JUDGMENT OF THE COURT (Second Chamber)
16 June 1994 *

In Case C-132/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Arbeitsgericht (Labour Court) Elmshorn (Federal Republic of Germany) for a preliminary ruling in the proceedings pending before that court between

Volker Steen

and

Deutsche Bundespost,

on the interpretation of the judgment of the Court of 28 January 1992 in Case C-332/90 *Steen* v *Deutsche Bundespost* [1992] ECR I-341,

THE COURT (Second Chamber),

composed of: G. F. Mancini, President of the Chamber (Rapporteur), F. A. Schockweiler and J. L. Murray, Judges,

* Language of the case: German.

Advocate General: M. Darmon,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Federal Republic of Germany, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Claus-Dieter Quassowski, Regierungsdirektor in that same Ministry, acting as Agents,

— the Italian Republic, by Professor Luigi Ferrari Bravo, Head of the Department for Legal Affairs of the Ministry of Foreign Affairs, acting as Agent, and Pier Giorgio Ferri, Avvocato dello Stato,

— the Commission of the European Communities, by Dimitrios Gouloussis, Legal Adviser, and Horstpeter Kreppel, a national official on secondment to the Commission's Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 March 1994,

gives the following

Judgment

1 By order of 16 March 1993 received at the Court on 31 March 1993, the Arbeitsgericht Elmshorn referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the judgment of the Court of 28 January 1992 in Case C-332/90 *Steen* v *Deutsche Bundespost* [1992] ECR I-341 (hereinafter 'the *Steen* judgment').

2 That question was raised in proceedings between Mr Steen, a German national, and the Deutsche Bundespost regarding a post designated by the code Dp A7 Pt/M which involved 'maintenance duties for the intermediate technical service, supervision and stores administration'.

3 In 1985 Mr Steen began a two-year period of training under a contract of employment with a view to taking up the above post and, in accordance with the order of the Federal Minister for Postal Services and Telecommunications of 14 May 1985, declared that he would accept, upon the conclusion of his training and subject to passing a test, establishment in the civil service. At the end of his period of training Mr Steen revoked his declaration and asked to be appointed to the post in question under a contract of employment. Mr Steen's remuneration in his post Dp A7 Pt/M was at the material time higher than that which he would have received if he had been appointed to it as a civil servant.

4 After his application was rejected, Mr Steen was transferred to a post in a lower salary group. He then brought an action before the Arbeitsgericht Elmshorn contesting that decision to transfer him and claimed that in so far as access to posts in the civil service is reserved to German nationals only, they alone were not able to occupy, as contractual employees, a post such as that at issue for an indefinite period and thereby suffered discrimination, within the meaning of Articles 7 and 48 of the Treaty, in relation to nationals of other Member States.

5 In reply to a question put to it by the Arbeitsgericht Elmshorn regarding those provisions of the Treaty, the Court stated in the *Steen* judgment that a national of

a Member State who had never exercised the right of freedom of movement within the Community was unable to rely on Articles 7 and 48 of the EEC Treaty with respect to a situation purely internal to that State.

6 The national court, being in some doubt regarding the answer given, takes the view in its order of 16 March 1993 that German nationals are treated less favourably than those of other Member States with regard in particular to the conditions of access to, and remuneration in, the post in question.

7 Since it was of the opinion that such a situation might infringe Article 3(1) of the Basic Law of the Federal Republic of Germany, according to which 'all persons are equal before the law', the Arbeitsgericht Elmshorn once again stayed the proceedings and referred the following question to the Court:

'Is the judgment of the Court of Justice of the European Communities of 28 January 1992 in Case C-332/90 to be interpreted as meaning that the national court is precluded from applying Community law in regard to a purely domestic situation, or does it, as the legally appointed court within the meaning of the second sentence of Article 101(1) of the Federal Republic of Germany's Grundgesetz (Basic Law), remain entitled, where the Court of Justice lacks jurisdiction, to examine as a preliminary question, in connection with a claim that Article 3(1) of the Basic Law has been infringed, whether there is discrimination against a German national because the effect of Community law in the event is to place German nationals in a worse position as compared with nationals of other Member States?'

8 In substance, the national court asks whether, despite the fact that according to the *Steen* judgment Community law is not applicable to the present case, it may consider the discrimination pleaded by Mr Steen in the light of national law and decide the case accordingly.

9 The only effect of the *Steen* judgment is to preclude Community law from being relied on with respect to a purely internal situation.

10 It is for the national court, faced with a question of national law, to determine whether there is any discrimination under that law and whether that discrimination must be eliminated and, if so, how.

11 Consequently, the reply to be given to the question put by the national court is that Community law does not preclude a national court from examining the compatibility with its constitution of a national rule which, in a situation unconnected with any of the situations contemplated by Community law, treats national workers less favourably than nationals from other Member States.

Costs

12 The costs incurred by the German and Italian Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Arbeitsgericht Elmshorn by judgment of 16 March 1993, hereby rules:

Community law does not preclude a national court from examining the compatibility with its constitution of a national rule which, in a situation unconnected with any of the situations contemplated by Community law, treats national workers less favourably than nationals from other Member States.

Mancini Schockweiler Murray

Delivered in open court in Luxembourg on 16 June 1994.

R. Grass
Registrar

G. F. Mancini
President of the Second Chamber