JUDGMENT OF THE COURT
17 April 1986 *

In Case 59/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the proceedings pending before that court between

State of the Netherlands [Ministry of Justice]

and

Ann Florence Reed, of Swindon, Great Britain,

on the interpretation of Articles 7 and 48 of the EEC Treaty and Article 10 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),

THE COURT

composed of: U. Everling, President of Chamber, acting as President, T. Koopmans, K. Bahlmann and R. Joliet (Presidents of Chambers), O. Due, Y. Galmot, C. Kakouris, T. F. O'Higgins and F. Schockweiler, Judges,

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

after considering the observations submitted on behalf of

Ann Florence Reed, the applicant in the main proceedings, by W. T. Snoek, of the Amsterdam Bar,

the Government of the Netherlands by I. Verkade, Permanent Under-Secretary at the Ministry of Foreign Affairs, for the Minister for Foreign Affairs, during the written procedure, and by D. J. Keur, acting as Agent, during the oral procedure,

* Language of the Case: Dutch.

the Commission of the European Communities by E. Traversa, a member of its Legal Department, acting as Agent, assisted by F. Herbert, of the Brussels Bar,

after hearing the Opinion of the Advocate General delivered at the sitting on 19 February 1986,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an order of 22 February 1985, which was received at the Court on 1 March 1985, the Hoge Raad der Nederlanden referred to the Court for a preliminary ruling under Article 177 of the Treaty three questions on the interpretation of Articles 7 and 48 of the EEC Treaty and Article 10 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

2 The questions arose in the course of proceedings concerning the rejection, by decision of the State Secretary of Justice of 21 October 1982, of the application for a residence permit made by Ann Florence Reed, the applicant in the main proceedings, as the companion of a worker from another Member State.

3 It appears from the documents before the Court that under the Vreemdelingencirculaire 1982, which sets out Netherlands policy on aliens, an alien who has a stable relationship with a Netherlands national, with an alien who has been admitted to the Netherlands as a refugee or as a person entitled to asylum, or with an alien who is a holder of a permanent residence permit, may under certain conditions be permitted to reside in the Netherlands. In particular, the persons concerned must live together as one household, or have lived together as such

before arriving in the Netherlands, be unmarried and possess adequate means of support for the foreign partner and appropriate accommodation.

4 Miss Reed, an unmarried British national, arrived in the Netherlands on 5 November 1981 and registered for employment on 22 January 1982; she did not, however, succeed in finding a job. On 24 March 1982 she applied on the ground that she was living with Mr W. for a residence permit. Mr W., who is also an unmarried British national, has worked in the Netherlands since 5 November 1981 and on 23 February 1982 obtained a residence permit as a national of a Member State of the European Economic Community valid until 5 November 1986. On the date of the contested decision Miss Reed and Mr W. were living together in the Netherlands and had a stable relationship of some five years standing.

5 Miss Reed applied for a review of the decision of the State Secretary of Justice rejecting her application for a residence permit. Since that application did not have suspensory effect, Miss Reed brought summary proceedings before the President of the Rechtbank [District Court], The Hague, for an order restraining the State of the Netherlands from deporting her pending a final decision on her application for a residence permit. The President of the Rechtbank granted her application on the ground that in applying Article 10 of Regulation No 1612/68 to circumstances such as those of this case unmarried companions must be treated in so far as is possible as spouses.

6 On appeal by the State of the Netherlands the Gerechtshof [Regional Court of Appeal], The Hague, upheld the order of the President of the Rechtbank, but on different grounds. According to the judgment of the Hoge Raad, the Gerechtshof considered that in view of the fact that discrimination on grounds of nationality between workers of the Member States was prohibited by Articles 7 and 48 (2) of the EEC Treaty the policy of the Netherlands State with regard to aliens, set out in the Vreemdelingencirculaire, must permit the companion of a worker who is a national of another Member State and is employed in the Netherlands to reside with that worker under the same conditions as those applied to the companion of a worker of Netherlands nationality. The Netherlands State brought a further appeal to the Hoge Raad against the decision of the Gerechtshof.

7 The Hoge Raad considered that the proceedings raised questions concerning the interpretation of Community law. It therefore stayed the proceedings until such time as the Court of Justice should have delivered a preliminary ruling on the following questions:

'(1) In the light of the provisions of Article 10 of Regulation No 1612/68, does discrimination prohibited by Articles 7 and 48 of the EEC Treaty arise where, as part of its policy on aliens, a Member State treats a person who has a stable relationship with a worker who is a national of that Member State as the spouse of such a worker, but does not grant the same treatment to a person who has a stable relationship with a worker who is a national of another Member State but is employed and resides in the first-named Member State?

