Emir Gül v. Regierungspräsident Düsseldorf (Case 131/85)

Before the Court of Justice of the European Communities (4th Chamber)

ECJ (4th Chamber)

(Presiding, Bahlmann P.C.; Koopmans, Bosco, O'Higgins and Schockweiler JJ.) Sig. Federico Mancini Advocate General.

7 May 1986

Reference from Germany by the Verwaltungsgericht (Administrative Court) Gelsenkirchen under Article 177 EEC.

Aliens. Family. Right to work. Professions. Medicine.

In order to pursue an occupation, such as the medical profession, pursuit of which is governed by special rules, the non-EEC spouse of a migrant worker must meet two requirements: he must have the qualifications necessary for pursuit of that occupation in accordance with the laws of the host member-State; and he must observe the specific rules governing the pursuit of that occupation. Those requirements must be the same as those imposed by the host member-State on its own nationals. [15]

Aliens. Family. Professions. Medicine.

The right of a non-EEC spouse of a Community migrant worker to take up any activity as an employee carries with it the right to pursue occupations which are subject to a system of administrative authorisation and to special rules governing their exercise, such as the medical profession, if the spouse shows that he has the professional qualifications and diplomas required by the host member-State for the exercise of that occupation. [18]

Aliens. Family.

A non-EEC spouse of a Community migrant worker is entitled to the same rights to work as are enjoyed by the working spouse. Where therefore, as under Article 3(1) of Regulation 1612/68, the migrant worker is entitled to access to a regulated occupation on the same terms as local nationals, the non-EEC spouse

is entitled to the same access and 'national treatment'. [20] & [26]

Aliens. Family. Right to work. Professions. Qualifications.

The non-EEC spouse of a Community migrant worker to whom *502 Article 11 of Regulation 1612/68 applies is entitled to be treated in the same way as a local national with regard to access, as an employee, to the medical profession and the practice of that profession, whether his qualifications are recognised under the law of the host State alone or pursuant to Directive 75/363 on doctors' training. [30]
The Court *interpreted* Articles 3(1) and 11 of Regulation 1612/68 *in the context of* the Cypriot husband of an English wife, both living in Germany where the wife worked and the husband had qualified as an anaesthesiologist but had been refused a licence to practise, *to the effect that* he was entitled to practise his trade as an employee on the same terms as a German national and for that purpose he was qualified if he held German qualifications or other qualifications which were to be recognised in Germany under Directive 75/363.

Representation

Albert Bleckmann, Professor of Public Law and Public International Law at the Wilhelms-Universität of Westphalia, for the plaintiff.
O. Piel for the defendant.
Friedrich Wilhelm Albrecht, Legal Adviser to the E.C. Commission, with him Bernd Schultze, of the Max-Planck-Institut für ausländisches und internationales Sozialrecht, Munich, for the Commission as *amicus curiae*.

The following cases were referred to by the Advocate General:
1. Diatta v. Land Berlin (267/83), 13 February 1985: [1986] 2 C.M.L.R. 164 Gaz:267/83
2. Fracas v. Belgium (7/75), 17 June 1975: [1975] E.C.R 679, [1975] 2 C.M.L.R. 442. Gaz:7/75

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Opinion of the Advocate General (Sig. Federico Mancini)

1

In the course of proceedings between Emir Gül and the Regierungspräsident Düsseldorf, the Verwaltungsgericht Gelsenkirchen has asked the Court to rule on the interpretation of a number of provisions of Council Regulation 1612/68 on freedom of movement for workers within the Community. The national court wishes to know in particular whether a national of a non-member country may claim to be entitled to authorisation to practise medicine in the member-State in

which he resides with his wife, an employed person who is a national of another member-State.

*503 **2**

Mr. Gül is a Cypriot national of Turkish origin; since 1971 he has been married to a British national who has the right of abode in the United Kingdom under the British Nationality Act 1971. The three children of the marriage are also of British nationality. Mr. Gül obtained a degree in medicine from the University of Istanbul, and on 1 October 1977 he obtained temporary authorisation to practise medicine in the Federal Republic of Germany in order to permit him to specialise in anaesthesiology. Before that authorisation was issued, he formally undertook to return to his country of origin or, should that be impossible, to go to another developing country after completing or discontinuing his training as a specialist. The authorisation was extended three times (20 June 1979, 8 July 1981 and 6 July 1982) and each time Mr. Gül was informed that he could not rely on further extensions. On 25 October 1982 the Ärztekammer (Medical Society) Nordrhein granted him a certificate of specialisation as an anaesthetist. He then applied for permanent authorisation to practise, stating that he intended to remain with his family in Germany and acquire German nationality. The Regierungspräsident Düsseldorf extended his provisional authorisation until 31 March 1983. A further request for an extension, in which Mr. Gül gave an assurance that he would not seek further extensions, was at first rejected by the authorities on 1 February; he was then granted an extension until 31 December 1983, either because the Marienhospital Altenessen still had need of his services or because Mrs. Gül was undergoing a difficult pregnancy.

