

European Communities

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DOCUMENT 1-573/80

Report

drawn up on behalf of the Legal Affairs Committee

on the ~~UK~~ Government's proposals for immigration controls

Rapporteur: Mr MALANGRE

The first motion for a resolution (Doc. 1-479/79) was tabled on 8 November 1979 with a request for urgent debate pursuant to Rule 14 of the Rules of Procedure. After Parliament had rejected the request on 13 November 1979, the motion for a resolution was forwarded to the Legal Affairs Committee as the committee responsible and to the Political Affairs Committee for an opinion. On 28-29 January 1980 the Legal Affairs Committee appointed Mr MALANGRE rapporteur.

At its meeting of 25-26 February 1980 the Legal Affairs Committee took a decision on the proposal by Mr D'Angelosante to debate the motion for a resolution at the March part-session pursuant to Rule 14(4) (procedure without report). At the time the Legal Affairs Committee decided to request the application of the urgent procedure, it was pointed out that such a request must be supported by 21 members. In the interval between the Legal Affairs Committee's meetings and the March part-session no political group indicated its support for the Committee's decision to debate the motion for a resolution pursuant to Rule 14(4).

On 12 March, 23 members of the Socialist Group tabled a second motion for a resolution (Doc. 1-9/80) in very similar terms to the first with a request for urgent debate. Parliament considered the request on 13 March and rejected it by a narrow majority. Accordingly, the motion for a resolution was referred to committee.

On 9 July 1980 the Political Affairs Committee decided not to give an opinion on either of the motions for a resolution.

At its meeting of 28-29 April 1980 the Legal Affairs Committee decided to consider both motions for a resolution together and examined them on the basis of an introductory speech by the rapporteur and Notice to Members No. 42/79 (PE 63.663).

On 27-28 May 1980 the committee considered the draft report (PE 64.951). On 3-4 June the committee heard a statement by the Commission representative on the progress of contacts between the services of the Commission and the British government.

On 25 June 1980 and 1-2 October 1980 the committee considered the draft report. On 27-28 October the committee adopted the draft report.

Present: Mr FERRI, chairman; Mr MALANGRE, rapporteur; Mr CHAMBEIRON; Mr DALZIEL; Mr D'ANGELOSANTE; Mr FISCHBACH; Mr HUTTON (for Mr TURNER); Mr JANSSEN VAN RAAY; Mr LUSTER; Mr MEGAHY; Mr PETERS (for Mr VETTER); Mr PROUT; Mr SIEGLERSCHMIDT; Mr TYRRELL; Ms VAYSSADE

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A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the motions for resolutions tabled by Mr SEAL and others on the UK Government's proposals for immigration controls

The European Parliament,

- having regard to the above motions for resolutions (Doc. 1-479/79 and Doc. 1-9/80),
 - having regard to the United Kingdom Government's 'statement of changes in immigration rules' of 20 February 1980,
 - having regard to the report of the Legal Affairs Committee (Doc. 1-573/80),
1. Notes that the rules in question have a bearing on freedom of movement, for which the Community is competent;
 2. Is of the opinion that the United Kingdom Government's new immigration rules may contravene the European Convention on Human Rights;
 3. Is further of the opinion that they may also contravene the principle of non-discrimination enshrined in Community law;
 4. Instructs its President to forward this resolution and the report relating thereto to the Council, the Commission and the Member States.

EXPLANATORY STATEMENTI. INTRODUCTION

1. Both motions for a resolution contain two substantive paragraphs:

- '1. Deeply deplores all moves by the UK government to establish immigration controls which discriminate against women;
- 2. Urges the UK government to introduce non-discriminatory nationality laws in accordance with the European Convention on Human Rights;'

2. The authors of the Motions for a Resolution mention only the provisions of the European Convention on Human Rights. It is however also important to take account of the corresponding provisions under Community law. For immigration rules have a bearing on freedom of movement of persons for which the Community is competent. Further the European Court of Justice has held that the provisions of international treaties such as the European Convention on Human Rights may form part of Community law. The other Community institutions (Parliament, Council and Commission) have stressed 'the prime importance they attach to the protection of fundamental rights, as derived in particular from...the European Convention for the Protection of Human Rights...' and declared that 'in the exercise of their powers...they respect and will continue to respect these rights'.¹

