



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 11/13

Luxembourg, 7 February 2013

Advocate General's Opinion in Case C-20/12
Elodie Giersch and others v Luxembourg

According to Advocate General Mengozzi, Luxembourg is justified in making funding of higher education studies for children of frontier workers conditional upon a residence requirement

The AG invites the Court to indicate to the referring court the criteria for verifying that such a condition is appropriate and proportional to the objective of ensuring the transition of Luxembourg's economy towards a knowledge-based economy

Luxembourg legislation provides that financial aid for higher studies is granted to citizens of Luxembourg and other EU citizens on the condition that they are resident in Luxembourg.

Several students, who are children of frontier workers in Luxembourg, brought actions¹ before the Administrative Court of Luxembourg, following a refusal by the Luxembourg authorities to grant them financial aid for their higher education studies on the ground that they were not resident in Luxembourg. They challenge that refusal, arguing that the Luxembourg legislation² treats the children of Luxembourg workers differently from those of frontier workers, which is contrary to the principle of free movement of persons. Luxembourg disputes that there is any discrimination and, in any event, asserts that the financial aid in question does not constitute a social benefit.

The request for a preliminary ruling of the Administrative Court of Luxembourg, which seeks guidance from the Court, stems from the idea that, pursuant to Article 203 of the Luxembourg Civil Code, the students in question must be considered to be the financial responsibility of their frontier worker parents. Advocate General Paolo Mengozzi rules out being able to give an opinion with that approach as a starting point because, pursuant to the principles of international private law, those students may be considered to be the responsibility of the frontier worker only where that is the case under the personal law applicable to them, which may be the law of their country of nationality, domicile or residence, but not Luxembourg law.

It follows that the referring court may address the problem in practice, only where it establishes not only that the students are part of the household of the frontier workers but also that those workers continue to be responsible for them by providing for them, and verifies also whether those students benefit, actually or potentially, in their country of residence, from a measure comparable to that introduced by the Law of 26 July 1010.

On the basis of that premise, the Advocate General notes that, in accordance with the Court's settled case-law:

- a) support for the higher educational studies of children for which frontier workers are responsible constitutes a social benefit in relation to which they may avail themselves of the principle of non-discrimination laid down in Regulation No 1612/68 relating to freedom of movement of workers within the Community and
- b) the requirement of residence, which is liable to work against migrant workers and frontier workers who are nationals of other Member States, inasmuch as it is imposed on students

¹ These actions are representative of another 600 similar pending actions.

² According to the referring court, the residence requirement applies indistinctly to Luxembourg and other Member State nationals, given that in the interpretation of national law, domicile and residence conditions are in fact equivalent.

who are children of frontier workers, constitutes indirect discrimination, in principle prohibited, unless it is objectively justified, appropriate for securing the attainment of the objective pursued and does not go beyond what is necessary to attain that objective.

In order to demonstrate the existence of such a justification, the Luxembourg Government invokes a “political” or “social” objective which is designed to significantly increase the share of Luxembourg residents with a higher education degree and to ensure the transition of the Luxembourg economy towards a knowledge-based economy. Luxembourg residents thus have a connection with Luxembourg society from which it may be presumed that, having benefited from Luxembourg financial aid during their studies, pursued abroad where applicable, they will return to apply the knowledge acquired for the benefit of the development of the national economy. In addition, limiting the benefit of the aid only to Luxembourg residents is necessary in order to finance the system whilst ensuring that it does not become an unreasonable burden to the detriment of the overall level of support for higher education studies which may be granted by that State.

According to Advocate General Mengozzi, the EU has asked Member States to make efforts on this issue in order to increase the percentage of young adults who have a higher education degree, even though those Member States have a wide discretion to define the objectives of their education policy. That requirement in particular informed Luxembourg’s choice to implement the Law of 2010, as a result of the historically atypical character of its economic situation. From an economy based on the mining and steel industries, Luxembourg effected a transformation, when those industries ceased to exist, towards the development of employment in the banking and finance sectors. Thereafter, and even before the financial crisis, those sectors were – and continue to be – under strong threat, as a result of steps undertaken at EU level to drastically cut back the advantageous position enjoyed by the Luxembourg banking system in comparison with the banking system of other Member States. It follows that the steps taken by Luxembourg to ensure a high level of education of its population pursues a legitimate objective which may be considered an overriding reason in the public interest.

In contrast to the Luxembourg Government, the Advocate General is convinced that the education policy objective must be examined separately from the fiscal objective, even if the determination of the beneficiaries of a social benefit logically affects the economic burden weighing on the State. However, the fiscal objective invoked by Luxembourg does not constitute a legitimate ground which may justify unequal treatment between Luxembourg workers and those of other Member States.

The Advocate General suggests that it is necessary to verify whether the ultimate economic aim pursued – the transition towards a knowledge-based economy – for which Luxembourg established the discriminatory practice at issue is seriously and effectively implemented in order to avoid the costs of that practice from being so large as to make the achievement of that very aim impossible. It is for the national court to carry out that verification.

Finally, the Advocate General considers the appropriateness and proportionality of the residence requirement.

If the Court accepts the proposition that a Member State may take measures to give access to its population to higher education in order to subsequently join and enrich the Luxembourg labour market, the Advocate General considers that the residence requirement is appropriate to ensure the objective pursued.

Regarding the proportionality of the residence requirement, it is for the national court to verify, firstly, the existence of a reasonable probability that the beneficiaries of support for higher education studies residing in Luxembourg will in fact return to that country at the outcome of their studies and become active in the Luxembourg economy and society. Secondly, that court will also have to verify that the pursuit of the transformation of the Luxembourg economy into a knowledge-based economy – and, consequently, an economy offering services in the broadest sense – has

indeed been followed up with public initiatives aiming to develop actual new employment prospects.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106