(2) Does it make any difference to the answer to Question 1 if the Member State treats as spouses not only a person who has a stable relationship with a national of that State but also a person who has a stable relationship with another person who enjoys in principle an unrestricted right of residence in that Member State?

(3) Must Article 10 (1) (a) of Regulation No 1612/68 be interpreted as meaning that in certain circumstances a person who has a stable relationship with a worker within the meaning of that provision is to be treated as his "spouse"?'

The third question

8 The third question should be dealt with first.

9 Miss Reed argues that, in the light of legal and social developments, in applying Article 10 of Regulation No 1612/68, and in particular the word 'spouse' in that article, to circumstances such as those of this case unmarried companions must in so far as is possible be treated as spouses.

10 The Netherlands Government points out that the third question concerns the interpretation of a provision of a regulation which has direct effect in all the Member States; that provision must therefore be interpreted in the Community context. The Community legislature used the word 'spouse' in the sense given to that word in

family law. When, in support of a dynamic interpretation, reference is made to developments in social and legal conceptions, those developments must be visible in the whole of the Community; such an argument cannot be based on social and legal developments in only one or a few Member States. There is no reason, therefore, to give the term 'spouse' an interpretation which goes beyond the legal implications of that term, which embrace rights and obligations which do not exist between unmarried companions.

11 The Commission points out that there is no provision of Community law which defines the terms 'spouse' and 'marital relations'. In the Community as it now stands it is impossible to speak of any consensus that unmarried companions should be treated as spouses. According to the Commission, therefore, the problem cannot be resolved by means of a broad construction of Article 10 of Regulation No 1612/68.

12 According to Article 189 of the EEC Treaty, Regulation No 1612/68 has general application, is binding in its entirety and is directly applicable in all Member States.

13 It follows that an interpretation given by the Court to a provision of that regulation has effects in all of the Member States, and that any interpretation of a legal term on the basis of social developments must take into account the situation in the whole Community, not merely in one Member State.

14 Article 10 (1) of Regulation No 1612/68 provides that certain members of the 'family' of a worker, including his 'spouse', irrespective of their nationality, 'have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State'.

15 In the absence of any indication of a general social development which would justify a broad construction, and in the absence of any indication to the contrary in the regulation, it must be held that the term 'spouse' in Article 10 of the Regulation refers to a marital relationship only.

16 The answer to the third question must therefore be that Article 10 (1) of Regulation No 1612/68 cannot be interpreted as meaning that the companion, in a stable relationship, of a worker who is a national of a Member State and is employed in the territory of another Member State must in certain circumstances be treated as his 'spouse' for the purposes of that provision.

The first and second questions

17 Since the first and second questions referred to the Court by the Hoge Raad are closely related, they may be dealt with together.

18 The applicant in the main proceedings considers that Netherlands policy with regard to the unmarried companions of workers who are nationals of another Member State is incompatible with the EEC Treaty; it also results in discrimination in relation to Regulation No 1612/68, inasmuch as it authorizes a Netherlands national to bring to the Netherlands a companion of foreign nationality whereas that possibility is not open to a national of another Member State.

19 The Netherlands Government argues in the first place that the right of EEC nationals, who have a right of residence under Community law, to bring with them their family, as set out in Article 10 *et seq.* of Regulation No 1612/68, is not based on a situation comparable to that of workers who are nationals of the host State, and thus is not a result of the principle of non-discrimination but rather an independent right granted under Community law, the content and scope of which must be found within the four corners of Regulation No 1612/68. Secondly, it was not because of a difference of nationality that the applicant in the main proceedings and Mr W. were not treated in the same manner as Netherlands nationals, but because of their legal position with regard to the right of residence; that is confirmed by the fact that Netherlands policy in that respect makes no distinction between Netherlands nationals and aliens who hold a permanent residence permit.

20 The Commission observes that the Netherlands policy with regard to aliens constitutes discrimination prohibited by Articles 7 and 48 of the EEC Treaty in so

far as a worker who is a national of another Member State and is employed in the Netherlands is not formally treated in the same manner as a worker of Netherlands nationality with regard to the admission to the Netherlands of his companion, where the latter does not have Netherlands nationality. Any Member State which authorizes the entry of the unmarried companions of its nationals on the ground that in the context of a stable relationship such a companion should be treated as a spouse, must place workers who are nationals of other Member States and are employed in its territory in the same position as its own nationals in that regard. Furthermore, it does not appear from the documents placed before the Court that the State of the Netherlands has argued that the discrimination in question is justified on objective grounds.

