

JUDGMENT OF THE COURT

3 July 1986 *

In Case 66/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesverwaltungsgericht [Federal Administrative Court] for a preliminary ruling in the proceedings pending before that court between

Deborah Lawrie-Blum, residing at Freiburg im Breisgau,

and

Land Baden-Württemberg

on the interpretation of Article 48 of the EEC Treaty and Article 1 of Regulation No 1612/68,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans, U. Everling and K. Bahlmann (Presidents of Chambers), G. Bosco, O. Due and F. Schockweiler, Judges,

Advocate General: C. O. Lenz

Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Deborah Lawrie-Blum, the plaintiff in the main proceedings, by Hans Peter Schmidt, Rechtsanwalt, Freiburg, in the written procedure, and by Siegfried de Witt, Rechtsanwalt, Freiburg, during the oral procedure,

Land Baden-Württemberg, the defendant in the main proceedings, by J. Boulanger, Rechtsanwalt, Mannheim,

* Language of the Case: German.

the United Kingdom, by its Agent, T. J. G. Pratt, represented by David Donaldson QC of Gray's Inn during the oral procedure,

the Commission of the European Communities, by Götz zur Hausen and Julian Currall, members of its Legal Department, in the written procedure and by Mr zur Hausen during the oral procedure,

after hearing the Opinion of the Advocate General delivered at the sitting on 29 April 1986,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

- 1 By a judgment of 24 January 1985, which was received at the Court on 14 March 1985, the Bundesverwaltungsgericht referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 48 of the EEC Treaty and Article 1 of Regulation 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).

The subject-matter of the dispute

- 2 That question arose in proceedings brought against the *Land* Baden-Württemberg by Deborah Lawrie-Blum, a British national, who, after passing at the University of Freiburg the examination for the profession of teacher at a *Gymnasium* [secondary school], was refused admission, on the ground of her nationality, by the Oberschulamt Stuttgart [Secondary Education Office, Stuttgart] to the *Vorbereitungsdienst*, a period of preparatory service leading to the Second State Examination, which qualifies successful candidates for appointment as teachers in a *Gymnasium*.

- 3 It appears from the documents and the observations submitted to the Court that in the Federal Republic of Germany teacher training is essentially a matter for the *Länder*. That training consists of university studies, leading to the First State Examination and a period of preparatory service followed by the Second State Examination, the qualifying examination for teachers.
- 4 At the material time, the period of preparatory service was governed in *Land* Baden-Württemberg by the *Verordnung des Ministeriums für Kultus und Sport über den Vorbereitungsdienst und die Pädagogische Prüfung für das Lehramt an Gymnasien* [Order of the Ministry of Education and Sport on Preparatory Service and the Examination for the Profession of Teacher at a Gymnasium] of 14 June 1976 (*Gesetzblatt Baden-Württemberg*, p. 504), which has since been replaced by the *Verordnung des Ministeriums für Kultus und Sport über der Vorbereitungsdienst und die zweite Staatsprüfung für die Laufbahn des höheren Schuldienstes an Gymnasien* [Order of the Ministry of Education and Sport on Preparatory Service and the Second State Examination for Admission as a Teacher in the Higher Education Service qualified to teach in a Gymnasium] of 31 August 1984 (*Gesetzblatt Baden-Württemberg*, p. 576).
- 5 The period of preparatory service, the purpose of which is to introduce the trainee teacher to educational theory and teaching, consists of two stages, each lasting one year. The first stage consists of training at a teachers' training college (Seminar) and at a school, generally a State school, to which the trainee teacher has been attached and the second stage consists in further developing the abilities and skills needed in order to carry out educational and teaching duties in a school. During the latter period, the trainee may be called upon to give lessons for up to 11 hours a week in different classes in the Gymnasium, initially under the direct supervision of an instructor and later, during the last six months, on his own.
- 6 Completion of the period of preparatory service and possession of the diploma granted for passing the Second State Examination are, *de jure*, essential for admission to the profession of teacher in the State school system and *de facto* necessary for employment in private schools.
- 7 A candidate admitted to preparatory service is appointed *Studienreferendar* [trainee teacher] with the status of temporary civil servant [*Beamte auf Widerruf*] and in that capacity enjoys all the advantages of civil service status. The above-mentioned orders of 1976 and 1984 restrict admission to persons satisfying the personal conditions for appointment to the civil service. Paragraph 6 of the *Landesbeamtengesetz für Baden-Württemberg* [Law of the *Land* of Baden-Württemberg on the Civil Service], in the version in force since 8 August 1979 (*Gesetzblatt*, p. 398), requires the possession of German nationality within the

