Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

3 July 2014*

(Request for a preliminary ruling — Articles 53(2) and 94 of the Rules of Procedure of the Court — Lack of sufficient information concerning the factual and regulatory background to the dispute in the main proceedings and the reasons why an answer to the question referred for a preliminary ruling is considered necessary — Manifest inadmissibility)

In Case C-19/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sozialgericht Duisburg (Germany), made by decision of 17 December 2013, received at the Court on 16 January 2014, in the proceedings

**Ana-Maria Talasca,**

**Angelina Marita Talasca**

v

**Stadt Kevelaer,**

THE COURT (Sixth Chamber)

composed of A. Borg Barthet, President of the Chamber, M. Berger (Rapporteur) and S. Rodin, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the decision taken, after hearing the views of the Advocate General, to determine the proceedings by reasoned order in accordance with Article 53(2) of the Rules of Procedure of the Court,

makes the following

## Order

1 The request for a preliminary ruling relates to the compatibility with European Union ('EU') law of Paragraph 7(1), subparagraph 2, of the Social Code, Book II, and, in particular, with the principle of the prohibition of discrimination.

* Language of the case: German.

2 The request was made in the context of proceedings between Ms Ana-Maria Talasca and her daughter, Angelina Marita Talasca, and the Stadt Kevelaer (city of Kevelaer), arising from the refusal of the employment service in that town (the 'Jobcenter') to award them the payment of certain social benefits.

## German legal context

3 Paragraph 7 of the Social Code (Sozialgesetzbuch), Book II ('SGB II'), entitled 'Beneficiaries', provides as follows:

'(1) Benefits under this Book shall be received by persons:

1. who have attained the age of 15 years and have not yet reached the age limit referred to in Paragraph 7a,

2. are fit for work,

3. are in need of assistance, and

4. whose ordinary place of residence is in the Federal Republic of Germany

(beneficiaries fit for work). The following are excluded:

1. foreign nationals who are not workers or self-employed persons in the Federal Republic of Germany and who do not enjoy the right of freedom of movement of persons under Paragraph 2(3) of the Law on freedom of movement of Union citizens [Freizügigkeitsgesetz/EU], and members of their families, for the first three months of their residence,

2. foreign nationals whose right of residence arises solely out of the search for employment, and members of their families,

…

Point 1 of the second sentence shall not apply to foreign nationals residing in the Federal Republic of Germany who have been granted a residence permit under Chapter 2, Section 5, of the Law on residence. Provisions of law on residence shall be unaffected.

…'

4 It is apparent from the document lodged at the Court on 7 February 2014 by the Sozialgericht Duisburg, entitled 'Summary of the facts relating to the order of 17 December 2013', that the German law on freedom of movement of Union citizens (Freizügigkeitsgesetz/EU) provides that persons seeking employment retain the status of worker or self-employed person for a period of six months after the end of the employment relationship.

## The dispute in the main proceedings and the questions referred for a preliminary ruling

5 It is apparent from the order for reference, and from the pleadings lodged on 7 February 2014, that Ms Talasca is a Romanian national.

6 On 1 July 2007, she left Romania for Kevelaer (Germany).

7 On 27 October 2010, the foreign nationals authority (Ausländerbehörde) issued Ms Talasca with a residence certificate intended for citizens of the European Union (Freizügigkeitsbescheinigung), valid exclusively for the purpose of seeking employment.

8 From 23 May to 23 November 2011, Ms Talasca worked in a horticultural business in a post for which social insurance contributions had to be paid.

9 From 1 December 2011 to 19 January 2012, Ms Talasca received unemployment benefit I (Arbeitslosengeld I). Her income being low, she claimed benefits under SGB II as from 1 January 2012 from the Jobcenter, the competent national authority in relation to benefits for persons seeking employment.

10 She was granted such benefits until 23 May 2012.

11 The same benefits were awarded until 23 May 2012 to Ms Talasca's daughter, born on 11 March 2012.

12 Taking the view that they were entitled to those benefits beyond 23 May 2012, and that denying them those benefits would amount to breach of the prohibition of discrimination laid down in 'European law', Ms Talasca and her daughter brought an action before the Sozialgericht Duisburg.

