

JUDGMENT OF THE COURT (Sixth Chamber)
20 February 1997 *

In Case C-344/95,

Commission of the European Communities, represented by Pieter van Nuffel, of the Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Jan Devadder, General Adviser at the Ministry of Foreign Affairs, Foreign Trade and Development Cooperation, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins, Résidence Champagne,

defendant,

APPLICATION for a declaration that:

— by requiring nationals of other Member States who are seeking employment in Belgium to leave its territory after a period of three months;

* Language of the case: French.

- by issuing, during the first six months of their residence, to persons holding employment for a period of at least one year two successive registration certificates instead of a residence permit for a national of a Member State and by requiring payment for those certificates;

- by issuing to employed persons and to seasonal workers whose activity is expected to last for more than three months a document relating to their residence and by requiring payment for that document;

the Kingdom of Belgium has failed to fulfil its obligations under Article 48 of the EC Treaty and under 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),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber (Rapporteur),
C. N. Kakouris, G. Hirsch, H. Ragnemalm and R. Schintgen, Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 November 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 30 October 1995 the Commission of the European Communities have brought an action under Article 169 of the EC Treaty for a declaration that:

- by requiring nationals of other Member States who are seeking employment in Belgium to leave its territory after a period of three months;
- by issuing, during the first six months of their residence, to persons holding employment for a period of at least one year two successive registration certificates instead of a residence permit for a national of a Member State and by requiring payment for those certificates;
- by issuing to employed persons and to seasonal workers whose activity is expected to last for more than three months a document relating to their residence and by requiring payment for that document;

the Kingdom of Belgium has failed to fulfil its obligations under Article 48 of the EC Treaty and under 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, hereinafter 'the Directive').

- 2 If persons from the Community and members of their family move to Belgium in order to pursue activities as employed persons, their residence in Belgium is governed by the Law of 15 December 1980 (as amended by the Law of 6 May 1993, *Moniteur Belge* of 21 May 1993), which was implemented by the Royal Decree of 8 October 1981 on the entry, residence, establishment and expulsion of foreigners (*Moniteur Belge* of 27 October 1981, hereinafter 'the Royal Decree').
- 3 Article 45 of the Royal Decree governs the procedure for delivery of residence permits to nationals of other Member States who intend to pursue activities as employed or non-employed persons in Belgium for a duration of at least one year. Paragraph 1 of that provision is worded as follows:

'A foreigner from the EC who comes to Belgium in order to pursue an activity as an employed or non-employed person which is expected to last for at least one year shall, on production of the documents required for his entry, be registered in the Foreigners' Register and be issued with a registration certificate ... valid for three months from the date of its issue.

At the time of his registration, he must submit an application for establishment ...

Before the end of the third month following the application, a foreigner from the EC 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. Failing this, the district authorities shall determine whether such a foreigner is in fact pursuing a gainful activity. They shall draw up an investigation report and forward a copy to the Minister responsible for the entry, residence, establishment and expulsion of foreigners.

If the documents referred to in the third paragraph are produced before expiry of the period laid down, the district authorities shall extend the registration certificate for a further period of three months. Failing this, it shall issue the foreigner with a document ...'.

- 4 Article 45(2) of the Royal Decree provides:

‘The Minister or his deputy shall decide promptly, at the latest six months following the application for establishment, whether an establishment permit is to be granted or refused and shall give the necessary instructions to the district authorities.

If the Minister ... or his deputy grants an establishment permit or if no instructions have been given after six months, the district authorities shall enter the EC foreigner in the Population Register and issue him with a residence permit for a national of a Member State of the European Communities.

If the Minister ... or his deputy refuses to allow establishment, he may issue an order requiring the foreigner to leave the territory. The foreigner will receive notification of the decision ...’.

- 5 Article 47 of the Royal Decree governs the situation of nationals of other Member States who intend to pursue activities as employed or self-employed persons in Belgium which are not expected to last for more than three months, including activities as seasonal workers. It provides:

‘A foreigner from the EC who comes to Belgium in order to pursue an activity as an employed or self-employed person which is not expected to last for more than three months, or an EC seasonal worker engaged for a period of no more than three months, shall receive from the district authorities, upon production of the documents required for entry and of either (i) a declaration of engagement by the employer or a work certificate or (ii) documents required for the exercise of his profession, a document ...’.