21 The Court notes that Article 7 of the Treaty provides that 'within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited'. That principle, laid down in a general manner in Article 7 of the Treaty, is applied specifically with regard to freedom of movement for workers within the Community in Article 48 of the Treaty.

22 It must therefore be ascertained whether the right to be accompanied by an unmarried companion falls within the scope of the Treaty and is thus governed by the principle of non-discrimination laid down in the provisions referred to above.

23 In view of the fact that Mr W. is a worker, as appears from the judgment of the national court, that question must be examined in the light more specifically of Articles 48 and 49 of the Treaty and the provisions of secondary legislation implementing those articles, in particular Regulation No 1612/68 of the Council.

24 Article 7 (2) of Regulation No 1612/68 provides that in the host State a worker who is a national of another Member State must 'enjoy the same social and tax advantages as national workers'.

25 The Court has emphasized, in particular in its judgment of 30 September 1975 in Case 32/75 (*Cristini* v *SNCF* [1975] ECR 1085), that the phrase 'social advantages' in Article 7 (2) must not be interpreted restrictively.

26 As the Court has repeatedly held, the purpose of Article 7 (2) of Regulation No 1612/68 is to achieve equal treatment, and therefore the concept of social advantage, extended by that provision to workers who are nationals of other Member States, must include all advantages 'which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other member countries therefore seems suitable to facilitate their mobility within the Community' (judgments of 31 May 1979 in Case 207/78 *Ministère public* v *Even* [1979] ECR 2019, and 20 June 1985 in Case 94/84 *Office national de l'emploi* v *Deak* [1985] ECR 1873).

27 The Court held in its judgment of 30 September 1975, referred to above, and in its judgment of 11 July 1985 in Case 137/84 (*Ministère public* v *Mutsch* [1985] ECR 2681), that the possibility for a migrant worker of obtaining fare reductions granted to large families or of using his own language in proceedings before the courts of the Member State where he resides fall within the concept of a social advantage for the purposes of Article 7 (2) of Regulation No 1612/68.

28 In the same way it must be recognized that the possibility for a migrant worker of obtaining permission for his unmarried companion to reside with him, where that companion is not a national of the host Member State, can assist his integration in the host State and thus contribute to the achievement of freedom of movement for workers. Consequently, that possibility must also be regarded as falling within the concept of a social advantage for the purposes of Article 7 (2) of Regulation No 1612/68.

29 It must therefore be concluded that the Member State which grants such an advantage to its own nationals cannot refuse to grant it to workers who are nationals of other Member States without being guilty of discrimination on grounds of nationality, contrary to Articles 7 and 48 of the Treaty.

30 The answer to the first and second questions must therefore be that Article 7 of the Treaty, in conjunction with Article 48 of the Treaty and Article 7 (2) of Regulation No 1612/68, must be interpreted as meaning that a Member State which permits the unmarried companions of its nationals, who are not themselves nationals of that Member State, to reside in its territory cannot refuse to grant the same advantage to migrant workers who are nationals of other Member States.

Costs

31 The costs incurred by the Government of the Netherlands and by the Commission of the European Communities, which 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,

in answer to the questions referred to it by the Hoge Raad der Nederlanden by an order of 22 February 1985, hereby rules:

(1) Article 10 (1) of Regulation No 1612/68 cannot be interpreted as meaning that the companion, in a stable relationship, of a worker who is a national of a Member State and is employed in the territory of another Member State must in certain circumstances be treated as his 'spouse' for the purposes of that provision.

(2) Article 7 of the Treaty, in conjunction with Article 48 of the Treaty and Article 7 (2) of Regulation No 1612/68, must be interpreted as meaning that a

Member State which permits the unmarried companions of its nationals, who are not themselves nationals of that Member State, to reside in its territory cannot refuse to grant the same advantage to migrant workers who are nationals of other Member States.

Everling Koopmans Bahlmann Joliet

Due Galmot Kakouris O'Higgins Schockweiler

Delivered in open court in Luxembourg on 17 April 1986.

P. Heim
Registrar

U. Everling
President of Chamber
acting as President