Anita Groener v. Minister for Education and City of Dublin Vocational Education Committee (Case 379/87)

Before the Court of Justice of the European Communities

ECJ

(Presiding, Due C.J.; Slynn, Kakouris, Schockweiler and Zuleeg PP.C.; Koopmans, Mancini, Joliet, O'Higgins, Moitinho de Almeida and Grevisse JJ.) M. Marco Darmon, Advocate General.

28 November 1989

Reference from Ireland by the High Court under Article 177 EEC.

Employment. Discrimination. Language. Migrant workers.

National rules on employment which are non-discriminatory as regards nationality but which have the effect of excluding other EEC nationals are contrary to Article 3 of Regulation 1612/68, with the exception of ' conditions relating to linguistic knowledge required by reason of the nature of the post to be filled'. *Prima facie*, where knowledge of the language is not needed in performing the work, the exception will not apply. But exceptionally, where the linguistic requirements relate to the national language which is also the first official language and are imposed as part of a policy to promote that language their application to teachers (*in casu*, teachers of art in vocational courses) is justified even though the subject of the course is not linguistic and it is normal to teach in another language (English). Such an overriding social policy can, however, only prevail if it is applied without discrimination (other than linguistic knowledge) and the level of linguistic knowledge required is not disproportionate to the object of the policy. [15], [16], [19] & [21]

The Court *interpreted* Article 3 of Regulation 1612/68 *in the context of* the refusal of a permanent teaching post in commercial art (painting) to a Dutch woman because she failed to pass a test of knowledge of the Irish language, courses in the Dublin college where she taught and was seeking establishment being normally given in English, *to the effect that* the Irish rules on knowledge of Irish

(imposed in order to promote the national language which was in fact the first official language, English being the second) as applied to teaching had a restrictive effect on the employment of other EEC nationals and so could only be acceptable if they fell within the *402 exception in Article 3(1), *that* because Irish was not used in teaching at the college and was not needed as part of the course it was not ' required for performance of the duties', *but that* the national policy of promoting Irish was legitimate in terms of Community law and could even override the free movement of EEC workers if such restriction was necessary to attain the aim of the policy and was not otherwise discriminatory or disproportionate, *that* teachers held a special position in relation to such a cultural aim, *that* therefore they could justly be required to have a modicum of knowledge of Irish even if it was not used professionally in their teaching, *but that* the requirement of linguistic knowledge must not be applied in an unnecessarily restrictive manner in the case of other EEC nationals who must remain free to learn Irish outside Ireland and to re-sit the language test if they fail it, *and that* if all these conditions were met, as appeared to be the case here, the permanent post sought by the plaintiff was of such a nature as to justify the requirement of linguistic knowledge and the exception in Article 3(1) applied to it.

Representation

F. Clarke S.C., instructed by John A. Reidy, for the plaintiff.
R. Nesbitt and H.A. Whelehan, instructed by Louis J. Dockery, Chief State Solicitor, for the defendants.
M. Giacomini and, in the written proceedings, Régis de Gouttes for the French Government as *amicus curiae*.
Karen Banks, of the E.C. Commission's Legal Department, for the Commission as *amicus curiae*.

The following cases were referred to by the Advocate General:
1. Kenny v. Insurance Officer (1/78), 28 June 1978: [1978] E.C.R. 1489, [1978] 3 C.M.L.R. 651. Gaz:1/78
2. Pinna v. Caisse D'Allocations Familiales de la Savoie (41/84), 15 January 1986: [1986] E.C.R. 1, [1988] 1 C.M.L.R. 350. Gaz:41/84
3. Seco SA v. Etablissement D'Assurance contre la Vieillesse et L'Invalidite (62-63/81), 3 February 1982: [1982] E.C.R. 223. Gaz:62/81
4. Gül v. Regierungspräsident Düsseldorf (131/85), 7 May 1986: [1986] E.C.R. 1573, [1987] 1 C.M.L.R. 501. Gaz:131/85
5. Thieffry v. Conseil de L'Ordre des Avocats A la Cour de Paris (71/76), 28 April 1977: [1977] E.C.R. 765, [1977] 2 C.M.L.R. 373. Gaz:71/76
6. Johnston v. Chief Constable of the Royal Ulster Constabulary (222/84), 15 May 1986: [1986] E.C.R. 1651, [1986] 3 C.M.L.R. 240. Gaz:222/84