- 6 By virtue of Article 49 of the Royal Decree, Articles 45 to 47 of the decree are applicable to members of the families of nationals of Member States of the European Community.
- 7 Article 2 of the Law of 14 March 1968 repealing the Laws relating to residence charges for foreigners, consolidated on 12 October 1953 (*Moniteur Belge* of 5 April 1968), authorizes district authorities to make charges to cover the administrative costs of issuing, renewing, replacing or extending residence documents. That provision expressly provides that such payments are to be the same as those which Belgian citizens must pay upon issue of identity cards.
- 8 Finally, a Ministerial Circular of 24 April 1989 on charges for the issue of administrative documents to foreigners (*Moniteur Belge* of 23 May 1989) reminds district authorities that the principle of non-discrimination applies in this matter.
- 9 The Commission, by letter of 3 August 1993, gave the Belgian Government notice to submit its observations, in accordance with Article 169 of the Treaty, on the compatibility of those rules with Community law.
- 10 When it received no reply to that letter, the Commission, on 4 August 1994, sent the Belgian Government a reasoned opinion requesting it to adopt the measures needed to comply with Community law within a period of two months from its notification.
- 11 In a communication of 12 August 1994, the Belgian Government accepted that, where job-seekers were concerned, the rules were not in accordance with its Community obligations and it therefore gave notice of its intention to amend them. However, as regards the second and third objections, the Belgian Government

initially challenged the Commission's position. However, in two later letters of 9 November 1994 and 18 April 1995 it accepted that adaptation of the rules was also necessary. When no measures were adopted, the Commission brought this action.

The first objection: the obligation to leave Belgian territory at the end of three months

- 12 The Commission's first objection is that, in providing that a Community national who has not found employment at the end of a period of three months following submission of his application for establishment and who has not provided to the district authorities a certificate proving that he is pursuing an activity as an employed person is automatically to be ordered to leave the territory, Article 45 of the Royal Decree is manifestly contrary to Article 48 of the Treaty, as interpreted by the Court of Justice in its judgment in Case C-292/89 *Antonissen* [1991] ECR I-745.
- 13 The Belgian Government does not defend itself against this objection but states that it intends to amend the Royal Decree in order to allow job-seekers' residence to be extended in accordance with the conditions established by the Court in *Antonissen*.
- 14 The Court had consistently held that the principle of freedom of movement for workers laid down in Article 48(1) to (3) of the Treaty forms one of the foundations of the Community and that, consequently, the provisions laying down that freedom must be given a broad interpretation (see, in particular, *Antonissen*, paragraph 11).

- 15 In paragraph 13 of its judgment in *Antonissen*, the Court stated further that freedom of movement for workers entails the right for nationals of Member States to move freely within the territory of other Member States and to stay there for the purposes of seeking employment.
- 16 The effectiveness of Article 48 is secured in so far as Community legislation or, in its absence, the legislation of a Member State gives persons concerned a reasonable time in which to apprise themselves, in the territory of the Member State concerned, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged (*Antonissen*, paragraph 16).
- 17 In the absence of Community provisions prescribing a period during which Community nationals who are seeking employment may stay in their territory, the Member States are entitled to lay down a reasonable period for this purpose. However, if after expiry of that period, the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged, he cannot be required to leave the territory of the host Member State (*Antonissen*, paragraph 21).
- 18 In view of the foregoing, it is sufficient to state that the Belgian legislation infringes Community law in automatically requiring nationals of other Member States who are looking for employment to leave Belgium after expiry of the period laid down.
- 19 The objection raised by the Commission on this point must therefore be regarded as well founded.

The second objection: the registration certificate rules

- 20 The Commission's second objection is that the issue of a document other than a residence permit is not provided for by the Directive and that, under Article 4 of the Directive, the authorities of the host Member State are obliged to issue a residence permit to any person who produces the documents required by that provision. Having regard to those considerations, the Commission considers that the Royal Decree is contrary to Community law. Furthermore, since a payment may be required from a Community national upon issue and each renewal of a registration certificate, these rules are not in conformity with the principle, laid down in the Directive, that there should be no discrimination in the matter of dues and taxes.
- 21 The Belgian Government states, first, that it intends to amend the Royal Decree in order to provide for the issue of a single registration certificate and, second, that a circular to be addressed to district authorities is being drafted in order to explain to them that the total amount of charges and taxes relating to the procedure for issuing residence permits may not exceed the amount chargeable upon the issue of an identity card to a Belgian citizen.
- 22 According to the case-law of the Court, Article 4 of the Directive entails an obligation for Member States to issue a residence permit to any person who provides proof, by means of the appropriate documents, namely the document with which he entered their territory, or a declaration of engagement by the employer or a work certificate, that he belongs to one of the categories set out in Article 1 of the Directive (Case 48/75 *Royer* [1976] ECR 497, paragraph 37).

