JUDGMENT OF THE COURT (Grand Chamber)

23 March 2006 *

In Case C-408/03,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 30 September 2003,

Commission of the European Communities, represented by M. Condou-Durande and D. Martin, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of Belgium, represented by E. Dominkovits, acting as Agent,

defendant,

* Language of the case: French.

supported by:

United Kingdom of Great Britain and Northern Ireland, represented by C. Jackson, acting as Agent, and by E. Sharpston QC,

intervener,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Schiemann (Rapporteur) and J. Makarczyk, Presidents of Chambers, J.-P. Puissochet, R. Schintgen, P. Kūris, J. Klučka, U. Lõhmus, E. Levits and A. Ó Caoimh, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 20 September 2005,

after hearing the Opinion of the Advocate General at the sitting on 25 October 2005,

gives the following

Judgment

1 By its application, the Commission of the European Communities asks the Court to declare that:

— by making the right of residence of citizens of the European Union subject to the requirement that they have sufficient personal resources, the Kingdom of Belgium has failed to fulfil its obligations under Article 18 EC and Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26),

— by making provision for automatic service of an order to leave Belgian territory on citizens of the Union who do not produce within the prescribed period the documents required to obtain a residence permit, the Kingdom of Belgium has failed to fulfil its obligations under Article 2 of Directive 90/364, 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 (OJ, English Special Edition 1968 (II), p. 485), Article 4 of 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), Article 2 of Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students (OJ 1993 L 317, p. 59) and Article 2 of Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ 1990 L 180, p. 28).

Legal context

Community legislation

2 The first subparagraph of Article 1(1) of Directive 90/364 provides:

'Member States shall grant the right of residence to nationals of Member States who do not enjoy this right under other provisions of Community law and to members of their families as defined in paragraph 2, provided that they themselves and the members of their families are covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence.'

3 Article 2(1) of that directive provides:

'Exercise of the right of residence shall be evidenced by means of the issue of a document known as a "Residence permit for a national of a Member State of the EEC", the validity of which may be limited to five years on a renewable basis. However, the Member States may, when they deem it to be necessary, require revalidation of the permit at the end of the first two years of residence. Where a member of the family does not hold the nationality of a Member State, he or she shall be issued with a residence document of the same validity as that issued to the national on whom he or she depends.

For the purposes of issuing the residence permit or document, the Member State may require only that the applicant present a valid identity card or passport and provide proof that he or she meets the conditions laid down in Article 1.'

4 Under Article 3 of that directive, the right of residence is to remain for as long as the beneficiaries of that right fulfil the conditions laid down in Article 1 of the directive.

5 Article 4 of Directive 68/360 provides:

'1. Member States shall grant the right of residence in their territory to the persons referred to in Article 1 who are able to produce the documents listed in paragraph 3.

2. As proof of the right of residence, a document entitled "Residence Permit for a National of a Member State of the EEC" shall be issued. ...

3. For the issue of a Residence Permit for a National of a Member State of the EEC, Member States may require only the production of the following documents: ...'

6 The first and second subparagraphs of Article 4(1) of Directive 73/148 provide:

'Each Member State shall grant the right of permanent residence to nationals of other Member States who establish themselves within its territory in order to pursue activities as self-employed persons, when the restrictions on these activities have been abolished pursuant to the Treaty.

As proof of the right of residence, a document entitled "Residence Permit for a National of a Member State of the European Communities" shall be issued. ...'

7 Article 6 of that directive provides:

'An applicant for a residence permit or [certificate] shall not be required by a Member State to produce anything other than the following, namely:

(a) the identity card or passport with which he or she entered its territory;

(b) proof that he or she comes within one of the classes of person referred to in Articles 1 and 4.'

8 Article 1 of Directive 93/96 provides:

'In order to lay down conditions to facilitate the exercise of the right of residence and with a view to guaranteeing access to vocational training in a non-discriminatory manner for a national of a Member State who has been accepted to attend a vocational training course in another Member State, the Member States shall recognise the right of residence for any student who is a national of a Member State and who does not enjoy that right under other provisions of Community law, and for the student's spouse and their dependent children, where the student assures the relevant national authority, by means of a declaration or by such alternative means as the student may choose that are at least equivalent, that he has sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence, provided that the student is enrolled in a recognised educational establishment for the principal purpose of following a vocational training course there and that he is covered by sickness insurance in respect of all risks in the host Member State.'