The following additional cases were referred to in argument:
7. Union Nationale des Entraineurs et Cadres Techniques Professionnels du

Football v. Heylens (222/86), 15 October 1987: [1987] E.C.R. 4097, [1989] 1 C.M.L.R. 901. Gaz:222/86 *403
8. Robert Fearon & Co. Ltd. v. Irish Land Commission (182/83), 6 November 1984: [1984] E.C.R. 3677, [1985] 2 C.M.L.R. 228. Gaz:182/83
9. Van Duyn v. Home Office (41/74), 4 December 1974: [1974] E.C.R. 1337, [1975] 1 C.M.L.R. 1. Gaz:41/74
10. Regina v. Bouchereau (30/77), 27 October 1977: [1977] E.C.R. 1999, [1977] 2 C.M.L.R. 800. Gaz:30/77

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Opinion of the Advocate General (M. Marco Darmon)

The case before the Court today following a request for a preliminary ruling submitted by the High Court, Dublin, relates to one of the most sensitive aspects of cultural identity. The importance of the Court's reply and its consequences for the member-States and for the diversity of the Community as a whole are so evident that I need not dwell upon them, for at issue here is the power of a State to protect and foster the use of a national language.
The facts are as follows. Mrs. Groener, the applicant in the main proceedings, who is a Dutch national, has, since September 1982, been working as a part-time teacher of art at the College of Marketing and Design, Dublin. That establishment comes under the authority of the City of Dublin Vocational and Educational Committee, which is a public body responsible for the administration of vocational education subsidised by the State in the Dublin area. In July 1984, Mrs. Groener entered a competition with a view to obtaining a permanent teaching post. She was successful in the competition but failed the special examination in Irish. Circular Letter no. 28/79 of the Irish Minister of Education requires candidates for permanent posts as assistant lecturer, lecturer or senior lecturer in the City of Dublin or any post subject to any other Vocational Educational Committee to demonstrate their knowledge of the Irish language. Such proof may be supplied either by production of a certificate ('An Ceard Teastas Gaeilge') or by passing a special examination in the Irish language. It is not disputed that the post in question fell within the scope of that circular letter. Mrs. Groener challenged the refusal to appoint her before the Irish courts. She argued that Circular Letter 28/79 was incompatible with Article 48 EEC and Article 3 of Council Regulation 1612/68 on freedom of movement for workers within the Community (hereinafter referred to as 'the Regulation'), which prohibit discrimination against Community nationals.
*404 Consequently, the High Court, Dublin, submitted a number of questions which, in substance, request this Court to give a ruling on whether a national provision requiring knowledge of one of the official languages of a member-State for a permanent teaching post is compatible with **Article 48** of the Treaty and Article 3 of the Regulation in circumstances where, according to the national court, knowledge of that language is not actually necessary to carry out the relevant duties.

The disputed administrative measure is applicable without distinction to Irish nationals and other Community nationals. However, it should be recalled that, generally speaking, the Court not only takes into account direct discrimination but also endeavours to ascertain whether the legal appearance of a provision applicable without distinction conceals *de facto* discrimination due to the specific circumstances prevailing in the field in question.
For example, in the field of freedom of movement for workers, the Court held in a case concerning the interpretation of Council Regulation 1408/71 that conditions for the acquisition or retention of rights to benefits would be contrary to Community law if those conditions
were defined in such a way that they could in fact be fulfilled only by nationals or if the conditions for loss or suspension of the right were defined in such a way that they would in fact more easily be satisfied by nationals of other member-States than by those of the State of the competent institution. [FN1]

FN1 Case 1/78, Kenny v. Insurance Officer: [1978] E.C.R. 1489, [1978] 3 C.M.L.R. 651, Para. [17], My Emphasis; See also Case 41/84, Pinna v. Caisse D'Allocations Familiales de la Savoie: [1986] E.C.R. 1, [1988] 1 C.M.L.R. 350, Para. [23].

