

- their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community.
3. The concept of “social advantage” referred to in Article 7 (2) of Regulation No 1612/68 encompasses not only the benefits accorded by virtue of a right but also those granted on a discretionary basis.
 4. Article 7 (2) of Regulation No 1612/68 is to be interpreted as meaning that the concept of “social advantage” referred to in that provision encompasses interest-free loans granted on childbirth by a credit institution incorporated under public law, on the basis of guidelines and with financial assistance from the State, to families with a low income with a view to stimulating the birth rate. Such loans must therefore be granted to workers of other Member States on the same conditions as those which apply to national workers.

In Case 65/81

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

1. FRANCESCO REINA, Stuttgart,
2. LETIZIA REINA, Stuttgart,

and

LANDESKREDITBANK BADEN-WÜRTTEMBERG, an institution incorporated under public law,

on the interpretation of Article 7 (1) of the EEC Treaty and Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475),

THE COURT (Third Chamber)

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: Sir Gordon Slynn
Registrar: M. Dausies, Legal Secretary

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment;

I — Facts and written procedure

1. Article 7 (1) and (2) of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) reads as follows:

“Article 7

1. A worker who is a national of a Member State may not, in the territory of another Member State, be

2. He shall enjoy the same social and tax advantages as national workers.”

2. The main proceedings, in a case relating to a matter of administrative law, concern the grant of a childbirth loan by the Landeskreditbank Baden-Württemberg, an institution incorporated with legal capacity under public law and coming under the direction of the *Land* of Baden-Württemberg. On the basis of guidelines for the grant of childbirth loans laid down by the competent ministry of the *Land* of Baden-Württemberg, that institution grants upon application loans “for the purpose of averting, alleviating or removing financial difficulties of families” (No 1 of

the guidelines) due *inter alia* to the birth of a child.

Under the guidelines up to DM 8 000 is provided by way of such a childbirth loan and in exceptional cases up to DM 12 000. The term of the loans is seven years and they are interest-free. The Landeskreditbank receives contributions for this purpose from the *Land* of Baden-Württemberg out of funds appropriated in the State budget.

According to the guidelines those entitled to apply for a loan are married couples of whom at least one spouse is a German national. The persons entitled to apply must have established their ordinary place of residence in Baden-Württemberg at the time of application. The childbirth loan is granted only if the average monthly net income of the married couple does not exceed a specified amount.

As the order making the reference for a preliminary ruling explains, the guidelines of the Ministry of Baden-Württemberg are not legal rules establishing direct legal rights for individuals. The court making the reference for a preliminary ruling describes them rather as legal rules of internal administration under which the defendant, as a subordinate authority solely *vis-à-vis* the Ministry, is obliged to make use of the funds entrusted to it. The guidelines have indirect legal effects for individuals only in so far as, when the Landeskreditbank applies them, it may not without substantive cause depart from them in individual cases without infringing the principle of equality.

The court making the reference for a preliminary ruling states that the grant of childbirth loans is unique to Baden-Württemberg. Childbirth loans are regarded as being benefits which are

intended to have a beneficial effect on the birth trend in the Federal Republic of Germany and to reduce the number of voluntary abortions.

3. The plaintiffs in the main proceedings are Francesco and Letizia Reina, a married couple of Italian nationality residing as workers in the Federal Republic of Germany. On the occasion of the birth of twins they applied for the grant of a childbirth loan. The Landeskreditbank refused their application on the ground that under the guidelines for the grant of family loans a childbirth loan may only be granted if at least one spouse is a German national.

The plaintiffs then brought an action before the Verwaltungsgericht [Administrative Court] Stuttgart with a view to compelling the Landeskreditbank to grant a childbirth loan.

That court took the view that its decision turned on whether the grant of the loan might be made conditional on at least one spouse's being a German national where nationals of a Member State are concerned. It therefore stayed the proceedings and referred the following questions to the Court of Justice pursuant to Article 177 of the EEC Treaty:

"1. Must Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) be construed as meaning that it puts other nationals of the EEC on an equal footing with German nationals if, pursuant to internal administrative guidelines and without there being any legal entitlement thereto, a credit institution incorporated under public

law grants upon application in the event of the birth of a child interest-free loans to married couples whose income does not exceed a certain amount for the purpose of averting, alleviating or removing financial difficulties and in respect of which loans the *Land* of Baden-Württemberg provides the institution with assistance for the servicing of debts on the basis of the funds appropriated from time to time in the State budget, with the aim *inter alia* of countering by measures for family assistance the decline in the birth rate in the Federal Republic of Germany and reducing the number of voluntary abortions?

