I.

Interpret the meaning of a «worker» within the Treaty on the Functioning of the European Union

1.1 by applying (1) grammatical method; (2) contextual (systematic) method, and (3) purposive (teleological) method (see materials attached below)

1.2 Apply the definitions you constructed to determine whether an unemployed person from an EU State seeking job in another EU State is to be considered a "worker" covered by TFEU provisions.

1.3 Compare outcomes you achieve by applying different methods of interpretation. In case of difference between outcomes, which result would in your opinion EU Court adopt? Do you agree or disagree, and why?

TFEU Article 45

(ex Article 39 TEC)

1. Freedom of movement for workers shall be secured within the Union.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
(a) to accept offers of employment actually made;
(b) to move freely within the territory of Member States for this purpose;
(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service.

[EXTRACT]

JUDGMENT OF THE COURT (First Chamber)

19 June 2014

(Reference for a preliminary ruling — Article 45 TFEU — Directive 2004/38/EC — Article 7 — 'Worker' — Union citizen who gave up work because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth)

In Case C-507/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court of the United Kingdom, made by decision of 31 October 2012, received at the Court on 8 November 2012, in the proceedings

Jessy Saint Prix

v

Secretary of State for Work and Pensions,

intervening party:

AIRE Centre,

[...]

23 In those circumstances the Supreme Court decided to stay the proceedings and to refer the following questions to the Court:

‘1. Is the right of residence conferred upon a “worker” in Article 7 of [Directive 2004/38] to be interpreted as applying only to those (i) in an existing employment relationship, (ii) (at least in some circumstances) seeking work, or (iii) covered by the extensions in Article 7(3) [of that directive], or is [Article 7 of that directive] to be interpreted as not precluding the recognition of further persons who remain “workers” for this purpose?

2. (a) If the latter, does it extend to a woman who reasonably gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy (and the aftermath of childbirth)?

(b) If so, is she entitled to the benefit of the national law’s definition of when it is reasonable for her to do so?’

[...]

Consideration of the questions referred

24 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether EU law, and in particular Article 45 TFEU and Article 7 of Directive 2004/38, are to be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth, retains the status of ‘worker’ within the meaning of those articles.

25 In order to answer those questions, it should be stated at the outset that it is apparent from recitals 3 and 4 in the preamble to that directive that the aim of the directive is to remedy the sector-by-sector piecemeal approach to the primary and individual right of Union citizens to move and reside freely within the territory of the Member States, in order to facilitate the exercise of that right by providing a single legislative act codifying and revising the instruments of EU law which preceded that directive (see, to that effect, *Ziolkowski* and *Szeja*, C-424/10 and C-425/10, EU:C:2011:866, paragraph 37).

26 In that regard, it is apparent from Article 1(a) of Directive 2004/38 that that directive is intended to set out the conditions governing the exercise of that right, which include, where residence is desired for a period of longer than three months, in particular the condition laid down in Article 7(1)(a) of that directive that Union citizens must be workers or self-employed persons in the host Member State (see, to that effect, *Brey*, C-140/12, EU:C:2013:565, paragraph 53 and the case-law cited).

27 Article 7(3) of Directive 2004/38 provides that, for the purposes of paragraph 7(1)(a) of that directive, a Union citizen who is no longer a worker or self-employed person shall nevertheless retain the status of worker or self-employed person in specific cases, namely where he is temporarily unable to work as the result of an illness or accident, where, in certain situations, he is in involuntary unemployment, or where, under specified conditions, he embarks on vocational training.

28 However, Article 7(3) of Directive 2004/38 does not expressly envisage the case of a woman who is in a particular situation because of the physical constraints of the late stages of her pregnancy and the aftermath of childbirth.

29 In that regard, the Court has consistently held that pregnancy must be clearly distinguished from illness, in that pregnancy is not in any way comparable with a pathological condition (see to that effect, inter alia, *Webb*, C-32/93, EU:C:1994:300, paragraph 25 and the case-law cited).

30 It follows that a woman in the situation of Ms Saint Prix, who temporarily gives up work because of the late stages of her pregnancy and the aftermath of childbirth, cannot be regarded as a person temporarily unable to work as the result of an illness, in accordance with Article 7(3)(a) of Directive 2004/38.

31 However, it does not follow from either Article 7 of Directive 2004/38, considered as a whole, or from the other provisions of that directive, that, in such circumstances, a citizen of the Union who does not fulfil the conditions laid down in that article is, therefore, systematically deprived of the status of 'worker', within the meaning of Article 45 TFEU.

32 The codification, sought by the directive, of the instruments of EU law existing prior to that directive, which expressly seeks to facilitate the exercise of the rights of Union citizens to move and reside freely within the territory of the Member States, cannot, by itself, limit the scope of the concept of worker within the meaning of the FEU Treaty.