In the related field of the freedom to provide services, the Court has recalled that Article 59 and Article 60(3) EEC
prohibit not only overt discrimination based on the nationality of the person providing a service but also all forms of covert discrimination which, although based on criteria which appeared to be neutral, in practice lead to the same result. [FN2]

FN2 Joined Cases 62-63/81 Seco Sa and Desquenne Giral SA v. Etablissement d'Assurance Contre la Vieillesse et l'Invalidite: [1982] E.C.R. 223, Para. [8], My Emphasis.

In accordance with that general principle, the fifth recital of the preamble to the regulation states that equality of treatment must be ensured in fact and in law and the second indent of Article 3(1) of the regulation prohibits provisions which 'though applicable irrespective of nationality, [have as] their exclusive or principal aim or effect ... to keep nationals of other member-States away from the employment offered'.
However, the following subparagraph provides that that provision is not to apply to 'conditions relating to linguistic knowledge required by reason of the nature of the post to be filled'.
*405 The concept of 'the nature of the post to be filled' appears to be fundamental here. It determines the scope of the exception thus created to the general principle of non-discrimination in Community law. Consequently, such a concept must be interpreted narrowly.
It appears that two factors must be present in order for this exception to operate. First, the language requirement must meet an aim and, secondly, it must be

strictly necessary in order to achieve that aim. This will be recognised as the principle of proportionality that is generally applied by the Court where it is a question of allowing restrictions on the freedoms guaranteed by the Treaty. It is therefore in the light of that principle that the posts whose nature may justify a requirement of linguistic knowledge must be identified. If the matter were brought before the Court, the principle of proportionality might therefore lead it to hold that national measures introducing language requirements for posts for which they are not strictly necessary were incompatible with Community law.
The order making the reference asks three questions which relate, first, to the possible existence of *de facto* discrimination, secondly to the concept of a post the nature of which requires linguistic knowledge and, finally, to the concept of public policy.
It appears logical to reply first to the second question on the point whether the post of art teacher is a post the nature of which requires linguistic knowledge since if the Court gives an affirmative answer to that question, the question whether or not there is any *de facto* discrimination will then be irrelevant. More generally, as the Commission points out, if there is no discrimination, there is no need to invoke the concept of public policy. This conclusion also follows if there is no *de facto* discrimination.
The Court has not yet considered those points. The only judgment given on the interpretation of Article 3 of the Regulation does not concern conditions relating to linguistic knowledge. [FN3] For the Court, therefore, the question is a novel one.

FN3 Case 131/85, Gül v. Regierungspräsident Düsseldorf: [1986] E.C.R. 1573, [1987] 1 C.M.L.R. 501.

The circumstances of the present case are these. Irish is the national language and the first official language according to the Constitution of Ireland. English is recognised as the second official language. According to the order making the reference, 33.6 per cent. of the population of Ireland professes fluency in the Irish language. Since the 1950's the Irish Government has actively pursued the objectives of preserving and restoring the Irish language, as is attested by the establishment in 1956 of a Department of State responsible for encouraging the extension of the use of Irish as a vernacular language and the 1979 ministerial circular letter which is at issue in this case. In its observations, the Irish Government fully sets out the details of the long-term plan undertaken to preserve the Irish language. However, it appears that at the Dublin College of *406 Marketing and Design most of the teachers and students habitually express themselves in English. Mrs. Groener submits that the full-time duties which she wishes to take up are not significantly different from the temporary duties which she is carrying out without any knowledge of the Irish language.
However, it does not seem to me necessary to embark upon a complex analysis to ascertain whether lack of knowledge of the Irish language may in fact create difficulties in the efficient teaching of the subject concerned, for--and we are now at the heart of the matter--it is a question of drawing a line between the powers of

the Community and those of the member-States and of considering whether or not a policy of preserving and fostering a language may be pursued, having regard to the requirements of Community law. The Regulation attempted to reconcile those apparently conflicting requirements by excluding conditions relating to linguistic knowledge from the scope of the principle of non-discrimination when the nature of the post to be filled requires such knowledge. May the intention of a State to promote the use of one of its languages be taken into account in this respect?