2. If Article 7 (2) of Regulation (EEC) No 1612/68 is not applicable, is Article 7 (1) of the Treaty establishing the European Economic Community of 25 March 1957 to be construed as meaning that in the circumstances referred to above it precludes discrimination between other nationals of the EEC and German nationals as regards the grant of childbirth loans?"
4. The order making the reference for a preliminary ruling was received at the Court Registry on 30 March 1981.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the Landeskreditbank Baden-Württemberg, represented by Mr Hanke and Mr Stehle, and by the Commission of the European Communities, represented by Manfred Beschel, a member of its Legal Department.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any

preparatory inquiry and to assign the case to the Third Chamber in accordance with Article 95 of the Rules of Procedure.

II — Written observations

1. As a preliminary submission, the *Landeskreditbank Baden-Württemberg* claims that the reference for a preliminary ruling is inadmissible because the *Verwaltungsgericht Stuttgart* did not frame its order suspending the proceedings and making the reference for a preliminary ruling in the manner prescribed by the relevant provisions of German procedural law.

- (a) As regards the *first question*, the *Landeskreditbank* states that under Article 48 (2) of the EEC Treaty freedom of movement for workers comprises the abolition of discrimination based on nationality only "as regards employment, remuneration and other conditions of work and employment" and so presupposes some functional connection with the status of worker. The material scope of application of Regulation No 1612/68 is also subject to the same limitation.

The childbirth loans in question do not constitute "social advantages" for workers within the meaning of Article 7 (2) of that regulation, nor does the grant of such loans come under "other conditions of work and employment" within the meaning of Article 48 (2) of the EEC Treaty. The grant of a loan is not conditional upon a person's being or having been a worker. Nor is it the case that, for the purpose of calculating the income limits within which a person must come for a loan to be granted, the sources of that income are in any way relevant. There is thus no legal connection with the status of worker or

with any prior employment. Moreover, there cannot be said to be any real obstacle to the free movement of workers from other Member States if the childbirth loan is granted only to single German nationals and married couples of whom at least one spouse has German nationality.

The Landeskreditbank further remarks that the childbirth loans are granted primarily for demographic reasons in order to counteract the decline in the birth rate of the German population in Baden-Württemberg. That birth rate is considerably lower than that of foreigners living there. Thus the grant of the childbirth loans constitutes a recognition of the burdens connected with the birth of children and their upbringing. No unobjective preference is given to German nationals as the intention is only to make up the relative deficit in births among the German population in relation to the foreign population.

The EEC Treaty does not prevent Member States from treating nationals and foreigners differently as far as civic rights and duties are concerned. In view of the demographic objective of the childbirth loan, the requirement that recipients of the loans must be German nationals or married couples of whom at least one spouse has German nationality constitutes a measure, with a legitimate national orientation, in the sphere of civic rights.

Another reason why the childbirth loan is not to be considered as a social

advantage within the meaning of Article 7 (2) of Regulation No 1612/68 is that it is a lump-sum benefit granted voluntarily from the limited financial resources of the *Land*, to which there is no legal entitlement but which is accorded only so far as the funds set aside for the purpose each year in the State budget permit.

Furthermore, restriction of the childbirth loans to German nationals is also justified from the economic point of view of securing the repayment of the loans. Foreign migrant workers will in many cases return to their home countries during the term of the loan so that, if their repayment obligations were not fulfilled, in many cases it would have to be expected that the claim for repayment could not be successfully pursued.

Finally, it should be pointed out that if Article 7 (2) of Regulation No 1612/68 were construed as also applying to the childbirth loans, it would not be covered by any enabling provision under primary Community law. The Community's competence extends only to the adoption of rules to remove obstacles which, in practice or in law, hinder the mobility of workers within the Community. However, there is no obstacle to the creation of complete freedom of movement for workers if childbirth loans are made available in a Member State only to nationals of that State in order to encourage their reproduction and to make up an existing deficit in births in relation to the number of foreign nationals. Article 48 et seq. of the EEC Treaty do not contain any prohibition of nationally oriented measures of demographic policy or contain any authority for issuing such a prohibition.