33 In that regard, it must be noted that, according to the settled case-law of the Court, the concept of 'worker', within the meaning of Article 45 TFEU, in so far as it defines the scope of a fundamental freedom provided for by the FEU Treaty, must be interpreted broadly (see, to that effect, *N.*, C-46/12, EU:C:2013:97, paragraph 39 and the case-law cited).

34 Accordingly, the Court has held that any national of a Member State, irrespective of his place of residence and of his nationality, who has exercised the right to freedom of movement for workers and who has been employed in a Member State other than that of his residence falls within the scope of Article 45 TFEU (see, inter alia, *Ritter-Coulais*, C-152/03, EU:C:2006:123, paragraph 31, and *Hartmann*, C-212/05, EU:C:2007:437, paragraph 17).

35 The Court has thus also held that, in the context of Article 45 TFEU, a person who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration must be considered to be a worker. Once the employment relationship has ended, the person concerned, as a rule, loses the status of worker, although that status may produce certain effects after the relationship has ended, and a person who is genuinely seeking work must also be classified as a worker (*Caves Krier Frères*, C-379/11, EU:C:2012:798, paragraph 26 and the case-law cited).

36 Consequently, and for the purposes of the present case, it must be pointed out that freedom of movement for workers entails the right for nationals of Member States to move freely within

the territory of other Member States and to stay there for the purposes of seeking employment (see, inter alia, *Antonissen*, C-292/89, EU:C:1991:80, paragraph 13).

37 It follows that classification as a worker under Article 45 TFEU, and the rights deriving from such status, do not necessarily depend on the actual or continuing existence of an employment relationship (see, to that effect, *Lair*, 39/86, EU:C:1988:322, paragraphs 31 and 36).

38 In those circumstances, it cannot be argued, contrary to what the United Kingdom Government contends, that Article 7(3) of Directive 2004/38 lists exhaustively the circumstances in which a migrant worker who is no longer in an employment relationship may nevertheless continue to benefit from that status.

39 In the present case, it is clear from the order for reference, a finding not contested by the parties in the main proceeding, that Ms Saint Prix was employed in the territory of the United Kingdom before giving up work, less than three months before the birth of her child, because of the physical constraints of the late stages of pregnancy and the immediate aftermath of childbirth. She returned to work three months after the birth of her child, without having left the territory of that Member State during the period of interruption of her professional activity.

40 The fact that such constraints require a woman to give up work during the period needed for recovery does not, in principle, deprive her of the status of 'worker' within the meaning Article 45 TFEU.

41 The fact that she was not actually available on the employment market of the host Member State for a few months does not mean that she has ceased to belong to that market during that period, provided she returns to work or finds another job within a reasonable period after confinement (see, by analogy, *Orfanopoulos and Oliveri*, C-482/01 and C-493/01, EU:C:2004:262, paragraph 50).

42 In order to determine whether the period that has elapsed between childbirth and starting work again may be regarded as reasonable, the national court concerned should take account of all the specific circumstances of the case in the main proceedings and the applicable national rules on the duration of maternity leave, in accordance with Article 8 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1).

43 The approach adopted in paragraph 41 of the present judgment is consistent with the objective pursued by Article 45 TFEU of enabling a worker to move freely within the territory of the other Member States and to stay there for the purpose of employment (see *Uecker and Jacquet*, C-64/96 and C-65/96, EU:C:1997:285, paragraph 21).

44 As the Commission contends, a Union citizen would be deterred from exercising her right to freedom of movement if, in the event that she was pregnant in the host State and gave up work as a result, if only for a short period, she risked losing her status as a worker in that State.

45 Furthermore, it must be pointed out that EU law guarantees special protection for women in connection with maternity. In that regard, it should be noted that Article 16(3) of Directive 2004/38 provides, for the purpose of calculating the continuous period of five years of residence in the host Member State allowing Union citizens to acquire the right of permanent residence in that territory, that the continuity of that residence is not affected, inter alia, by an

absence of a maximum of 12 consecutive months for important reasons such as pregnancy and childbirth.

46 If, by virtue of that protection, an absence for an important event such as pregnancy or childbirth does not affect the continuity of the five years of residence in the host Member State required for the granting of that right of residence, the physical constraints of the late stages of pregnancy and the immediate aftermath of childbirth, which require a woman to give up work temporarily, cannot, a fortiori, result in that woman losing her status as a worker.

47 In the light of all the foregoing considerations, the answer to the questions referred for a preliminary ruling by the referring court is that Article 45 TFEU must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of 'worker', within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child.

DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL of 29 April 2004
on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States
[EXTRACT]

Article 7

Right of residence for more than three months
1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) are workers or self-employed persons in the host Member State; or

(b) […]

[…]

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

(a) he/she is temporarily unable to work as the result of an illness or accident;
(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office;
(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;
(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.