9 Under the second and third subparagraphs of Article 2(1) of that directive:

'The right of residence shall be evidenced by means of the issue of a document known as a "Residence permit for a national of a Member State of the Community", ...

For the purpose of issuing the residence permit or document, the Member State may require only that the applicant present a valid identity card or passport and provide proof that he or she meets the conditions laid down in Article 1.'

10 The first subparagraph of Article 1(1) of Directive 90/365 provides:

'Member States shall grant the right of residence to nationals of Member States who have pursued an activity as an employee or self-employed person and to members of their families as defined in paragraph 2, provided that they are recipients of an invalidity or early retirement pension, or old age benefits, or of a pension in respect of an industrial accident or disease of an amount sufficient to avoid becoming a burden on the social security system of the host Member State during their period of residence and provided they are covered by sickness insurance in respect of all risks in the host Member State.'

11 Article 2(1) of that directive provides:

'Exercise of the right of residence shall be evidenced by means of the issue of a document known as a "Residence permit for a national of a Member State of the EEC" ...

For the purposes of issuing the residence permit or document, the Member State may require only that the applicant present a valid identity card or passport and provide proof that he or she meets the conditions laid down in Article 1.'

National legislation

12 The conditions governing the residence of citizens of the Union in Belgium are laid down in the Royal Decree of 8 October 1981 on foreigners' entry into, residence and

establishment in, and expulsion from Belgium (*Moniteur belge* of 27 October 1981, p. 1), as amended by the Royal Decree of 12 June 1998 (*Moniteur belge* of 21 August 1998, p. 26854; 'the Royal Decree').

13 As regards the right of residence of nationals of Member States under Directive 90/364, Article 53 of the Royal Decree provides:

'1. An EC foreign national ... has a right to live in the Kingdom provided that he is covered by sickness insurance in respect of all risks in Belgium and provided that he has sufficient resources not to become a burden on the public authorities.

2. ...

Before the end of the fifth month after the application for establishment an EC foreign national must provide evidence that he meets the conditions laid down in paragraph 1.

...

4. The Minister or his deputy shall refuse establishment where the conditions for establishment are not met. The mayor or his deputy shall refuse establishment where the documents required have not been produced within the prescribed period [of five months].

In both cases, the foreign national shall be notified of the decision by service of a document ... where appropriate including an order to leave the territory.

...

6. Where establishment is refused pursuant to paragraph 4, at the end of the fifth month following the application ... the EC foreign national shall be given an order to leave the territory. The order to leave the territory is enforceable 15 days after expiry of the validity of the registration certificate.'

14 Article 5(3)(b)(1) of the circular of 14 July 1998 concerning the conditions of residence of EC foreign nationals and members of their families and foreign family members of Belgian nationals (*Moniteur belge* of 21 August 1998, p. 27032) confirms that, if the necessary evidence is not produced within the prescribed period, the administration is bound not only to refuse residence but also to serve an order to leave Belgian territory.

15 As regards the right of residence of employed or self-employed persons, Article 45 of the Royal Decree provides:

'1. An EC foreign national who comes to Belgium in order to pursue an activity as an employed or self-employed person ... shall ... be registered in the Foreigners' Register and be issued with a registration certificate ... valid for five months from the date of its issue.

...

Before the end of the fifth month following the application, an EC foreign national must produce either an employer's certificate ... if he is pursuing, or intends to pursue, an activity as an employed person, or the documents required for the exercise of a profession if he is pursuing, or intends to pursue, an activity as a self-employed person.

...

3. The Minister or his deputy shall refuse to allow establishment if the conditions for establishment are not met. The mayor or his deputy shall refuse to allow establishment where the documents required are not produced within the period prescribed in paragraph 1(3).

In both cases, the foreign national will receive notification of the decision, ... containing, where appropriate, an order to leave Belgian territory.

...

5. ... The order to leave the territory shall be enforceable 30 days after expiry of the validity of the registration certificate.

...'

