JUDGMENT OF THE COURT
18 October 1990 *

In Joined Cases C-297/88 and C-197/89,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de première instance (Court of First Instance), Brussels, and by the Cour d'appel (Court of Appeal), Brussels, for a preliminary ruling in the proceedings pending before those courts between

Massam Dzodzi

and

The Belgian State,

on the interpretation:

(i) in Case C-297/88, of certain provisions of Community law on the right of residence and the right to remain of spouses of nationals of the European Economic Community, and more particularly of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (Official Journal, English Special Edition 1970 (II), p. 402);

(ii) in Case C-197/89, of Articles 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (Official Journal, English Special Edition 1963-64, p. 117),

* Language of the case: French.

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias (Presidents of Chambers), F. A. Schockweiler and F. Grévisse, Judges,

Advocate General: M. Darmon
Registrar: D. Louterman, Principal Administrator,

after considering the written observations submitted on behalf of

Mrs Massam Dzodzi, by Luc Misson and Jean-Paul Brilmaker, of the Liège Bar,

the Belgian Government, by the Deputy Prime Minister, Minister for Justice and Small Businesses (Case C-297/88), and by the Prime Minister, Minister for Justice and Small Businesses (Case C-197/89), counsel Martine Scarcez, of the Brussels Bar,

the Commission of the European Communities, by Étienne Lasnet, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing oral argument, presented at the hearing on 22 May 1990, from Mrs Massam Dzodzi, represented by Luc Misson, Marc-Albert Lucas and Jean-Louis Dupond, of the Liège Bar, and from the Commission,

after hearing the Opinion of the Advocate General delivered at the sitting on 3 July 1990,

gives the following

Judgment

1 By order of 5 October 1988, which was received at the Court on 12 October 1988, the Tribunal de première instance, Brussels, referred, in the course of interlocutory proceedings, for a preliminary ruling under Article 177 of the EEC Treaty three questions relating, first, to the right of residence in the territory of a Member State of the spouse of a national of that State, secondly, to the right of that spouse to remain in the territory of that State under the terms of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (Official Journal, English Special Edition 1970 (II), p. 402), and lastly, to the right to reside and remain in the territory of a Member State of the spouse of a national of another Member State.

2 By order of 16 May 1989, which was received at the Court on 22 May 1989, the Cour d'appel, Brussels, referred, in the course of appeal proceedings brought against the abovementioned order of the Tribunal de première instance, for a preliminary ruling under Article 177 of the EEC Treaty two supplementary questions on Articles 8 and 9 of Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (Official Journal, English Special Edition 1963-64, p. 117), and more specifically on the circumstances in which persons covered by the directive may challenge, in proceedings before the national courts, a refusal to issue a residence permit or a measure ordering expulsion from the territory of a Member State.

3 Those questions were raised in litigation between the plaintiff and appellant in the main proceedings, Mrs Massam Dzodzi, a Togolese national and the widow of Julien Herman, a Belgian national, and the Belgian State, which refused to recognize that she had the right to reside or to remain in Belgium.

4 Article 40 of the Belgian Law of 15 December 1980 on admission to the territory of the State for aliens and the residence, establishment and expulsion of aliens (*Moniteur belge* of 31.12.1980, p. 14584) provides that 'save where otherwise provided in this law, the following persons shall, regardless of their nationality, be treated as an alien from within the European Community: (1) the spouse of such an alien; . . . The spouse of a Belgian national shall also be so treated . . . '.

5 Mrs Dzodzi entered Belgium in early 1987 and, on 14 February 1987, married Mr Julien Herman. As the spouse of a Belgian national, she then applied to the administrative authorities for permission to remain in Belgian territory by virtue of a right which she maintained was conferred by Community directives and regulations. There was no response to that application. The couple left for Togo and resided there from April to July 1987 without informing the Belgian authorities. Mr Herman died on 28 July 1987, shortly after returning to Belgium. Subsequent applications by Mrs Dzodzi for the issue of a permit for an extended period of residence in Belgium were rejected.

6 Having been ordered to leave Belgian territory, Mrs Dzodzi applied to the Tribunal de première instance, Brussels, for interim relief in the form of the suspension of the execution of that decision and an order that the Belgian State, on pain of periodic penalty payments, should issue her with a residence permit valid for five years.