meaning of Article 116 of the Grundgesetz [Constitution], unless an express derogation is granted by the Minister for the Interior on account of the imperative requirements of the service.

8 After being refused admission to preparatory service because she did not have German nationality, Mrs Lawrie-Blum brought an action before the Verwaltungsgericht Freiburg [Administrative Court, Freiburg] for the annulment of the decision of refusal on the ground that it was contrary to the Community rules prohibiting all discrimination on grounds of nationality as regards access to employment. The Verwaltungsgericht Freiburg and the Verwaltungsgerichtshof Baden-Württemberg [Higher Administrative Court for Baden-Württemberg], before which an appeal was brought, dismissed her application on the ground that Article 48 (4) of the EEC Treaty provided that the rules concerning freedom of movement for workers did not apply to employment in the public service. The appeal court also stated that the State school system was excluded from the scope of the Treaty because it did not form part of economic life.

9 Mrs Lawrie-Blum appealed to the Bundesverwaltungsgericht, which decided to stay the proceedings until the Court of Justice had given a preliminary ruling on the following question:

‘Do the rules of European law on the free movement of persons (Article 48 of the EEC Treaty) and Article 1 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 (Official Journal, English Special Edition 1968 (II), p. 475, later amended) give nationals of a Member State the right to be appointed trainee teachers in the State school system of another Member State under the same conditions as nationals of that Member State, even where such trainee teachers, according to national law, have civil service status (in this case, as temporary civil servants [Beamten auf Widerruf] under German law) and conduct classes independently, and where national law requires that persons appointed to the civil service must in principle be nationals of the Member State concerned?’

10 The national court is essentially asking in the first place whether a trainee teacher undergoing a period of service as preparation for the teaching profession during which he enjoys civil service status and provides services by conducting classes for which he receives remuneration must be regarded as a worker within the meaning of Article 48 of the EEC Treaty and secondly whether such preparatory service must be regarded as employment in the public service within the meaning of Article 48 (4) to which nationals of other Member States may be refused admission.

- 11 In its carefully reasoned order for reference the Bundesverwaltungsgericht states that, in its view, a trainee teacher appointed as a temporary civil servant may not be regarded as a worker within the meaning of Article 48 of the EEC Treaty and that in any event he comes within the exception in Article 48 (4) since he exercises powers conferred by public law or contributes towards the safeguarding of the general interests of the State.

On the meaning of 'worker' in Article 48 (1)

- 12 Mrs Lawrie-Blum considers that any paid activity must be regarded as an economic activity and that the sphere in which it is exercised must necessarily be of an economic nature. A restrictive interpretation of Article 48 (1) would reduce freedom of movement to a mere instrument of economic integration, would be contrary to its broader objective of creating an area in which Community citizens enjoy freedom of movement and would deprive the exception in Article 48 (4) of any meaning of its own. The term 'worker' covers any person performing for remuneration work the nature of which is not determined by himself for and under the control of another, regardless of the legal nature of the employment relationship.
- 13 The *Land* Baden-Württemberg espouses the considerations put forward by the Bundesverwaltungsgericht in its order for reference to the effect that, since a trainee teacher's activity falls under education policy, it is not an economic activity within the meaning of Article 2 of the Treaty. The term 'worker' within the meaning of Article 48 of the Treaty and Regulation No 1612/68 covers only persons whose relationship to their employer is governed by a contract subject to private law and not persons whose employment relationship is subject to public law. The period of preparatory service should be regarded as the last stage of the professional training of future teachers.
- 14 The United Kingdom considers that a distinction between students and workers must be made on the basis of objective criteria and that the term 'worker' in Article 48 must be given a Community definition. Objectively defined, a 'worker' is a person who is obliged to provide services to another in return for monetary reward and who is subject to the direction or control of the other person as regards the way in which the work is done. In the present case, account must be taken of the fact that a trainee teacher is required, at least towards the end of the period of preparatory service, to conduct lessons and therefore provides an eco-

