JUDGMENT OF THE COURT (Full Court)

23 March 2004 *

In Case C-138/02,

REFERENCE to the Court under Article 234 EC by the Social Security Commissioner (United Kingdom) for a preliminary ruling in the proceedings pending before the Commissioner between

Brian Francis Collins

and

Secretary of State for Work and Pensions,

on the interpretation of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1), and 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),

* Language of the case: English.

THE COURT (Full Court),

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.N. Cunha Rodrigues (Rapporteur) and A. Rosas, Presidents of Chambers, A. La Pergola, J.-P. Puissochet, R. Schintgen, N. Colneric and S. von Bahr, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Collins, by R. Drabble QC, instructed by P. Eden, solicitor,

— the United Kingdom Government, by J.E. Collins, acting as Agent, assisted by E. Sharpston QC,

— the German Government, by W.-D. Plessing, acting as Agent,

— the Commission of the European Communities, by N. Yerrell and D. Martin, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Collins, represented by R. Drabble, of the United Kingdom Government, represented by R. Caudwell, acting as Agent, and E. Sharpston, and of the Commission, represented by N. Yerrell and D. Martin, at the hearing on 17 June 2003,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2003,

gives the following

Judgment

By ruling of 28 March 2002, received at the Court on 12 April 2002, the Social Security Commissioner referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1) ('Regulation No 1612/68'), and 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).

2 Those questions were raised in proceedings between Mr Collins and the Secretary of State for Work and Pensions concerning the latter's refusal to grant Mr Collins the jobseeker's allowance provided for by legislation of the United Kingdom of Great Britain and Northern Ireland.

The relevant provisions

Community legislation

3 The first paragraph of Article 6 of the EC Treaty (now, after amendment, the first paragraph of Article 12 EC) provides:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

4 Article 8 of the EC Treaty (now, after amendment, Article 17 EC) states:

'1. Citizenship of the Union is hereby established.

Every person holding the nationality of a Member State shall be a citizen of the Union.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.'

Article 8a(1) of the EC Treaty (now, after amendment, Article 18(1) EC) provides that every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the EC Treaty and by the measures adopted to give it effect.

As provided by Article 48(2) of the EC Treaty (now, after amendment, Article 39 (2) EC), freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

In accordance with Article 48(3) of the Treaty, freedom of movement for workers '[entails] the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

...'

8 Article 2 of Regulation No 1612/68 states:

'Any national of a Member State and any employer pursuing an activity in the territory of a Member State may exchange their applications for and offers of employment, and may conclude and perform contracts of employment in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting therefrom.'

9 Article 5 of Regulation No 1612/68 provides that 'a national of a Member State who seeks employment in the territory of another Member State shall receive the same assistance there as that afforded by the employment offices in that State to their own nationals seeking employment'.

10 In accordance with Article 7(2) of Regulation No 1612/68, a worker who is a national of a Member State is to enjoy, in the territory of another Member State, the same social and tax advantages as national workers.

11 Article 1 of Directive 68/360 provides:

'Member States shall, acting as provided in this Directive, abolish restrictions on the movement and residence of nationals of the said States and of members of their families to whom Regulation (EEC) No 1612/68 applies.'

2 Article 4(1) of Directive 68/360 provides that Member States are to grant the right of residence in their territory to the persons referred to in Article 1 thereof who are able to produce the documents listed in Article 4(3).

3 Under the first indent of Article 4(3) of the directive, those documents are, for a worker:

'(a) the document with which he entered their territory;

(b) a confirmation of engagement from the employer or a certificate of employment'.

4 In accordance with Article 8(1) of Directive 68/360, Member States are to recognise, without issuing a residence permit, the right of residence in their territory (a) of workers pursuing an activity as an employed person where the activity is not expected to last for more than three months, (b) of frontier workers and (c) of seasonal workers.

National legislation

5 Jobseeker's allowance is a social security benefit provided under the Jobseekers Act 1995 ('the 1995 Act'), section 1(2)(i) of which requires the claimant to be in Great Britain.