7 In these circumstances the Tribunal de première instance, Brussels, decided to stay the proceedings until such time as the Court of Justice gave a preliminary ruling on the following questions.

'A — *Right of residence*

A person who is not a Community citizen married a Belgian national who died some six months after the marriage. Must the conditions for granting a residence permit to a non-Community national who has married a Belgian national be determined at the time when the applicant for the permit enters the Kingdom, at the time when the application for a residence permit is made or at the time when the decision is taken within a reasonable period?

Is any such right of residence impaired by the fact that the couple left the country for more than three months and less than six months — before the residence permit was issued — and without previously informing the authorities of any intention subsequently to return to Belgium? If not, could the spouse's death after returning to Belgium impair that right?

B — *Right to remain*

In the circumstances described above, may the widow claim a right to remain in Belgium under Regulation No 1251/70?

C — *Additional question*

Article 40 of the Belgian Law of 15 December 1980 treats the spouse of a Belgian national as a Community citizen. If, therefore, the two previous questions were to be answered in the negative solely by reason of the deceased's Belgian nationality, could the plaintiff claim a right of residence or a right to remain if her deceased spouse had been a national of another Member State of the Community?'

8 Mrs Dzodzi appealed against that order on the grounds that the court considering the application for interim relief had not first ruled on the admissibility of the application before it and had refused to take provisional measures so as to safeguard her rights.

9 By order of 16 May 1989, the Cour d'appel, Brussels, ordered the Belgian State to issue to Mrs Dzodzi a provisional residence permit valid until the end of the proceedings for interim relief and referred the following two supplementary questions to the Court for a preliminary ruling:

'(1) Council Directive 64/221/EEC of 25 February 1964 gives to nationals of a Member State who are the subject of a decision concerning entry, or refusing the issue or renewal of a residence permit, or ordering expulsion from the territory, the right to "the same legal remedies . . . as are available to nationals of the State concerned in respect of acts of the administration" (Article 8).

In Belgium, nationals of that State who are threatened with imminent harm which might be caused to them by an act of the administration whose legality is open to dispute may bring before the President of the Tribunal de première

instance, pursuant to Article 584 of the Judicial Code, proceedings for interim relief in the form of an order requiring the public authority to take measures to preserve their interests that are under threat or to suspend provisionally the effects of the act complained of.

Is it permitted, in the light of the abovementioned requirement laid down by Directive 64/221, to prohibit those to whom that directive applies from having recourse to the procedure for obtaining interim relief?

(2) Must Article 9 of the directive be interpreted as meaning that the persons concerned must be entitled to bring an action which would enable them to apply as a matter of urgency for the intervention of a national court or tribunal, prior to the enforcement of the measure complained of, in order to obtain in good time measures protecting the rights under threat?'

10 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the applicable legislation and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The object of the questions submitted to the Court

11 The questions submitted by the Tribunal de première instance essentially seek to establish whether, and in what circumstances, the Community provisions confer a right of residence or a right to remain in the territory of a Member State on a national of a non-member country solely in the capacity as the spouse of a Community national. Since the national court refers expressly to Regulation No 1251/70, cited above, which applies to workers and members of their families, it is necessary, in the absence of any other indications in the documents before the Court, to assume that the reference concerns the position of the spouse of a Community national who is, or was, a worker.

12 The first two questions are concerned with the situation in which, before he died, the Community national had — as in the case which is the subject of the main proceedings — the nationality of the Member State from which the spouse of the Community national seeks the right to reside or remain.

13 The Tribunal de première instance asks the Court to answer the third question in the event that it should consider that the Community provisions are inapplicable to the situation described above on the ground that the Community national is a national of the State in which his widow wishes to reside or remain. That third question postulates a situation in which, before he died, the Community national was a national of another Member State. In order to show that this question is useful and relevant for the purposes of resolving the dispute, the national court refers to Article 40 of the abovementioned Belgian Law of 15 December 1980. It is clear from the wording of the question that the interpretation of Article 40 upon which the national court bases itself is that the national legislature introduced that provision of Belgian law, the object of which, according to the relevant preparatory documents, is to obviate 'reverse discrimination' against aliens married to Belgian nationals, in order to extend to those aliens the benefit of the Community rules applicable to the spouses of nationals of other Member States residing in the territory of the Kingdom of Belgium.

