Judgment of the Court (First Chamber) of 17 March 2005

Karl Robert Kranemann v Land Nordrhein-Westfalen

Reference for a preliminary ruling: Bundesverwaltungsgericht - Germany

Article 48 of the EC Treaty (now, after amendment, Article 39 EC) - Freedom of movement for workers - Civil servant undergoing preparatory practical training - Practical training completed in another Member State - Reimbursement of travel expenses limited to the domestic stretch of the journey

Case C-109/04

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In Case C-109/04,REFERENCE for a preliminary ruling under Article 234 EC from the Bundesverwaltungsgericht (Germany), made by decision of 17 December 2003, received at the Court on 2 March 2004, in the proceedings
Karl Robert Kranemann
v
Land Nordrhein-Westfalen,

THE COURT (First Chamber),,

composed of P. Jann,, President of the Chamber, K. Lenaerts (Rapporteur), N. Colneric, K. Schiemann and E. Levits, Judges,
Advocate General: L.A. Geelhoed,
Registrar: R. Grass,
having regard to the written procedure,after considering the observations submitted on behalf of:
– Mr K.R. Kranemann, in person,
– the Land Nordrhein-Westfalen, by Mr Statthalter, acting as Agent,
– the Commission of the European Communities, by G. Rozet and H. Kreppel, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 27 January 2005,
gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC). The reference was made in the course of proceedings brought by Mr Kranemann, a trainee lawyer who completed part of his training in the United Kingdom, against the refusal of the Land Nordrhein-Westfalen to reimburse travelling expenses incurred for the stretch outside German territory of the journey to his place of training.

The national legal background

2 Paragraph 7(4), fourth and fifth subparagraphs, of the regulation concerning the grant of separation allowance (Verordnung über die Gewährung von Trennungsentschädigung, the 'TEVO') of the Land Nordrhein Westfalen, dated 29 April 1988, provides in the version applicable to the present case (GVBl. NW 1994, p. 444) that, in the case of temporary civil servants carrying out a traineeship who are posted abroad to a place of their choice, daily allowances and lodging allowances are calculated only by reference to the rates applicable to the journey on national territory. Travel expenses incurred in getting to and from such a posting are reimbursed only for that part of the journey to the German border and back, by regular transport and in the cheapest class
3 An analogous regulation applies to travel expenses for trips home during the period of the traineeship, by virtue of the combined provisions of Paragraph 5(4) and Paragraph 7(7) of the TEVO.

The main proceedings and the question referred for a preliminary ruling

4 In the course of his mandatory legal traineeship preceding the second State examination in law, Mr Kranemann, as a temporary civil servant, underwent training from 1 August to 30 November 1995 in a firm of lawyers in London (United Kingdom).
5 During this period, he received, in addition to his trainee salary, a separation allowance of DEM 1 686.68 from the Land Nordrhein-Westfalen. In response to his request for reimbursement of travel expenses for the return trip from his home in Aachen (Germany) to the place of his traineeship, as well as for the cost of a return trip home for a weekend he received only a sum of DEM 83.25, which corresponded to the daily allowance for a business trip of several days and a lodging allowance. However, as the TEVO limited the reimbursement of travel expenses to the amount necessary for the return journey to and from the German border, and as Aachen was considered to be on the German border, Mr Kranemann was not reimbursed for the other travel expenses claimed, which he estimates to amount to DEM 539.60.

6 Mr Kranemann's action challenging this refusal was unsuccessful at first instance and on appeal. Mr Kranemann brought a further appeal on a point of law ('Revision') to the Bundesverwaltungsgericht.
7 In its order for reference that court observed that the case-law of the Court of Justice had not yet given a clear answer to the question whether temporary civil servants completing a legal traineeship ('Rechtsreferendare' or 'stagiaires en droit') qualify as 'workers' within the meaning of Article 48 of the Treaty.
8 That court also raised the question whether a refusal to pay for travel expenses for a training period abroad in itself constitutes a sufficiently direct restriction on freedom of movement for persons and, if so, whether Article 48 of the Treaty entails an obligation to reimburse not only the trainee's basic travel expenses to and from the place of training but also the cost of a trip home during the traineeship.
9 Finally, the referring court raises the question whether any such restriction on freedom of movement for workers can be validly justified by budgetary considerations and whether such considerations could require that the payment of a distance allowance and the reimbursement of travelling expenses to trainee lawyers should generally be refused.
10 It is against that background that the Bundesverwaltungsgericht decided to stay proceedings and refer the following question to the Court for a preliminary ruling:
'Is a national legal provision under which a trainee lawyer who completes part of his prescribed training at a place of his choosing in another Member State is entitled to reimbursement of travelling expenses only to the amount incurred for the domestic stretch of the journey compatible with [Article 48 of the Treaty]?'