3. The documents examined by the committee in the preparation of this report are to be found in the annexes below.²

II. THE UK IMMIGRATION RULES

4. The rules under consideration lay down the practice to be followed by the UK authorities in the administration of the United Kingdom Immigration Act of 1971. Changes to the rules were presented to the (UK) Parliament by the Home Secretary in November 1979; an amended version was tabled on 20 February 1980 (see paragraph 10 below). The rules came into force on 1 March 1980. They cover the conditions for entry into the UK of several different categories of prospective immigrants: temporary visitors, students, businessmen, elderly dependents of UK residents, au pair girls, etc. But the most controversial proposals, those criticised in the motions, are those on the immigration rights of husbands and fiancés of women settled in the United Kingdom.

5. The relevant provisions for husbands and fiancés are to be found in sections 50, 52 and 54 of the rules³. These contrast with the equivalent but separate rules for wives and fiancées in sections 44 and 45³. There are significant differences between the two, the rules for husbands and fiancés being stricter than those for wives and fiancées. Broadly speaking, there are few restrictions on wives and fiancées of men settled in the UK. Husbands and fiancés of women in the UK will only be admitted if the women satisfy strict citizenship criteria⁴ and even then there are restrictions imposed

¹ Joint Declaration of 5 April 1977, see 1978 Treaty edition at p.214

² Originally distributed as Notice to Members No.42/79, PE 63.663

³ See Annex I

⁴ See paragraph 10 below

in order to avoid what are claimed to be marriages arranged solely to circumvent the immigration rules.

III. LEGAL PROVISIONS AT EUROPEAN LEVEL

(a) The European Convention on Human Rights

6. The authors of the motions mention Member States' obligations under the European Convention on Human Rights and imply that the rules contravene that Convention's provisions against discrimination on grounds of sex. As pointed out above, the European Court of Justice has held (in the Nold and Internationale Handelsgesellschaft cases¹) that the provisions of international treaties such as the European Convention on Human Rights may form part of Community law. The authors of the motions cite one of the articles of the Convention. It is Article 14, which reads:

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Not cited but of almost equal relevance are Articles 8 and 12 which read:

Article 8

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.'

Article 12

'Men and women of marriageable age have the right to marry and start a family, according to the national laws governing the exercise of this right.'

The Legal Affairs Committee is of the view that the rules may contravene the above provisions of the Convention.

(b) Community Law

7. As noted above, the rules have a bearing on the provisions of Community law on freedom of movement of persons. The EEC Treaty chapter on freedom of movement for workers lays down (in Article 48(3)) the right of workers of the Member States to 'move freely within the territory of Member States' for the purpose of taking up employment. Article 52 on the right of establishment provides for the progressive abolition of 'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State'. There are similar provisions on the freedom to provide services.

¹Annex VIII

8. Effect has been given to the Treaty provisions by a number of implementing regulations and directives, the most important of which for present purposes is Council Regulation (EEC) No. 1612/68 of 15 October 1968. This contains a title on 'workers' families', including Article 10 which reads as follows:

'1. The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

(a) his spouse and their descendants who are under 21 years of age or are dependents;

(b) dependent relatives in the ascending line of the worker and his spouse.'

9. The above article gives the worker of either sex, who is a national of a Member State, the right to settle in another Member State with his or her spouse. It is to this provision which the authors apparently refer when they allege in the preamble of the motions that the rules mean:

'...unequal treatment for citizens of different Community countries - women from all countries except Britain being able to live anywhere in the Community (including Britain) with their foreign husbands.'

and

'...three classes of British citizens: namely, men, women born in the UK and women born abroad whose parents were born abroad.'

10. In order to judge whether the rules contravene Community law it is therefore necessary to examine the definitions of 'citizens' and 'nationality' in the various relevant provisions.

- (a) In Community law the term used is 'national'. The definition of a UK national for the purposes of the Community Treaties is set out in a declaration by the UK government annexed to the 1972 act of accession¹. It basically defines 'nationals' as those who under the 1971 UK Immigration Act have the 'right of abode' in the United Kingdom. This includes citizens of the United Kingdom and Colonies who were either born in the UK or whose parents were born there¹.
- (b) The first version of the rules used the term 'citizen' and used as the criterion for defining those women who could bring in their husbands and fiancés with relatively little difficulty the term 'citizen of the United Kingdom and colonies born in the UK'. This definition is narrower than that of 'UK national' in (a) above in that it excludes those citizens whose right of abode derives from their parents' birth in the UK.
- (c) The criterion used in the current version is such as to include the latter group. The definition thus corresponds to that of UK national under Community law. But, although the definitions are the same, the treatment of UK women and UK men remains substantially different.

