 3 June 1986 in Case 139/85 *Kempf* v *Staatssecretaris van Justitie* [1986] ECR 1746).

14 In its judgment of 4 April 1974 in Case 167/73 *Commission* v *French Republic* [1974] ECR 359, the Court held that Articles 48 to 51 of the EEC Treaty were applicable in the sphere of maritime transport, thereby implicitly accepting that a national of a Member State employed on board a vessel from another Member State of the Community ought to be regarded as a worker within the meaning of the Treaty.

15 With regard to professional activities which are pursued, partially or temporarily, outside the territory of the Community, the Court has held, in its judgments of 12 December 1974 in Case 36/74 *Walrave* v *Union cycliste internationale* [1974] ECR 1405 and of 12 July 1984 in Case 237/83 *Prodest SARL* v *Caisse primaire d'assurance maladie de Paris* [1984] ECR 3153, that persons pursuing such activities

had the status of workers employed in the territory of a Member State if the legal relationship of employment could be located within the territory of the Community or retained a sufficiently close link with that territory.

16 That connection criterion must also apply in the case of a worker/national of a Member State who is permanently employed on board a ship flying the flag of another Member State.

17 It is for the national court to decide whether the employment relationship of the applicant in the main proceedings has a sufficiently close connection with the territory of the Netherlands, taking into account in particular the following circumstances apparent from the case-file and from the written and oral observations submitted to the Court: the applicant works on board a vessel registered in the Netherlands in the employ of a shipping company incorporated under the law of the Netherlands and established in that State; he was hired in the Netherlands and the employment relationship between him and his employer is subject to Netherlands law; he is insured under the social security system of the Netherlands and pays income tax in the Netherlands.

18 With regard to the fact, pointed out by the national court in its question, that the applicant in the main proceedings had not obtained a residence permit enabling him to carry on activities as an employed person in the territory of the Netherlands, it must be borne in mind that this Court has consistently ruled that a worker acquires a right of residence by virtue of the provisions of Community law, irrespective of the issue, by the responsible authority in a Member State, of a residence permit, which is purely declaratory in nature (see the judgment of 8 April 1976 in Case 48/75 *Royer* [1976] ECR 497).

19 Consequently, the reply to the first question submitted by the Raad van State must be that Article 216(1) of the Act of Accession must be interpreted as meaning that Article 7 *et seq.* of Regulation (EEC) No 1612/68 may be relied upon by a Portuguese national who, since a date prior to the accession of Portugal, has been carrying on an activity as an employed person on board a vessel flying the flag of another Member State and who has not been granted possession of a residence document for carrying on an activity as an employed person in the territory of that State, if the employment relationship has a sufficiently close connection with the territory of that Member State.

The second question

20 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 (Official Journal, English Special Edition 1968 (II), p. 485) provides in Article 1 that it is to cover nationals of Member States and members of their families to whom Regulation No 1612/68 applies; it makes no distinction between Title I of Part 1, concerning eligibility for employment, and Title II, which deals with employment and equality of treatment. Article 4 of Directive 68/360 provides that the Member States are to grant the right of residence in their territory to those persons and, for that purpose, issue to them a document entitled 'Residence Permit for a National of a Member State of the EEC'.

21 A Portuguese national who was already employed in the territory of one of the old Member States of the Community at the time of his country's accession and who may, by virtue of Article 216(1) of the Act of Accession, seek application of Title II of Regulation No 1612/68, may therefore rely on the provisions of Directive 68/360.

22 The answer to the second question submitted by the Raad van State must therefore be that a Portuguese national who satisfies the conditions set out in the reply to the first question may rely on the provisions of Article 4 of Directive 68/360.

Costs

23 The costs incurred by the Government of the Portuguese Republic, the Government of the Kingdom of the Netherlands 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions submitted to it by the Raad van State of the Netherlands, by decision of 22 December 1987, hereby rules:

(1) Article 216(1) of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties, annexed to the Treaty between the 10 States which were already members of the European Communities and the Kingdom of Spain and the Portuguese Republic concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community signed on 12 June 1985, must be interpreted as meaning that Article 7 *et seq.* of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community may be relied upon by a Portuguese national who, since a date prior to the accession of Portugal, has been carrying on an activity as an employed person on board a vessel flying the flag of another Member State and who has not been granted possession of a residence document for carrying on an activity as an employed person in the territory of that State, if the employment relationship has a sufficiently close connection with the territory of that Member State.

(2) A Portuguese national who satisfies those conditions may rely on Article 4 of 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.

Koopmans Mancini

Kakouris Schockweiler Diez de Velasco

Delivered in open court in Luxembourg on 27 September 1989.

J.-G. Giraud T. Koopmans

Registrar President of the Sixth Chamber