

SCHOLZ

JUDGMENT OF THE COURT

23 February 1994 ^{*}

In Case C-419/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale Amministrativo Regionale per la Sardegna (Italy) for a preliminary ruling in the proceedings pending before that court between

Ingetraut Scholz

and

Opera Universitaria di Cagliari,

Cinzia Porcedda,

on the interpretation of Articles 7 and 48 of the EEC Treaty and Articles 1 and 3 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of

^{*} Language of the case: Italian.

movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475),

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida and M. Díez de Velasco (Rapporteur), (Presidents of Chambers), C. N. Kakouris, F. A. Schockweiler, M. Zuleeg, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: F. G. Jacobs,

Registrar: D. Loutherman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- Ingetraut Scholz, by Eligio Simbula, Advocate at the Supreme Court of Cassation,
- the Italian Government, by Professor Luigi Ferrari Bravo, Head of the Department for Legal Affairs in the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, *Avvocato dello Stato*,
- the French Government, by Jean-Pierre Puissochet, Director of the Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Claude Chavance, *Attaché Principal d'Administration Centrale*, acting as Agents,
- the Commission of the European Communities, by Dimitrios Gouloussis, Legal Adviser, and Enrico Traversa, a member of the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Scholz, the Italian Government, the French Government and the Commission, at the hearing on 10 November 1993,

after hearing the Opinion of the Advocate General at the sitting on 15 December 1993,

gives the following

Judgment

1 By judgment of 10 June 1992, which was received at the Court on 18 December 1992, the Tribunale Amministrativo Regionale per la Sardegna (Regional Administrative Court for Sardinia) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 7 and 48 of the EEC Treaty and Articles 1 and 3 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community.

2 That question was raised in a dispute concerning the list of candidates who were successful in an open competition based on tests and qualifications for recruiting canteen staff for posts at the University of Cagliari.

3 The plaintiff in the main proceedings, who is of German origin and acquired Italian nationality by marriage, brought an action challenging her place on the list

drawn up following the aforesaid competition, in which she alleged that it was unlawful for the selection board to refuse to take into account, in accordance with the notice of competition, her previous employment in the German post office before her marriage.

- 4 The notice of competition provided, in particular, for the award, with a view to drawing up the list of successful candidates, of a number of points in respect of qualifications and experience. It did not contain any details as to what type of previous experience was relevant.
- 5 The Tribunale Amministrativo Regionale per la Sardegna, before which the proceedings were instituted, accordingly requested the Court to give a preliminary ruling on the question:

‘Whether Articles 7 and 48 of the EEC Treaty and Articles 1 and 3 of Regulation No 1612/68 may be interpreted as precluding, in connection with an open competition to fill posts not falling within those covered by the reservation referred to in Article 48 (4), the possibility of disregarding work carried out in the public service of another Member State, when work carried out for a public authority of the State in which the competition is published is regarded as relevant experience for the purposes of the list of successful candidates to be drawn up on completion of the competition procedure.’

- 6 It should be borne in mind, first of all, that Article 7 of the Treaty, which prohibits any discrimination on grounds of nationality, does not apply independently where the Treaty lays down, as it does in Article 48 (2) in relation to the free movement of workers, a specific prohibition of discrimination (see the judgment in Case 305/87 *Commission v Greece* [1989] ECR 1476, at paragraphs 12 and 13) . In addition, Articles 1 and 3 of Regulation No 1612/68 merely clarify and give effect to the rights already conferred by Article 48 of the Treaty. Accordingly, that provision alone is relevant to this case.

- 7 The Court has consistently held (see, in particular, the judgment in Case C-111/91 *Commission v Luxembourg* [1993] ECR I-817, at paragraph 9) that Article 48 of the Treaty prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result.
- 8 In this case, it should be noted first of all that the fact that the plaintiff in the main proceedings has acquired Italian nationality has no bearing on the application of the principle of non-discrimination.
- 9 Any Community national who, irrespective of his place of residence and his nationality, has exercised the right to freedom of movement for workers and who has been employed in another Member State, falls within the scope of the aforesaid provisions.
- 10 Next, it should be noted that the rules governing the competition in question made provision for taking account, in drawing up the list of successful candidates, of previous periods of employment completed in the public service, without specifying that such employment had to be connected with the duties of canteen staff.
- 11 Finally, it must be stated that the refusal to take into consideration the plaintiff's employment in the public service of another Member State, for the purposes of the award of the additional points provided for, in order to determine her place on the list, constitutes unjustified indirect discrimination.
- 12 The answer to the question submitted must therefore be that Article 48 of the EEC Treaty must be interpreted as meaning that, where a public body of a Member State, in recruiting staff for posts which do not fall within the scope of Article 48 (4) of the Treaty, provides for account to be taken of candidates'

previous employment in the public service, that body may not, in relation to Community nationals, make a distinction according to whether such employment was in the public service of that particular State or in the public service of another Member State.

Costs

- 13 The costs incurred by the Italian and French Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Tribunale Amministrativo Regionale per la Sardegna (Italy) by judgment of 10 June 1992, hereby rules:

Article 48 of the EEC Treaty must be interpreted as meaning that, where a public body of a Member State, in recruiting staff for posts which do not fall within the scope of Article 48 (4) of the Treaty, provides for account to be taken of candidates' previous employment in the public service, that body

may not, in relation to Community nationals, make a distinction according to whether such employment was in the public service of that particular State or in the public service of another Member State.

Due

Mancini

Moitinho de Almeida

Díez de Velasco

Kakouris

Schockweiler

Zuleeg

Kapteyn

Murray

Delivered in open court in Luxembourg on 23 February 1994.

R. Grass

O. Due

Registrar

President