16 Regulations made under the 1995 Act, namely the Jobseeker's Allowance Regulations 1996 ('the 1996 Regulations') lay down the conditions to be met in order to be eligible for jobseeker's allowance and the amounts that may be claimed by the various categories of claimant. Paragraph 14(a) of Schedule 5 to the 1996 Regulations prescribes an amount of nil for the category of 'persons from abroad' who are without family to support.

17 Regulation 85(4) of the 1996 Regulations defines 'person from abroad' as follows:

'... a claimant who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, but for this purpose, no claimant shall be treated as not habitually resident in the United Kingdom who is –

(a) a worker for the purposes of Council Regulation (EEC) No 1612/68 or (EEC) No 1251/70 or a person with a right to reside in the United Kingdom pursuant to Council Directive No 68/360/EEC or No 73/148/EEC;

...'

The main proceedings and the questions referred for a preliminary ruling

18 Mr Collins was born in the United States and possesses dual Irish and American nationality. As part of his college studies, he spent one semester in the United Kingdom in 1978. In 1980 and 1981 he returned there for a stay of approximately 10 months, during which he did part-time and casual work in pubs and bars and in sales. He went back to the United States in 1981. He subsequently worked in the United States and in Africa.

19 Mr Collins returned to the United Kingdom on 31 May 1998 in order to find work there in the social services sector. On 8 June 1998 he claimed jobseeker's allowance, which was refused by decision of an adjudication officer of 1 July 1998, on the ground that he was not habitually resident in the United Kingdom. Mr Collins appealed to a Social Security Appeal Tribunal, which upheld the refusal, stating that he could not be regarded as habitually resident in the United Kingdom since (i) he had not been resident for an appreciable time and (ii) he was not a worker for the purposes of Regulation No 1612/68, nor did he have a right to reside in the United Kingdom pursuant to Directive 68/360.

20 Mr Collins then appealed to the Social Security Commissioner, who decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is a person in the circumstances of the claimant in the present case a worker for the purposes of Regulation No 1612/68 of the Council of 15 October 1968?

(2) If the answer to question 1 is not in the affirmative, does a person in the circumstances of the claimant in the present case have a right to reside in the United Kingdom pursuant to Directive No 68/360 of the Council of 15 October 1968?

(3) If the answers to both questions 1 and 2 are not in the affirmative, do any provisions or principles of European Community law require the payment of a social security benefit with conditions of entitlement like those for income-based jobseeker's allowance to a person in the circumstances of the claimant in the present case?'

Question 1

Observations submitted to the Court

21 Mr Collins contends that, as Community law currently stands, his position in the United Kingdom as a person genuinely seeking work gives him the status of a 'worker' for the purposes of Regulation No 1612/68 and brings him within the scope of Article 7(2) of that regulation. At paragraph 32 of its judgment in Case C-85/96 *Martínez Sala* [1998] ECR I-2691, the Court deliberately laid down the rule that persons seeking work are to be considered to be workers for the purposes of Regulation No 1612/68 if the national court is satisfied that the person concerned was genuinely seeking work at the appropriate time.

22 The United Kingdom Government, the German Government and the Commission of the European Communities, on the other hand, submit that a person in Mr Collins' position is not a worker for the purposes of Regulation No 1612/68.

23 The United Kingdom Government and the Commission argue that Mr Collins cannot claim to be a 'former' migrant worker who is now merely seeking a benefit under Article 7(2) of Regulation No 1612/68, because there is no relationship between the work which he did in the course of 1980 and 1981 and the type of work which he says he wished to find in 1998.

24 In Case 316/85 *Lebon* [1987] ECR 2811, the Court held that equal treatment with regard to social and tax advantages, which is laid down by Article 7(2) of Regulation No 1612/68, applies only to workers, and that those who move in search of employment qualify for such equal treatment only as regards access to employment in accordance with Article 48 of the Treaty and Articles 2 and 5 of that regulation.

25 The German Government draws attention to the specific circumstances in *Martínez Sala*, cited above, which were characterised by very close connections of long duration between the plaintiff and the host Member State, whereas in the main proceedings there is clearly no link between the earlier work carried out by Mr Collins and the work sought by him.