16 Similarly, as regards employed or self-employed persons who have ceased their professional activity, Article 51(4) of the Royal Decree provides that the foreign national is to be served with the decision refusing establishment together with an

order to leave the territory where the required documents have not been produced before the end of the fifth month following the application for establishment. The order to leave the territory is enforceable 15 days after expiry of the validity of the registration certificate.

17 As regards the right of residence of students, Article 55 of the Royal Decree provides that where the Member State national provides no supporting documents to establish that he meets the conditions for residence within the period of three months following his application for residence, the local authority is to serve him with a decision terminating his residence and ordering him to leave the territory.

The pre-litigation procedure

18 According to the case-file, the Commission received various complaints about Belgian legislation and administrative practice concerning both the conditions for granting residence permits under Directive 90/364 and orders to leave Belgian territory issued to citizens of the Union.

19 It states that it was particularly struck by the situation of Mrs De Figueiredo, a Portuguese national who came to Belgium with her three daughters in August 1999 to live with her long-standing partner, a Belgian national. The declaration of entry drawn up on 30 August 1999 indicates that residence was authorised until 29 October 1999. At the same time, Mrs De Figueiredo's partner gave an undertaking to support her.

20 On 16 December 1999, an order to leave Belgian territory was served on Mrs De Figueiredo on the ground that she had remained in Belgium after the expiry date appearing on the declaration of entry. The Belgian authorities took the view that she did not fulfil the requirement of sufficient resources laid down in Article 1 of Directive 90/364, stating that the undertaking to support her given by her partner did not constitute evidence that she had sufficient resources.

21 Following correspondence between the Belgian authorities and the Commission, the Commission sent a letter of formal notice on 8 May 2001 informing the Kingdom of Belgium that it took the view that resources other than the personal resources of the person seeking a residence permit could be taken into account. Moreover, as regards the order to leave Belgian territory, the Commission took issue with the automatic nature under Belgian law of the administration's decision to issue such an order once a failure to produce the supporting documents necessary to obtain a residence permit was recorded.

22 In their reply to the letter of formal notice, the Belgian authorities stated that, in their view, the first subparagraph of Article 1(1) of Directive 90/364 implied that a citizen of the Union who relied on the protection of the directive had to have sufficient personal resources.

23 The authorities argued that the income of a third party could also be taken into account provided that it belonged to the spouse and/or children of the citizen of the Union relying on Directive 90/364. The connection between that citizen and the person he claims to be the source, even if only in part, of his income must be one regulated by law so that the host Member State can be sure that that person is bound by a legal obligation to support that citizen of the Union financially.

24 Moreover, the Belgian authorities stated that they considered themselves entitled to take steps to deport a citizen of the Union who resided in Belgium for more than three months without commencing the procedure for establishment or who did not produce the documents required to support the application for establishment made.

25 Taking the view that the arguments relied on by the Kingdom of Belgium in reply to the letter of formal notice were not satisfactory, the Commission sent a reasoned opinion to that Member State on 3 April 2002, calling on it to take the measures necessary to comply with the opinion within two months of the date of its notification.

26 As it was not satisfied with the reply of the Kingdom of Belgium to that reasoned opinion, the Commission brought this action.

27 By order of the President of the Court of 9 March 2004, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the form of order sought by the Kingdom of Belgium.

The action

The first plea, concerning the requirement that the citizen of the Union must have sufficient personal resources

Arguments of the parties

28 The Commission submits that the first subparagraph of Article 1(1) of Directive 90/364 in no way requires that a citizen of the Union must have sufficient personal resources for himself and his family.

29 That literal interpretation of that provision is borne out by the purpose of Directive 90/364 which is to prevent the holder of a right of residence or the members of his family becoming a burden on the social security system of the host Member State. The Commission submits that, to achieve that purpose, it is irrelevant whether the resources are the personal resources of the holder of the right of residence or come from another source.

30 For instance, such resources might be, or be supplemented by, those of a relative or a third party, such as a person living with the holder of the right of residence or offering himself as a guarantor for the holder, provided that appropriate supporting documents are supplied. The Commission considers that the distinction made by the Belgian authorities regarding the source of the income according to whether or not it comes from persons with whom the citizen of the Union has a legal connection is artificial and has no foundation in Community law.