14 The questions submitted by the Cour d'appel, Brussels, ask the Court to interpret Articles 8 and 9 of Directive 64/221/EEC of 25 February 1964, cited above, on the legal remedies for challenging decisions of the authorities of a Member State refusing the issue of a residence permit or ordering expulsion from the territory. However, the grounds of the order of the national court also refer to Article 40 of the Belgian Law of 15 December 1980. It must therefore be considered that in reality the Cour d'appel has in fact two hypotheses in mind: under the first hypothesis, Community law is directly applicable to a situation such as the one at issue in the main proceedings; according to the second, the Community provisions whose interpretation is sought are applicable only indirectly through Article 40 of the aforesaid national law.

15 Accordingly, a distinction must be drawn between the questions submitted by the national courts in so far as, on the one hand, they refer to Community law alone and in so far as, on the other hand, they are based on Article 40 of the aforesaid national law, for the purposes of justifying their requests for an interpretation of Community law. The two points will be considered in turn in the light of the Community legislation applicable at the material time; account will not be taken in particular of the later provisions of Council Directive 90/364 of 28 June 1990 on the right of residence (Official Journal 1990 L 180, p. 26) or Council Directive 90/365 of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (Official Journal 1990 L 180, p. 28).

The questions relating to the interpretation of Community law regarded as being directly applicable (first and second questions of the Tribunal de première instance and the questions of the Cour d'appel)

Jurisdiction of the Court

16 The Commission and the Belgian State maintain that the situation giving rise to the dispute before the national courts is a purely internal one, since the Community national whose spouse claims the right to reside or to remain had never worked or resided in the territory of a Member State other than his country of origin. Accordingly, the Commission asks the Court to declare that the Community provisions are inapplicable to such a situation. The Belgian State argues as a result that the Court has no jurisdiction to give a preliminary ruling on the questions.

17 That line of argument is not challenged by Mrs Dzodzi, whose observations are confined to the questions raised by reference to Article 40 of the aforesaid national law.

18 It must be observed that the circumstances relied upon by the Commission and the Belgian State in order to show that the situation is a purely internal one relate to the substance of the questions submitted by the national courts. Consequently, whilst they may be relevant for the purpose of answering those questions, they are not relevant in determining whether the Court has jurisdiction to rule on the requests for preliminary rulings (judgment in Case 180/83 *Moser* v *Land Baden-Württemberg* [1984] ECR 2539, paragraph 10).

19 The objections raised by the Belgian Government as to the jurisdiction of the Court cannot therefore be upheld.

Substance

20 Freedom of movement within the Community of spouses of Community workers is governed by Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).

21 As far as such spouses' right of residence and right to remain in the territory of a Member State are concerned, the first right is governed by 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 (Official Journal, English Special Edition 1968 (II), p. 485) and the second right by Regulation No 1251/70 of 29 June 1970, cited above.

22 The regulations and the directive are designed to permit and facilitate the achievement of the objectives of Article 48 of the Treaty on the free movement of workers within the Community.

23 As the Court has previously held, however, Community legislation on the free movement of workers does not apply to cases which have no factor linking them with any of the situations governed by Community law (judgment in Joined Cases 35/82 and 36/82 *Morson and Jhanjan* v *Netherlands* [1982] ECR 3723, paragraph 16).

24 That is so in the case referred to by the Tribunal de première instance of a national of a non-member country married to a national of a Member State where the right to reside or remain in the territory of that State which the person concerned claims solely in the capacity as a spouse cannot be linked to the exercise by the Community national of freedom of movement within the Community.

25 In so far as they refer to Community law alone, the questions of the Cour d'appel must be answered in similar terms.

26 Directive 64/221, cited above, of which the Cour d'appel seeks an interpretation of Articles 8 and 9, applies, on the terms laid down in Article 1 thereof, to spouses of Community nationals who reside in or travel to another Member State of the Community, either in order to pursue an activity as an employed or self-employed person, or as a recipient of services.