The Court's answer

26 In accordance with the Court's case-law, the concept of 'worker', within the meaning of Article 48 of the Treaty and of Regulation No 1612/68, has a specific Community meaning and must not be interpreted narrowly. Any person who pursues activities which are real and genuine, to the exclusion of activities on such

a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. The essential feature of an employment relationship is, according to that case-law, that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (see, in particular, Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraphs 16 and 17, *Martínez Sala*, paragraph 32, and Case C-337/97 *Meeusen* [1999] ECR I-3289, paragraph 13).

27 The Court has also held that migrant workers are guaranteed certain rights linked to the status as a worker even when they are no longer in an employment relationship (Case C-35/97 *Commission* v *France* [1998] ECR I-5325, paragraph 41, and Case C-413/01 *Ninni-Orasche* [2003] ECR I-13187, paragraph 34).

28 As is apparent from the documents sent to the Court by the Social Security Commissioner, Mr Collins performed casual work in the United Kingdom, in pubs and bars and in sales, during a 10-month stay there in 1980 and in 1981. However, even if such occupational activity satisfies the conditions as set out in paragraph 26 of this judgment for it to be accepted that during that stay the appellant in the main proceedings had the status of a worker, no link can be established between that activity and the search for another job more than 17 years after it came to an end.

29 In the absence of a sufficiently close connection with the United Kingdom employment market, Mr Collins' position in 1998 must therefore be compared with that of any national of a Member State looking for his first job in another Member State.

30 In this connection, it is to be remembered that the Court's case-law draws a distinction between Member State nationals who have not yet entered into an employment relationship in the host Member State where they are looking for work and those who are already working in that State or who, having worked there but no longer being in an employment relationship, are nevertheless considered to be workers (see Case 39/86 *Lair* [1988] ECR 3161, paragraphs 32 and 33).

31 While Member State nationals who move in search for work benefit from the principle of equal treatment only as regards access to employment, those who have already entered the employment market may, on the basis of Article 7(2) of Regulation No 1612/68, claim the same social and tax advantages as national workers (see in particular, *Lebon*, cited above, paragraph 26, and Case C-278/94 *Commission* v *Belgium* [1996] ECR I-4307, paragraphs 39 and 40).

32 The concept of 'worker' is thus not used in Regulation No 1612/68 in a uniform manner. While in Title II of Part I of the regulation this term covers only persons who have already entered the employment market, in other parts of the same regulation the concept of 'worker' must be understood in a broader sense.

33 Accordingly, the answer to the first question must be that a person in the circumstances of the appellant in the main proceedings is not a worker for the purposes of Title II of Part I of Regulation No 1612/68. It is, however, for the national court or tribunal to establish whether the term 'worker' as referred to by the national legislation at issue is to be understood in that sense.

Question 2

Observations submitted to the Court

34 Mr Collins submits that Directive 68/360 grants a right of residence for a period of three months to persons seeking work.

35 The United Kingdom Government, the German Government and the Commission contend that it is on the basis of Article 48 of the Treaty directly, and not of the provisions of Directive 68/360, which are applicable exclusively to persons who have found work, that Mr Collins would be entitled to go to the United Kingdom to seek work and to stay there as a person looking for work for a reasonable period.

The Court's answer

36 In the context of freedom of movement for workers, Article 48 of the Treaty grants nationals of the Member States a right of residence in the territory of other Member States in order to pursue or to seek paid employment (Case C-171/91 *Tsiotras* [1993] ECR I-2925, paragraph 8).

37 The right of residence which persons seeking employment derive from Article 48 of the Treaty may be limited in time. 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 (see Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 21, and Case C-344/95 *Commission* v *Belgium* [1997] ECR I-1035, paragraph 17).

8 Directive 68/360 seeks to abolish, within the Community, restrictions concerning the movement and residence of Member State nationals and of members of their families to whom Regulation No 1612/68 applies.