The question referred for a preliminary ruling

11 It must first be determined whether the situation of a trainee lawyer who is undergoing part of his preparatory legal training in a Member State other than that of which he is a national is covered by Article 48 of the Treaty.

The scope of Article 48 of the Treaty
12 According to settled case-law, the concept of 'worker' within the meaning of Article 48 of the Treaty has a specific Community meaning and must not be interpreted narrowly. Any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. The essential feature of an employment relationship is, according to that case-law, 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 (see, in particular, Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraphs 16 and 17, Case C-3/90 *Bernini* [1992] ECR I-1071, paragraph 14, and Case C-456/02 *Trojani* [2004] ECR I-0000, paragraph 15).
13 As regards those undergoing a traineeship, the Court has held that the fact that the traineeship 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 of the Treaty if the training period is completed under the conditions of genuine and effective activity as an employed person (*Lawrie-Blum*, cited above, paragraph 19, and *Bernini*, cited above, paragraph 15).
14 As the Court held in Case C-79/99 *Schnorbus* [2000] ECR I-10997, paragraph 28, the practical legal training required in Germany constitutes a period of training and a necessary prerequisite of access to employment in the judicial service or the higher civil service.
15 As regards the activities carried out by trainee lawyers, according to the order for reference such trainees are required to apply in practice the legal knowledge acquired during their course of study and thus make a contribution, under the guidance of the employer providing them with training, to that employer's activities and trainees receive payment in the form of a maintenance allowance for the duration of their training.
16 Contrary to the contentions of the Land Nordrhein-Westfalen, such an employment relationship cannot fall outside the scope of Article 48 of the Treaty merely because the allowance paid to trainees constitutes only assistance allowing them to meet their minimum needs and, for trainees undergoing practical training outside the public sector, the payment of such an allowance by the State could not be considered to be made in return for services rendered by the trainee.
17 According to settled case-law neither the origin of the funds from which the remuneration is paid nor the limited amount of the remuneration can have any consequence in regard to whether or not the person is a worker for the purposes of Community law (see Case 53/81 *Levin* [1982] ECR 1035, paragraph 16; Case 344/87 *Bettray* [1989] ECR 1621, paragraph 16; and *Trojani*, paragraph 16).
18 Given that trainee lawyers carry out genuine and effective activity as an employed person they must be considered to be workers within the meaning of Article 48 of the Treaty.
19 The application of Article 48 cannot be excluded on the basis of the exception laid down in Article 48(4) in respect of 'employment in the public service'. As regards a trainee who is undergoing part of his training, as here, outside the public sector, suffice it to note that the concept of 'employment in the public service' does not encompass employment by a private natural or legal person, whatever the duties of the employee (Case C-283/99 *Commission* v *Italy* [2001] ECR I-4363, paragraph 25).
20 Nor can the case of a trainee lawyer who has left his Member State of origin to undergo part of his training in another Member State be excluded from the scope of the Treaty as a situation purely internal to a Member State.
21 In the light of the foregoing, it must be considered that a trainee lawyer who is a national of a Member State and undergoes part of his practical training in another Member State under conditions of genuine and effective activity as an employed person is a worker within the meaning of Article 48 of the Treaty.
22 It falls then to be considered whether the rules relating to the reimbursement of travel expenses, as applicable in the dispute in the main proceedings constitute a restriction of the right to freedom of movement which Article 48 of the Treaty confers on workers.

Restriction on the free movement of workers

23 It must be observed that, by making the reimbursement of expenses incurred by a trainee lawyer undergoing part of his practical training outside Germany subject to the rates applicable to travel in the course of service within Germany, Paragraph 7 of the TEVO precludes the reimbursement of travel expenses incurred by such a trainee outside Germany.

24 It follows that, while trainees who undergo their practical training in a place of work within Germany are entitled to reimbursement of all their travel expenses whatever the distance between their home and their place of training, those who choose to undergo part of their practical training in another Member State have to bear the part of the travel expenses relating to the stretch of the journey outside Germany themselves.

25 In that regard, the Court has held on numerous occasions that the Treaty provisions relating to freedom of movement for persons are intended to facilitate the pursuit by Community nationals of occupational activities of all kinds throughout the Community, and preclude measures which might place Community nationals at a disadvantage when they wish to pursue an economic activity in the territory of another Member State (Joined Cases 154/87 and 155/87 *Wolf and Others* [1988] ECR 3897, paragraph 13, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 94, and Case C-18/95 *Terhoeve* [1999] ECR I-345, paragraph 37, and Case C-190/98 *Graf* [2000] ECR I-493, paragraph 21).