31 The Commission concludes that, in requiring a citizen of the Union to have sufficient personal resources for himself and his family, the Belgian authorities are in breach of Article 18 EC and fail to observe the principle of proportionality in applying the condition relating to the existence of sufficient resources laid down by Directive 90/364.

32 Having initially taken a firm position, the Kingdom of Belgium relaxed its position in its rejoinder, accepting that a partner's resources could be taken into account, but only where that partner had undertaken by contract to make them available to the citizen of the Union by means of an agreement made before a notary and containing an assistance clause.

33 As regards the source of those resources, the United Kingdom submits that an applicant for a residence permit must have sufficient personal resources and may not rely on the resources of a member of his family in that regard.

Findings of the Court

— Preliminary observations

34 The right to reside within the territory of the Member States under Article 18(1) EC is conferred directly on every citizen of the Union by a clear and precise provision of the EC Treaty subject to the limitations and conditions laid down by the EC Treaty and by the measures adopted to give it effect (Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraphs 84 and 85).

35 For the purposes of the present case, those limitations and conditions derive from Directive 90/364.

36 According to the first subparagraph of Article 1(1) of that directive, Member States may require of nationals of another Member State who wish to enjoy a right of residence on their territory that they themselves and the members of their families are covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of that State during their period of residence.

37 Those conditions, read in the light of the fourth recital in the preamble to that directive, according to which beneficiaries of the right of residence must not become an unreasonable burden on the public finances of the host Member State, are based on the idea that the exercise of the right of residence of citizens of the Union can be subordinated to the legitimate interests of the Member States (*Baumbast and R*, paragraph 90).

— Consideration of the first plea

38 By its first plea, the Commission complains that the Kingdom of Belgium took into account, for the purposes of applying Directive 90/364, only the personal resources of the citizen of the Union who is seeking a right of residence or those of the spouse or of a child of that citizen to the exclusion of resources of a third person, such as a partner with whom he has no legal link.

39 It must be borne in mind that it is settled case-law that the limitations and conditions laid down in the first subparagraph of Article 1(1) of Directive 90/364 must be applied in compliance with the limits imposed by Community law and in accordance with the general principles of that law, in particular the principle of proportionality. That means that national measures adopted on that subject must be necessary and appropriate to attain the objective pursued (see *Baumbast and R*, paragraph 91).

40 In paragraphs 30 and 31 of its judgment in Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, the Court held that according to the very terms of the first subparagraph of Article 1(1) of Directive 90/364, it is sufficient for the nationals of Member States to 'have' the necessary resources, and that provision lays down no requirement whatsoever as to their origin. The correctness of that interpretation is reinforced by the fact that provisions laying down a fundamental principle such as that of the free movement of persons must be interpreted broadly.

41 The Court therefore held that an interpretation of the condition concerning the sufficiency of resources within the meaning of Directive 90/364 to mean that the person concerned must himself have such resources and may not rely on the resources of a member of the family accompanying him would add to that condition,

as formulated in that directive, a requirement as to the origin of the resources which, not being necessary for the attainment of the objective pursued, namely the protection of the public finances of the Member States, would constitute a disproportionate interference with the exercise of the fundamental right of freedom of movement and of residence upheld by Article 18 EC (*Zhu and Chen*, paragraph 33).

42 According to that case-law, the condition concerning the sufficiency of resources laid down in the first subparagraph of Article 1(1) of Directive 90/364 is met where the financial resources are provided by a member of the family of the citizen of the Union.

43 It must be examined whether the same conclusion is called for where a citizen of the Union intends to rely on the income of his partner who resides in the host Member State.

44 Consideration of that question essentially focuses on the source of such income, as the authorities of the host Member State are, in any event, entitled to undertake the necessary checks as to its existence, amount and availability.

45 The Kingdom of Belgium accepts that such income may be taken into account where it comes from a person connected with the beneficiary by a legal link which obliges him to provide for the beneficiary. It contends that such a requirement is justified by the fact that, if account were taken of the income of a person whose link with the citizen of the Union was not legally defined and could, therefore, be severed easily, the risk of that citizen becoming a burden for the social security system of the host Member State after a certain time would be all the greater.