nomically valuable service for which he receives remuneration which is based on the starting salary of a duly appointed teacher.

- 15 The Commission takes the view that the criterion for the application of Article 48 is the existence of an employment relationship, regardless of the legal nature of that relationship and its purpose. The fact that the period of preparatory service is a compulsory stage in the preparation for the practice of a profession and that it is spent in the public service is irrelevant if the objective criteria for defining the term 'worker', namely the existence of a relationship of subordination *vis-à-vis* the employer, irrespective of the nature of that relationship, the actual provision of services and the payment of remuneration, are satisfied.
- 16 Since freedom of movement for workers constitutes one of the fundamental principles of the Community, the term 'worker' in Article 48 may not be interpreted differently according to the law of each Member State but has a Community meaning. Since it defines the scope of that fundamental freedom, the Community concept of a 'worker' must be interpreted broadly (judgment of 23 March 1982 in Case 53/81 *Levin v Staatssecretaris van Justitie* [1982] ECR 1035).
- 17 That concept must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship, however, is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.
- 18 In the present case, it is clear that during the entire period of preparatory service the trainee teacher is under the direction and supervision of the school to which he is assigned. It is the school that determines the services to be performed by him and his working hours and it is the school's instructions that he must carry out and its rules that he must observe. During a substantial part of the preparatory service he is required to give lessons to the school's pupils and thus provides a service of some economic value to the school. The amounts which he receives may be regarded as remuneration for the services provided and for the duties involved in completing the period of preparatory service. Consequently, the three criteria for the existence of an employment relationship are fulfilled in this case.

19 The fact that teachers' preparatory service, like apprenticeships in other occupations, may be regarded as practical preparation directly related to the actual pursuit of the occupation in point is not a bar to the application of Article 48 (1) if the service is performed under the conditions of an activity as an employed person.

20 Nor may it be objected that services performed in education do not fall within the scope of the EEC Treaty because they are not of an economic nature. All that is required for the application of Article 48 is that the activity should be in the nature of work performed for remuneration, irrespective of the sphere in which it is carried out (see the judgment of 12 December 1974 in Case 36/74 *Walrave v Union Cycliste Internationale* [1974] ECR 1405). Nor may the economic nature of those activities be denied on the ground that they are performed by persons whose status is governed by public law since, as the Court pointed out in its judgment of 12 February 1974 in Case 152/73 (*Sotgiu v Deutsche Bundespost* [1974] ECR 153), the nature of the legal relationship between employee and employer, whether involving public law status or a private law contract, is immaterial as regards the application of Article 48.

21 The fact that trainee teachers give lessons for only a few hours a week and are paid remuneration below the starting salary of a qualified teacher does not prevent them from being regarded as workers. In its judgment in *Levin*, cited above, the Court held that the expressions 'worker' and 'activity as an employed person' must be understood as including persons who, because they are not employed full time, receive pay lower than that for full-time employment, provided that the activities performed are effective and genuine. The latter requirement is not called into question in this case.

22 Consequently, the reply to the first part of the question must be that a trainee teacher who, under the direction and supervision of the school authorities, is undergoing a period of service in preparation for the teaching profession during which he provides services by giving lessons and receives remuneration must be regarded as a worker within the meaning of Article 48 (1) of the EEC Treaty, irrespective of the legal nature of the employment relationship.