(b) As regards the *second question*, the Landeskreditbank observes that the general prohibition of discrimination contained in Article 7 of the EEC Treaty has no effect where the special provision contained in Article 48 (2) of the EEC Treaty applies. At all events Article 7 may not be construed as having more far-reaching effects than those of Article 48 (2). The prohibition of discrimination laid down in Article 7 is expressly restricted to the area in which the EEC Treaty applies and relates only to those areas encompassed by the economic integration aimed at by the EEC Treaty to which the specific demographic measures in question do not belong.

2. (a) The *Commission of the European Communities* submits in regard to the *first question* that the answer depends on whether the grant of childbirth loans provided for by the guidelines of the Baden-Württemberg Ministry must be considered to be "social advantages" within the meaning of Article 7 (2) of Regulation No 1612/68. In this connection it is first necessary to examine whether grants of such loans must be considered from a conceptual point of view as social advantages and, if so, whether the considerations, mentioned by the Verwaltungsgericht, which weighed with the competent authority when making the appropriations, or the aim of making efficient use of the available funds, justify the exclusion of nationals of other Member States from those advantages.

By their general nature the childbirth loans in question must certainly be regarded as "social advantages". They are designed to alleviate the financial burdens which weigh on poorer families when a child is born. The economic advantage for the recipient of the loan is that he receives it free of interest.

It should however be noted that the advantage is not granted exclusively to workers and therefore the existence of an employment relationship is not a prior legal condition for the grant of a childbirth loan.

However, in its judgment of 30 September 1975 in Case 32/75 *Cristini* [1975] ECR 1085 the Court held that the reference to "social advantages" in Article 7 (2) may not be construed restrictively but applies to all social and tax advantages, whether or not attached to the contract of employment. The Court of Justice thus took account of the special importance of the right of freedom of movement.

The Landeskreditbank's objection that there is no legal entitlement to the grant of a childbirth loan is not convincing either, because the principle of equal treatment embodied in Article 7 (2) of the regulation requires that the enjoyment of social advantages should be granted to the beneficiaries on the same conditions as those which apply to national workers. That means that workers from other Member States are just as entitled as national workers to have their application examined by the authorities and decided in accordance with the relevant criteria for making the decision.

If the loans of the type described are, from a conceptual point of view, social advantages within the meaning of Article 7 (2) of the regulation, a further question to be clarified is whether the considerations underlying the introduction of the family loans permit the grant of those advantages to be restricted to nationals.

In its judgment of 31 May 1979 in Case 207/78 *Even* [1979] ECR 2019 the Court refused to apply Article 7 (2) to a particular social benefit because that benefit was not available to any national but only to those who, on the basis of qualifying factors of a personal nature, namely the services which they rendered in wartime to their own country, had been granted special status which distinguished them from other workers, including national workers.

Nevertheless the aforementioned considerations on which the Baden-Württemberg legislature proceeded provide no objective justification in the present context for giving German nationals special status. The consideration that the childbirth loans are intended to help to prevent voluntary abortions may clearly not be relied upon as an objective justification for the creation of such special status. Nor does it follow from the demographic objective pursued by means of approval of an appropriation, namely to counteract the falling birth rate, that it is necessary to reserve the advantages to German nationals. Member States may indeed pursue demographic objectives by means of social measures; however they may not assume that this gives them the right to discriminate against nationals of other Member States.

Nor, finally, does the concern to make efficient use of the limited funds available provide any justification for restricting the social advantages in question to German nationals. In the Commission's view, purely fiscal considerations are in principle not of such a nature as to be able, in the area to which the Treaty applies, to exclude nationals of other Member States from social advantages.

(b) Therefore an answer to the *second question* is unnecessary. By way of a subsidiary observation the Commission remarks that what it has said on the

subject of Article 7 (2) of Regulation No 1612/68 also applies to the prohibition of discrimination on grounds of nationality laid down in Article 7 (1) of the EEC Treaty which is given specific expression in Article 48 et seq. of the EEC Treaty and the secondary Community law based thereon.

In conclusion the Commission proposes that the questions referred to the Court should be answered as follows:

- “1. Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of the European Communities of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) must be construed as meaning that it also covers advantages such as the childbirth loans described in the order of the Verwaltungsgericht Stuttgart making the reference for a preliminary ruling.
2. An answer to the second question is unnecessary.”

III — Oral procedure

At the sitting on 29 October 1981, oral argument was presented by the following: Irene Kessler for the Landeskreditbank Baden-Württemberg; Guido Fienga, State Advocate, for the Italian Government; Manfred Beschel, a member of the Legal Department of the Commission of the European Communities, for the latter. In addition replies were given to questions put by the Court.

