

Parties to the main proceedings

Applicant: Minister voor Vreemdelingenzaken en Integratie

Defendant: R.N.G. Eind

Re:

Reference for a preliminary ruling — Nederlandse Raad van State — Interpretation of Article 10 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) and of Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26) — Interpretation of Article 18 EC — Right of residence of a family member who is a national of a non-member country — Existence of such a right in the absence of genuine and actual work on the part of the worker — Return of the worker to his or her State of origin — No right of residence in that State for the family member

Operative part of the judgment

- 1) *In the event of a Community worker returning to the Member State of which he is a national, Community law does not require the authorities of that State to grant a right of entry and residence to a third-country national who is a member of that worker's family because of the mere fact that, in the host Member State where that worker was gainfully employed, that third-country national held a valid residence permit issued on the basis of Article 10 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.*
- 2) *When a worker returns to the Member State of which he is a national, after being gainfully employed in another Member State, a third-country national who is a member of his family has a right under Article 10(1)(a) of Regulation No 1612/68 as amended by Regulation No 2434/92, which applies by analogy, to reside in the Member State of which the worker is a national, even where that worker does not carry on any effective and genuine economic activities. The fact that a third-country national who is a member of a Community worker's family did not, before residing in the Member State where the worker was employed, have a right under national law to reside in the Member State of which the worker is a national has no bearing on the determination of that national's right to reside in the latter State.*

⁽¹⁾ OJ C 296, 26.11.2005.

Judgment of the Court (Grand Chamber) of 18 December 2007 (reference for a preliminary ruling from the Arbetsdomstolen — Sweden) — Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1, Byggettan, Svenska Elektrikerförbundet

(Case C-341/05) ⁽¹⁾

(Freedom to provide services — Directive 96/71/EC — Posting of workers in the construction industry — National legislation laying down terms and conditions of employment covering the matters referred to in Article 3(1), first subparagraph, (a) to (g), save for minimum rates of pay — Collective agreement for the building sector the terms of which lay down more favourable conditions or relate to other matters — Possibility for trade unions to attempt, by way of collective action, to force undertakings established in other Member States to negotiate on a case by case basis in order to determine the rates of pay for workers and to sign the collective agreement for the building sector)

(2008/C 51/15)

Language of the case: Swedish

Referring court

Arbetsdomstolen

Parties to the main proceedings

Applicant: Laval un Partneri Ltd

Defendants: Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avd. 1, Byggettan, Svenska Elektrikerförbundet

Re:

Reference for a preliminary ruling — Arbetsdomstolen — Interpretation of Articles 12 EC and 49 EC and of Articles 3(1); 3(7); 3(8); 3(10) and Article 4 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1) — Collective action against a construction company which supplied paid workers in a Member State other than that of its head office and which did not enter into a collective agreement in that State.

Operative part of the judgment

- 1) Article 49 EC and Article 3 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services are to be interpreted as precluding a trade union, in a Member State in which the terms and conditions of employment covering the matters referred to in Article 3(1), first subparagraph, (a) to (g) of that directive are contained in legislative provisions, save for minimum rates of pay, from attempting, by means of collective action in the form of a blockade ('blockad') of sites such as that at issue in the main proceedings, to force a provider of services established in another Member State to enter into negotiations with it on the rates of pay for posted workers and to sign a collective agreement the terms of which lay down, as regards some of those matters, more favourable conditions than those resulting from the relevant legislative provisions, while other terms relate to matters not referred to in Article 3 of the directive;
- 2) Where there is a prohibition in a Member State against trade unions undertaking collective action with the aim of having a collective agreement between other parties set aside or amended, Articles 49 EC and 50 EC preclude that prohibition from being subject to the condition that such action must relate to terms and conditions of employment to which the national law applies directly.

(¹) OJ C 281, 12.11.2005.

Judgment of the Court (Grand Chamber) of 18 December 2007 (Reference for a preliminary ruling from the Sozialgericht Berlin and Landessozialgericht Berlin-Brandenburg — Germany) — Doris Habelt (C-396/05), Martha Möser (C-419/05) and Peter Wachter (C-450/05) v Deutsche Rentenversicherung Bund

(Joined Cases C-396/05, C-419/05 and C-450/05) (¹)

(Social security — Regulation (EEC) No 1408/71 — Annexes III and VI — Freedom of movement for persons — Articles 18 EC, 39 EC and 42 EC — Old-age benefits — Periods of contribution completed outside the Federal Republic of Germany — Not exportable)

(2008/C 51/16)

Language of the case: German

Referring courts

Sozialgericht Berlin and Landessozialgericht Berlin-Brandenburg

Parties to the main proceedings

Applicants: Doris Habelt (C-396/05), Martha Möser (C-419/05) and Peter Wachter (C-450/05)

Defendant: Deutsche Rentenversicherung Bund

Re:

Reference for a preliminary ruling — Sozialgericht Berlin — Interpretation of Article 42 of the EC Treaty — Validity of Annex VI D. (Germany), No 1, to Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English special edition, 1971 (II), p. 416), as amended — Refusal to pay German old-age benefits in respect of periods of employment completed between 1939 and 1945 in the Sudetenland to a German national who has taken up residence in Belgium

Operative part of the judgment

- 1) The provisions of Annex VI, Part C, headed 'Germany', point 1, to Regulation (EEC) No 1408/71 of the Council 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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, are incompatible with freedom of movement for persons, and, in particular, with Article 42 EC, in that they make it possible, in circumstances such as those in the main proceedings, to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed between 1937 and 1945 on the parts of the territory where the social security legislation of the German Reich was applicable, but which are outside the territory of the Federal Republic of Germany, subject to the condition that the recipient reside in the territory of that Member State.
- 2) The provisions of Annex III, Parts A and B, point 35, headed 'Germany-Austria', under (e), to Regulation No 1408/71, as amended, are incompatible with Article 39 EC and Article 42 EC in that they make it possible, in circumstances such as those in the main proceedings, where the recipient resides in Austria, to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed under the law on pension rights acquired by contribution abroad (Fremdrentengesetz) between 1953 and 1970 in Romania subject to the condition that the recipient reside in the territory of the Federal Republic of Germany.
- 3) The provisions of Annex VI, Part C, headed 'Germany', point 1, to Regulation No 1408/71, as amended, are incompatible with freedom of movement for persons and, in particular, with Article 42 EC, in that they make it possible, in circumstances such as those in the main proceedings, to make the inclusion, for the purposes of the payment of old-age benefits, of contribution periods completed under the law on pension rights acquired by contribution abroad between 1953 and 1970 in Romania subject to the condition that the recipient reside in the territory of the Federal Republic of Germany.

(¹) OJ C 22, 28.1.2006.
OJ C 22, 25.3.2006.