That question has not escaped the attention of the Community institutions. On 16 October 1981, the European Parliament adopted a resolution on a Community charter of regional languages and cultures and on a charter of rights of ethnic minorities and, on 30 October 1987, it adopted a resolution on the languages and cultures of regional and ethnic minorities in the European Community, following the Kuijpers report. The first of those documents requests national governments to 'allow and provide for, in response to needs expressed by the population, teaching in schools of all level and grades to be carried out in regional languages'. Furthermore, in 1982, the Commission set up the European Office on Minority Languages, whose office is in Dublin. All this shows the extent to which it is recognised that it is essential to preserve Europe's cultural richness and to ensure the diversity of its linguistic heritage.

Certainly, Irish cannot be described as a regional language. Indeed, the Irish Constitution gives it the status of a national language. However, since it is a minority language, such a language cannot be preserved without the adoption of voluntary and obligatory measures. Any minority phenomenon, in whatever field, cannot usually survive if appropriate measures are not taken.

The preservation of languages is one of those questions of principle which one cannot dismiss without striking at the very heart of cultural identity. Is it therefore for the Community to decide whether or not a particular language should survive? Is the Community to set Europe's linguistic heritage in its present state for all time. Is it to fossilise it?

It seems to me that every State has the right to try to ensure the diversity of its cultural heritage and, consequently, to establish the means to carry out such a policy. Such means concern primarily *407 public education. Likewise, every State has the right to determine the importance it wishes to attribute to its cultural heritage. The fact that Irish is recognised as an official language in the Constitution is evidence in this case of the desire of the Irish State to attribute major importance to the preservation of this heritage.

Once a Constitution (that is to say, all the fundamental values to which a nation solemnly declares that it adheres) recognises the existence of two official languages without limiting their use to specific parts of the national territory or to certain matters, each citizen has the right to be taught in those two languages. The fact that only 33.6 per cent. of Irish citizens use the Irish language is no justification for sweeping away that right altogether, for its importance is measured not only by its use but also by the possibility of preserving its use in the future.

Consequently, without contravening the principle of proportionality in any way,

this linguistic requirement must be conceived as not being limited merely to posts involving the teaching of Irish literature or culture. At this point I would like to quote from 'Le degré zéro de l'écriture' by Roland Barthes: ' Il n'y a pas de pensée sans langage', he states after having written 'la langue ... est l'aire d'une action, la définition et l'attente d'un possible'. To limit the requirement of a knowledge of Irish to posts involving the actual teaching of Irish would be to treat it as a dead language like ancient Greek or Latin, and as a language incapable of further development, or, at least, as a confidential language whose use is restricted to a small circle of initiates.

Every Irishman has the right--enshrined, as we have seen, in the Irish State's most fundamental legal instrument--to be taught any subject at all, including painting, in Irish, if he so desires. Whatever the official language used in an educational institution, a State is entitled to ensure that any citizen can express himself and be understood there in another language, which is also an official language and which is a repositary of and a means of transmitting a common cultural heritage.

Consequently, it seems to me that teaching posts fall by their nature within a field essential to the pursuit of a policy of preserving and fostering a language.

Finally it should be noted that derogations for full-time posts are possible where there is no other qualified candidate and that the level of knowledge required is not so high as to make it impossible for a foreigner to pass the examination. Provision is made for an intensive course lasting only one month as preparation for that examination. Out of six non-Irish candidates, four passed at the first attempt and one at the second. Finally, the documents annexed to the observations of the applicant in the main proceedings indicate that the oral examination which she took related to topical questions and was not particularly difficult. Consequently, the disputed measure, which is *408 flexible in a number of ways, is, in my view, limited to what is strictly necessary.

The possibility of applying a less strict measure, consisting, for example, in requiring a teacher, once appointed, to take lessons in Irish does not seem to meet satisfactorily the aim in question. First, the learning of the language would not be immediate and, secondly, the teachers involved would undoubtedly be less conscious of the necessity of having a knowledge of the Irish language. Consequently, it does not appear that the measure in question is contrary to the principle of proportionality.