27 The case before the Cour d'appel has no link with the situations covered by Article 1 of the directive.

28 Accordingly, the answer to be given is that Regulation No 1612/68 of 15 October 1968, Directive 68/360 of 15 October 1968, Regulation No 1251/70 of 29 June 1970 and Directive 64/221 of 25 February 1964 do not apply to purely internal situations of a Member State, such as the situation of a national of a non-member country who, solely in the capacity as the spouse of a national of a Member State, claims a right to reside or to remain in the territory of that Member State.

Questions on the interpretation of Community law made applicable by Article 40 of the Belgian Law of 15 December 1980 (third question submitted by the Tribunal de première instance and the questions submitted by the Cour d'appel)

Jurisdiction of the Court

29 The Belgian State and the Commission contend that it is only the application of domestic Belgian law which is at issue, and the Commission argues in particular that a provision of the kind contained in Article 40 of the national law has no effect on the determination of the field of application of Community law. The Belgian State asks the Court to rule that it has no jurisdiction to answer these questions.

30 In contrast, Mrs Dzodzi argues that, owing to Article 40 of the national law, the dispute before the national courts puts Community provisions in contention. It is for the Court to rule on questions of interpretation raised in such disputes in order to avoid divergence developing between the case-law on the interpretation of Community provisions of the Court of Justice and that of national courts.

31 Under Article 177 of the Treaty the Court has jurisdiction to give preliminary rulings concerning the interpretation of the Treaty and the acts of the institutions of the Community.

32 The second and third paragraphs of Article 177 provide that, where a question concerning the interpretation of a provision of Community law is raised before any court or tribunal of a Member State, that court or tribunal may — or in the case of a court or tribunal against whose decisions there is no remedy under national law, must — request the Court to give a ruling, if it considers that a decision on the question is necessary to enable it to give judgment.

33 The procedure provided for in Article 177 of the Treaty is therefore an instrument for cooperation between the Court of Justice and the national courts, whereby the Court of Justice provides the national courts with the criteria for the interpretation of Community law which they need in order to dispose of the disputes which they are called upon to resolve.

34 It follows that it is solely for the national courts before which the dispute has been brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court.

35 Accordingly, since the questions submitted by the national courts concern the interpretation of a provision of Community law, the Court is, in principle, obliged to give a ruling.

36 It does not appear either from the wording of Article 177 or from the aim of the procedure introduced by that article that the authors of the Treaty intended to exclude from the jurisdiction of the Court requests for a preliminary ruling on a Community provision in the specific case where the national law of a Member State refers to the content of that provision in order to determine rules applicable to a situation which is purely internal to that State.

37 On the contrary, it is manifestly in the interest of the Community legal order that, in order to forestall future differences of interpretation, every Community provision should be given a uniform interpretation irrespective of the circumstances in which it is to be applied.

38 Since the jurisdiction of the Court under Article 177 is designed to ensure uniform interpretation in all Member States of the provisions of Community law, the Court merely deduces from the letter and the spirit of those provisions the meaning of the Community rules at issue. Thereafter it is for the national courts alone to apply the Community provisions thus interpreted in the light of the factual and legal circumstances of the case before them.

39 Consequently, in accordance with the division of judicial tasks between the national courts and the Court of Justice pursuant to Article 177, the Court gives its preliminary ruling without, in principle, having to look into the circumstances in which the national courts were prompted to submit the questions and envisage applying the provision of Community law which they have asked the Court to interpret.

40 The matter would be different only if it were apparent either that the procedure provided for in Article 177 had been diverted from its true purpose and sought in fact to lead the Court to give a ruling by means of a contrived dispute, or that the provision of Community law referred to the Court for interpretation was manifestly incapable of applying.

41 Where Community law is made applicable by national provisions, it is for the national court alone to assess the precise scope of that reference to Community law. If it takes the view that the content of a provision of Community law is applicable, by virtue of that reference, to the purely internal situation underlying the dispute brought before it, the national court is entitled to request the Court for a preliminary ruling on the terms laid down by the provisions of Article 177 as a whole, as they have been interpreted in the case-law of the Court of Justice.