The Advocate General delivered his opinion at the sitting on 10 December 1981.

Decision

- 1 By order of 17 February 1981 which was received at the Court on 30 March 1981 the Verwaltungsgericht [Administrative Court] Stuttgart referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions as to the interpretation of Article 7 (1) of the EEC Treaty and Article 7 (2) of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).

- 2 Those questions have been raised in a dispute on a matter of administrative law concerning the grant of a childbirth loan between a married couple, workers of Italian nationality residing in the Federal Republic of Germany, and the Landeskreditbank Baden-Württemberg, an institution incorporated under public law and placed under the direction of the *Land* of Baden-Württemberg.

- 3 The Landeskreditbank grants loans, upon application, on the basis of guidelines laid down by the competent authority of the *Land* of Baden-Württemberg, *inter alia* on the birth of a child. The childbirth loans, which are free of interest as a result of subsidies allocated by the *Land*, are granted for a term of seven years up to an amount of DM 8 000, which may be increased to DM 12 000 in exceptional cases. They may be granted to married couples only where at least one of the spouses is a German national and the family income does not exceed a specified amount. According to the information provided by the national court, this system of childbirth loans was introduced with a view to stimulating the birth rate of the German population and in order to reduce the number of voluntary abortions.

- 4 In the present case, the plaintiffs in the main action, Mr and Mrs Reina, applied for the grant of a loan on the birth of twins. The Landeskreditbank Baden-Württemberg rejected their application on the ground that under the above-mentioned guidelines, a loan may be granted only if at least one spouse is a German national. The plaintiffs then brought an action before the Verwaltungsgericht Stuttgart challenging the conformity of that requirement with Community law.

5 Since it took the view that it required a ruling of the Court of Justice to enable it to give judgment, the Verwaltungsgericht Stuttgart referred the following questions to the Court of Justice for a preliminary ruling.

- “1. Must Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) be construed as meaning that it puts other nationals of the EEC on an equal footing with German nationals if, pursuant to internal administrative guidelines and without there being any legal entitlement thereto, a credit institution incorporated under public law grants upon application in the event of the birth of a child interest-free loans to married couples whose income does not exceed a certain amount for the purpose of averting, alleviating or removing financial difficulties and in respect of which loans the *Land* of Baden-Württemberg provides the institution with assistance for the servicing of debts on the basis of the funds appropriated from time to time in the State budget, with the aim *inter alia* of countering by measures for family assistance the decline in the birth rate in the Federal Republic of Germany and reducing the number of voluntary abortions?

2. If Article 7 (2) of Regulation (EEC) No 1612/68 is not applicable, is Article 7 (1) of the Treaty establishing the European Economic Community of 25 March 1957 to be construed as meaning that in the circumstances referred to above it precludes discrimination between other nationals of the EEC and German nationals as regards the grant of childbirth loans?”

Procedure

• The Landeskreditbank has challenged the admissibility of the reference for a preliminary ruling on the ground that the Verwaltungsgericht was incorrectly composed when it made the order referring the matter to the Court. When doing so, the Verwaltungsgericht was composed of three judges by profession whereas the relevant provisions of German procedural law require, in addition, the participation of two lay judges.

• In that regard, it is necessary to recall that Article 177 of the EEC Treaty confers on the Court jurisdiction to give preliminary rulings on questions of Community law referred to it by a court or tribunal of one of the Member States. Under the scheme of that provision, it is for the Court to consider, with a view to confirming its own jurisdiction, whether it is duly seized of a matter brought before it by a court or tribunal of a Member State. However,

in view of the distribution of functions between itself and the national court, it is not for the Court to determine whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organization of the courts and their procedure. The Court is therefore bound by a decision of a court or tribunal of a Member State referring a matter to it, in so far as that decision has not been rescinded on the basis of a means of redress provided for by national law.

- 8 It follows from those considerations that where a court of a Member State brings a matter before the Court of Justice under Article 177 of the EEC Treaty the Court has jurisdiction, under that provision, to answer the questions raised without there being any need to consider first whether the decision making the reference to it was taken in accordance with the rules of national law governing the organization of the courts and their procedure.

