OPINION OF ADVOCATE GENERAL JACOBS
delivered on 16 December 1992 *

My Lords,

1. In this case the Commission takes issue with certain residence conditions attached to the receipt of Luxembourg childbirth allowance ('allocation de naissance') and maternity allowance ('allocation de maternité'). By an application brought under Article 169 of the Treaty, the Commission requests the Court to declare that, by imposing such conditions, Luxembourg is in breach of its obligations under the following provisions of Community law:

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

(2) Article 18 of Council Regulation No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6); and

(3) Article 52 of the Treaty.

2. The Commission began the procedure laid down in Article 169 of the Treaty by issuing a letter of formal notice on 7 October 1987. In that letter the Commission suggested that the residence conditions imposed by Articles 11 and 12 of the Law of 20 June 1977 (governing childbirth allowance) and by Article 1 of the Law of 30 April 1980 (governing maternity allowance) were contrary to Article 7(2) of Regulation No 1612/68, as regards employed workers, and contrary to Article 7 of the Treaty as regards self-employed workers. Article 7(2) of Regulation No 1612/68 provides that a worker who is a national of a Member State shall, in the territory of another Member State, enjoy the same social and tax advantages as national workers.

3. In its reply to the Commission's letter of notice, the Luxembourg Government conceded that childbirth allowance was a social advantage for the purposes of Article 7(2) of Regulation No 1612/68, but denied that the relevant Luxembourg legislation infringed the principle of equal treatment laid down by Article 7 of that regulation, as regards employed workers, and by Article 7 of the Treaty, as regards the self-employed. As far as maternity allowance was concerned, the Luxembourg Government suggested that it might be regarded as falling under Regulation No 1408/71 rather than as a social

* Original language: English.

advantage within the meaning of Regulation No 1612/68.

4. On 26 July 1989 the Commission issued a supplementary letter of formal notice addressing the point on Regulation No 1408/71 which had been raised by the Luxembourg Government. The Commission now suggested that the provisions of Luxembourg law which applied residence conditions to maternity allowance were incompatible with Regulation No 1408/71, as well as with Regulation No 1612/68. It will be recalled that Regulation No 1408/71, as amended, applies to both employed and self-employed persons and their families. Furthermore, as regards childbirth allowance the Commission now claimed that, as far as self-employed persons were concerned, the residence conditions imposed by Luxembourg law breached Article 52 (rather than Article 7) of the Treaty. Thus, the Commission now alleged an infringement of Regulation No 1612/68 and of Articles 48 and 52 of the Treaty, as regards childbirth allowance, and of Regulation No 1408/71, as regards maternity allowance. The Commission also alleged a breach of Article 51 of the Treaty.

5. In its reply to the Commission's supplementary letter of notice, the Luxembourg Government again denied that the residence conditions attached to childbirth allowance contravened the principle of equal treatment, and now appeared to claim that maternity allowance did not fall within the scope of Regulation No 1408/71, although the Luxembourg Government stated that it had no objection to the latter benefit being brought within the scope of the regulation when that regulation was next amended.

6. On 6 July 1990, the Commission issued a reasoned opinion alleging that, by imposing residence conditions on the grant of childbirth and maternity allowances, Luxembourg had infringed its obligations under Article 48 of the Treaty and Article 7(2) of Regulation No 1612/68, under Article 52 of the Treaty, and under Regulation No 1408/71. Luxembourg was given two months to take the measures necessary to conform to the Commission's reasoned opinion. No such measures having been taken, the Commission lodged the present application at the Court on 12 April 1991.

7. It can be seen that the Commission changed its ground frequently in the course of the pre-litigation procedure. However, the Luxembourg Government was given a full opportunity to respond to the allegations added to the original letter of formal notice, and there cannot of course be any objection to the Commission subsequently withdrawing other allegations contained in the supplementary letter of notice and in the reasoned opinion (see paragraph 11 below).

The Community legislation

8. Article 7 of Regulation No 1612/68 provides as follows:

'1. 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 ... .

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

...'.

Article 4 of Regulation No 1408/71 provides that:

'1. This Regulation shall apply to all legislation concerning the following branches of social security:

(a) sickness and maternity benefits;

...