9 So far as concerns restrictions on movement, first, Article 2(1) of Directive 68/360 requires Member States to grant the right to leave their territory to Community nationals intending to go to another Member State to seek employment there. Second, in accordance with Article 3(1) of the directive, Member States are to allow those nationals to enter their territory simply on production of a valid identity card or passport.

10 In addition, given that the right of residence is a right conferred directly by the Treaty (see, in particular, Case C-363/89 *Roux* [1991] ECR I-273, paragraph 9), issue of a residence permit to a national of a Member State, as provided for by Directive 68/360, is to be regarded not as a measure giving rise to rights but as a measure by a Member State serving to prove the individual position of a national of another Member State with regard to provisions of Community law (Case C-459/99 *MRAX* [2002] ECR I-6591, paragraph 74).

41 Under Article 4 of Directive 68/360, Member States are to grant the right of residence in their territory only to workers who are able to produce, in addition to the document with which they entered the Member State's territory, a confirmation of engagement from the employer or a certificate of employment.

42 Article 8 of the directive sets out an exhaustive list of the circumstances in which certain categories of workers may have their right of residence recognised without issue of a residence permit to them.

43 It follows that the right of residence in a Member State referred to in Articles 4 and 8 of Directive 68/360 is accorded only to nationals of a Member State who are already in employment in the first Member State. Persons seeking employment are excluded. They can rely solely on the provisions of that directive concerning their movement within the Community.

44 The answer to the second question must therefore be that a person in the circumstances of the appellant in the main proceedings does not have a right to reside in the United Kingdom solely on the basis of Directive 68/360.

Question 3

Observations submitted to the Court

45 In Mr Collins' submission, there is no doubt that he is a national of another Member State who was lawfully in the United Kingdom and that jobseeker's

allowance is within the scope of the Treaty. The result, as the Court held in Case C-184/99 *Grzelczyk* [2001] ECR I-6193, is that the payment of a non-contributory means-tested benefit to a national of a Member State other than the host Member State cannot be made conditional on the satisfaction of a condition when such a condition is not applied to nationals of the host Member State. Mr Collins acknowledges that the habitual residence test is applied to United Kingdom nationals as well. However, it is well established that a provision of national law is to be regarded as discriminatory for the purposes of Community law if it is inherently more likely to be satisfied by nationals of the Member State concerned.

46 The United Kingdom Government and the German Government argue that there is no provision or principle of Community law which requires that a benefit such as the jobseeker's allowance be paid to a person in the circumstances of Mr Collins.

47 With regard to the possible existence of indirect discrimination, the United Kingdom Government submits that there are relevant objective justifications for not making income-based jobseeker's allowance available to persons in the situation of Mr Collins. Unlike the position in Case C-224/98 *D'Hoop* [2002] ECR I-6191, the eligibility criteria adopted for the allowance at issue here do not go beyond what is necessary to attain the objective pursued. They represent a proportionate and hence permissible method of ensuring that there is a real link between the claimant and the geographic employment market. In the absence of such criteria, persons who have little or no link with the United Kingdom employment market, as in the case of Mr Collins, would then be able to claim that allowance.

48 According to the Commission, it is not disputed that Mr Collins was genuinely seeking work in the United Kingdom during the two months following his arrival

in that Member State and that he was lawfully resident there in his capacity as a person seeking work. As a citizen of the Union lawfully residing in the United Kingdom, he was clearly entitled to the protection conferred by Article 6 of the Treaty against discrimination on grounds of nationality in any situation falling within the material scope of Community law. That is precisely the case with regard to jobseeker's allowance, which should be considered to be a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.

49 The Commisson also observes that it is clear that the right to stay in another Member State to seek work there can be limited to a reasonable period and that Mr Collins' right to rely on Articles 6 and 8 of the Treaty in order to claim the allowance, on the same basis as United Kingdom nationals, is therefore similarly restricted to that period of lawful residence.