¹ See Annex III

11. At this point it should be noted that the provisions of the 1968 regulation favour nationals of one Member State employed in the territory of another Member State. It does not apply to nationals of a Member State employed in the same Member State. For example, UK nationals in France and French nationals in the UK benefit, but not UK nationals in the UK. However, in another context the European Court of Justice has held (in the Knoots¹ and Auer² judgements) that Community law should not lead to discrimination against own nationals. It would be in line with the Court's previous case law for this principle to be extended to the present case. The Legal Affairs Committee is therefore of the opinion that the rules may contravene the principle of non-discrimination enshrined in Community law.

IV. CONCLUSIONS

12. The Legal Affairs Committee is of the opinion that the United Kingdom's new immigration rules may contravene the European Convention on Human rights and the principle of non-discrimination enshrined in Community law. The Legal Affairs Committee suggests that the matter be brought to the attention of the Council, Commission and Member States.

¹ See Annex V

² See Annex VI

EXTRACTS FROM THE 'STATEMENT OF CHANGES IN IMMIGRATION RULES'¹

The Home Secretary has, with effect from 1 March 1980, made changes in the rules laid down by him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom, and contained in statements laid before Parliament on 25 January 1973 (as amended).

.....

Part IV: Passengers coming for settlement

...42. This paragraph and paragraphs 43-49 cover the admission for settlement of the dependants of a person who is present in the United Kingdom and settled here, or who is on the same occasion given indefinite leave to enter. In all such cases (except those mentioned in the last sentence of this paragraph) that person must be able and willing to maintain and accommodate his dependants without recourse to public funds in accommodation of his own or which he occupies himself and he should give an undertaking in writing to this effect if requested. This requirement does not apply to the admission of the wife, or a child under the age of 18, of a Commonwealth citizen who has the right of abode or was settled in the United Kingdom on the coming into force of the Act.

43. In addition, a passenger seeking admission as a dependant under this Part of the rules must hold a current entry clearance granted to him for that purpose.

Wives

44. The wife of a person who is settled in the United Kingdom or is on the same occasion being admitted for settlement is herself to be admitted for settlement if the requirements of paragraphs 42 and 43 are satisfied. A member of HM Forces based in the United Kingdom but serving overseas should be regarded for this purpose as being in the United Kingdom.

Husbands

50. The husband of a woman who is settled in the United Kingdom, or who is on the same occasion being admitted for settlement, is to be admitted if he holds a current entry clearance granted to him for that purpose. An entry clearance will be refused if the entry clearance officer has reason to believe:

- (a) that the marriage was one entered into primarily to obtain admission to the United Kingdom; or

¹ Laid before Parliament on 20 February 1980 under section 3(2) of the Immigration Act 1971

45. A woman who has been living in permanent association with a man has no claim to enter but may be admitted, subject to the requirements of paragraphs 42 and 43, as if she were his wife, due account being taken of any local custom or tradition tending to establish the permanence of the association. A woman is not, however, to be admitted under this provision unless any previous marriage by either party has permanently broken down. Nor may she be admitted if the man has already been joined by his wife or another woman admitted under this paragraph, whether or not the relationship still subsists.

Fiancées

55. A woman seeking to enter to marry a man settled in the United Kingdom should be admitted if the Immigration Officer is satisfied that the marriage will take place within a reasonable time and that adequate maintenance and accommodation will be available, without the need to have recourse to public funds, both before and after the marriage. She may be admitted for a period of up to 3 months subject to a condition prohibiting the taking of employment and should be advised to apply to the Home Office for an extension of stay once the marriage has taken place.

- (b) that one of the parties no longer has any intention of living permanently with the other as his or her spouse; or
- (c) that the parties have not met.

Where the entry clearance officer has no reason to believe any any of (a) to (c) above applies, an entry clearance will be issued provided that the wife is a citizen of the United Kingdom and Colonies who was born in the United Kingdom or one whose parents was born there.

