

Case C-344/95

Commission of the European Communities

v

Kingdom of Belgium

(Failure to fulfil obligations —
Article 48 of the EC Treaty — Directive 68/360/EEC)

Opinion of Advocate General Lenz delivered on 14 November 1996	I - 1039
Judgment of the Court (Sixth Chamber), 20 February 1997	I - 1046

Summary of the Judgment

1. *Freedom of movement for persons — Workers — Right to stay in order to look for employment — Duration of stay — Rules of a Member State requiring other Member States' nationals looking for employment to leave its national territory automatically at the end of a period of three months — Not permissible*
(EC Treaty, Art. 48; Council Directive 68/360)
2. *Freedom of movement for persons — Rights of entry and residence of nationals of the Member States — Workers engaged in employment lasting more than one year — Rules of a Member State providing for the issue for the first six months of a worker's stay, of a registration certificate and then for its renewal, subject to payment of a charge — Not permissible*
(EC Treaty, Art. 48; Council Directive 68/360, Arts 1, 4 and 9(1))

3. *Freedom of movement for persons — Rights of entry and residence of nationals of the Member States — Employed persons and seasonal workers engaged for not more than three months — Rules of a Member State providing for the issue, subject to payment of a charge, of a document relating to their residence — Not permissible*
 (EC Treaty, Art. 48; Council Directive 68/360, Art. 8(1)(a) and (c) and 8(2))

1. The principle of freedom of movement for workers laid down in Article 48(1), (2) and (3) of the Treaty, which must be given a broad interpretation, 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.

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.

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.

It follows that a Member State fails to fulfil its obligations under Article 48 of the Treaty in requiring nationals of other Member States who are looking for employment in its territory automatically to leave its territory after expiry of a period of three months.

2. A Member State which, during the first six months of their residence, issues to persons holding employment for a period of at least one year two successive registration certificates and not the residence permit provided for by Directive 68/360, on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, and which makes each issue subject to a charge equal to that required of its own nationals upon the issue of an identity card fails to fulfil its obligations under Article 48 of the Treaty and under that directive.

Article 4 of Directive 68/360 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. Such 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, this procedure and the fact that it may take six months before a residence permit is issued entail excessive burdens and consequently constitute in practice an obstacle to the free movement of workers, contrary to Article 48.

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. Under the 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.

3. A Member State which issues to employed persons and seasonal workers whose activity is not expected to last for more than three months a document relating to their residence and which requires payment of a charge for that document fails to fulfil its obligations under Article 48 of the Treaty and under Directive 68/360 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

Article 8(1) of that directive, which provides, in subparagraph (a), 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, and, in subparagraph (c), that 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, mean that anything going beyond having to report one's presence, as provided for by Article 8(2) of the directive, which the competent

authorities of the host State may require of the worker in order to report his presence, and having the character of an authorization or a residence permit, is not compatible with the directive. Further-

more, requiring a person to pay a charge when reporting his presence constitutes a financial obstacle to the movement of workers, contrary to the Community rules.