46 Such a justification cannot be accepted, as the requirement of a legal link, as advocated by the Kingdom of Belgium, between the provider and the recipient of the resources is disproportionate in that it goes beyond what is necessary to achieve the purpose of Directive 90/364, which is the protection of the public finances in the host Member State.

47 The loss of sufficient resources is always an underlying risk, whether those resources are personal or come from a third party, even where that third party has undertaken to support the holder of the residence permit financially. The source of those resources thus has no automatic effect on the risk of such a loss arising, as the materialisation of such a risk is the result of a change of circumstances.

48 It is for that reason that, in order to protect the legitimate interests of the host Member State, Directive 90/364 contains provisions allowing that State to act in the event of an actual loss of financial resources, to prevent the holder of the residence permit from becoming a burden on the public finances of that State.

49 Thus, Article 3 of Directive 90/364 provides that the right of residence is to remain for as long as beneficiaries of that right fulfil the conditions laid down in Article 1 of that directive.

50 That provision enables the host Member State to monitor whether citizens of the Union who enjoy a right of residence continue to meet the conditions laid down for that purpose by Directive 90/364 throughout the period of their residence. In addition, the first subparagraph of Article 2(1) of that directive allows the Member States, when they deem it to be necessary, to require revalidation of the permit at the end of the first two years of residence.

51 It follows from all those considerations that, by excluding the income of a partner residing in the host Member State in the absence of an agreement concluded before a notary and containing an assistance clause, the Kingdom of Belgium has failed to fulfil its obligations under Article 18 EC and Directive 90/364 when applying that directive to nationals of a Member State who wish to rely on their rights under that directive and on Article 18 EC.

52 Accordingly, it must be held that the first plea relied on by the Commission is well founded.

The second plea, concerning the order to leave the territory served on citizens of the Union who have not produced the documents required for the issue of a residence permit within the time specified

Arguments of the parties

53 The Commission submits that a citizen of the Union can only be deported, other than in the case of decisions on grounds of public policy, public security or public health, if the person concerned does not meet the conditions laid down by Community law for the grant of a right of residence or no longer meets those conditions.

54 The deportation order served by the Belgian authorities on the citizen of the Union in this case was actually a penalty imposed because the applicant had failed to produce within the prescribed period the documents required for the issue of a residence permit.

55 The Commission takes the view that the fact that the person concerned did not comply with the necessary administrative requirements for the issue of a residence permit does not necessarily mean that she does not in fact meet the conditions laid down by Community law for the recognition of the right of residence. The automatic service of an order to leave Belgian territory is thus contrary to Article 2 of Directive 90/364, Article 4 of Directive 68/360, Article 4 of Directive 73/148, Article 2 of Directive 93/96 and Article 2 of Directive 90/365.

56 In its defence, the Kingdom of Belgium contends that a national of a Member State may reside for more than three months in another Member State only if he meets the conditions laid down by the various regulations and directives on freedom of movement. Provided that he meets those conditions, which can be established only by production of the documents required by those regulations and directives, he enjoys the protection granted by them and can be issued with a residence permit which certifies his right to freedom of movement.

57 Production of the supporting documents to prove that those conditions are met is, the Kingdom of Belgium argues, a condition *sine qua non* for the exercise of the right of residence.

58 Consequently, if the citizen of the Union has not produced, within the prescribed period, in this case, five months, the documents required to establish that he meets the conditions laid down for the recognition of his right of residence, he must be deemed to have resided for more than three months in Belgium without valid reason and, in those circumstances, a deportation order is justified.

59 However, the Kingdom of Belgium points out that the deportation order is qualified. It is not enforced by coercive measures and is intended, by bringing to a close the procedure for the application of a residence permit, to establish that the citizen of the Union concerned has no document authorising him to remain on Belgian territory for more than three months.

60 It points out, further, that there is nothing to prevent the person concerned from initiating a fresh procedure for establishment in the course of which he can adduce evidence that he meets the conditions for residence.

61 The United Kingdom contends that, where an applicant for a residence permit does not produce the necessary evidence within the prescribed period, the competent national authority must be entitled to take an unfavourable decision as regards that applicant.