Fiancés

52. A man seeking to enter the United Kingdom for marriage to a woman settled here and who intends himself to settle thereafter should not be admitted unless he holds a current entry clearance granted to him for that purpose. An entry clearance will be refused if the entry clearance officer has reason to believe:

- (a) that the primary purpose of the intended marriage is to obtain admission to the United Kingdom; or
- (b) that there is no intention that the parties to the marriage should live together permanently as man and wife; or
- (c) that the parties to the proposed marriage have not met.

Where the entry clearance officer has no reason to believe that any of (a) to (c) applies, an entry clearance will, subject to the maintenance and accommodation requirements of this

paragraph, be issued provided that the woman is a citizen of the United Kingdom and Colonies who was born in the United Kingdom or one of whose parents was born there. An entry clearance should not be issued unless the entry clearance officer is satisfied that adequate maintenance and accommodation will be available for the fiancé until the date of his marriage without the need to have recourse to public funds.

54. A man seeking to enter the United Kingdom for marriage to a woman settled here may be admitted only if the Immigration Officer is satisfied that the marriage will take place within a reasonable time; that the passenger and his wife will leave the United Kingdom shortly after the marriage; and that the requirements of paragraph 17 are met. Where the Immigration Officer is so satisfied, the passenger may be admitted for 3 months, with a prohibition on employment.

Extract from the European Convention on Human Rights

Article 8

'1. Everyone has the right to respect for his private and family life, his life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Article 12

'Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.'

Article 14

'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

Definition of UK national for the purposes of the EEC Treaty

(a) Declaration by the Government of the United Kingdom of Great Britain and Northern Ireland on the definition of the term 'nationals'

At the time of signature of the Treaty of Accession, the Government of the United Kingdom of Great Britain and Northern Ireland made the following Declaration:

'As to the United Kingdom of Great Britain and Northern Ireland, the terms 'nationals', 'nationals of Member States' or 'nationals of Member States' or 'nationals of Member States and overseas countries and territories' wherever used in the Treaty establishing the European Economic Community, the Treaty establishing the European Atomic Energy Community or the Treaty establishing the European Coal and Steel Community or in any of the Community acts deriving from those Treaties, are to be understood to refer to:

(a) persons who are citizens of the United Kingdom and Colonies or British subjects not possessing that citizenship or the citizenship of any other Commonwealth country or territory, who in either case, have the right of abode in the United Kingdom, and are therefore exempt from United Kingdom immigration control;

(b) persons who are citizens of the United Kingdom and Colonies by birth or by registration or naturalization in Gibraltar, or whose father was so born, registered or naturalised.'

(b) Extract from 1971 UK Immigration Act

'2. Statement of right of abode, and related amendments as to citizenship by registration

(1) A person is under this Act to have the right of abode in the United Kingdom if -

(a) he is a citizen of the United Kingdom and Colonies who has that citizenship by his birth, adoption, naturalisation or (except as mentioned below) registration in the United Kingdom or in any of the Islands; or

(b) he is a citizen of the United Kingdom and Colonies born to or or legally adopted by a parent who had that citizenship at the time of the birth or adoption, and the parent either -

(i) then had that citizenship by his birth, adoption, naturalisation or (except as mentioned below) registration in the United Kingdom or in any of the Islands; or

(ii) had been born to or legally adopted by a parent who at the time of that birth or adoption so had it; or

(c) he is a citizen of the United Kingdom and Colonies who has at any time been settled in the United Kingdom and Islands and had at that time (and while such a citizen) been ordinarily resident there for the last five years or more; or

- (d) he is a Commonwealth citizen born to or legally adopted by a parent who at the time of the birth or adoption had citizenship of the United Kingdom and Colonies by his birth in the United Kingdom or in any of the Islands.
- (2) A woman is under this Act also to have the right of abode in the United Kingdom if she is a Commonwealth citizen and either -
 - (a) is the wife of any such citizen of the United Kingdom and Colonies as is mentioned in subsection (1)(a)(b) or (c) above or any such Commonwealth citizen as is mentioned in subsection (1)(d); or
 - (b) has at any time been the wife -
 - (i) of a person then being such a citizen of the United Kingdom and Colonies or Commonwealth citizen; or
 - (ii) of a British subject who but for his death would on the date of commencement of the British Nationality Act 1948 have been such a citizen of the United Kingdom and Colonies as is mentioned in subsection (1)(a) or (b)...

