2. If the answer to the first question is in the affirmative for one of the categories listed, do Article 6(2) and Article 17(2) and (6) of the Sixth Directive leave room for a national statutory provision, such as that which is the subject of the dispute, which was enacted before the Sixth Directive entered into force and on the basis of which a taxable person may not deduct in full the turnover tax paid on the acquisition of certain goods or services because a fee was charged in respect thereof which incurred turnover tax, but may only deduct an amount equivalent to the amount of tax owed in respect of the transaction concerned?

3. If, in respect of 'the provision of food and drink', the condition is satisfied which requires the designation of a category of adequately defined goods and services, does Article 17(6) of the Sixth Directive preclude an amendment to an existing exclusion of the deduction, from which amendment it seems likely that in principle the scope of the exclusion will be restricted but where it cannot be ruled out that in an individual case in a particular year the scope of the restriction of the deduction might be extended, in particular through the fixed-rate nature of the amended provision?

([1]) Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16).

([2]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Reference for a preliminary ruling from the Tribunal du travail, Brussels (Belgium) made on 26 January 2009 — Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM)

(Case C-34/09)

(2009/C 90/15)

Language of the case: French

Referring court

Tribunal du travail, Brussels

Parties to the main proceedings

Applicant: Gerardo Ruiz Zambrano

Defendant: Office national de l'Emploi (ONEM)

Questions referred

1. Do Articles 12, 17 and 18 of the Treaty establishing the European Community, or one or more of them when read separately or in conjunction, confer a right of residence upon a citizen of the Union in the territory of the Member State of which that citizen is a national, irrespective of whether he has previously exercised his right to move within the territory of the Member States?

2. Must Articles 12, 17 and 18 of the Treaty establishing the European Community, in conjunction with the provisions of Articles 21, 24 and 34 of the Charter of Fundamental Rights (adopted by the European Council of Nice on 7 December 2000, published in its current version in OJ 2007 C 303), be interpreted as meaning that the right which they recognise, without discrimination on the grounds of nationality, in favour of any citizen of the Union to move and reside freely in the territory of the Member States means that, where that citizen is an infant dependent on a relative in the ascending line who is a national of a non-member State, the infant's enjoyment of the right of residence in the Member State in which he resides and of which he is a national must be safeguarded, irrespective of whether the right to move freely has been previously exercised by the child or through his legal representative, by coupling that right of residence with the useful effect whose necessity is recognised by Community case-law (Case C-200/02 *Zhu and Chen*), by granting the relative in the ascending line who is a national of a non-member State, upon whom the child is dependent and who has sufficient resources and sickness insurance, the secondary right of residence which that same national of a non-member State would have if the child who is dependent upon him were a Union citizen who is not a national of the Member State in which he resides?

3. Must Articles 12, 17 and 18 of the Treaty establishing the European Community, in conjunction with the provisions of Articles 21, 24 and 34 of the Charter of Fundamental Rights, be interpreted as meaning that the right of a minor child who is a national of a Member State to reside in the territory of the State in which he resides must entail the grant of an exemption from holding a work permit to the relative in the ascending line who is a national of a non-member State, upon whom the child is dependent and who, were it not for the requirement to hold a work permit under the national law of the Member State in which he resides, fulfils the condition of sufficient resources and the possession of sickness insurance by virtue of paid employment making him subject to the social security system of that State, so that the child's right of residence is coupled with the useful effect recognised by Community case-law (Case C-200/02 *Zhu and Chen*) in favour of a minor child who is a European citizen with a nationality other than that of the Member State in which he resides and is dependent upon a relative in the ascending line who is a national of a non-member State?