50 None the less, the Commission submits that a requirement of habitual residence may be indirectly discriminatory because it can be more easily met by nationals of the host Member State than by those of other Member States. Whilst such a requirement may be justified on objective grounds necessarily intended to avoid 'benefit tourism' and thus the possibility of abuse by work-seekers who are not genuine, the Commission notes that in the case of Mr Collins the genuine nature of the search for work is not in dispute. Indeed, it appears that he has remained continuously employed in the United Kingdom ever since first finding work there shortly after his arrival.

The Court's answer

51 By the third question, the Social Security Commissioner asks essentially whether there is a provision or principle of Community law on the basis of which a

national of a Member State who is genuinely seeking employment in another Member State may claim there a jobseeker's allowance such as that provided for by the 1995 Act.

52 First of all, without there being any need to consider whether a person such as the appellant in the main proceedings falls within the scope *ratione personae* of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1) ('Regulation No 1408/71'), it is clear from the order for reference that the person concerned never resided in another Member State before seeking employment in the United Kingdom, so that the aggregation rule contained in Article 10a of Regulation No 1408/71 is inapplicable in the main proceedings.

53 Under the 1996 Regulations, nationals of other Member States seeking employment who are not workers for the purposes of Regulation No 1612/68 and do not derive a right of residence from Directive 68/360 can claim the allowance only if they are habitually resident in the United Kingdom.

54 It must therefore be determined whether the principle of equal treatment precludes national legislation which makes entitlement to a jobseeker's allowance conditional on a residence requirement.

55 In accordance with the first paragraph of Article 6 of the Treaty, any discrimination on grounds of nationality is prohibited within the scope of application of the Treaty, without prejudice to any special provisions contained therein. Since Article 48(2) of the Treaty is such a special provision, it is appropriate to consider first the 1996 Regulations in the light of that article.

56 Among the rights which Article 48 of the Treaty confers on nationals of the Member States is the right to move freely within the territory of the other Member States and to stay there for the purposes of seeking employment (*Antonissen*, cited above, paragraph 13).

57 Nationals of a Member State seeking employment in another Member State thus fall within the scope of Article 48 of the Treaty and, therefore, enjoy the right laid down in Article 48(2) to equal treatment.

58 As regards the question whether the right to equal treatment enjoyed by nationals of a Member State seeking employment in another Member State also encompasses benefits of a financial nature such as the benefit at issue in the main proceedings, the Court has held that Member State nationals who move in search of employment qualify for equal treatment only as regards access to employment in accordance with Article 48 of the Treaty and Articles 2 and 5 of Regulation No 1612/68, but not with regard to social and tax advantages within the meaning of Article 7(2) of that regulation (*Lebon*, paragraph 26, and Case C-278/94 *Commission* v *Belgium*, cited above, paragraphs 39 and 40).

59 Article 2 of Regulation No 1612/68 concerns the exchange of applications for and offers of employment and the conclusion and performance of contracts of employment, while Article 5 of the regulation relates to the assistance afforded by employment offices.

60 It is true that those articles do not expressly refer to benefits of a financial nature. However, in order to determine the scope of the right to equal treatment for persons seeking employment, this principle should be interpreted in the light of other provisions of Community law, in particular Article 6 of the Treaty.

1 As the Court has held on a number of occasions, citizens of the Union lawfully resident in the territory of a host Member State can rely on Article 6 of the Treaty in all situations which fall within the scope *ratione materiae* of Community law. Citizenship of the Union is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for (see, in particular, *Grzelczyk*, cited above, paragraphs 31 and 32, and Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraphs 22 and 23).

2 It is to be noted that the Court has held, in relation to a student who is a citizen of the Union, that entitlement to a non-contributory social benefit, such as the Belgian minimum subsistence allowance ('minimex'), falls within the scope of the prohibition of discrimination on grounds of nationality and that, therefore, Articles 6 and 8 of the Treaty preclude eligibility for that benefit from being subject to conditions which are liable to constitute discrimination on grounds of nationality (*Grzelczyk*, paragraph 46).

3 In view of the establishment of citizenship of the Union and the interpretation in the case-law of the right to equal treatment enjoyed by citizens of the Union, it is no longer possible to exclude from the scope of Article 48(2) of the Treaty — which expresses the fundamental principle of equal treatment, guaranteed by Article 6 of the Treaty — a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State.

