

In Case 53/81

REFERENCE to the Court under [Article 267 TFEU] by the Judicial Division of the Netherlands Raad van State [State Council] for a preliminary ruling in the case pending before that court between

D. M. LEVIN, Amsterdam,

and

STAATSSECRETARIS VAN JUSTITIE [Secretary of State for Justice]

on the interpretation of [Article 45 TFEU] and of certain provisions of [Union] directives and regulations on the free movement of persons within the [Union],

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keefe, T. Koopmans, U. Everling, A. Chloros and F. Grevisse, Judge,

Advocate General: Sir Gordon Slynn

Registrar: A. Van Houtte

gives the following

**JUDGMENT**

## Decision

- 1 By interlocutory judgment of 28 November 1980, received at the Court on 11 March 1981, the Raad van State [State Council] of the Netherlands referred to the Court for a preliminary ruling under [Article 267 TFEU] three questions relating to the interpretation of [Article 45 TFEU] and of certain provisions of [Union] regulations and directives on the free movement of persons within the [Union].
- 2 The appellant in the main proceedings, Mrs Levin, of British nationality and the wife of a national of a non-member country, applied for a permit to reside in the Netherlands. The permit was refused, on the basis of Netherlands legislation, on the ground, amongst others, that Mrs Levin was not engaged in a gainful occupation in the Netherlands and therefore could not be described as a "favoured [EU] citiz[e]n" within the meaning of that legislation.
- 3 Mrs Levin applied to the Staatssecretaris van Justitie [Secretary of State for Justice] for the decision to be reconsidered. Her application was rejected and she appealed to the Raad van State claiming that in the meantime she had taken up an activity as an employed person in the Netherlands and that, in any event, she and her husband had property and income more than sufficient to support themselves, even without pursuing such an activity.
- 4 Since the Raad van State considered that the judgment to be given depended on the interpretation of [Union] law it referred the following three questions to the Court for a preliminary ruling:
  - "1. Should the concept of 'favoured [EU] citizen', which in the Netherlands legislation is taken to mean a national of a Member State as described in Article 1 of Directive 64/221/EEC of the Council of the European [Union] of 25 February 1964 and is used in that legislation to determine the category of persons to whom [Article 45 of the Treaty on the Functioning of the European Union], Regulation (EEC) No 1612/68 of 15 October 1968 and Directives 64/221/EEC of 25 February 1964 and 68/360/EEC of 15 October 1968 adopted by the Council of the European [Union] in application of [Article 45 TFEU] apply, also be taken to mean a

national of a Member State who in the territory of another Member State pursues an activity, whether paid or not as a employed person, or provides services to such a limited extent that in so doing he earns income which is less than that which in the last- mentioned Member State is considered as the minimum necessary to enable him to support himself?

2. In the answer to Question 1, should a distinction be drawn between, on the one hand, persons who apart from or in addition to their income derived from limited employment have other income (for example from property or from the employment of their spouses living with them who are not nationals of a Member State) as a result of which they have sufficient means of support as referred to in Question 1 and, on the other hand, persons who do not have such additional income at their disposal and yet for reasons of their own wish to make do with an income less than what is generally considered to be the minimum - required ?
  3. Assuming that Question 1 is answered in the affirmative, can the right of such a worker to free admission into and establishment in the Member State in which he pursues or wishes to pursue an activity or provides or wishes to provide services to a limited extent still be relied upon if it is demonstrated or seems likely that his chief motive for residing in that Member State is for a purpose other than the pursuit of an activity or provision of services to a limited extent?"
- 5 Although these questions, as worded, are concerned not only with freedom of movement for workers but also with freedom of establishment and freedom to provide services, it is apparent from the particulars of the dispute in the main proceedings that the national court really has in mind only the issue of freedom of movement for workers. The answers to be given should therefore be confined to those aspects which have a bearing on that freedom.

First and second questions

- 6 In its first and second questions, which should be considered together, the national court is essentially asking whether the provisions of [Union] law relating to freedom of movement for workers also cover a national of

a Member State whose activity as an employed person in the territory of another Member State provides him with an income less than the minimum required for subsistence within the meaning of the legislation of the second Member State. In particular the court asks whether those provisions cover such a person where he either supplements his income from his activity as an employed person with other income so as to arrive at that minimum or is content with means of support which fall below it.