42 Nevertheless, the jurisdiction of the Court is confined to considering provisions of Community law only. In its reply to the national court, the Court of Justice cannot take account of the general scheme of the provisions of domestic law which, while referring to Community law, define the extent of that reference. Consideration of the limits which the national legislature may have placed on the application of

Community law to purely internal situations, to which it is applicable only through the operation of the national legislation, is a matter for domestic law and hence falls within the exclusive jurisdiction of the courts of the Member State.

43 In the present case it must be observed that the questions set out above do not relate to provisions of Belgian domestic law but exclusively to provisions of the abovementioned regulations and directive on the right of residence and the right to remain in the territory of a Member State of spouses of Community workers and to Directive 64/221 of 25 February 1964, cited above. Accordingly, for those reasons and within the limits defined above, the Court has jurisdiction to rule on those questions.

The right of residence and the right to remain of the spouse of a Community national (third question submitted by the Tribunal de première instance)

44 Article 10 of Regulation No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community covers the situation of the spouse of a worker who is a national of one Member State and who is employed in the territory of another Member State. Article 10 confers on the spouse, irrespective of nationality, the right to install himself or herself with the worker in the territory of the State in which the worker is employed, provided that the provisions set out in Article 10(3) with regard to the housing available to the worker are fulfilled.

45 Pursuant to Article 1 and Article 3(1) of Directive 68/360 of 15 October 1968, the Member State must allow a spouse to whom Regulation No 1612/68 applies to enter its territory simply on production of a valid identity card or passport. Article 3(2) defines the circumstances in which the Member State may additionally require spouses who are not nationals of a Member State to produce an entry visa or comply with an equivalent formality.

46 Under Articles 1 and 4 of the directive the Member State must grant to such a spouse who is able to produce the documents listed in Article 4(3) the right of residence in its territory; moreover, that right of residence is to be evidenced by the issue of a residence permit.

47 Finally, it appears from Article 10 of the directive that Member States may not derogate from the provisions of the directive, including the provisions mentioned above, save on grounds of public policy, public security or public health.

48 Regulation No 1251/70 of 29 June 1970 governing the right to remain applies, according to Articles 1 and 3 thereof, to the spouse of a Community worker as defined in Article 10 of Regulation No 1612/68 of 15 October 1968.

49 Article 3(1) of Regulation No 1251/70 confers on the spouse of a worker who resides with him in the territory of a Member State the right to remain there permanently if the worker has acquired the right to remain in the territory of the State in accordance with Article 2 of the regulation, and to do so even after his death.

50 Under Article 2 of the regulation the worker's right to remain is subject, except in the cases set out in the second sentence of Article 2(1)(b) and in Article 2(2), to minimum periods of employment and residence in the territory of the Member State.

51 Article 3(2) of Regulation No 1251/70 covers cases in which the worker dies during his working life before he acquired the right to remain in the territory of the Member State. In such a case the spouse enjoys the right to remain in particular where the worker, on the date of his decease, had resided continuously in the territory of that Member State for at least two years or where his death resulted from an accident at work or an occupational disease.

52 Article 5 of the regulation lays down the terms under which the right to remain is to be exercised. Under Article 5(1) the person entitled to the right to remain is allowed to exercise it within two years from the time of becoming entitled to such right pursuant to the provisions of the regulation. During that period he may leave the territory of the Member State without adversely affecting the right. Article 5(2) provides that no formality is required on the part of the person concerned in respect of the exercise of that right.

53 Lastly, the right to remain is to be evidenced by the issue of a residence permit on the terms set out in Article 6 of the regulation.

54 If the implementation of the aforesaid Community provisions were to give rise to difficulty because they had to be applied to the purely internal situation which was at the origin of the main proceedings, the task of resolving that difficulty would fall within the competence of the national court. In that regard it must be reiterated that it is the duty of the national court to determine the scope which the national legislature intended to attach to the reference to Community law which it laid down and, for example, if it sees fit, to determine the circumstances in which the provisions of Article 10 of Regulation No 1612/68 regarding the housing which the worker must have available for his family or the requirements laid down in Regulation No 1251/70 as regards minimum periods of residence in the territory of a Member State before the right to remain there can be granted, may be applied to a worker who is a national of that State.