Findings of the Court

— Preliminary observations

62 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 is a right conferred directly by the Treaty, or, as the case may be, by the provisions adopted for its implementation (see Case 48/75 *Royer* [1976] ECR 497, paragraph 31).

63 The grant of a residence permit to a national of a Member State 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 (see *Royer*, paragraph 33, and Case C-459/99 *MRAX* [2002] ECR I-6591, paragraph 74).

64 However, as the right of residence under Article 18 EC is not unconditional, it is for the citizens of the Union to adduce the necessary evidence that they meet the conditions laid down in that regard by the relevant Community provisions.

65 The conditions for the grant of a residence permit are governed, as regards employed persons, by Directive 68/360, as regards self-employed persons, by Directive 73/148, as regards students, by Directive 93/96, as regards employees and self-employed persons who have ceased their occupational activity, by Directive 90/365, and, as regards nationals of Member States who do not enjoy a right of residence under other provisions of Community law, by Directive 90/364.

— Consideration of the second plea

66 Only if a national of a Member State is not able to prove that those conditions are fulfilled may the host Member State undertake deportation subject to the limits imposed by Community law (see Case C-215/03 *Oulane* [2005] ECR I-1215, paragraph 55).

67 By its second plea, the Commission takes issue with the Belgian legislation because, under it, failure by the national of a Member State to produce, within a specified period, the supporting documents necessary for the grant of a residence permit automatically entails the service of an order for deportation.

68 Such automatic deportation impairs the very substance of the right of residence directly conferred by Community law. Even if a Member State may, where necessary, decide to deport a national of another Member State where that person is unable to produce, within the required period, the documents proving that he fulfils the necessary financial conditions, where that deportation is automatic, as it is under the Belgian legislation, it is disproportionate.

69 Since the order for deportation is automatic, that legislation does not allow account to be taken of the reasons why the person concerned did not take the necessary administrative measures or of whether he was able to establish that he fulfilled the conditions which Community law attached to his right of residence.

70 In that regard, it is of no relevance that there is in practice no immediate enforcement of orders for deportation. The Belgian legislation, notably Articles 45, 51 and 53 of the Royal Decree, provides for time-limits on expiry of which the orders for deportation issued are enforceable. In any event, the fact that the deportation orders are allegedly qualified does not alter the fact that those measures are disproportionate to the seriousness of the infringement and are liable to deter citizens of the Union from exercising their right to freedom of movement.

71 In view of the foregoing, the Court finds that the second plea relied on by the Commission is well founded.

72 Accordingly, it must be held that:

— by excluding the income of a partner residing in the host Member State in the absence of an agreement concluded before a notary and containing an assistance clause, the Kingdom of Belgium has failed to fulfil its obligations under Article 18 EC and Directive 90/364 when applying that directive to nationals of a Member State who wish to rely on their rights under that directive and on Article 18 EC,

— by making provision for automatic service of an order to leave Belgian territory on citizens of the Union who do not produce within the prescribed period the documents required to obtain a residence permit, the Kingdom of Belgium has failed to fulfil its obligations under Article 2 of Directive 90/364, Article 4 of Directive 68/360, Article 4 of Directive 73/148, Article 2 of Directive 93/96 and Article 2 of Directive 90/365.

Costs

73 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of Belgium has been unsuccessful, the latter must be ordered to pay the costs. Pursuant to the first subparagraph of Article 69(4) of the Rules of Procedure, the Member States which have intervened in the proceedings must bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. Declares that

(a) by excluding the income of a partner residing in the host Member State in the absence of an agreement concluded before a notary and containing an assistance clause, the Kingdom of Belgium has failed to fulfil its obligations under Article 18 EC and Council Directive 90/364/EEC of 28 June 1990 on the right of residence when applying that directive to nationals of a Member State who wish to rely on their rights under that directive and on Article 18 EC;

(b) by making provision for automatic service of an order to leave Belgian territory on citizens of the Union who do not produce within the prescribed period the documents required to obtain a residence permit, the Kingdom of Belgium has failed to fulfil its obligations under Article 2 of Directive 90/364, 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, Article 4 of 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, Article 2 of Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students and Article 2 of Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity;

2. Orders the Kingdom of Belgium to pay the costs;

3. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.

[Signatures]