Extract from Council Regulation (EEC) No. 1612/68 of 15
of 15 October 1968¹

Workers' families

Article 10

'1. The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

- (a) his spouse and their descendants who are under 21 years of age or are dependants:
- (b) dependant relatives in the ascending line of the worker and his spouse.'

¹ OJ L 257/68

Extract from the judgement of the European Court of Justice
of 7 February 1979¹ in Case 115/78 (Knooks)

'...

15. The General Programme for the abolition of restrictions on **freedom to provide services**, in the first indent of Title I, **defines as beneficiaries** the 'nationals of Member States who are established within the Community', without making any distinction as to the nationality or residence of the persons concerned.

16. The same idea is expressed by Title I of the General Programme for the abolition of restrictions on freedom of establishment, which designates as beneficiaries, in the first and third indents, the 'nationals of Member States' without any distinction as regards nationality or residence.

17. It may therefore be stated that Directive No.64/427 is based on a broad definition of the 'beneficiaries' of its provisions, in the sense that the nationals of all Member States must be able to avail themselves of the liberalising measures which it lays down, provided that they come objectively within one of the situations provided for by the directive, and no differentiation of treatment on the basis of their residence or nationality is permitted.

18. Thus the provisions of the directive may be relied upon by the nationals of all the Member States who are in the situations which the directive defines for its application, even in respect of the State whose nationality they possess.

19. This interpretation is justified by the requirements flowing from freedom of movement for persons, freedom of establishment and freedom to provide services, which are guaranteed by Articles 3(c), 48, 52 and 59 of the Treaty.

20. In fact, these liberties, which are fundamental in the Community system, could not be fully realized if the Member States were in a position to refuse to grant the benefit of the provisions of Community law to those of their nationals who have taken advantage of the facilities existing in the matter of freedom of movement and establishment and who have acquired, by virtue of such facilities, the trade qualifications referred to by the directive in a Member State other than that whose nationality they possess.

21. In contesting this solution the Netherlands Government states, first, that the first paragraph of Article 52 provides for the abolition of 'restrictions on the freedom of establishment of nationals of Member State in the territory of another Member State' and, secondly, that according to the second paragraph of the same article, freedom of establishment is to include the right to take up activities as self-employed persons under the conditions laid down by the law of the country where such establishment is effected 'for its own nationals'.

22. It is claimed that those provisions of the Treaty show that the nationals of the host State are not regarded as being beneficiaries of the liberalisation measures for which provision is made and that they therefore remain entirely subject to the provisions of their national legislation.

¹ ECR 1979 399 at page 409

23. Moreover, the Netherlands Government draws attention to the risk that the nationals of a Member State might evade the application of their national provisions in the matter of training for a trade if they were authorized to avail themselves, as against their own national authorities, of the facilities created by the directive.

24. Although it is true that the provisions of the Treaty relating to establishment and the provision of services cannot be applied to situations which are purely internal to a Member State, the position nevertheless remains that the reference in Article 52 to 'nationals of a Member State' who wish to establish themselves 'in the territory of another Member State' cannot be interpreted in such a way as to exclude from the benefit of Community law a given Member State's own nationals when the latter, owing to the fact that they have lawfully resided on the territory of another Member State and have there acquired a trade qualification which is recognised by the provisions of Community law, are, with regard to their State of origin, in a situation which may be assimilated to that of any other persons enjoying the rights and liberties guaranteed by the Treaty.

25. However, it is not possible to disregard the legitimate interest which a Member State may have in preventing certain of its nationals, by means of facilities created under the Treaty, from attempting wrongly to evade the application of their national legislation as regards training for a trade...'

Extract from the judgement¹ of the European Court of Justice of
7 February 1979 in case 136/78 (Auer)

' ...

16. Under Article 3 of the Treaty the activities of the Community with a view to the establishment of the Common Market include, inter alia, the abolition of the obstacles to freedom of movement for persons and services.

17. In the words of Article 7 of the Treaty, within the scope of its application, any discrimination on grounds of nationality is prohibited.