By letters of 5 July and 3 September 1983 Mr. Gül again requested permanent authorisation; this time he pointed out that since his wife and children were British nationals and his wife was employed he was entitled under Article 11 of Regulation 1612/68 to take up employment in Germany. In both letters Mr. Gül also pointed out that his own residence permit expired on 30 September 1986, that his wife's earnings as a hairdresser were not sufficient to provide a decent living for his family and that if authorisation was not granted he would be obliged to return to Turkey or Cyprus.

By letter of 19 October 1983 the Regierungspräsident informed Mr. Gül that his application was regarded as an application for a licence to practise; since the laws in force did not permit the issue of a licence, it asked whether he intended to maintain that application. On 19 October 1983 Mr. Gül replied that his application should be taken as requesting an extension of his authorisation for two years. By a decision of 2 November 1983 the application was rejected on the grounds that the requirements laid down in section 10(2) and (3) of the Bundesärzteordnung (Federal Regulation on the Practice of Medicine) 1977 *504 . The Regierungspräsident stated that the usual practice was to grant authorisation under section 10(3) of the Bundesärzteordnung to foreign doctors who were married to German nationals and were engaged in employment, since such persons had a right of residence. Such authorisation was not however granted to foreign doctors married to nationals of a member-State of the EEC, since it could

be expected that such a person would practise in the country of which his spouse was a national and that the sopuse would ultimately return to his country of origin in spite of his right of establishment in Germany.
Mr. Gül's administrative appeal against that decision was rejected, and he brought proceedings before the Verwaltungsgericht Gelsenkirchen for the annulment of the decision of 2 November 1983 and for an order requiring the authorities to grant him an authorisation for an unlimited period or for a period of two years. By order of 6 March 1984 that court upheld Mr. Gül's application for interim relief, brought at the same time as the main action; holding that Community law was applicable, it ordered the Regierungspräsident to issue a provisional authorisation for a period of two years, subject to the condition that Mrs. Gül continued to work in Germany as an employed person.
On appeal by the authorities the Third Chamber of the Oberverwaltungsgericht Münster took the view that the interim order was based on an erroneous application of Community law and therefore quashed it by a decision of 19 September 1984. In the main action, however, on 28 March 1985 the Seventh Chamber of the Verwaltungsgericht Gelsenkirchen stayed the proceedings and referred the following questions to the Court for a preliminary ruling pursuant to Article 177 EEC:
1. Does the right of a person who is a national of a non-member country to take up any activity as an employed person throughout the territory of a member-State, pursuant to Article 11 of Regulation 1612/68, also entitle that person to the grant of a special authorisation for the exercise of a particular occupation (in this case, the medical profession) which under national law may only be taken up and pursued in accordance with an authorisation issued by the authorities pursuant to special legal provisions regarding occupations, where that person fulfils the other applicable conditions?
2. If the answer to Question 1 is in the affirmative: Can the national of a non-member country so entitled under Article 11 of that regulation rely on the first indent of Article 3(1) of the regulation?
3. If the answer to Question 2 is in the affirmative: Does the first paragraph of Article 3(1) of the regulation give the national of a non-member country so entitled under Article 11 the right to be treated in the same way as a national of the member-State concerned in regard to the taking up and pursuit of an occupation? If not, what is the legal significance of that provision?
4. If Questions 1 to 3 are answered in the affirmative: In deciding whether the provisions laid down by law, regulation or administrative action or the administrative practices regarding admission to a *505 particular occupation have the effect of discriminating against foreigners, is it sufficient to examine in isolation the provisions whose application is in question in the specific case (here, section 10 of the Bundesärzteordnung, as last amended on 16 August 1977 [FN1]), or is it necessary to assess as a whole the cumulative effect of all the provisions governing admission to that occupation (here, in particular sections 2, 3 and 10 of the Bundesärzteordnung in conjunction with Article 12 of the Grundgesetz (Constitution) of the Federal Republic of Germany)?

FN1 [1977] I Bgb1. 1581.

5. If Questions 1 to 3 are answered in the affirmative: Does the right to be treated in the same way as a national of the member-State concerned, with regard to the taking up and pursuit of the activities of a doctor, apply even where the national of a non-member country entitled under Article 11 of the regulation to take up employment has only 'other evidence of formal qualifications' as referred to in Article 1(5) in conjunction with Article 6 of Council Directive 75/363 of 16 June 1975 concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of activities as doctors, [FN2] on the basis of which the member-State, under its own rules, authorises its own nationals and those of other member-States to take up and pursue the activities of a doctor?