4 The interpretation of the scope of the principle of equal treatment in relation to access to employment must reflect this development, as compared with the interpretation followed in *Lebon* and in Case C-278/94 *Commission* v *Belgium*.

65 The 1996 Regulations introduce a difference in treatment according to whether the person involved is habitually resident in the United Kingdom. Since that requirement is capable of being met more easily by the State's own nationals, the 1996 Regulations place at a disadvantage Member State nationals who have exercised their right of movement in order to seek employment in the territory of another Member State (see, to this effect, Case C-237/94 *O'Flynn* [1996] ECR I-2617, paragraph 18, and Case C-388/01 *Commission* v *Italy* [2003] ECR I-721, paragraphs 13 and 14).

66 A residence requirement of that kind can be justified only if it is based on objective considerations that are independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions (Case C-274/96 *Bickel and Franz* [1998] ECR I-7637, paragraph 27).

67 The Court has already held that it is legitimate for the national legislature to wish to ensure that there is a genuine link between an applicant for an allowance in the nature of a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 and the geographic employment market in question (see, in the context of the grant of tideover allowances to young persons seeking their first job, *D'Hoop*, cited above, paragraph 38).

68 The jobseeker's allowance introduced by the 1995 Act is a social security benefit which replaced unemployment benefit and income support, and requires in particular the claimant to be available for and actively seeking employment and not to have income exceeding the applicable amount or capital exceeding a specified amount.

69 It may be regarded as legitimate for a Member State to grant such an allowance only after it has been possible to establish that a genuine link exists between the person seeking work and the employment market of that State.

70 The existence of such a link may be determined, in particular, by establishing that the person concerned has, for a reasonable period, in fact genuinely sought work in the Member State in question.

71 The United Kingdom is thus able to require a connection between persons who claim entitlement to such an allowance and its employment market.

72 However, while a residence requirement is, in principle, appropriate for the purpose of ensuring such a connection, if it is to be proportionate it cannot go beyond what is necessary in order to attain that objective. More specifically, its application by the national authorities must rest on clear criteria known in advance and provision must be made for the possibility of a means of redress of a judicial nature. In any event, if compliance with the requirement demands a period of residence, the period must not exceed what is necessary in order for the national authorities to be able to satisfy themselves that the person concerned is genuinely seeking work in the employment market of the host Member State.

73 The answer to the third question must therefore be that the right to equal treatment laid down in Article 48(2) of the Treaty, read in conjunction with Articles 6 and 8 of the Treaty, does not preclude national legislation which makes entitlement to a jobseeker's allowance conditional on a residence requirement, in so far as that requirement may be justified on the basis of objective considerations that are independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions.

Costs

74 The costs incurred by the United Kingdom and German Governments and the Commission, 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 Social Security Commissioner, the decision on costs is a matter for the Commissioner.

On those grounds,

THE COURT

in answer to the questions referred to it by the Social Security Commissioner by ruling of 28 March 2002, hereby rules:

1. **A person in the circumstances of the appellant in the main proceedings is not a worker for the purposes of Title II of Part I of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992. It is, however, for the national court or tribunal to establish whether the term 'worker' as referred to by the national legislation at issue is to be understood in that sense.**

2. A person in the circumstances of the appellant in the main proceedings does not have a right to reside in the United Kingdom solely on the basis 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.

3. The right to equal treatment laid down in Article 48(2) of the EC Treaty (now, after amendment, Article 39(2) EC), read in conjunction with Articles 6 and 8 of the EC Treaty (now, after amendment, Articles 12 EC and 17 EC), does not preclude national legislation which makes entitlement to a jobseeker's allowance conditional on a residence requirement, in so far as that requirement may be justified on the basis of objective considerations that are independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions.

Skouris Jann Timmermans

Gulmann Cunha Rodrigues Rosas

La Pergola Puissochet Schintgen

Colneric von Bahr

Delivered in open court in Luxembourg on 23 March 2004.

R. Grass V. Skouris

Registrar President