18. Thus freedom of movement for persons is intended to contribute to the establishment of a common market, in which nationals of the Member States have opportunity to carry on their economic activities by establishing themselves or by providing services in any place within the territory of the Community.

19. As regards freedom of establishment, the realisation of this objective is in the first place brought about by Article 52 of the Treaty which provides, first, that 'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period' and, secondly, that such freedom of establishment shall include the right to take up and pursue activities as self-employed persons, 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected'.

20. In so far as it is intended to ensure, within the transitional period, with direct effect, the benefit of national treatment, Article 52 concerns only - and can concern only - in each Member State the nationals of other Member States, those of the host Member State coming already, by definition, under the rules in question.

21. However, it may be seen from the provisions of Articles 54 and 57 of the Treaty that freedom of establishment is not completely ensured by the mere application of the rule of national treatment, as such application retains all obstacles other than those resulting from the non-possession of the nationality of the host State and, in particular, those resulting from the disparity of the conditions laid down by the different national laws for the acquisition of an appropriate professional qualification.

22. With a view to ensuring complete freedom of establishment, Article 54 of the Treaty provides that the Council shall draw up a general programme for the abolition of existing restrictions on such freedom and Article 57 provides that the Council shall issue directives for the mutual recognition of diplomas, certificates and other evidence of qualifications.

23. It follows from the general structure both of the General Programmes of 18 December 1961, drawn up in implementation of Articles 54 and 63 of the Treaty (Official Journal, English Special Edition, Second Series, IX, pp.3 and 7) and of the directives issued in implementation of those programmes, that the field of application, *ratione personae*, of the measures for securing freedom of establishment and freedom to provide services is to be determined on each occasion without distinction based on the nationality of those concerned...'

¹ 1979 ECR 437 at page 448

Judgement of the European Court of Justice of 12 November 1969¹
in case 29/69 (Stauder)

1. By an order of 18 June 1969 received by the Court Registry on 26 June 1969 the Verwaltungsgericht Stuttgart has referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty the question of whether the requirement in Article 4 of Decision No.69/71 EEC of the Commission of the European Communities that the sale of butter at reduced prices to beneficiaries under certain social welfare schemes shall be subject to the condition that the name of beneficiaries shall be divulged to retailers can be considered compatible with the general principles of Community law in force.
2. The abovementioned decision is addressed to all the Member States and authorised them, with a view to stimulating the sale of surplus quantities of butter on the Common Market, to make butter available at a lower price than normal to certain categories of consumers who are in receipt of certain social assistance. This authorisation is subject to certain conditions designed, inter alia, to ensure that the product, when marketed in this way, is not prevented from reaching its proper destination. To that end Article 4 of Decision No.69/71 stipulates in two of its versions, one being the German version, that the States must take all necessary measures to ensure that beneficiaries can only purchase the product in question on presentation of a 'coupon indicating their names', whilst in the other versions, however, it is only stated that a 'coupon referring to the person concerned' must be shown, thus making it possible to employ other methods of checking in addition to naming the beneficiary. It is therefore necessary in the first place to ascertain exactly what methods the provision at issue prescribes.
3. When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all four languages.
4. In a case like the present one, the most liberal interpretation must prevail, provided that it is sufficient to achieve the objectives pursued by the decision in question. It cannot, moreover, be accepted that the authors of the decision intended to impose stricter obligations in some Member States than in others.
5. This interpretation is, moreover, confirmed by the Commission's declaration that an amendment designed to remove the requirement that a name shall appear on the coupon was proposed by the Management Committee to which the draft of Decision No.69/71 was submitted for its opinion. The last recital of the preamble to this decision shows that the Commission intended to adopt the proposed amendment.
6. It follows that the provision in question must be interpreted as not requiring - although it does not prohibit - the identification of beneficiaries by name. The Commission was thus able to publish on 29 July 1969 an amending decision to this effect. Each of the Member States is accordingly now able to choose from a number of methods by which the coupons may refer to the person concerned.
7. Interpreted in this way the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.'

¹ 1969 ECR 419 at page 424

ANNEXVIII

- (a) Extract from the judgement of the European Court of Justice of 17 December 1970¹ in case 11/70 (Internationale Handelsgesellschaft)

'The protection of fundamental rights in the Community legal system

3. Recourse to the legal rules or concepts of national law in order to judge the validity of measures adopted by the institutions of the Community would have an adverse effect on the uniformity and efficacy of Community law. The validity of such measures can only be judged in the light of Community law. In fact, the law stemming from the Treaty, an independent source of law, cannot because of its very nature be overridden by rules of national law, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question. Therefore the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of a national constitutional structure.