2. This Regulation shall apply to all general and special social security schemes, whether contributory or non-contributory, and to schemes concerning the liability of an employer or shipowner in respect of the benefits referred to in paragraph 1.

...

4. This Regulation shall not apply to social and medical assistance ... .'

9. Title III of Regulation No 1408/71 is entitled 'Special provisions relating to the various categories of benefits', and Chapter 1 (Articles 18 to 36) is entitled 'Sickness and maternity'. By Article 18(1):

'The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of periods of insurance, employment or residence shall, to the extent necessary, take account of periods of insurance, employment or residence completed under the legislation of any other Member State as if they were periods completed under the legislation which it administers.'

It is to be noted that 'residence' is defined in Article 1(h) of the regulation to mean 'habitual residence'.

10. Council Regulation No 1247/92 of 30 April 1992 (OJ 1992 L 136, p. 1) amends Regulation No 1408/71 by adding, in particular, the following provisions. In Article 4,

a new paragraph 2a is inserted which provides that:

'This Regulation shall also apply to special non-contributory benefits which are provided under a legislation or schemes other than those referred to in paragraph 1 or excluded by virtue of paragraph 4, where such benefits are intended:

(a) either to provide supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in paragraph 1(a) to (h), or

(b) solely as specific protection for the disabled.'

A new Article 10a and a new Annex IIa are also inserted in the regulation. Paragraph 2 of Article 10a provides that:

'The institution of a Member State under whose legislation entitlement to benefits covered by paragraph 1 [namely benefits referred to in Article 4(2a) which are listed in Annex IIa] is subject to the completion of periods of employment, self-employment or residence shall regard, to the extent necessary, periods of employment, self-employment or residence completed in the territory of any other Member State as periods completed in the territory of the first Member State.'

The entry for Luxembourg in the new Annex IIa lists the following benefits:

'(a) Compensatory cost of living allowance (Law of 13 June 1975).

(b) Special severe disablement allowance (Law of 16 April 1979).

(c) Maternity allowance (Law of 30 April 1980).'

It must however be observed that those amendments were made after the present proceedings were commenced by the Commission, and indeed after the Luxembourg Government lodged its rejoinder on 20 December 1991.

11. In what follows I shall examine separately the provisions of Luxembourg law concerning childbirth allowance and those concerning maternity allowance. It is to be noted that, although Article 48 of the Treaty is mentioned in the title of the Commission's application, the Commission no longer alleges a breach of that article in its conclusions. Furthermore, the Commission does not repeat the allegation of a breach of Article 51 which was made in its supplementary letter of notice (and which was moreover in my view plainly erroneous). Thus, the Commission now takes the view that it is

sufficient to allege breaches of Regulation No 1612/68 and Regulation No 1408/71, which implement Articles 48 and 51 respectively. However, the Commission still alleges a breach of Article 52 of the Treaty (but not, it will be recalled, of Article 7 of the Treaty).

Childbirth allowance

12. By Article 9 of the Law of 20 June 1977, each viable birth gives rise to a right to childbirth allowance, payable in part by way of prenatal allowance, in part by way of childbirth allowance properly so-called, and in part by way of postnatal allowance. By Article 14, one or more parts of the allowance can be paid even if the recipient does not qualify for the other parts. By Article 1, every pregnant woman who has been resident in Luxembourg for at least one year must, in order to receive prenatal allowance, have in the course of her pregnancy at least five medical examinations and one dental examination. Article 2 provides for the details and intervals of the examinations to be fixed by Grand-Ducal Regulation. By Article 11, the first instalment of benefit is paid by way of prenatal allowance after the mother-to-be has had the last of the required examinations. That benefit is not however paid unless she has been resident in Luxembourg for the entire year preceding the birth, and on condition that she produces certificates attesting to her attendance at the examinations.

13. By Article 12 of the Law of 20 June 1977, the second instalment of childbirth allowance is paid after the birth, on condition, in particular, that one of the parents has resided in Luxembourg for the entire year preceding the birth. By Articles 5 and 12, the mother must also have had a postnatal examination within eight weeks of the birth. By Article 16, the Minister for the Family may grant dispensation from the residence requirements imposed by Articles 11 and 12, but only if the mother declares an intention to continue to reside in Luxembourg and to bring up her child there.