- 23 The Court notes in this regard that the Belgian registration-certificate rules do not make any allowance where a worker from another Member State submits all the documents required by the Directive even when submitting the first application for a residence permit. Furthermore, under those rules, a period of six months may elapse before the residence permit is issued.
- 24 As the Advocate General points out in paragraph 11 of his Opinion, this procedure and the fact that it lasts until a residence permit is issued entails excessive burdens and consequently constitute in practice an obstacle to the free movement of workers, contrary to Article 48 of the Treaty.
- 25 As regards the rules relating to payment of duties upon the issue of certificates, Article 9(1) of the Directive clearly states that residence documents granted to nationals of Member States of the Community are to be issued and renewed free of charge or on payment of an amount not exceeding the dues and taxes charged for the issue of identity cards to a Member State's own nationals.
- 26 Under the Belgian procedure for the issue of registration certificates, a national of another Member State must go through several administrative stages before obtaining a definitive document and at each stage must pay a charge. Even though each charge on its own does not exceed the amount payable when an identity card is issued to a Belgian national, their total sum is higher than that amount, which constitutes a breach of Article 9(1) of the Directive.
- 27 Consequently, the objection raised by the Commission in this regard must be considered to be well founded.

The third objection: certificates issued to persons whose stay does not last for more than three months

- 28 The Commission considers that obtaining the issue of a document covering stays by persons from other Member States who go to Belgium in order to pursue an activity as employed persons there for a period not lasting more than three months and also stays by seasonal workers constitutes an administrative and financial obstacle for such persons, rendering this requirement contrary to Article 8(1) of the Directive, which does not provide for the issue of such a document.
- 29 The Belgian Government states that, as regards seasonal workers and Community nationals who intend to take up in Belgium employment not expected to last for more than three months, it intends to abolish the obligation to produce a declaration of engagement by the employer or a work certificate.
- 30 Article 8(1)(a) of the Directive provides that the Member States are to recognize the right of residence of a worker pursuing an activity as an employed person, where the activity is not expected to last for more than three months and that they are to do this without issuing a residence permit, the worker's authorization to stay arising from the document with which he entered the territory and from a statement by the employer on the expected duration of the employment. Under Article 8(1)(c) of the Directive, a seasonal worker's stay is covered if he holds a contract of employment stamped by the competent authority of the Member State on whose territory he has come to pursue his activity.
- 31 Although Article 8(2) of the Directive provides that the competent authorities of the host Member State may require the worker to report his presence, it follows from the foregoing that anything going beyond having to report one's presence and having the character of an authorization or a residence permit is not compatible with the Directive.

32 Furthermore, requiring a person to pay a charge when he reports his presence constitutes a financial obstacle to the movement of workers, which is also contrary to the Community rules.

33 Consequently, the objection raised by the Commission in this regard must be regarded as well founded.

34 It must accordingly be held that:

- by requiring nationals of other Member States who are seeking employment in Belgium to leave its territory after a period of three months;

- by issuing, during the first six months of their residence, to persons holding employment for a period of at least one year two successive registration certificates instead of a residence permit for a national of a Member State and by requiring payment for those certificates;

- by issuing to employed persons and to seasonal workers whose activity is expected to last for more than three months a document relating to their residence and by requiring payment for that document;

the Kingdom of Belgium has failed to fulfil its obligations under Article 48 of the Treaty and under the Directive.

Costs

- 35 Under Article 69(2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs. Since the Kingdom of Belgium has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

Declares that:

- 1) — **by requiring nationals of other Member States who are seeking employment in Belgium to leave its territory after a period of three months;**

- **by issuing, during the first six months of their residence, to persons holding employment for a period of at least one year two successive registration certificates instead of a residence permit for a national of a Member State and by requiring payment for those certificates;**

— by issuing to employed persons and to seasonal workers whose activity is not expected to last for more than three months a document relating to their residence and by requiring payment for that document;

the Kingdom of Belgium has failed to fulfil its obligations under Article 48 of the EC Treaty and under 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;

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

Mancini

Kakouris

Hirsch

Ragnemalm

Schingten

Delivered in open court in Luxembourg on 20 February 1997.

R. Grass

G. F. Mancini

Registrar

President of the Sixth Chamber