4. However, an examination should be made as to whether or not any analogous guarantee inherent in Community law has been disregarded. In fact, respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community. It must therefore be ascertained, in the light of the doubts expressed by the Verwaltungsgericht, whether the system of deposits has infringed rights of a fundamental nature, respect for which must be ensured in the Community legal system.'

- (b) Extract from the judgement of the European Court of Justice of 14 May 1974² in case 4/73 (Nold)

'13. As the Court has already stated, fundamental rights form an integral part of the general principles of law, the observance of which it ensures.

In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the Member States, and it cannot therefore uphold measures which are incompatible with fundamental rights recognised and protected by the Constitutions of those States.

Similarly, international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.'

1 1970 ECR 1125 at page 1134

2 1974 ECR 491 at page 507

Extracts from the First Report from the Home Affairs Committee
of the House of Commons (1979-80) on proposed new immigration rules
and the European Convention on Human Rights¹

'...10. The Articles of the Convention which have been considered in relation to earlier cases on immigration, and those which our witnesses regard as relevant to the proposed new Rules, are Articles 3, 8, 12 and 14.

Article 3 states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 8 states that everyone has the right to respect for his private and family life.

Article 12 states that men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 14 states that the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

11. An important principle emerged from the evidence given to the Subcommittee on the construction of these articles. The discrimination provisions of Article 14 have to be related to the freedoms guaranteed under other Articles, so that discrimination alone is not necessarily a breach of the Convention. The converse of this, however, is that 'there may be an infringement of Article 14 in combination with another Article of the Convention even though there is no infringement of the other Article taken alone'. Differential treatment, however, only constitutes discrimination if it has 'no objective and reasonable justification'. It was agreed by our witnesses that the key question was whether the differential treatment involved would be regarded by the Commission² as having objective and reasonable justification; and if it were, whether there was a reasonable relationship between the means employed and the aim sought (the principle of 'proportionality')...

Article 8 with Article 14

14. It was suggested to us that the Government's proposals are most vulnerable in relation to Article 8 taken together with Article 14, on the grounds of sexual and/or racial discrimination in respect of the rights guaranteed under Article 8.

15. None of the witnesses disputed that Rules 50 and 52 embodied differential treatment on grounds of sex, although the Home Office argued that such differentiation did not necessarily constitute discrimination. Professor Jacobs told us that he had not found the main justifications advanced particularly convincing. Lord Scarman maintained that, in the light of all the circumstances and the general context of the rules, any differential treatment amounted to discrimination. Both he and Mr Lester further argued that the declared aim of the rules, namely the curtailment of the exploitation of marriage as a means of primary immigration, could not be held to justify the means.

¹ The full report, together with the Proceedings of the Committee and the Minutes of Evidence and Appendices, is available in English for consultation from the Secretariat

² i.e. the Human Rights Commission

16. It was suggested by some witnesses that, in addition to differentiation by sex, rules 50 and 52, as well as rule 48, might be found by the Commission to be racially discriminatory, and so to constitute a violation of Article 8 read together with Article 14. Mr Lester argued that 'it would be no more difficult to establish the racial motivation upon which the proposed Rules are based than it was to establish the racial motivation of the 1968 Act' and that a similar possibility existed in relation to the parents and grandparents rule.

17. The modifications to rules 50 and 52 announced by the Home Secretary in the course of the debate on the White Paper in favour of women with parents one of whom was born in the United Kingdom did not appear to Lord Scarman to lessen the likelihood of the rules being found racially discriminatory.

Article 3

18. If the Commission were of the opinion that the rules were racially discriminatory, the possibility could also arise that such discrimination might be found to be in breach of Article 3. This suggestion seems to rest on the opinion of the Commission in the East African Asians' Case that, in certain circumstances, racial discrimination could of itself amount to degrading treatment and, in the case of some of the applications in that case, did so amount. The Commission has said that degrading treatment must 'grossly humiliate individuals in their own eyes or the eyes of others'. Professor Jacobs stated that it could 'not be assumed that any discrimination on grounds of race constitutes a violation of Article 3'. Lord Scarman saw a serious risk of Article 3 being infringed. Mr Lester argued that racial discrimination against citizens of the United Kingdom and Colonies could be regarded as inherently degrading under Article 3 although, in the interests of judicial economy, the Commission might not find it necessary to decide that question.