13 The national court stresses the importance of the question raised in these proceedings for a series of similar cases pending before it.

14 It was in those circumstances that the Sozialgericht Duisburg decided to stay the proceedings before it and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the second sentence of Paragraph 7(1) of [SGB II] compatible with [Union] law?

(2) If not, must the legal situation be altered by the Federal Republic of Germany, or does a new legal situation immediately arise, and if so, what is it?

(3) Does the second sentence of Paragraph 7(1) of [SGB II] remain in force until (any) necessary change to the law has been effected by the institutions of the Federal Republic of Germany?'

**Admissibility of the request for a preliminary ruling**

15 Under Article 53(2) of the Rules of Procedure of the Court, where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, at any time give a decision by reasoned order without taking further steps in the proceedings.

16 It is settled case-law that it is not for the Court, in the context of proceedings under Article 267 TFEU, to determine whether national provisions are compatible with Union law. However, the Court may provide the national court with all the criteria for the interpretation of Union law necessary to enable it to assess whether those provisions are so compatible in order to give judgment in the proceedings before it (see, in particular, judgments in *Fendt Italiana*, C-145/06 and C-146/06, EU:C:2007:411, paragraph 30, and *KGH Belgium*, C-351/11, EU:C:2012:699, paragraph 17, and the order in *Mlamali*, C-257/13, EU:C:2013:763, paragraph 17).

17 However, it must be noted that, in the context of the cooperation instituted by Article 267 TFEU, the need to provide an interpretation of Union law which will be of use to the national court makes it necessary for the referring court to define the factual and legislative context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based

(see, in particular, judgments in *Centro Europa 7*, C-380/05, EU:C:2008:59, paragraph 57, and *Mora IPR*, C-79/12, EU:C:2013:98, paragraph 35, and orders in *Augustus*, C-627/11, EU:C:2012:754, paragraph 8, and *Mlamali*, EU:C:2013:763, paragraph 18).

18 In fact, the Court of Justice is empowered to rule on the interpretation or validity of Union provisions only on the basis of the facts which the national court puts before it (see judgment in *Eckelkamp and Others*, C-11/07, EU:C:2008:489, paragraph 52, and orders in *SKP*, C-433/11, EU:C:2012:702, paragraph 24, and *Mlamali*, EU:C:2013:763, paragraph 19).

19 The Court also stresses that it is important for the referring court to set out the precise reasons why it is unsure as to the interpretation of Union law and why it considers it necessary to refer questions to the Court for a preliminary ruling (see, to that effect, inter alia, judgments in *ABNA and Others*, C-453/03, C-11/04, C-12/04 and C-194/04, EU:C:2005:741, paragraph 46, and *Mora IPR* EU:C:2013:98, paragraph 36, and order in *Mlamali*, EU:C:2013:763, paragraph 20).

20 In fact, given that it is the order for reference that serves as the basis for the proceedings before the Court, it is essential that the national court should give, in the order for reference itself, the factual and regulatory context of the case in the main proceedings and at least a minimum amount of explanation of the reasons for the choice of the provisions of EU law it seeks to have interpreted and on the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (see, to that effect, inter alia, judgments in *Asemfo*, C-295/05, EU:C:2007:227, paragraph 33, and *Mora IPR*, C-79/12, EU:C:2013:98, paragraph 37, and orders in *Laguillaumie*, C-116/00, EU:C:2000:350, paragraphs 23 and 24, and *Mlamali*, C-257/13, EU:C:2013:763, paragraph 21).

21 Those requirements in regard to the content of a request for a preliminary ruling appear expressly in Article 94 of the Rules of Procedure of the Court of which the national court is supposed, in the context of the cooperation instituted by Article 267 TFEU, to be aware and which it is bound to observe scrupulously.

22 It must also be recalled that Article 267 TFEU does not constitute a right of action available to the parties to a case pending before a national court; thus, the mere fact that a party contends that the dispute gives rise to a question concerning the interpretation of Union law does not compel the court concerned to consider that a question has been raised within the meaning of Article 267 TFEU. Accordingly, the fact that the interpretation of a Union act is contested before a national court is not in itself sufficient to warrant referral of a question to the Court for a preliminary ruling (see judgments in *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraph 28, and *Ascafor and Asidac*, C-484/10 EU:C:2012:113, paragraph 33; orders in *Adiamix*, C-368/12, EU:C:2013:257, paragraph 17, and *Mlamali*, EU:C:2013:763, point 23).