FN2 [1975] O.J. L167/14.

6. If Question 5 is answered in the negative: In regard to the national of a non-member country entitled to take up employment under Article 11 of Regulation 1612/68 who, on the basis of a medical qualification from a non-member country, has practised medicine in a member-State with an authorisation issued by that State for more than six years and has obtained a certificate in specialised medicine in that State corresponding to the provisions of Article 2 of Directive 75/363, can that member-State still rely on the fact that he does not satisfy the conditions for taking up and pursuing the activities of a doctor laid down in Article 1(1) of that directive?

3

For the purposes of a better understanding of the questions referred it is appropriate to undertake a summary review of the German law regarding access to the medical profession and the relevant Community law. The German rules on the matter are contained in the Bundesärzteordnung. Under section 2(1) any person wishing to practise medicine must possess a licence. However, only three categories of persons, if they fulfil certain conditions, are entitled to such a licence: German nationals (within the meaning of Article 116 of the Grundgesetz), nationals of other member-States of the Community and stateless persons. Nationals of non-member countries may obtain a licence only in particular circumstances (for example, in the interests of public health: section 3(3)).
It is possible, however, to practise medicine without a licence on the basis of a temporary authorisation (section 10 of the Bundesärzteordnung). Such an authorisation is granted for a *506 maximum period of four years, but it may be extended at the discretion of the authority, which determines whether its extension would contribute to improving the ratio of doctors to the general population (where appropriate, in a particular region). Following an amendment of section 10(3) in March 1985 the granting of political asylum to the applicant or his marriage to a German national are also grounds for extension. Even before that amendment, however, marriage to a German national was considered a

ground for extension pursuant to a circular of the Ministry of Labour, Health and Social Affairs of Nordrhein Westfalen. [FN3]

FN3 [1980] Ministerialblatt 1751.

It should be emphasised that there are significant differences between a licence and an authorisation, even leaving aside the discretionary nature of the latter. For the grant of an authorisation it is sufficient that the applicant should have a 'complete' medical training; in order to qualify for a licence, on the other hand, the applicant's training must be equivalent to German training.
From the point of view of Community law the most important provisions are those of Regulation 1612/68. As we know, according to the fifth recital in the preamble to that regulation, the right of freedom of movement 'requires that equality of treatment shall be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons ... and also that obstacles to the mobility of workers shall be eliminated, in particular as regards the worker's right to be joined by his family and the conditions for the integration of that family into the host country'. In that spirit the first indent of Article 3(1) provides that ' provisions laid down by law, regulation or administrative action or administrative practices of a member-State shall not apply ... where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals'. For the purposes of this case, however, the most important provision is Article 11. It provides that 'where a national of a member-State is pursuing an activity as an employed or self-employed person in the territory of another member-State, his spouse and those of the children who are under the age of 21 years or dependent on him shall have the right to take up any activity as an employed person throughout the territory of that same State, even if they are not nationals of any member-State'.

4

Let us turn, then, to the questions referred to the Court. In the first question the national court asks whether the right granted by the provision just cited to a national of a non-member country *507 entails the right to be authorised to pursue an occupation, where under the law of a member-State that occupation may only be pursued by persons holding an authorisation granted by the authorities. The reply depends on the interpretation to be given to the words 'shall have the right to take up any activity as an employed person' in Article 11. It is necessary in particular to determine whether the distinction discerned by the Regierungspräsident between access to the general labour market and access to employment requiring specific authorisation is justified.
I agree with the point of view of Mr. Gül and the E.C. Commission that there are insurmountable arguments based on the wording and intent of Article 11 against the argument of the German authorities to the effect that that Article concerns only access to the general labour market. The first are well known. The Regierungspräsident may rely on the wording of the German version of Article

11, which does distinguish between 'eine Tätigkeit im Lohn- oder Gehaltsverhältnis'. However, the other versions (French: 'touteactivit1e'; English: 'any activity'; Italian: 'qualsiasiattivit2a) make it quite clear that no distinction can be made between the two types of access. The same approach, moreover, is taken in the judgment of the Court in Case 267/83, Diatta v. Land Berlin. [FN4]

FN4 [1986] 2 C.M.L.R. 164 At Para. [19].

That conclusion is strongly supported by the purpose of the measure in which Article 11 is included. Based on Article 49 of the Treaty, Regulation 1612/68 is intended to provide complete freedom of movement for workers and ensure that migrant workers are treated in the same way as nationals of the host State. That equal treatment is not confined to the employment relationship. As Trabucchi A.G. said in his Opinion in Case 7/75, MR. and Mrs. F. v. Belgium, [FN5] 'the migrant worker is not regarded by Community law--nor is he by the internal legal systems--as a mere source of labour but is viewed as a human being. In this context the Community legislature is not concerned solely to guarantee him the right to equal pay and social benefits in connection with the employer-employee relationship, it also emphasised the need to eliminate obstacles to the mobility of the worker, *inter alia* with regard to the "conditions for the integration of his family into the host country"' (see the fifth recital in the preamble to Regulation 1612/68).