On the meaning of 'employment in the public service' in Article 48 (4)

- 23 Mrs Lawrie-Blum points out that, according to case-law, a post is covered by the reservation in Article 48 (4) only if it involves the exercise of powers conferred by public law and contributes to safeguarding the general interests of the State. The activities of a teacher and *a fortiori* of a trainee teacher do not, however, involve the exercise of powers conferred by public law.
- 24 According to the *Land Baden-Württemberg*, which espouses the considerations put forward by the Bundesverwaltungsgericht, a trainee teacher does in fact exercise powers conferred by public law in the course of his activities, inasmuch as he prepares lessons, awards marks to pupils and participates in the decisions on whether they should move to a higher class. In any event, in performing those activities he contributes towards the safeguarding of the general interests of the State, which encompass education; that fact alone justifies the application of Article 48 (4).
- 25 According to the Commission, the reservation contained in Article 48 (4) is subject to the formal condition that the post concerned should involve the discharge of functions governed by public law and the substantive condition that it should involve the exercise of powers conferred by public law and contribute towards the safeguarding of the general interests of the State, those two criteria being cumulative. The normal activities of a teacher in State schools and, *a fortiori*, in private schools do not, however, meet those conditions.
- 26 In deciding this question it must be borne in mind that, as a derogation from the fundamental principle that workers in the Community should enjoy freedom of movement and not suffer discrimination, Article 48 (4) must be construed in such a way as to limit its scope to what is strictly necessary for safeguarding the interests which that provision allows the Member States to protect. As the Court pointed out in its judgment of 3 June 1986 in Case 307/84 (*Commission v France* [1986] ECR 1725), access to certain posts may not be limited by reason of the fact that in a given Member State persons appointed to such posts have the status of civil servants. To make the application of Article 48 (4) dependent on the legal nature of the relationship between the employee and the administration would enable the Member States to determine at will the posts covered by the exception laid down in that provision.

- 27 As the Court has already stated in its judgment of 17 December 1980 in Case 149/79 *Commission v Belgium* [1980] ECR 3881 and of 26 May 1982 in Case 149/79 *Commission v Belgium* [1982] ECR 1845, 'employment in the public service' within the meaning of Article 48 (4), which is excluded from the ambit of Article 48 (1), (2) and (3), must be understood as meaning those posts which involve direct or indirect participation in the exercise of powers conferred by public law and in the discharge of functions whose purpose is to safeguard the general interests of the State or of other public authorities and which therefore require a special relationship of allegiance to the State on the part of persons occupying them and reciprocity of rights and duties which form the foundation of the bond of nationality. The posts excluded are confined to those which, having regard to the tasks and responsibilities involved, are apt to display the characteristics of the specific activities of the public service in the spheres described above.
- 28 Those very strict conditions are not fulfilled in the case of a trainee teacher, even if he does in fact take the decisions described by the *Land Baden-Württemberg*.
- 29 Consequently, the reply to the second part of the question must be that the period of preparatory service for the teaching profession cannot be regarded as employment in the public service within the meaning of Article 48 (4) to which nationals of other Member States may be denied access.

Costs

- 30 The costs incurred by the United Kingdom and the Commission, which have 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Bundesverwaltungsgericht by order of 24 January 1985, hereby rules:

- (1) **A trainee teacher who, under the direction and supervision of the school authorities, is undergoing a period of service in preparation for the teaching profession during which he provides services by giving lessons and receives remuneration must be regarded as a worker within the meaning of Article 48 (1) of the EEC Treaty, irrespective of the legal nature of the employment relationship.**
- (2) **The period of preparatory service for the teaching profession cannot be regarded as employment in the public service within the meaning of Article 48 (4) to which nationals of other Member States may be denied access.**

Mackenzie Stuart

Koopmans

Everling

Bahlmann

Bosco

Due

Schockweiler

Delivered in open court in Luxembourg on 3 July 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President