I therefore suggest that the second question should be answered to the effect that teaching posts are by their nature amongst those posts in respect of which a member-State pursuing a policy of preserving and fostering a national language may require a sufficient knowledge of that language.

If that is also the Court's position, it seems to me, for the reasons set out above, that there is no need to reply either to the first or to the third question. However, if the Court does not accept my opinion, how should the second indent of Article 3(1) of the Regulation be interpreted for the purposes requested by the national court?

Is it the exclusive or principal aim or effect of the national provision in question to keep nationals of other member-States away from the employment offered? In

other words, does it constitute indirect discrimination?
In my view, the reply to that question must be qualified. It is not alleged by anyone that the aim of the measure is to keep non-Irish nationals away from the posts in question. Although brought up to date in 1979, the policy followed by the Irish Government of preserving and fostering the Irish language is, as I have pointed out, quite old and in any event dates from before Ireland's accession to the Community Treaties. It also seems that this policy has borne fruit since statistics drawn up following the 1981 census show an increase in the number of persons speaking the Irish language in certain regions between 1926 and 1981, namely from 9.4 to 28.2 per cent. in Leinster, from 21.6 to 34.6 per cent. in Munster and from 33.3 to 38.8 per cent. in Connaught. [FN4] There is, therefore, no question at all of a measure having as its aim to keep nationals of other member-States away from teaching posts.

FN4 *Observations of Ireland,* Annex no. 1.

As regards the exclusive or principal effect of the measure, it seems to be rather to require Irish nationals who wish to obtain a full-time teaching post to learn the Irish language than to keep away non-Irish nationals. Moreover, the Commission points out that Irish may be studied in Paris, Bonn, Rennes, Brest and Aberystwyth. It *409 should also be noted that Mrs. Groener is apparently the only non-Irish Community national to have failed the special examination in the Irish language. Finally, the proportion of teachers who are nationals of another member-State in relation to the number of teachers of Irish nationality (189 as against 1,723) does not, to my mind, indicate that a dissuasive effect has been exerted on non-Irish Community nationals; indeed, quite the reverse seems to be true.
However, the measure would be manifestly discriminatory if, in the case of recognised equivalence, the conditions for obtaining the certificate of knowledge of the Irish language differed according to the place where the Irish language studies were pursued. The replies which Ireland gave to the questions asked by the Court are not sufficiently explicit in this regard. Obtaining the certificate presupposes success in the written and oral examinations. Exemption from the written examination may be granted essentially to persons who have completed their studies and passed examinations in Irish, to persons who have studied Irish for at least three years and obtained the appropriate diploma and to graduates who have passed the Irish examination. Exemption from the oral examination may be granted to a person who has obtained a pass in the oral examination for registration as a secondary school teacher. It is true that many Irish people pursue their studies entirely in English and do not benefit from those derogations. Furthermore, a special examination in Irish such as that taken by Mrs. Groener compensates for the absence of a certificate. However, the Irish Government stated at the hearing that Community nationals who have learned Irish outside Ireland in one of the towns where such a course is available, which I have already mentioned, are not granted the exemptions available to persons who have obtained the aforesaid diplomas in Ireland. However, since the judgment in

Thieffry v. Conseil de L'Ordre des Avocats A la Cour de Paris, [FN5] the Court has considered a refusal to take into account a diploma which has been recognised as equivalent to a national diploma to be an unjustified restriction. That case concerned freedom of establishment but the decision is also applicable to freedom of movement for workers.

FN5 Case 71/76, Thieffry v. Conseil de L'Ordre des Avocats A la Cour de Paris: [1977] E.C.R. 765, [1977] 2 C.M.L.R. 373.