FN5 [1975] E.C.R. 679 At 696, [1975] 2 C.M.L.R. 442 At 450.

That being the case, the function of Article 11 would be called in question if a national of a non-member country, married to a national of a member-State, were not permitted to take up an employment of his choice appropriate to his training. If he is in fact prohibited from taking such employment, the integration of *508 the family in the State to which his spouse has moved will be made at least more difficult and the freedom of movement guaranteed to the spouse under Article 48 of the Treaty will be impaired. In other words, an obstacle of the very kind which the adoption of Regulation 1612/68 was intended to remove will be created.
On this issue I therefore conclude that the expression 'any activity as an employed person' must mean all occupational activities pursued in the context of an employment relationship, including those in respect of which the rules governing a particular occupation require an administrative authorisation. It is clear that if such occupations were excluded, if the rules governing them were exempted from the principles of Community law, the member-States could deprive the right to freedom of movement laid down in Article 48 of all practical effect in relation to large sectors of employment.
Nor let it be objected that in the case of access to the medical profession the recognition of such a right is subject to exceptions justified on grounds of public health. The Regierungspräsident, who raised that argument, did not bother to provide a proper logical basis for it; in particular, he did not explain why, according to the administrative practice in Nordrhein Westfalen, the exception

should apply to nationals of non-member countries married to a national of a member-State other than the Federal Republic of Germany but not to their compatriots who have had the good fortune to marry a German national.

5

The second question concerns the relationship between Article 11 and the first indent of Article 3(1) of Regulation 1612/68. In particular, the national court wishes to know whether a national of a non-member country entitled to take up employment under the first provision may also rely on the second, according to which, as I have already pointed out, 'provisions laid down by law, regulation or administrative action or administrative practices of a member-State shall not apply where they limit [access to employment] or subject it to conditions not applicable in respect of their own nationals'. I think the reply to that question must be in the affirmative. The plaintiff in the main proceedings and the Commission also propose an affirmative reply. Although they concur in the result, their arguments differ, however, as to the basis for it.

According to the Commission, Title I (Articles 1 to 6) of the regulation, on eligibility for employment, concerns only Community nationals: the first indent of Article 3(1) therefore does not apply to nationals of non-member countries. They are covered instead by Article 11, under Title III, on workers' families. According to the system established by the regulation, however, the spouse of a *509 worker who is a national of a member-State, whatever that spouse's nationality, has a secondary right identical in extent to the primary right granted to the worker. In the light of that general rule, and taking into account its relation to Article 48 EEC, Article 11 therefore means, although it is not stated explicitly, that nationals of non-member countries married to a worker who is a national of a member-State also have a right to equal treatment and access to employment.

Mr. Gül has followed another path, one which seems to me less complicated and more persuasive. If it is true that Article 3 is included in the title concerning access to employment and that Article 11 appears in the title on workers' families, it is none the less undeniable that the second provision expressly mentions the right to 'take up' any activity. It should also be noted that Article 3 provides for equal treatment between the nationals of a member-State and 'foreign nationals'; in the scheme of the regulation the latter category includes both nationals of member-States and nationals of non-member countries referred to in Article 11. It follows that since the regulation must be taken as a coherent and rational whole, Article 3 must also apply to a national of a non-member country who is married to a national of a non-member state.

6

The third question is designed to ascertain whether a national of a non-member country entitled to take up employment under Article 11 has the right under Article 3(1) to be treated in the same way as a national of the member-State concerned with regard to the taking up and pursuit of an occupation.

I have stated above that Article 3 is fully applicable to persons entitled to take up

employment under Article 11. With regard to such persons provisions and practices which limit the access to and pursuit of employment, or subject them to conditions not applicable in respect of a State's own nationals, are therefore inappropriate. To that obvious conclusion it must be added that: (a) the list of such provisions and practices contained in Article 3(2) must be regarded as illustrative, not exhaustive, as is shown by the phrase 'in particular' in the introductory sentence of that provision; (b) under the second paragraph of Article 3(1), only restrictions relating to the linguistic knowledge required by reason of the nature of the employment are permissible.