55 Accordingly, the answer to be given is that the spouse of a worker who is a national of a Member State and who is, or has been, employed in the territory of another Member State, may claim a right of residence or a right to remain in the territory of that second State on the terms laid down by Directive 68/360 of 15 October 1968, Regulation No 1612/68 of 15 October 1968, and Regulation No 1251/70 of 29 June 1970. Whilst the national court is bound by the guidance and the interpretations of Community law provided by the Court of Justice, for its part it must determine, in the light of the scope of the reference made by the national legislation to the aforesaid Community provisions, the circumstances in which those provisions may be applied to the purely internal situation which gave rise to the proceedings of which it is seised.

Remedies provided for in Directive 64/221 of 25 February 1964 (questions submitted by the Cour d'appel)

56 As the Court has already observed, Article 1 of Directive 64/221 of 25 February 1964 defines the scope of that directive; it covers, in particular, nationals of a Member State who reside in or travel to another Member State in order to pursue an activity as an employed person and, in the circumstances which it lays down, their spouses.

Article 8 of the directive

57 Article 8 provides that any person covered by the directive 'shall have the same legal remedies in respect of any decision concerning entry, or refusing the issue or renewal of a residence permit or ordering expulsion from the territory, as are available to nationals of the State concerned in respect of acts of the administration'.

58 That provision defines the decisions referred to by the directive as 'acts of the administration' and imposes upon the Member States the obligation to make available to any person affected by such acts the same legal remedies as are available to nationals in respect of acts of the administration. Accordingly, a Member State cannot, without being in breach of the obligation imposed by Article 8, organize, for persons covered by the directive, legal remedies governed by special procedures affording lesser safeguards than those pertaining to remedies available to nationals in respect of acts of the administration (judgment in Case 98/79 *Pecastaing* v *Belgium* [1980] ECR 691, paragraph 10).

59 It follows that if, in a Member State, the administrative courts are not empowered to grant a stay of execution of an administrative decision or interim protective measures with regard to the execution of such a decision, but such power is vested in the ordinary courts, that State is obliged to permit persons covered by the directive to apply to those courts on the same terms as nationals. It must nevertheless be emphasized that such rights depend essentially on the organization of the courts and the division of the jurisdiction of judicial bodies in the various Member States, since the only obligation imposed upon the Member States by Article 8 is to grant to persons protected under Community law rights of appeal which are not less favourable than those available to nationals of the State concerned against acts of the administration (judgment in *Pecastaing* v *Belgium*, cited above, paragraph 11).

60 Accordingly, the reply to be given is that under Article 8 of Directive 64/221 of 25 February 1964 the Member States are under a duty to secure for the persons covered by that directive judicial protection which is not less favourable, in particular as regards the authority before which an appeal may be brought and the powers of that authority, than the protection which those States afford their own nationals as regards appeals against acts of the administration.

Article 9 of the directive

61 The question essentially seeks to establish whether, as a result of Article 9 of the directive, the Member States are under a duty to recognize a right on the part of persons covered by the directive to bring an appeal, prior to the execution of a decision refusing a residence permit or ordering expulsion from the territory, before a court empowered, under an urgency procedure, to adopt interim protective measures in connection with rights of residence.

62 The object of Article 9(1) of Directive 64/221 is to ensure a minimum procedural safeguard for persons affected by a decision refusing renewal of a residence permit or ordering the expulsion of the holder of a residence permit from the territory. That provision, which applies only where there is no right of appeal to a court of law, or where such appeal may be only in respect of the legal validity of the decision, or where the appeal cannot have suspensory effect, provides for the intervention of a competent authority other than the authority empowered to take the decision. Save in cases of urgency, the administrative authority may not take its decision until an opinion has been obtained from that consultative body. In proceedings before that body the person concerned must enjoy such rights of defence and of assistance or representation as the domestic law of that country provides for.

63 Article 9(2) provides that persons who are the subject of a decision refusing the issue of a first residence permit or ordering their expulsion before any permit is issued may refer the matter to the authority whose opinion is required under Article 9(1). In such a case, the person concerned is then entitled to submit his defence in person, except where this would be contrary to the interests of national security.

64 That authority must deliver an opinion which, as is evident from the objectives of the system provided for by the directive, must be duly notified to the person concerned (judgment in Joined Cases 115/81 and 116/81 *Adoui and Cornuaille* v *Belgium* [1982] ECR 1665, paragraph 18).