23 It must also be emphasised in that regard that the information provided in orders for reference serves not only to enable the Court to give useful answers but also to ensure that it is possible for the Governments of the Member States and other interested parties to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It is the Court's duty to ensure that that possibility is safeguarded, in the light of the fact that, under that provision, only the orders for reference are notified to the interested parties (see, *inter alia*, judgment in *Holdijk and Others*, 141/81 to 143/81, EU:C:1982:122, paragraph 6, and orders in *Laguillaumie* EU:C:2000:350, paragraph 14, *Augustus* EU:C:2012:754, paragraph 10, and *Mlamali* EU:C:2013:763, paragraph 24).

24 In this instance it must be stated that the order for reference in the present case does not satisfy the requirements set out at paragraphs 16 to 22 of this order.

25 With regard to the first question referred, first of all, the order for reference does not contain any information on the factual context of the main proceedings. Only the document lodged at the Court on 7 February 2014 entitled 'Summary of the facts relating to the order of 17 December 2013' provided some information from the national court which nonetheless is still insufficient to enable a determination of, *inter alia*, Ms Talasca's status as a worker.

26 Next, it must be pointed out that there is a dearth of information on the national legal context too, save for a mere reference to certain provisions, none of the wording of which is reproduced. With regard to the second sentence of Paragraph 7(1) of the SGB II, providing for several grounds for refusing benefits to foreign unemployed persons, the national court confines itself to referring to all those grounds for refusal without stating which is applicable in the case before it.

27 Finally, although the national court requests the interpretation of provisions of EU law, it gives no further details to that effect, save for the reference in the document lodged at the Court on 7 February 2014 to the observations set out in the application made by Ms Talasca in the main proceedings, which refer to 'the prohibition of discrimination laid down by the provisions of European law'.

28 In addition, the national court asks the Court to rule on the compatibility of Paragraph 7(1), second sentence, of the SGB II with 'European Community' law, without, however, setting out the reasons why it considers that interpretation of EU law seems to it necessary or useful for the purpose of resolving the case in the main proceedings and, in particular, without explaining what link there is between EU law and the national legislation applicable to those proceedings. On the contrary, it merely refers to the statement appearing in the originating application that 'the exclusion from the law on the benefits in the second sentence of Paragraph 7(1) of the SGB II infringes the prohibition of discrimination provided for under European law'. Yet the national court itself states that the case in the main proceedings constitutes a test case inasmuch as a great many similar cases are pending before that court.

29 Thus, in particular, the national court gives no information on the nature of the social benefits claimed by the applicants in the main proceedings that would make it possible to determine whether the latter fall within the ambit of the provisions of EU law prohibiting discrimination. In that context, the national court has not provided enough information for the precise situation in which Ms Talasca and her daughter find themselves to be determined, in order to enable the Court to make a comparison with other persons in receipt of those social benefits.

30 In those circumstances, the national court has not put the Court in a position to satisfy itself that the factual basis of the questions referred for a preliminary ruling actually falls within the ambit of the EU law of which interpretation is sought or, more generally, to give a useful, reliable answer to the questions referred (see orders in *Augustus* EU:C:2012:754, paragraph 14, and *Mlamali* EU:C:2013:763, paragraph 32).

31 Accordingly, it must be declared that the first question referred for a preliminary ruling is manifestly inadmissible.

32 In view of the manifest inadmissibility of the first question, the second and third questions are devoid of purpose.

33 In the light of all the foregoing considerations, it must be declared, pursuant to Article 53(2) of the Rules of Procedure of the Court, that this request for a preliminary ruling is manifestly inadmissible.

## Costs

34 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds, the Court (Sixth Chamber) hereby rules:

**The request for a preliminary ruling referred by the Sozialgericht Duisburg (Germany), by decision of 17 December 2013, is manifestly inadmissible.**

[Signatures]