7

In the fourth question the Verwaltungsgericht asks how far it is necessary to take the examination of national law in order to determine whether the rules regarding admission to an occupation *510 discriminate against foreigners. In the order of that court it is pointed out that in spite of its apparent neutrality section 10 of the Bundesärzteordnung is a means of control specifically intended to work to the advantage of doctors who are German nationals.
It is obvious that under Article 177 this Court has no power to interpret provisions of national law or to rule on their compatibility with Community law. It will be for the national court, therefore, to ascertain whether national provisions governing access to the medical profession discriminate, openly or in a disguised manner, against persons to whom Article 11 of Regulation 1612/68 applies. As the Commission has pointed out, in carrying out that examination the national court must compare the legal situations of nationals of the State concerned and of persons to whom Article 11 applies, and the application of national rules to nationals of non-member countries married to nationals of that State or to nationals of other member-States. In doing so it will be helpful to determine whether in support of a refusal to grant authorisation to practise medicine to persons to whom Article 11 applies reference is made to such considerations as the number of doctors needed by the population.
It should be pointed out, again for the guidance of the national court, that the rights guaranteed by the Treaty and by measures implementing it cannot be waived by the persons in whom they are vested.

8

The fifth question is intended to ascertain whether the right to be treated in the same way as a national of the member-State concerned applies even where the national of a non-member country entitled to take up employment under Article 11 has only 'other evidence of formal qualifications' as referred to in Article 1(5) and Article 6 of Council Directive 75/363.
On this issue I need merely point out that: (a) the directive referred to by the national court is part of a set of measures intended mainly to provide for recognition of diplomas issued in member-States with a view to co-ordinating the provisions governing the activities of doctors; (b) it does not apply directly to diplomas issued by non-member countries; Article 1(5), however, allows

member-States to grant access to the medical profession to holders of diplomas obtained in a non-member country; (c) the directive does not create rights in the area of freedom of movement. The right to be treated in the same way as a national of the State concerned and hence the rule that no obstacles may be raised to the recognition of evidence of formal qualifications must therefore flow directly from Article 48(2) of the Treaty (*cf.* section 4 of this Opinion), especially when that State has taken advantage of the possibility offered by Article 1(5) of Directive 75/363.

*511 In view of the replies to the preceding questions, the sixth question appears to me to be redundant.

9

On the basis of the foregoing considerations I propose that the Court give the following replies to the questions referred to it by the order of 28 May 1985 of the Seventh Chamber of the Verwaltungsgericht Gelsenkirchen in the proceedings pending before it between Emir Gül and the Regierungspräsident Düsseldorf:

(1) Article 11 of Regulation 1612/68 must be interpreted as meaning that where a national of a member-State resides in another member-State and carries on an activity as an employed or self-employed person there his spouse is entitled to take up and pursue any activity whatever as an employed person in that State. That right extends to activities which under national law may be pursued only in accordance with an administrative authorisation issued pursuant to special rules governing the profession, so long as the person concerned fulfils all the applicable conditions.

(2) A national of a non-member country to whom Article 11 of Regulation 1612/68 applies may rely on the first indent of Article 3(1) of that regulation.

(3) Under the first indent of Article 3(1) of Regulation 1612/68 persons to whom Article 11 of that regulation applies are entitled to be treated in the same way as nationals of the State concerned.

(4) It is for the national court to undertake a comprehensive examination of all the provisions regarding access to the medical profession in order to determine whether they have the effect of discriminating against foreign nationals.

(5) The right to be treated in the same way as a national of the State concerned implies that no obstacles may be raised to the recognition of the formal medical qualifications of persons to whom Article 11 of Regulation 1612/68 applies, especially where a member-State has taken advantage of the possibility offered by Article 1(5) of Directive 75/363.

JUDGMENT

[1] By order of 28 March 1985, which was received at the Court on 30 April 1985, the Verwaltungsgericht Gelsenkirchen referred to the Court for a preliminary ruling under Article 177 EEC a number of questions on the interpretation of certain provisions of Community law, in particular Articles 3 and 11 of Council Regulation 1612/68 on freedom of movement for workers within the Community.

*512 [2] Those questions were raised in the course of proceedings brought by

Emir Gül, a doctor of Cypriot nationality, whose spouse is a British national, against the refusal of the competent German authority, the Regierungspräsident Düsseldorf, to renew his authorisation to practise medicine in Germany.

[3] After completing his studies in medicine at the University of Istanbul in 1976 Mr. Gül was authorised by the German authorities to practise medicine in Germany on a temporary basis in order to enable him to undertake further training as a specialist in anaesthesia. That authorisation, which was renewed on a number of occasions, was granted on the express condition that Mr. Gül undertook to return to his own country or to another developing country after completing or discontinuing his training as a specialist in Germany. On 25 October 1982 he was awarded a certificate of specialisation as an anaesthesiologist. On his application his authorisation to practise medicine in an employed capacity was renewed for 1983 on the grounds that his services were still required by the hospital in which he was working as an anaesthetist and that his wife was undergoing a difficult pregnancy.