- 7 Under [Article 45 TFEU] freedom of movement for workers is to be secured within the [Union]. That freedom is to entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and is to include the right, subject to limitations justified on grounds of public policy, public security or public health, to accept offers of employment actually made, to move freely within the territory of Member States for this purpose, to stay in a Member State for the purpose of employment and to remain there after the termination of that employment.
- 8 That provision was implemented *inter alia* by Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the [Union] (Official Journal, English Special Edition 1968 (II), p. 475) and Council Directive 68/360/EEC of the same date on the abolition of restrictions on movement and residence within the [Union] for workers of the Member States and their families (Official Journal, English Special Edition 1968 (II), p. 485). Under Article 1 of Regulation (EEC) No 1612/68 any national of a Member State is, irrespective of his place of residence, to have the right to take up activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State.
- 9 Although the rights deriving from the principle of freedom of movement for workers and more particularly the right to enter and stay in the territory of a Member State are thus linked to the status of 'a worker or of a person pursuing an activity as an employed person or desirous of so doing, the terms "worker" and "activity as an employed person" are not expressly defined in any of the provisions on the subject. It is appropriate, therefore, in order to determine their meaning, to have

recourse to the generally recognized principles of interpretation, beginning with the ordinary meaning to be attributed to those terms in their context and in the light of the objectives of the Treaty.

- 10 The Netherlands and Danish Governments have maintained that the provisions of [Article 45 TFEU] may only be relied upon by persons who receive a wage at least commensurate with the means of subsistence considered as necessary by the legislation of the Member State in which they work, or who work at least for the number of hours considered as usual in respect of full-time employment in the sector in question. In the absence of any provisions to that effect in [Union] legislation, it is suggested that it is necessary to have recourse to national criteria for the purpose of defining both the minimum wage and the minimum number of hours.
- 11 That argument cannot, however, be accepted. As the Court has already stated in its judgment of 19 March 1964 in Case 75/63 *Hoekstra (née Unger)* [1964] ECR 1977 the terms "worker" and "activity as an employed person" may not be defined by reference to the national laws of the Member States but have a [Union] meaning. If that were not the case, the [Union] rules on freedom of movement for workers would be frustrated, as the meaning of those terms could be fixed and modified unilaterally, without any control by the [Union] institutions, by national laws which would thus be able to exclude at will certain categories of persons from the benefit of the Treaty.
- 12 Such would, in particular, be the case if the enjoyment of the rights conferred by the principle of freedom of movement for workers could be made subject to the criterion of what the legislation of the host State declares to be a minimum wage, so that the field of application *ratione personae* of the [Union] rules on this subject might vary from one Member State to another. The meaning and the scope of the terms "worker" and "activity as an employed person" should thus be clarified in the light of the principles of the legal order of the [Union].
- 13 In this respect it must be stressed that these concepts define the field of application of one of the fundamental freedoms guaranteed by the Treaty and, as such, may not be interpreted restrictively.

14 In conformity with this view the recitals in the preamble to Regulation (EEC) No 1612/68 contain a general affirmation of the right of all workers in the Member States to pursue the activity of their choice within the [Union], irrespective of whether they are permanent, seasonal or frontier workers or workers who pursue their activities for the purpose of providing services. Furthermore, although Article 4 of Directive 68/36/EEC grants the right of residence to workers upon the mere production of the document on the basis of which they entered the territory and of a confirmation of engagement from the employer or a certificate of employment, it does not subject this right to any condition relating to the kind of employment or to the amount of income derived from it.

15 An interpretation which reflects the full scope of these concepts is also in conformity with the objectives of the Treaty which include, according to [Article 3 TEU], the abolition, as between Member States, of obstacles to freedom of movement for persons, with the purpose *inter alia* of promoting throughout the [Union] a harmonious development of economic activities and a raising of the standard of living. Since part-time employment, although it may provide an income lower than what is considered to be the minimum required for subsistence, constitutes for a large number of persons an effective means of improving their living conditions, the effectiveness of [Union] law would be impaired and the achievement of the objectives of the Treaty would be jeopardized if the enjoyment of rights conferred by the principle of freedom of movement for workers were reserved solely to persons engaged in full-time employment and earning, as a result, a wage at least equivalent to the guaranteed minimum wage in the sector under consideration.