The first question

- 9 In its first question, the national court asks in substance whether Article 7 (2) of Regulation No 1612/68 of the Council of 15 October 1968 must be construed as meaning that the concept of "social advantage" referred to in that provision encompasses interest-free loans granted on childbirth by a credit institution incorporated under public law, on the basis of guidelines and with financial assistance from the State, to families with a low income with a view to stimulating the birth rate.
- 10 The Landeskreditbank contends in the first place that Article 7 (2) may not be applied to the loans in question in view of the absence of any connection between the grant of the loan and the recipient's status as a worker and on the ground that the refusal to grant the loan in no way hinders the mobility of workers within the Community.
- 11 It should be recalled that Regulation No 1612/68, adopted *inter alia* pursuant to Article 49 of the EEC Treaty with a view to achieving freedom of movement for workers, provides, in Article 7 (1), that a worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work. Paragraph

(2) of the same article adds that such a worker is to enjoy the same social and tax advantages as national workers.

- 12 As the Court has repeatedly held, most recently in its judgment of 31 May 1979 in Case 207/78 *Even* [1979] ECR 2019, it follows from those provisions and from the objective pursued that the advantages which that regulation extends to workers who are nationals of other Member States are all those which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community.
- 13 Consequently, childbirth loans such as those referred to by the national court satisfy in principle the criteria enabling them to be classified as social advantages to be granted to workers of all the Member States without any discrimination whatever on grounds of nationality, in particular in view of their aim which is to alleviate, in the case of families with a low income, the financial burden resulting from the birth of a child.
- 14 The Landeskreditbank disputes that conclusion by maintaining that childbirth loans, such as those at issue, fall outside the scope of the concept of "social advantage" within the meaning of Article 7 (2) of Regulation No 1612/68 since they are granted principally for reasons of demographic policy in order to counteract the decline in the birth rate of the German population. It is therefore a measure adopted in the area of political rights, necessarily linked to nationality, and which as a result falls outside the ambit of Article 48 *et seq.* of the Treaty and of the rules adopted to implement those provisions.
- 15 It should be stated that, since the Community has no powers in the field of demographic policy as such, the Member States are permitted, in principle, to pursue the achievement of the objectives of such a policy, even by means of social measures. This does not mean, however, that the Community

exceeds the limits of its jurisdiction solely because the exercise of its jurisdiction affects measures adopted in pursuance of that policy. Accordingly, childbirth loans of that kind may not be considered as falling outside the scope of the rules of Community law relating to the free movement of persons and, more specifically, of Article 7 (2) of Regulation No 1612/68, solely because they are granted for reasons of demographic policy.

- 16 The Landeskreditbank contends in addition that the loans in question constitute voluntary benefits within the limits of the budgetary resources allocated for that purpose, with the result that no entitlement to those benefits is created. Similarly, it is proper to take into account the fact that many foreign workers return to their countries of origin before the expiry of the period prescribed for the repayment of the loan, so that the repayment is put in jeopardy.
- 17 However, it must be observed in that connection that the concept of "social advantage" referred to in Article 7 (2) of the regulation encompasses not only the benefits accorded by virtue of a right but also those granted on a discretionary basis. In the latter case, the principle of equal treatment requires the benefits to be made available to nationals of other Member States on the same conditions as those which apply to a State's own nationals and on the basis of the same guidelines as those which govern the grant of the loans to the latter.
- 18 The answer to the first question must therefore be that Article 7 (2) of Regulation No 1612/68 of the Council of 15 October 1968 is to be interpreted as meaning that the concept of "social advantage" referred to in that provision encompasses interest-free loans granted on childbirth by a credit institution incorporated under public law, on the basis of guidelines and with financial assistance from the State, to families with a low income with a view to stimulating the birth rate. Such loans must therefore be granted to workers of other Member States on the same conditions as those which apply to national workers.

Second question

As the second question was only put in the event of the first question's being answered in the negative, it does not call for a reply.

Costs

- 19 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber)

in answer to the questions submitted to it by the Verwaltungsgericht Stuttgart by order of 17 February 1981, hereby rules:

Article 7 (2) of Regulation No 1612/68 of the Council of 15 October 1968 must be interpreted as meaning that the concept of "social advantage" referred to in that provision encompasses interest-free loans granted on childbirth by a credit institution incorporated under public law, on the basis of guidelines and with financial assistance from the State, to families with a low income with a view to stimulating the birth rate. Such loans must therefore be granted to workers of other Member States on the same conditions as those which apply to national workers.

Touffait

Mackenzie Stuart

Everling

Delivered in open court in Luxembourg on 14 January 1982.

For the Registrar

H. A. Rühl

Principal Administrator

A. Touffait

President of the Third Chamber