[4] In 1983 Mr. Gül applied for permanent authorisation to practise, relying on the fact that his wife and the children of their marriage were of British nationality and the fact that his wife worked in Germany as a hairdresser. As the spouse of 'a national of a member-State [who was] pursuing an activity as an employed or self-employed person in the territory of another member-State' he was therefore entitled under Article 11 of Regulation 1612/68 to take up any activity as an employed person throughout the territory of the host member- State.

[5] The Regierungspräsident Düsseldorf refused to grant him permanent authorisation on the ground that under German law such authorisation could be granted only in the form of a licence to practise medicine ('Approbation'). He pointed out that under section 3 of the Bundesärzteordnung (Federal Regulation on the Practice of Medicine) 1977 only German nationals, nationals of other member-States of the Community and stateless persons were entitled to a licence, if they fulfilled the conditions prescribed; in certain special circumstances, which did not exist in the case in point, a licence might be issued to a national of a non-member country. However, a national of a non-member country might practise medicine on the basis of an authorisation ('Erlaubnis') under section 10 of the Bundesärzteordnung. Such an authorisation, the issue of which was within the discretion of the competent authority, could be granted only for a limited period, normally four years, and for a specific post or activity.

[6] Mr. Gül then applied for the renewal of his authorisation for a period of two years, but that application was rejected by the Regierungspräsident, who took the view that there was no ground *513 for granting such a renewal to a foreign doctor married to a Community national; it was not excessive to require him to return to his country of origin, particularly since an increasing number of doctors in Germany were unemployed.

[7] Mr. Gül brought proceedings against the rejection of his application before the Verwaltungsgericht Gelsenkirchen, relying on the right to take up employment provided for by the Community legislation on freedom of movement and on the principle of non-discrimination. That is to say, the practice of the German authorities was to grant authorisation under section 10 of the

Bundesärtzteordnung to doctors who were nationals of a non-member country married to German nationals, but to refuse authorisation to doctors from non-member countries married to nationals of other member-States. Such a practice must, he argued, be regarded as discriminatory with regard to nationals of other member-States.

[8] The Verwaltungsgericht considered that authorisation under section 10 of the Bundesärzteordnung could not be granted to the applicant on the basis of national legislation alone, and that the result of the proceedings therefore depended on whether the applicant was entitled to authorisation under Community law.

[9] In order to resolve that problem the Verwaltungsgericht stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

1. Can the right of a person who is a national of a non-member country to take up any activity as an employed person throughout the territory of a member-State, pursuant to Article 11 of Regulation 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, also entitle that person to the grant of a special authorisation for the exercise of a particular occupation (in this case, the medical profession) which under national law may only be taken up and pursued in accordance with an authorisation issued by the authorities pursuant to special legal provisions regarding occupations, where that person fulfils the other applicable conditions?

2. If the answer to Question 1 is in the affirmative: Can the national of a non-member country so entitled under Article 11 of that regulation rely on the first indent of Article 3(1) of the regulation?

3. If the answer to Question 2 is in the affirmative: Does the first paragraph of Article 3(1) of the regulation give the national of a non-member country so entitled under Article 11 the right to be treated in the same way as a national of the member-State concerned in regard to the taking up and pursuit of an occupation? If not, what is the legal significance of that provision?

4. If Questions 1 to 3 are answered in the affirmative: In deciding whether the provisions laid down by law, regulation or administrative action or the administrative practices regarding admission to a particular occupation have the effect of discriminating against foreigners, is it sufficient to examine in isolation the provisions whose application is in question in the specific case (here, section 10 of the Bundesärzteordnung as last amended on 16 August *514 1977 [FN6]), or is it necessary to assess as a whole the cumulative effect of all the provisions governing admission to that occupation (here, in particular sections 2, 3 and 10 of the Bundesärzteordnung in conjunction with Article 12 of the Grundgesetz (Constitution) of the Federal Republic of Germany)?

FN6 [1977] I Bgb1. 1581.

5. If Questions 1 to 3 are answered in the affirmative: Does the right to be treated in the same way as a national of the member-State concerned, with regard to the taking up and pursuit of the activities of a doctor, apply even where the national

of a non-member country entitled under Article 11 of the regulation to take up employment has only 'other evidence of formal qualifications' as referred to in Article 1(5) in conjunction with Article 6 of the Council Directive of 16 June 1975 concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of activities as doctors (75/363/EEC), [FN7] on the basis of which the member-State, under its own rules, authorises its own nationals and those of other member-States to take up and pursue the activities of a doctor?

FN7 [1975] O.J. L167/14.

