JUDGMENT OF THE COURT (Third Chamber)
27 November 1991 *

In Case C-4/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal Administratif (Administrative Court), Paris, for a preliminary ruling in the proceedings pending before that court between

Annegret Bleis

and

Ministère de l'Éducation Nationale (Ministry of Education)

on the interpretation of Article 48(4) of the EEC Treaty,

THE COURT (Third Chamber),

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

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: French.

after considering the written observations submitted on behalf of:

— the applicant in the main proceedings, by Sylvie Deniniolle, of the Paris bar,

— the French Republic, by Edwige Belliard, Deputy Director of Legal Affairs at the Ministère des Affaires Étrangères (Ministry of Foreign Affairs), and Claude Chavance, Principal Attaché for Central Administration at the same ministry, acting as Agents,

— the Commission of the European Communities, by its Legal Adviser, Jean-Claude Séché, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the applicant in the main proceedings, the French Government and the Commission at the hearing on 26 September 1991,

after hearing the Opinion of the Advocate General at the sitting on 22 October 1991,

gives the following

Judgment

1 By judgment of 4 December 1990, which was received at the Court on 9 January 1991, the Tribunal Administratif (Administrative Court), Paris, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 48(4) of the EEC Treaty.

2 The question was raised in the context of proceedings between Mrs Annegret Bleis, a German national, and the Ministère de l'Éducation Nationale (Ministry of Education). Mrs Bleis had applied to be registered for an external competition for

the Certificat d'Aptitude au Professorat de l'Enseignement du Second Degré (Certificate of Aptitude as a Secondary School Teacher) in German. Her application was refused by the Deputy Director for Recruitment at the Ministère de l'Éducation Nationale (Ministry of Education) on the ground of her nationality and she made an administrative complaint against that decision to the Minister of National Education. Having received no response for over four months, Mrs Bleis began proceedings before the Tribunal Administratif, Paris, for the annulment of the tacit decision to be inferred from the absence of response.

3 Being of the opinion that the validity of the contested decision depended on the interpretation of Article 48(4) of the EEC Treaty, the Tribunal Administratif, Paris, decided to stay its proceedings until the Court had given a preliminary ruling on whether employment as a secondary school teacher in French public establishments constituted employment in the public service within the meaning of that provision.

4 Reference is made to the Report for the Hearing for a fuller account of the facts, the legal framework of the main proceedings and the written observations submitted to the Court, which are mentioned here only in so far as is necessary for the reasoning of the Court.

5 By the question which it has referred, the national court is seeking essentially to ascertain whether employment as a secondary school teacher constitutes employment in the public service within the meaning of Article 48(4) of the Treaty.

6 It should be pointed out in that respect that, according to the consistent case-law of the Court (see, *inter alia*, Case 149/79 *Commission* v *Belgium* [1980] ECR 3881, paragraph 10; Case 149/79 *Commission* v *Belgium* [1982] ECR 1845, paragraph 7; Case 225/85 *Commission* v *Italy* [1987] ECR 2625, paragraph 9), employment in

the public service for the purposes of Article 48(4), which is excluded from the ambit of Article 48(1) to (3), must be understood as meaning a series of posts which involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities and which, because of that fact, presume on the part of those occupying them the existence of a special relationship of allegiance to the State and reciprocity of rights and duties which form the foundation of the bond of nationality. The only posts excluded are those which, having regard to the tasks and responsibilities involved, are apt to display the characteristics of the specific activities of the public service in the spheres described above.

7 The Court has already considered that those very strict conditions are not fulfilled in the case of trainee teachers (Case 66/85 *Lawrie-Blum* v *Land Baden-Württemberg* [1986] 2121) and foreign-language assistants (Case 33/88 *Allué and Another* v *Università degli studi di Venezia* [1989] ECR 1591). The same applies with regard to employment as a secondary school teacher.

8 Consequently, the answer to the question referred to the Court must be that employment as a secondary school teacher does not constitute employment in the public service within the meaning of Article 48(4) of the EEC Treaty.

Costs

9 The costs incurred by the French 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 action, 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 (Third Chamber),

in answer to the question referred to it by the Tribunal Administratif, Paris, by judgment of 4 December 1990, hereby rules:

Employment as a secondary school teacher does not constitute employment in the public service within the meaning of Article 48(4) of the EEC Treaty.

Grévisse Moitinho de Almeida Zuleeg

Delivered in open court in Luxembourg on 27 November 1991.

J.-G. Giraud
Registrar

F. Grévisse
President of the Third Chamber