14. Pursuant to Article 2 of the Law of 20 June 1977, a Grand-Ducal Regulation of 8 December 1977 specifies the details of the five prenatal medical examinations and the dental examination, and of the postnatal examination of the mother. By Article 1 of the regulation, the first prenatal medical examination must take place before the end of the third month of pregnancy; by Article 9 the dental examination must take place as soon as the pregnancy is confirmed, and in any event before the end of the third month. By Article 6, the last prenatal examination must take place in the first fortnight of the ninth month of pregnancy. Finally, by Articles 6 and 13 of the Law of 20 June 1977, the child must itself have six examinations in its first two years before the third and final instalment of the benefit can be received; the details of those examinations are specified by another Grand-Ducal Regulation of 8 December 1977.

15. The Luxembourg Government does not dispute that childbirth allowance is a 'social advantage' within the meaning of Article 7(2)

of Council Regulation No 1612/68. It seems to me, in fact, that it would be difficult to reach any other conclusion. As the Court has stated on a number of occasions, in particular in Case 249/83 *Hoeckx* [1985] ECR 973, at paragraph 20 of the judgment:

'... 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 whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community.'

Thus, loans granted on the birth of a child which were interest-free as a result of subsidies allocated by the national authorities have been held to be a 'social advantage' for the purpose of the regulation: see Case 65/81 *Reina* [1982] ECR 33. Such advantages must of course be available on equal terms to workers who are nationals of another Member State.

16. Accordingly, the Luxembourg Government concedes that childbirth allowance must be awarded on the basis of equal treatment as between its own nationals and those of other Member States. It denies however that the residence conditions attached to the receipt of Luxembourg childbirth allowance amount to unequal treatment. In its view it is sufficient, in order to satisfy the requirement of equal treatment, that the conditions are imposed on Luxembourg nationals as well as upon the nationals of other Member States.

17. As the Commission points out, however, it is clear that the requirement of non-discrimination imposed by Community law extends to indirect as well as to direct discrimination. As the Court stated in Case 152/73 *Sotgiu* v *Deutsche Bundespost* [1974] ECR 153, at paragraph 11 of the judgment:

'The rules regarding equality of treatment, both in the Treaty and in Article 7 of Regulation No 1612/68, forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result.

...

It may therefore be that criteria such as place of origin or residence of a worker may, according to circumstances, be tantamount, as regards their practical effect, to discrimination on the grounds of nationality, such as is prohibited by the Treaty and the Regulation.'

The principle that indirect or disguised discrimination is contrary to Article 48 of the Treaty and Article 7 of Regulation No 1612/68 has recently been reaffirmed by the Court in Case C-175/88 *Biehl* [1990] ECR

I-1779, at paragraphs 11 to 13, and in Case C-27/91 *Le Manoir* [1991] ECR I-5531, at paragraph 10. Similarly, indirect discrimination against nationals of other Member States wishing to establish themselves as self-employed persons is prohibited by Article 52 of the Treaty: see for example, Case 79/85 *Segers* [1986] ECR 2375, at paragraph 15 of the judgment. Again, the Court has recently held that a residence requirement imposed on the crews of fishing vessels amounts to indirect discrimination contrary to Articles 48, 52 and 59 of the Treaty: see Case C-279/89 *Commission* v *United Kingdom* [1992] ECR I-5785, at paragraphs 40 to 43 of the judgment.

18. It would, in my opinion, be difficult to argue that the residence requirements imposed by Articles 11 and 12 (and indeed by Article 16) of the Law of 20 June 1977 do not amount to unequal treatment of foreign nationals. Of those having children in Luxembourg, a Luxembourg national, or his or her spouse, is more likely to have resided in Luxembourg during the entire year preceding the birth than is a national of another Member State. The conditions imposed by Articles 11 and 12 therefore discriminate indirectly against migrants from other Member States.