6. If Question 5 is answered in the negative: In regard to a national of a non-member country entitled to take up employment under Article 11 of Regulation 1612/68 who, on the basis of a medical qualification from a non-member country, has practised medicine in a member-State with an authorisation issued by that State for more than six years and has obtained a certificate in specialised medicine in that State corresponding to the provisions of Article 2 of Directive 75/363, can that member-State still rely on the fact that he does not satisfy the conditions for taking up and pursuing the activities of a doctor laid down in Article 1(1) of that directive?
[10] Observations were submitted by Mr. Gül, by the Regierungspräsident Düsseldorf and by the Commission.

The first question

[11] Under Article 11 of Regulation 1612/68, the interpretation of which is requested, where a national of a member-State is pursuing an activity as an employed or self-employed person in the territory of another member-State, his spouse and those of the children who are under the age of 21 years or dependent on him are entitled to take up any activity as an employed person throughout the territory of that same State, even if they are not nationals of any member-State.
[12] According to the Regierungspräsident, that provision must be interpreted as meaning that the right to take up employment granted to the spouse of a migrant worker does not include the right to pursue a particular occupation, such as the medical profession, access to which is governed by special legal provisions.
[13] For Mr. Gül and the Commission, on the other hand, it is clear from the very wording of Article 11 of Regulation 1612/68 that the right of the spouse, whatever his nationality, to take up employment covers any activity as an employed person; the spouse *515 must therefore be subject to the same rules regarding access to and pursuit of the occupation as nationals of the host member-State.
[14] The latter argument must be upheld. First of all, Article 11 does not exclude any type of employment from its area of application; furthermore, that provision must be interpreted in the light of the objective of Regulation 1612/68, which is to ensure freedom of movement for workers within the Community. As the preamble to the regulation states, freedom of movement is a fundamental right 'of workers

and their families' (third recital) and it requires that obstacles to the mobility of workers should be eliminated, in particular as regards 'the worker's right to be joined by his family' and 'the conditions for the integration of that family into the host country' (fifth recital).
[15] In order to pursue an occupation, such as the medical profession, the access to and pursuit of which are governed by special rules, the spouse of a migrant worker who is a national of a non-member country must meet two requirements: he must show that he has the qualifications and diplomas necessary for the pursuit of that occupation in accordance with the legislation of the host member-State and must observe the specific rules governing the pursuit of that occupation; those requirements must be the same as those imposed by the host member-State on its own nationals. It appears from the documents before the Court that Mr. Gül meets both these requirements.
[16] In that regard the Regierungspräsident has further argued that freedom of movement for workers and the right of establishment may under Articles 48 and 56 of the EEC Treaty be made subject to restrictions justified on grounds of public health; there is all the more reason for applying such restrictions to spouses of nationals of a member-State who themselves are nationals of non-member countries.
[17] That argument cannot be accepted. The right to restrict freedom of movement on grounds of public health is intended not to exclude the public health sector, as a sector of economic activity and from the point of view of access to employment, from the application of the principles of freedom of movement but to permit member-States to refuse access to their territory or residence there to persons whose access or residence would in itself constitute a danger for public health.
[18] It follows from the foregoing considerations that Article 11 of Regulation 1612/68 must be interpreted as meaning that the right of the spouse of a worker entitled to move freely within the Community to take up any activity as an employed person carries with it the right to pursue occupations subject to a system of administrative authorisation and to special rules governing their exercise, such as the medical profession, if the spouse shows that *516 he has the professional qualifications and diplomas required by the host member-State for the exercise of the occupation in question.

The second question

[19] In its second question the national court asks whether a national of a non-member country to whom Article 11 of Regulation 1612/68 applies may rely on the first indent of Article 3(1) of that regulation which provides that, under the regulation, provisions laid down by law, regulation or administrative action or administrative practices of a member-State are not to apply where they limit application for and offers of employment or the right of foreign nationals to take up and pursue employment, or subject these to conditions not applicable in respect of its own nationals.
[20] As the Commission has correctly emphasised, the rights granted to the

spouse of a migrant worker by Articles 10 and 11 of Regulation 1612/68 are linked to the rights which that worker enjoys under Article 48 of the EEC Treaty and Articles 1 *et seq.* of the regulation. In so far as the spouse can rely on such secondary rights and those rights include the right to take up any activity as an employed person pursuant to Article 11, he must be able to pursue that activity under the same conditions as are applicable to a worker entitled to freedom of movement. Article 3(1) of the regulation thus requires the authorities of the host member-State to treat the spouse in a non-discriminatory fashion. The 'national treatment' to which workers from member-States are entitled in that regard is thus extended to their spouses.
[21] The answer to the second question must therefore be that a person to whom Article 11 of Regulation 1612/68 applies may rely on the first indent of Article 3(1) of that regulation irrespective of his nationality.

The third question

[22] The answer to this question, concerning the right of nationals of non-member countries to whom Article 11 of Regulation 1612/68 applies to be treated in the same manner as nationals of the host country, may be found in the foregoing observations. There is therefore no need to reply separately to this question.