Consequently, it seems to me that the Court could if necessary rule that diplomas obtained outside a member-State but recognised by that member-State as being equivalent should be taken into account for the purposes of exemptions granted in the procedure for obtaining a certificate of linguistic competence. It is in those terms that I propose the first question should be answered if the Court does not adopt the interpretation of the last sentence of Article 3 which I have suggested.
As regards the third question, concerning the concept of public policy within the meaning of Article 48, I will confine myself to a few *410 remarks. It seems to me that this exception cannot apply to access to employment. This proviso appears in paragraph (3) of Article 48 which in effect sets out workers' freedom to come and go within the Community and to stay there; in other words, it concerns the political aspect of freedom of movement. On the other hand, the public policy proviso is not mentioned in paragraph (2) of Article 48, which relates to the abolition of discrimination as regards employment, remuneration and other conditions of work and employment, that is to say the economic aspect of freedom of movement. Moreover, the Regulation, which was adopted to implement **Article 48,** lays down the exceptions to the principle of non-discrimination, essentially as regards languages, as we have seen, and this would seem to exclude the possibility of adding an exception based on public policy, which does not appear either in the Regulation or in the paragraph of **Article 48** dealing with working conditions.
Finally, it should be recalled that in its judgment in Johnston v. Chief Constable of the Royal Ulster Constabulary [FN6] the Court stated that:
... the only **Articles** in which the Treaty provides for derogations applicable in situations which may involve public safety are Articles 26, 48, 56, 223 and 224 which deal with exceptional and clearly defined cases. Because of their limited character those **Articles** do not lend themselves to a wide interpretation and it is not possible to infer from them that there is inherent in the Treaty a general proviso covering all measures taken for reasons of public safety.

FN6 Case 222/84: [1986] E.C.R. 1651, [1986] 3 C.M.L.R. 240, Para. [26].

Consequently, it seems to me for the same reasons that the public policy proviso is inapplicable in this case and that it is unnecessary to reply to the third question.
I would therefore propose that the Court should rule as follows:
(1) The post of full-time teacher, whatever the subject taught, is one of the kind of

posts referred to in the last sentence of Article 3(1) of Council Regulation 1612/68 of 15 October 1968 on freedom of movement for workers within the Community.
In order to foster one of its national languages, a member-State may therefore rely on that provision for the purpose of laying down the requirement that any candidate for such a post should possess a sufficient knowledge of the language concerned.
(2) In the alternative, the second indent of the first subparagraph of Article 3(1) of that regulation must be interpreted as not precluding national provisions making access to a post subject to the requirement that candidates should have a sufficient knowledge of one of the official languages of a member-State, provided that the conditions in which that requirement is declared satisfied are not more favourable to persons who *411 have pursued their linguistic studies in the member-State concerned than to persons who possess diplomas recognised as equivalent by that State but who have pursued the same studies in another member-State.
(3) It is unnecessary to reply to the third question.

JUDGMENT

[1] By order of 3 December 1987, which was received at the Court on 21 December 1987, the High Court, Dublin, referred to the Court for a preliminary ruling under Article 177 EEC three questions on the interpretation of Article 48(3) of the Treaty and Article 3 of Council Regulation 1612/68 on freedom of movement for workers within the Community with a view to appraising the compatibility with those provisions of national rules making appointment to a permanent full-time post as a lecturer in public vocational education institutions conditional upon proof of an adequate knowledge of the Irish language.
[2] The questions were raised in proceedings instituted by Anita Groener, a Dutch national, against the Irish Minister for Education (hereinafter referred to as 'the Minister') and the City of Dublin Vocational Education Committee (hereinafter referred to as 'the Education Committee'). The origin of the dispute was the Minister's refusal to appoint Mrs. Groener to a permanent full-time post as an art teacher (Lecturer 1 (Painting)) employed by the Education Committee after she had failed a test intended to assess her knowledge of the Irish language.
[3] It is apparent from the documents before the Court that, according to section 23(1) and (2) of the Vocational Education Act 1930, the Minister's approval is required concerning the numbers, qualifications, remuneration and appointment of all employees of each vocational education committee. Exercising his powers under that Act, the Minister adopted, *inter alia*, two administrative measures.
[4] First, pursuant to Memorandum V.7., which entered into force on 1 September 1974, the competent committee may not appoint a person to a permanent full-time post in certain areas of teaching, including in particular art, unless that person holds the *Ceard-Teastas Gaeilge* (certificate of proficiency in the Irish language) or has an equivalent qualification recognised by the Minister. In that memorandum, the Minister also reserved the right to exempt candidates from

