

JUDGMENT OF THE COURT (Sixth Chamber)
30 April 1998 *

In Case C-24/97,

Commission of the European Communities, represented by Peter Hillenkamp and Pieter Jan Kuijper, Legal Advisers, acting as Agents, 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

Federal Republic of Germany, represented by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent, D-53107 Bonn,

defendant,

APPLICATION for a declaration that by treating nationals of other Member States residing in Germany disproportionately differently, as regards the degree of fault and scale of fines, from German nationals when they commit a comparable infringement of the obligation to hold a valid identity document, the Federal Republic of Germany has failed to fulfil its obligations under Articles 48, 52 and 59 of the EC Treaty and under Article 4(1) 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) and Article 4(1) of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within

* Language of the case: German.

the Community for nationals of Member States with regard to establishment and the provision of services (OJ 1973 L 172, p. 14),

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm (Rapporteur), President of the Chamber,
G. F. Mancini, J. L. Murray, G. Hirsch and K. M. Ioannou, Judges,

Advocate General: F. G. Jacobs,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 22 January 1998,

gives the following

Judgment

- 1 By application lodged at the Registry of the Court on 17 January 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that by treating nationals of other Member States residing in Germany disproportionately differently, as regards the degree of fault and scale of fines, from German nationals when they commit a comparable infringement of the obligation to hold a valid identity document, the Federal Republic of Germany has failed to fulfil its obligations under Articles 48, 52 and 59 of the EC Treaty and under Article 4(1) 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) and Article 4(1) 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).

- 2 Paragraph 12a(1)(2) of the Gesetz über Einreise und Aufenthalt von Staatsangehörigen der Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft (Law on entry and residence of European Economic Community nationals) of 22 July 1969 provides that any person enjoying the right of free movement within the meaning of that Law, who resides in the territory to which the Law applies without holding the necessary passport, document serving as a passport, residence permit or concession is guilty of an administrative offence.

- 3 According to Paragraph 12a(2), any person who negligently acts in the manner referred to in the preceding subparagraph is also guilty of an administrative offence. Paragraph 12a(3) provides that the fine for the administrative offence is subject to a maximum of DM 5 000.

- 4 As regards administrative offences committed by German nationals, Paragraph 5(1)(1) and (2) and Paragraph 5(2) of the Gesetz über Personalausweise (Law on identity cards) of 19 December 1950 provide that:

‘(1) Any person who

1. intentionally or with reckless disregard fails to obtain an identity card for himself or for a minor of whom he is the legal representative, although required to do so, or

2. fails to present his identity card when asked to do so by a competent authority ...

is guilty of an administrative offence.

(2) A fine may be imposed for that administrative offence.'

- 5 According to Paragraph 17(1) of the Gesetz über Ordnungswidrigkeiten (Law on administrative offences) of 24 May 1968, the penalty is then subject to a minimum of DM 5 and a maximum of DM 1 000, unless the law provides otherwise. Paragraph 17(4) states that the fine must exceed the financial benefit derived by the person concerned from his action. If the legal maximum is not sufficient, it may be exceeded.
- 6 In a letter of formal notice sent to the German Government on 25 July 1990, the Commission criticised the way in which nationals of other Member States residing in Germany were treated by the authorities in the event of infringement of the obligation to hold a valid identity document. In the Commission's view, that treatment was discriminatory in comparison to the treatment of German nationals.
- 7 By letters of 11 January 1991, 20 March 1991 and 18 February 1992, the German Government recognised that there was discrimination and indicated that it was ready to carry out the relevant amendments. It was anticipated that a draft law to that effect would be adopted in 1992. The German Government also referred to two letters from the Federal Ministry of the Interior asking the ministers and senators for internal affairs in the different *Länder* to ensure that sanctions were

imposed on nationals of other Member States in respect of infringements of the obligation to hold a valid identity document only in the event of recklessness.

- 8 Since the promised amendment had not been made, on 27 July 1995 the Commission sent a reasoned opinion to the German Government, calling on it to take the necessary measures to comply with its obligations within two months of notification.
- 9 As it had not been informed of any amendment of the provisions in question, the Commission brought the present proceedings.
- 10 In its defence, the German Government does not dispute the alleged infringement.
- 11 First, it should be recalled that Article 48 of the Treaty, which was implemented by Directive 68/360, and Articles 52 and 59 of the Treaty, implemented by Directive 73/148, are based on the same principles both as regards the entry into and residence in the territory of Member States of persons covered by Community law and as regards the prohibition of all discrimination between them on grounds of nationality (Case 48/75 *Royer* [1976] ECR 497, paragraphs 11 and 12).
- 12 Article 4(1) of Directive 68/360 and Article 4(1) of Directive 73/148 both provide that Member States are to grant the right of residence in their territory to nationals of other Member States and members of their families who are able to produce an identity card or a valid passport.

- 13 Community law does not prevent a Member State from carrying out checks on compliance with the obligation to be able to produce a residence permit at all times, provided that it imposes the same obligation on its own nationals as regards their identity card (Case 321/87 *Commission v Belgium* [1989] ECR 997, paragraph 12).
- 14 In the event of failure to comply with that obligation, the national authorities are entitled to impose penalties comparable to those attaching to minor offences committed by their own nationals, such as those laid down in respect of failure to carry an identity card, provided that they do not impose a penalty so disproportionate that it becomes an obstacle to the free movement of workers (Case C-265/88 *Messner* [1989] ECR 4209, paragraph 14).
- 15 In view of the foregoing, it must be held that, by treating nationals of other Member States residing in Germany disproportionately differently, as regards the degree of fault and the scale of fines, from German nationals when they commit a comparable infringement of the obligation to carry a valid identity document, the Federal Republic of Germany has failed to fulfil its obligations under Articles 48, 52 and 59 of the Treaty, Article 4 of Directive 68/360 and Article 4 of Directive 73/148.

Costs

- 16 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Federal Republic of Germany has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that, by treating nationals of other Member States residing in Germany disproportionately differently, as regards the degree of fault and scale of fines, from German nationals when they commit a comparable infringement of the obligation to hold a valid identity document, the Federal Republic of Germany has failed to fulfil its obligations under Articles 48, 52 and 59 of the EC Treaty, 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 and 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;
2. Orders the Federal Republic of Germany to pay the costs.

Ragnemalm

Mancini

Murray

Hirsch

Ioannou

Delivered in open court in Luxembourg on 30 April 1998.

R. Grass

H. Ragnemalm

Registrar

President of the Sixth Chamber