16 It follows that the concepts of "worker" and "activity as an employed person" must be interpreted as meaning that the rules relating to freedom of movement for workers also concern persons who pursue or wish to pursue an activity as an employed person on a part-time basis only and who, by virtue of that fact obtain or would obtain only remuneration lower than the minimum guaranteed remuneration in the sector under consideration. In this regard no distinction may be made between those who wish to make do with their income from such an activity and those who supplement that income with other income, whether the latter is derived from property or from the employment of a member of their family who accompanies them.

17 It should however be stated that whilst part-time employment is not excluded from the field of application of the rules on freedom of movement for workers, those rules cover only the pursuit of effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary. It follows both from the statement of the principle of freedom of movement for workers and from the place occupied by the rules relating to that principle in the system of the Treaty as a whole that those rules guarantee only the free movement of persons who pursue or are desirous of pursuing an economic activity.

18 The answer to be given to the first and second questions must therefore be that the provisions of [Union] law relating to freedom of movement for workers also cover a national of a Member State who pursues, within the territory of another Member State, an activity as an employed person which yields an income lower than that which, in the latter State, is considered as the minimum required for subsistence, whether that person supplements the income from his activity as an employed person with other income so as to arrive at that minimum or is satisfied with means of support lower than the said minimum, provided that he pursues an activity as an employed person which is effective and genuine.

### Third question

19 The third question essentially seeks to ascertain whether the right to enter and reside in the territory of a Member State may be denied to a worker whose main objectives, pursued by means of his entry and residence, are different from that of the pursuit of an activity as an employed person as defined in the answer to the first and second questions.

20 Under [Article 45(3) TFEU] the right to move freely within the territory of the Member States is conferred upon workers for the "purpose" of accepting offers of employment actually made. By virtue of the same provision workers enjoy the right to stay in one of the Member States "for the purpose" of employment there. Moreover, it is stated in the preamble to Regulation (EEC) No 1612/68 that freedom of movement for workers entails the right of workers to move freely within the [Union] "in order to" pursue activities as employed persons, whilst Article 2 of Directive 68/360/EEC requires the Member States to grant workers the

right to leave their territory "in order to" take up activities as employed persons or to pursue them in the territory of another Member State.

21 However, these formulations merely give expression to the requirement, which is inherent in the very principle of freedom of movement for workers, that the advantages which [Union] law confers in the name of that freedom may be relied upon only by persons who actually pursue or seriously wish to pursue activities as employed persons. They do not, however, mean that the enjoyment of this freedom may be made to depend upon the aims pursued by a national of a Member State in applying for entry upon and residence in the territory of another Member State, provided that he there pursues or wishes to pursue an activity which meets the criteria specified above, that is to say, an effective and genuine activity as an employed person.

22 Once this condition is satisfied, the motives which may have prompted the worker to seek employment in the Member State concerned are of no account and must not be taken into consideration.

23 The answer to be given to the third question put to the Court by the Raad van State must therefore be that the motives which may have prompted a worker of a Member State to seek employment in another Member State are of no account as regards his right to enter and reside in the territory of the latter State provided that he there pursues or wishes to pursue an effective and genuine activity.

### **Costs**

The costs incurred by the Danish, French, Italian and Netherlands Governments and by the Commission, which have 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 before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Judicial Division of the Raad van State of the Netherlands by interlocutory judgment of 28 November 1980, hereby rules:

- 1. The provisions of [Union] law relating to freedom of movement for workers also cover a national of a Member State who pursues, within the territory of another Member State, an activity as an employed person which yields an income lower than that which, in the latter State, is considered as the minimum required for subsistence, whether that person supplements the income from his activity as an employed person with other income so as to arrive at that minimum or is satisfied with means of support - lower than the said minimum, provided that he pursues an activity as an employed person which is effective and genuine.**
- 2. The motives which may have prompted a worker of a Member State to seek employment in another Member State are of no account as regards his right to enter and reside in the territory of the latter State provided that he pursues or wishes to pursue an effective and genuine activity.**

	Mertens de Wilmars	Bosco Mackenzie	Touffait
Due	Pescatore	Stuart	
Koopmans	Everling	Chloros	O'Keeffe
			Grevisse

Delivered in open court in Luxembourg on 23 March 1982.

P. Heim  
Registrar

J. Mertens de Wilmars  
President