Articles 8 and 12

19. As regards Articles 8 and 12 taken on their own, the Commission has held on a number of occasions that it is not an interference with family life if a couple are able to live in the husband's country of origin even if the wife is obliged to leave her own country. All our witnesses agreed that this had obvious implications for rules 50 and 52 and rule 48. Although Mr Lester felt that an individual applicant might make a successful application under either Article in the light of particular circumstances he suggested that any case presented to the Commission based on general practice under the new rules would have to depend on their discriminatory provisions.

Conclusion

20. We have attempted to set out the principle arguments adduced in evidence before us, and we do not think it possible or desirable for us to form any judgement. We leave it to Members to form their own conclusions on reading the evidence.'

tabled by Mr SEAL, Mr LOMAS, Miss QUIN, Mr ENRIGHT, Mr CABORN, Mr BOYES
Mrs BUCHAN, Mr GRIFFITHS, Mr COLLINS, Mr MUNTINGH and Mr MEGAHY

With request for urgent debate pursuant to Rule 14 of the
Rules of Procedure

on the UK Government's proposals for immigration controls

The European Parliament,

- noting Community Member States' obligation under the European Convention on Human Rights, in particular Article 14 which states that:
'the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, etc.',
 - aware of recent attempts within the Community to eliminate discrimination on grounds of sex in the laws of procedure of Member States,
 - noting with alarm the UK Government's recent proposals to prevent British women not born in the UK from living in Britain with their foreign husbands - proposals which would create three classes of British citizens - men, women born in the UK and women born abroad,
 - noting that the implementation of these proposals would mean unequal treatment for citizens of different Community countries - women from all countries except Britain being able to live anywhere in the Community (including Britain) with their foreign husbands,
1. Deplores any move by the UK Government to establish immigration controls which discriminate against women;
 2. Urges the UK Government to introduce nationality laws on non-discriminatory lines in accordance with the European Convention on Human Rights;
 3. Instructs its President to forward this resolution to the Council and Commission.

JUSTIFICATION

The recent statements by the British Home Secretary on this matter call for an immediate reaction from the European Parliament.

tabled by Mr SEAL, Mr SIEGLERSCHMIDT, Mr PELIKAN, Mrs WEBER, Mr PETERS, Mr ENRIGHT, Mr GRIFFITHS, Mr JOSSELIN, Mrs SEIBEL-EMMERLING, Mr LOMAS, Mr BALFE, Mr MEGAHY, Mr VAN MINNEN, Mr SCHIELER, Mr LINKOHR, Mr KEY, Mr ADAM, Mrs GROES, Mrs DESMOND, Mrs VIEHOFF, Mrs VAYSSADE, Mrs FUILLET and Mr ROGERS

with request for urgent debate pursuant to Rule 14 of the Rules of Procedure on the UK Government's proposals for immigration controls

The European Parliament,

- noting Community Member States' obligations under the European Convention on Human Rights, in particular Article 14, which states that :
'the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, etc',
 - noting that informed legal opinion is that these UK proposals contravene Article 14,
 - aware of recent attempts within the Community to eliminate discrimination on grounds of sex in the laws of procedure of Member States,
 - noting with alarm that the UK Government's proposals are to prevent British women not born in the UK and whose parents were not born in the UK from living in Britain with their foreign husbands - proposals which would mainly affect coloured women and create three classes of British citizens, namely men, women with parents born in the UK and women born abroad whose parents were born abroad,
 - noting that the implementation of these proposals would mean unequal treatment for citizens of different Community countries - women from all countries except Britain being able to live anywhere in the Community (including Britain) with their foreign husbands,
1. Deplores any move by the UK Government to establish immigration controls which discriminate against women;
 2. Urges the UK Government to introduce nationality laws on non-discriminatory lines in accordance with the European Convention on Human Rights;
 3. Instructs its President to forward this resolution to the Council and Commission.

Justification

31 March 1980 is the last date by which the order for these revised immigration rules can be reversed.