19. Similarly, the condition attached to the dispensation which may be granted by the Minister for the Family, under Article 16 of the Law, is less likely to be satisfied by nationals of other Member States, who may be less inclined than Luxembourg nationals to make Luxembourg their permanent home. Furthermore, as the Commission observed at the hearing, that condition also discriminates against Luxembourg nationals intending to move to another Member State. As the Court has pointed out, the provisions of the Treaty relating to the free movement of persons not only forbid discrimination by a Member State against nationals of other Member States present in its territory, but also preclude national legislation which discriminates against Community citizens who wish to exercise their right of free movement by extending their activities beyond the territory of a single Member State or by establishing themselves in another Member State: see Case 143/87 *Stanton* v *Inasti* [1988] ECR 3877, at paragraphs 9 to 14, and Case 81/87 *The Queen* v *H. M. Treasury*, ex parte *Daily Mail* [1988] ECR 5483, at paragraph 16.

20. The Luxembourg Government argues, in the alternative, that the residence conditions attached to childbirth allowance are objectively justified. Thus, even if the conditions amount to unequal treatment as between Luxembourg nationals and non-nationals, in its view the conditions are justified in the general interest, and in particular for reasons of public health. According to the Luxembourg Government, the principal aim of the Law of 20 June 1977 is to establish a system of close medical surveillance of pregnant women and young infants, in order to reduce the risks of prenatal mortality and postnatal handicap. In its view, the purpose of the benefit is medical rather than pecuniary, its aim being to ensure that women giving birth in Luxembourg have attended all the medical examinations required under Article 2 of the Law. For that reason, the first instalment of benefit is paid only when the final prenatal examination has been completed. In the view

of the Luxembourg Government, therefore, it is only logical that those mothers who were unable to attend the required examinations, because they were not present in Luxembourg for the year preceding the birth, should be denied the first two instalments of benefit.

21. It seems to me that the reasoning of the Luxembourg Government is vulnerable on a number of counts. The basic flaw, in my opinion, is that no connection has been established between the need to encourage expectant mothers already resident in Luxembourg to have the medical examinations prescribed by Luxembourg law, by making completion of the series of examinations a condition for the receipt of the allowance, and the alleged need to subject other women to the same requirement. Women who are resident in other Member States may of course have considerable difficulty in satisfying such a condition. Thus, a woman who intends to migrate to Luxembourg, and who intends also to become pregnant, can hardly be expected to bring forward her arrival in Luxembourg merely in order to receive the Luxembourg medical examinations; indeed, in practical terms it may not be possible for her to do so. Furthermore, such a migrant may not in any event know that she is about to become pregnant. It does not seem to me that the system of medical surveillance established by the Luxembourg legislation would in any way be compromised if its requirements were not applied to women in such circumstances.

22. It is also to be noted that the first medical examination required under the Law of 20 June 1977 need not take place until the end of the third month of pregnancy. It is true that the dental examination should take place as soon as the pregnancy is confirmed, but even in that case the mandatory deadline appears to be the third month. Strictly speaking, therefore, a period of residence of only six months would suffice to complete the required series of examinations. As we have seen, however, the residence condition is in fact imposed for the entire year preceding the birth. A migrant might therefore arrive in Luxembourg, establish residence there, become or discover that she is pregnant, have all the required medical and dental examinations, give birth in Luxembourg, and yet still be ineligible for the first two instalments of childbirth allowance.

23. An expectant mother might moreover migrate to Luxembourg during the course of her pregnancy, after having had medical examinations in another Member State. The Law of 20 June 1977 appears however to make no provision for the recognition of equivalent medical examinations performed in another Member State. It is also to be observed that the residence condition imposed by Article 12 of the Law can be satisfied by either the mother-to-be or the other

parent; the Luxembourg Government has not however succeeded in explaining what relevance the place of residence of the father has, in that case, to the health of the mother. Similarly, the conditions attached to the derogation provided for in Article 16 of the Law appear to have no medical significance.