countries other than Ireland from the obligation to know Irish, provided that there were no other fully qualified candidates for the post.
[5] Secondly, on 26 June 1979, the Minister issued Circular Letter no. 28/79. According to paragraphs 2 and 3 of that circular, for posts of Assistant Lecturer and Lecturer, Scale I, preference must be given to suitably qualified candidates who hold the *Ceard-Teastas Gaeilge*. Appointees who do not hold that certificate may be required to *412 undergo a special examination in Irish consisting of an oral test (hereinafter referred to as 'the examination'). The candidates concerned may not be appointed to a temporary or permanent full-time post until they have passed the examination. Paragraph 5 of the circular confirms that the provision in Memorandum V.7., under which exemption from the linguistic qualification requirement may be granted in a case where there is no fully qualified candidate, is to continue to apply.
[6] In September 1982, Mrs. Groener was engaged on a temporary basis as a part-time art teacher in the College of Marketing and Design, Dublin, which is under the authority of the Education Committee. In July 1984, she applied for a permanent full-time post as a lecturer in art at that college. Since she did not have the *Ceard-Teastas Gaeilge,* Mrs. Groener asked for an exemption, but that request was refused. The reason for the refusal was that there were other fully qualified candidates for the post. The Minister however gave his consent to her being appointed provided that she first passed the examination.
[7] Mrs. Groener followed a four-week beginners' course under the auspices of the Gael Linn Institute and took the examination during the last week of that course; however, she did not pass.
[8] Steps subsequently taken both by Mrs. Groener and by the College, her employer, to secure her engagement for the academic year 1985-1986 as a full-time lecturer under a temporary contract or for her to be granted an exemption from the obligation to prove her knowledge of Irish were unsuccessful.
[9] Mrs. Groener then instituted proceedings for judicial review against the Minister and the Education Committee before the High Court, Dublin, maintaining that the conditions laid down by Memorandum V.7. and Circular Letter no. 28/79 were contrary to Article 48 EEC and Regulation 1612/68.
[10] Considering that the application raised certain questions of interpretation of those provisions of Community law, the High Court, Dublin, referred the following question to the Court for a preliminary ruling:
1. Where provisions laid down by law, regulation or administrative action make employment in a particular post in a member-State conditional upon the Applicant having a competent knowledge of one of the two official languages of that member-State, being a language which nationals of other member-States would not normally know but would have to learn for the sole purpose of complying with the condition, should Article 3 of Council Regulation 1612/68 be construed as applying to such provisions on the ground that there exclusive or principal effect is to keep nationals of other member-States away from the employment offered?
2. In considering the meaning of the phrase 'the nature of the post to be filled' in Article 3 of Regulation 1612/68, is regard to be had to a policy of the Irish State

that persons holding the post should have a *413 competent knowledge of the Irish language, where such knowledge is not required to discharge the duties attached to the post?
3.
(1) Is the term 'public policy' in Article 48(3) of the EEC Treaty to be construed as applying to the policy of the Irish State to support and foster the position of the Irish language as the first official language?
(2) If it is, is the requirement that persons seeking appointment to posts as lecturer in vocational education institutions in Ireland, who do not possess 'An Ceard-Teastas Gaeilge', shall undergo a special examination in Irish with the view to satisfying the Department of Education of their competency in Irish, a limitation justified on the grounds of such policy?
[11] Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
[12] It should be borne in mind first of all that the second indent of Article 3(1) of Regulation 1612/68 provides that national provisions or administrative practices of a member-State are not to apply where, 'though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other member-States away from the employment offered'. The last subparagraph of Article 3(1) provides that that provision is not to 'apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled'.
[13] It is apparent from the documents before the Court that the obligation to prove a knowledge of the Irish language imposed by the national provisions in question applies without distinction to Irish and other Community nationals, except as regards the exemptions which may be allowed for nationals of other member-States.
[14] Since the second indent of Article 3(1) is not applicable where linguistic requirements are justified by the nature of the post, it is appropriate to consider first the second question submitted by the national court, which is essentially whether the nature of a permanent full-time post of lecturer in art in public vocational education institutions is such as to justify the requirement of a knowledge of the Irish language.
[15] According to the documents before the Court, the teaching of art, like that of most other subjects taught in public vocational education schools, is conducted essentially or indeed exclusively in the English language. It follows that, as indicated by the terms of the second question submitted, knowledge of the Irish language is not required for the performance of the duties which teaching of the kind at issue specifically entails.
[16] However, that finding is not in itself sufficient to enable the national court to decide whether the linguistic requirement in question is justified 'by reason of the nature of the post to be filled', within the *414 meaning of the last subparagraph of Article 3(1) of Regulation 1612/68.
[17] To apprehend the full scope of the second question, regard must be had to the special linguistic situation in Ireland, as it appears from the documents before