65 The directive does not specify how the competent authority referred to in Article 9 is appointed. It does not require that authority to be a court or to be composed of members of the judiciary. Nor does it require the members of the competent authority to be appointed for a specific period. The essential requirement is, first,

that it should be clearly established that the authority is to perform its duties in absolute independence and is not to be directly or indirectly subject, in the exercise of its duties, to any control by the authority empowered to take the measures provided for in the directive (judgment in *Adoui and Cornuaille*, cited above, paragraph 16) and, secondly, that the authority should follow a procedure enabling the person concerned, on the terms laid down by the directive, to put forward his arguments in defence.

66 Although there is no provision empowering the authority in question to take interim protective decisions in connection with the right of residence, it must none the less be observed that, under Article 9 of the directive as interpreted by the Court (judgment in *Pecastaing* v *Belgium*, cited above, paragraph 18), once the matter has been brought before that authority, an expulsion order covered by Article 9 may not be executed, save in cases of urgency, before the opinion of that consultative body has been obtained and notified to the person concerned. It must further be noted that the order may not be enforced in breach of the right of that person to stay in the territory for the time necessary to avail himself of the remedies accorded to him under Article 8 of the directive (judgment in *Pecastaing* v *Belgium*, cited above, paragraph 12).

67 It follows from the whole of the foregoing that Article 9 cannot be construed as requiring the provision, for the benefit of persons covered by the directive, of a judicial appeal of the kind described by the Belgian court.

68 It must be emphasized that, contrary to the assertions of Mrs Dzodzi, that interpretation of Article 9 of the directive is not incompatible with any general principle of Community law enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or Article 14 of the International Covenant on Civil and Political Rights of 19 December 1966 (*United Nations Treaty Series*, Vol. 999, p. 171); none of the stipulations of those agreements can, according to their very wording, be interpreted as requiring the implementation of an appeal procedure having the features described by the Cour d'appel, Brussels.

69 Accordingly, the reply must be that Article 9 of Directive 64/221 of 25 February 1964 does not require the Member States to make available to persons covered by

the directive a right of appeal, prior to the execution of a decision refusing a residence permit or ordering expulsion from the territory, to a court empowered, under an urgency procedure, to adopt interim protective measures in connection with rights of residence.

Costs

70 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national courts, the decision on costs is a matter for those courts.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Tribunal de première instance, Brussels, by order of 5 October 1988 and by the Cour d'appel, Brussels, by order of 16 May 1989, hereby rules as follows:

(1) Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, 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, Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State and Council Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health do not apply to purely internal situations of a Member State, such as the situation of a national of a non-member country who, solely in the capacity as the spouse of a national of a Member State, claims a right to reside or to remain in the territory of that Member State.

(2) The spouse of a worker who is a national of a Member State and who is, or has been, employed in the territory of another Member State may claim a right of residence or a right to remain in the territory of that second State on the terms laid down by Directive 68/360/EEC of 15 October 1968, Regulation (EEC) No 1612/68 of 15 October 1968, and Regulation (EEC) No 1251/70 of 29 June 1970. Whilst the national court is bound by the guidance and the interpretations of Community law provided by the Court of Justice, for its part it must determine, in the light of the scope of the reference made by the national legislation to the aforesaid Community provisions, the circumstances in which those provisions may be applied to the purely internal situation which gave rise to the proceedings of which it is seised.

(3) Under Article 8 of Directive 64/221/EEC of 25 February 1964 the Member States are under a duty to secure for the persons covered by that directive judicial protection which is not less favourable, in particular as regards the authority before which an appeal may be brought and the powers of that authority, than the protection which those States afford their own nationals as regards appeals against acts of the administration.

(4) Article 9 of Directive 64/221/EEC of 25 February 1964 does not require the Member States to make available to persons covered by the directive a right of appeal, prior to the execution of a decision refusing a residence permit or ordering expulsion from the territory, to a court empowered, under an urgency procedure, to adopt interim protective measures in connection with rights of residence.

Due Mancini O'Higgins

Moitinho de Almeida Rodríguez Iglesias Schockweiler Grévisse

Delivered in open court in Luxembourg on 18 October 1990.

J.-G. Giraud
Registrar

O. Due
President