

The Commission submits that:

- the possibility of making certain operations subject to prior administrative authorisation, in the circumstances described in the articles cited, constitutes a restriction on the free movement of capital and the freedom of establishment, which are provided for in Article 56 EC (ex Article 73b) and Article 43 EC (ex Article 52);
- the system of administrative authorisation laid down by Law 5/1995 can in no way be justified by overriding reasons of public interest and clearly involves the exercise of discretion. That discretionary power is a key factor conducive to a negative assessment as regards the requirement of proportionality and to the conclusion that what is involved is a system allowing indirect discrimination.

(¹) Law 5/1995 of 23 March 1995 on the rules applying to the sale of public shareholdings in certain companies (Boletín Oficial del Estado No 72 of 25 March 1995).

Reference for a preliminary ruling by the Immigration Appellate Authority (United Kingdom), by order of that court of 19 December 2000, in the case of Arben Kaba against Secretary of State for the Home Department

(Case C-466/00)

(2001/C 61/08)

Reference has been made to the Court of Justice of the European Communities by an order of the Immigration Appellate Authority (United Kingdom) of 19 December 2000, which was received at the Court Registry on 27 December 2000, for a preliminary ruling in the case of Arben Kaba against Secretary of State for the Home Department, on the following questions:

Question 1

1. What mechanisms are there for the referring court or the parties to the proceedings (before the referring court and the ECJ) to ensure that the totality of the proceedings comply with the obligations under Article 6 ECHR and therefore to ensure that no liability for breach of Article 6 ECHR arises either under the domestic human rights statute or before the Court of Human Rights? and
2. Was the procedure followed in this case in compliance with the requirements of Article 6 ECHR and, if not, how does this affect the validity of the first judgment (¹)?

Question 2

1. The Immigration Adjudicator having found that the Appellant, and the spouse of a person present and settled in the United Kingdom were (or would be) afforded different treatment in that
 - a) the Appellant, having entered the United Kingdom as the spouse of an EU citizen exercising free movement rights, was required to have been in the United Kingdom for four years before he could apply for indefinite leave to remain, whereas
 - b) the spouse of a person who was present and settled in the United Kingdom (whether a British national or as a person who had been granted indefinite leave to remain) would qualify after one year for indefinite leave to remain.
2. No evidence (or argument) concerning justification of the differential treatment between the applicant and such a spouse of a person present and settled having been presented to the referring court either at the hearing leading up to the Order for Reference of 25 September 1998, in the written or oral observations made by the Respondent before the European Court of Justice or the hearing leading up to the present Order for Reference, despite the request by the Adjudicator for full argument, the Immigration Adjudicator asks
 1. Whatever the answer to the first question set out above, is the Court's judgment of 11 April 2000 in this case (Case-356/98) to be interpreted as stating that, in these circumstances, there was discrimination contrary to Article 39 EC and/or Article 7(2) of Regulations 1612/68 (²)?
 2. After re-assessment of the facts, is there discrimination contrary to Article 39 EC and/or Article 7(2) of Regulations 1612/68?

(¹) Judgment of the Court of 11 April 2000 in Case C-356/98, Arben Kaba against Secretary of State for the Home Department (ECR p. I-2623).

(²) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p. 2 [SE SER1 68(H) p. 475]).