24. In its rejoinder, the Luxembourg Government attempts to justify the residence condition attached to the second instalment of the benefit by pointing to the need for the continuity of medical supervision. It will be recalled that, by Articles 5 and 12 of the Law of 20 June 1977, the mother is required to have had a postnatal examination within eight weeks of the birth. The Luxembourg Government suggests that the requirement of a rigorous and effective medical supervision can only be satisfied if the same doctor performs the postnatal examination as performed the five prenatal examinations, and that the mother must therefore have been resident in Luxembourg during the pregnancy as well as after the birth. As the Commission pointed out at the hearing, however, pregnant women enjoy a right to free movement under the Treaty as much as any other beneficiary of that right; in principle, it is for the women themselves to decide whether to exercise that right, even if doing so would entail a change of medical adviser. The continuity of medical supervision can in any case be ensured, to a considerable extent, by an appropriate exchange of information between doctors. The Luxembourg Government has not moreover explained how such a continuity is guaranteed where only the father has resided in Luxembourg for the year preceding the birth, which as we have seen is an alternative permitted by Article 12. Accordingly, it is not at all clear why a mother who, for reasons perhaps beyond her control, had migrated to Luxembourg during the course of her pregnancy, should incur a financial penalty as a result of having had to change her doctor.

25. The Luxembourg Government is of course entitled to require expectant mothers residing in Luxembourg to have periodic medical examinations, although even in the case of those residing in Luxembourg throughout their pregnancy it is doubtful whether it could refuse to recognize equivalent examinations performed in another Member State. It is also entitled, in my view, to require that women receiving childbirth allowance are resident in Luxembourg at the time of birth, since otherwise expectant mothers resident elsewhere might arrange to give birth in Luxembourg merely in order to collect the benefit. In my opinion, however, the residence conditions imposed by Articles 11, 12 and 16 of the Law of 20 June 1977 go far beyond what is necessary to prevent such abuse. Those conditions are therefore in my view incompatible with Article 7(2) of Regulation No 1612/68. Exactly the same considerations moreover apply, in my opinion, in the case of self-employed persons and their families, who are entitled to equal treatment as compared with Luxembourg nationals pursuant to Article 52 of the Treaty.

26. I accordingly reach the conclusion that the Commission's application should succeed in so far as it relates to childbirth allowance. I now therefore turn to consider the application in so far as it concerns maternity allowance.

Maternity allowance

27. Luxembourg maternity allowance is awarded under the Law of 30 April 1980. According to Article 1 of that law, every woman who is pregnant or has given birth has the right to a maternity allowance, provided that she is resident in Luxembourg and either (1) she has resided there for the entire year preceding the beginning of her entitlement, or (2) her spouse has resided there for the preceding three years. By Article 2, the benefit is awarded for a maximum period of sixteen weeks, beginning with the eighth week preceding the presumed date of birth. Article 3 provides that the Minister for the Family may grant dispensation from those residence conditions if the mother declares an intention to continue to reside in Luxembourg and to bring up her child there.

28. The Luxembourg Government does not dispute that, if maternity allowance is a benefit falling within the scope of Regulation No 1408/71, it is required by Article 18(1) of the regulation to take into account periods of residence completed under the legislation of another Member State. A mother who had given birth in Luxembourg and was now resident there would then be entitled to receive the allowance, even if she had been resident in another Member State in the year preceding the birth. The Luxembourg Government argues however that, at the time the Commission brought its application, Regulation No 1408/71 did not yet extend to Luxembourg maternity allowance. The Luxembourg Government must accordingly take the view, either that maternity allowance cannot be regarded as 'maternity benefit' for the purposes of Article 4(1) of the regulation, or that it must be regarded as 'social assistance' within the meaning of Article 4(4), which would remove it from the scope of the regulation. The Luxembourg Government recognizes however that, by virtue of the amendment made by Regulation No 1247/92 of 30 April 1992, it would now be obliged to take into account periods of residence completed in the territory of other Member States: see the new Article 10a, paragraph 2, and the new Annex IIa inserted by Regulation No 1247/92, cited above in paragraph 10.

29. The Commission, on the other hand, argues that Luxembourg maternity allowance already fell within the scope of Regulation No 1408/71, even before that recent amendment, and that it was included in the new Annex IIa inserted by Regulation No 1247/92 only for the avoidance of doubt.