the Court. By virtue of Article 8 of the Bunreacht na hEireann (Irish Constitution)
1. The Irish language as the national language is the first official language.
2. The English language is recognised as a second official language.
3. Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof.
[18] As is apparent from the documents before the Court, although Irish is not spoken by the whole Irish population, the policy followed by Irish Governments for many years has been designed not only to maintain but also to promote the use of Irish as a means of expressing national identity and culture. It is for that reason that Irish courses are compulsory for children receiving primary education and optional for those receiving secondary education. The obligation imposed on lecturers in public vocational education schools to have a certain knowledge of the Irish language is one of the measures adopted by the Irish Government in furtherance of that policy.
[19] The EEC Treaty does not prohibit the adoption of a policy for the protection and promotion of a language of a member-State which is both the national language and the first official language. However, the implementation of such a policy must not encroach upon a fundamental freedom such as that of the free movement of workers. Therefore, the requirements deriving from measures intended to implement such a policy must not in any circumstances be disproportionate in relation to the aim pursued and the manner in which they are applied must not bring about discrimination against nationals of other member-States.
[20] The importance of education for the implementation of such a policy must be recognised. Teachers have an essential rôle to play, not only through the teaching which they provide but also by their participation in the daily life of the school and the privileged relationship which they have with their pupils. In those circumstances, it is not unreasonable to require them to have some knowledge of the first national language.
[21] It follows that the requirement imposed on teachers to have an adequate knowledge of such a language must, provided that the level of knowledge required is not disproportionate in relation to the objective pursued, be regarded as a condition corresponding to the knowledge required by reason of the nature of the post to be filled within the meaning of the last subparagraph of Article 3(1) of Regulation 1612/68.
*415 [22] It must also be pointed out that where the national provisions provide for the possibility of exemption from that linguistic requirement where no other fully qualified candidate has applied for the post to be filled, Community law requires that power to grant exemptions to be exercised by the Minister in a non-discriminatory manner.
[23] Moreover, the principle of non-discrimination precludes the imposition of any requirement that the linguistic knowledge in question must have been acquired within the national territory. It also implies that the nationals of other member-States should have an opportunity to re-take the oral examination, in the event of their having previously failed it, when they again apply for a post of assistant

lecturer of lecturer.
[26] Accordingly, the reply to the second question must be that a permanent full-time post of lecturer in public vocational education institutions is a post of such a nature as to justify the requirement of linguistic knowledge, within the meaning of the last subparagraph of Article 3(1) of Council Regulation 1612/68, provided that the linguistic requirement in question is imposed as part of a policy for the promotion of the national language which is, at the same time, the first official language and provided that that requirement is applied in a proportionate and non-discriminatory manner.
[25] In view of the answer given to the second question, it is unnecessary to give an answer to the first and third questions.

Costs

[26] The costs incurred by the Irish and French Governments and by the Commission of the European Communities, 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.

Order

On those grounds, THE COURT, in reply to the questions submitted to it by the High Court, Dublin, by order of 3 December 1987,
HEREBY RULES:
A permanent full-time post of lecturer in public vocational education institutions is a post of such a nature as to justify the requirement of linguistic knowledge, within the meaning of the last subparagraph of Article 3(1) of Council, Regulation 1612/68, provided that the linguistic requirement in question is imposed as part of a policy for the promotion of the national language which is, at the same time, the first official language and provided that that requirement is applied in a proportionate and non-discriminatory manner.

[1990] 1 C.M.L.R. 401

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