The fourth question

[23] In its fourth question the national court seeks to ascertain the precise scope of the non-discriminatory treatment provided for by the first indent of Article 3(1) of Regulation 1612/68. In so far as it refers to the interpretation to be given to provisions of national law, such as section 10 of the Bundesärzteordnung, the Court is not competent under Article 177 EEC to examine the matter. More particularly, it is not for the Court to rule on the manner in which national authorities must recognise the right of *517 the spouse of a migrant worker to take up employment for which he has the necessary professional qualifications.
[24] In so far as the fourth question seeks to ascertain whether, in order to determine whether or not there is discrimination, only the legislation itself should be examined or whether regard should be had to the applicable provisions laid down by law, regulation or administrative action and administrative practices, the objectives of the regulation and the wording of Article 3 itself show that the latter approach is the correct one.
[25] As the preamble to Regulation 1612/68 points out, in order that the right of freedom of movement may be exercised, by objective standards, in freedom and dignity, equal treatment must be ensured 'in fact and in law' (fifth recital). In that context the first indent of Article 3(1) of the regulation prohibits the application of discriminatory legal provisions and ' administrative practices' which make access to employment subject to conditions not applicable to nationals of the host State. Furthermore, the very concept of equal treatment presupposes not only that the same laws should be applied to nationals and to foreigners but that those laws should be applied to both categories of persons in the same manner.

[26] The answer to the fourth question must therefore be that the non-discriminatory treatment provided for in the first indent of Article 3(1) of Regulation 1612/68 consists in the application to persons covered by that provision of the same provisions laid down by law, regulation or administrative action and the same administrative practices as are applied to nationals of the host State.

The fifth question

[27] The fifth question concerns the effect on the rights of the spouse of a migrant worker who intends to practise medicine as an employed person of Council Directive 75/363 of 16 June 1975 concerning the co-ordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors. [FN8] That directive is intended not to lay down rules for the implementation of freedom of establishment and freedom of movement for doctors but to facilitate the exercise of those rights by means of the recognition of training and other conditions necessary for the issue of a licence or temporary authorisation to practise medicine.

FN8 [1975] O.J. L167/14.

[28] It has already been pointed out above that in order to practise medicine in another member-State a worker who is a national of a member-State or the spouse of such a worker must possess the qualifications and diplomas required for that purpose by the legislation of that other member-State. In that respect it is *518 irrelevant whether his qualifications and diplomas are recognised under national law alone or under a Council directive or an agreement entered into between the host member-State and a non-member country.
[29] With regard in particular to Directive 75/363, it must be held that a worker's spouse to whom Article 11 of Regulation 1612/68 applies may rely on his entitlement to equal treatment in order to obtain recognition of his qualifications and diplomas under the same conditions as are applicable to a worker who is a national of a member-State.
[30] The answer must therefore be that the spouse of a worker who is a national of a member-State to whom Article 11 of Regulation 1612/68 applies is entitled to be treated in the same way as a national of the host member-State with regard to access, as an employed person, to the medical profession and the practice of that profession whether his qualifications are recognised under the legislation of the host member-State alone or pursuant to Directive 75/363.

The sixth question

[31] Since the sixth question was referred to the Court only in the event that a negative reply should be given to the fifth question, there is no need to reply to it.

Costs

[32] The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since 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 court, costs are a matter for that court.

Order

On those grounds, THE COURT (Fourth Chamber), in answer to the question submitted to it by the Verwaltungsgericht Gelsenkirchen by order of 28 March 1985,
HEREBY RULES:
1. Article 11 of Regulation 1612/68 must be interpreted as meaning that the right of the spouse of a worker entitled to move freely within the Community to take up any activity as an employed person carries with it the right to pursue occupations subject to a system of administrative authorisation and to special legal rules governing their exercise, such as the medical profession, if the spouse shows that he has the professional qualifications and diplomas required by the host *519 member-State for the exercise of the occupation in question.
2. A person to whom Article 11 of Regulation 1612/68 applies may rely on the first indent of Article 3(1) of that regulation irrespective of his nationality.
3. The non-discriminatory treatment provided for in the first indent of Article 3(1) of Regulation 1612/68 consists in the application to persons covered by that provision of the same provisions laid down by law, regulation or administrative action and the same administrative practices as are applied to nationals of the host State.
4. A spouse of a worker who is a national of a member-State to whom Article 11 of Regulation 1612/68 applies is entitled to be treated in the same way as a national of the host State with regard to access, as an employed person, to the medical profession and the practice of that profession whether his qualifications are recognised under the legislation of the host member-State alone or pursuant to Directive 75/363.

[1987] 1 C.M.L.R. 501

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