30. In my view, the Luxembourg Government has advanced no compelling reason for regarding maternity allowance as social

assistance, within the meaning of Article 4(4) of Regulation No 1408/71, rather than as a social security benefit. It is to be noted, in particular, that in deciding whether a benefit is to be regarded as social assistance, on the one hand, or social security, on the other, the decisive criterion is not whether the benefit is contributory or non-contributory; indeed, Article 4(2) expressly includes non-contributory schemes. The criterion is rather whether the legislation in question confers a right to the benefit, without reference to individual needs or circumstances: see Joined Cases 379/85 to 381/85 and 93/86 *Giletti* [1987] ECR 955, at paragraphs 7 to 11. Thus, provided that the benefit concerns one of the risks expressly listed in Article 4(1) of the regulation, it is sufficient that it is granted without any individual and discretionary assessment of personal needs: see Case C-78/91 *Hughes* [1992] ECR I-4839, at paragraph 15 of the judgment.

31. Furthermore, the Luxembourg Government has not succeeded in demonstrating that maternity allowance falls outside the scope of Article 4(1) of Regulation No 1408/71. That provision expressly mentions 'maternity benefit' as a branch of social security covered by the regulation, a term which is apt to include, in particular, maternity allowance. Contrary to the view of the Luxembourg Government, it does not seem to me that maternity allowance can be distinguished from 'classical schemes of social security in respect of its field of application, objectives and modalities of application' (see page 13 of the defence). The Luxembourg Government has not pointed to any feature of Luxembourg maternity allowance which would distinguish it from other, allegedly more classical, schemes of maternity benefit. All such schemes presumably have as their object the welfare of the mother and the newly-born infant, and award benefit for a limited period of time to all those who satisfy the conditions laid down for the receipt of the benefit.

32. As the Commission points out, even if maternity allowance did not fall within the scope of Regulation No 1408/71, it would in any event have to be regarded as a social advantage for the purposes of Regulation No 1612/68 (see paragraph 15 above), a proposition which was accepted by the Luxembourg Government at the hearing.

33. It may also be noted that, even if it is accepted that maternity allowance falls within the scope of Regulation No 1408/71, the refusal to grant the allowance to families of employed persons may amount to a breach of Regulation No 1612/68 rather than of Regulation No 1408/71. That is because Regulation No 1408/71 applies to benefits awarded to members of the family of workers or self-employed persons only if the right to the benefit is derived from the family relationship with the worker or self-employed person; it does not extend to rights conferred directly on the family member: see Case 147/87 *Zaoui* [1987] ECR 5511, at paragraphs 12 and 13 of the judgment, and Case C-243/91 *Taghavi* [1992] ECR I-4401, at paragraphs 7 to 9. Maternity allowance, however, is a benefit which is awarded to the mother in her own right, rather than by virtue of a right derived from her capacity as a family member. It follows that, in the case of

a mother who is not herself employed or self-employed, and who is a member of the family of a worker exercising the right of free movement, the residence conditions attached to maternity allowance would fall to be considered under Article 7(2) of Regulation No 1612/68, which extends to benefits awarded to members of a worker's family: see Case 249/83 *Hoeckx*, cited above in paragraph 15, at paragraph 22 of the judgment. The conditions would then be inconsistent with that provision, since they clearly amount to indirect discrimination against nationals of other Member States.

34. In the case of the families of self-employed persons, on the other hand, the residence conditions would, for similar reasons, amount to a breach of Article 52 of the Treaty. Although it is not entirely clear from the pre-litigation procedure whether the Commission originally sought to rely upon Article 52 in respect of maternity allowance, the pleadings have proceeded upon that basis. The Commission can therefore be understood as submitting that the residence conditions attached to maternity allowance amount to a breach of Article 52 of the Treaty as well as of Regulation No 1612/68 and Regulation No 1408/71.

35. As we have seen, those submissions must in my view be upheld, and accordingly the Commission's application must also succeed in so far as it relates to maternity allowance.

Conclusion

36. I am accordingly of the opinion that the Court should:

(1) declare that, by imposing residence conditions on the award of childbirth allowance and maternity allowance which do not take into account periods of residence completed in another Member State, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 52 of the Treaty, under Article 7(2) of Regulation No 1612/68 and under Article 18(1) of Regulation No 1408/71;

(2) order the Grand Duchy of Luxembourg to pay the costs.