26 Provisions which preclude or deter a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement therefore constitute an obstacle to that freedom even if they apply without regard to the nationality of the workers concerned (*Bosman*, cited above, paragraph 96, *Terhoeve*, cited above, paragraph 39, and *Graf*, cited above, paragraph 23, Case C-224/01*Köbler* [2003] ECR I-10239, paragraph 74, and Case C-232/01 *Van Lent* [2003] ECR I-11525, paragraph 16).

27 It follows that, where a Member State provides for a system of access to certain jobs based on a preparatory period of practical training during which trainees carry out genuine and effective activity as an employed person and where it also allows a trainee to undergo such training in another Member State, it must ensure that the detailed rules for the organisation of such training do not create restrictions of the fundamental freedoms guaranteed by the Treaty.

28 Where national legislation such as the TEVO requires trainees undergoing their practical training in another Member State to bear the travel expenses relating to the stretches of the journey outside their home country themselves, including the cost of a trip home during the period of training, a trainee undergoing his practical training in another Member State is in a worse position than he would be if he trained in his Member State of origin because in that case his travel expenses would have been paid.

29 Thus such legislation creates a financial obstacle which may deter trainee lawyers, particularly those with limited financial resources, from taking up a traineeship in another Member State, regardless of whether the decision to undergo such practical training is motivated generally, as the Land Nordrhein-Westfalen observes, by reasons relating to the trainee's specialisation or by personal reasons, such as the wish to gain experience of another legal culture.

30 Accordingly, a measure such as that laid down by Paragraph 7 of the TEVO is liable to restrict the free movement of workers, which is prohibited generally by Article 48 of the Treaty.

31 The referring court seeks to know whether such a restriction may none the less be justified by budgetary considerations.

32 According to Mr Kranemann, the refusal to reimburse travel expenses only to trainees who have undergone their practical training abroad cannot be justified by budgetary considerations if it proves that those expenses are not necessarily higher than those which may be incurred by trainees who elected a place of training in Germany. Budgetary considerations could, at most, warrant a ceiling on the reimbursable amount.

33 It should be pointed out, in that connection, that a measure which constitutes an obstacle to freedom of movement for workers could be accepted only if it pursued a legitimate aim compatible with the Treaty and were justified by pressing reasons of public interest. But even if that were so, application of that measure would still have to be such as to ensure achievement of the aim in question and not go beyond what is necessary for that purpose (see, inter alia, Case C-19/92 *Kraus* [1993] ECR I-1663, paragraph 32, *Bosman*, paragraph 104, and *Köbler*, cited above, paragraph 77).

34 According to settled case-law, aims of a purely economic nature cannot constitute pressing reasons of public interest justifying a restriction of a fundamental freedom guaranteed by the Treaty (see Case 352/85 *Bond van Adverteerders and Others* [1988] ECR 2085, paragraph 34, Case C-288/89 *Collectieve Antennevoorziening Gouda* [1991] ECR I-4007, paragraph 11, Case C-398/95 *SETTG* [1997] ECR I-3091, paragraph 23, Case C-35/98 *Verkooijen* [2000] ECR I-4071, paragraph 48, and Case 388/01 *Commission* v *Italy* [2003] ECR I-721, paragraph 22).

35 In any event, as Mr Kranemann and the Commission of the European Communities observed, it is not inconceivable that, in certain cases, the cost of a journey made within Germany might be greater than that of a journey to another Member State.

36 The answer to the question referred should therefore be that Article 48 of the Treaty precludes a national measure which grants a person who has completed a practical training period under conditions of genuine and effective activity as an employed person in a Member State other than his Member State of origin the right to reimbursement of travel expenses only up to the amount incurred in respect of the domestic stretch of the journey, while providing that, if such an activity were carried out on national territory, all the travel costs would be reimbursed.

Costs

37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) rules as follows:
Article 48 of the EC Treaty (now, after amendment, Article 39 EC) precludes a national measure which grants a person who has completed a practical training period under conditions of genuine and effective activity as an employed person in a Member State other than his Member State of origin the right to reimbursement of travel expenses only up to the amount incurred in respect of the domestic stretch of the journey, while providing that, if such an activity were carried out on national territory, all the travel costs would be reimbursed.

[Signatures]

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1 –Language of the case: German.