



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 14/13

Luxembourg, 21 February 2013

Advocate General's Opinion in Joined Cases C-523/11 and C-585/11
Laurence Prinz v Region Hannover
Philipp Seeberger v Studentenwerk Heidelberg

According to Advocate General Sharpston, making the funding of a full course of studies abroad dependent on three years uninterrupted residence in the funding Member State immediately prior to starting those studies is a restriction of the right to free movement of EU citizens

Advocate General Sharpston also considers that it would assist national courts if the Court were to clarify its case law on what objectives are capable of justifying a restriction on the right of freedom of movement resulting from a rule like this three-year rule

In Germany, students who are EU citizens may apply for funding of their studies in another Member State. For funding for the full duration of their studies abroad, they have to show three years of uninterrupted residence in Germany immediately before commencing those studies. Otherwise, they can receive funding only for the first year of such studies or for the full duration of studies in Germany. The three-year rule is imposed to address the risk of an unreasonable financial burden which might have effects on the overall level of assistance available ('the economic objective'); to identify those who are integrated into German society and to ensure that funding is awarded to those students who are most likely to return to Germany following their studies and contribute to German society ('the social objective').

The Court of Justice has been asked by two German Courts whether EU law, namely the rules on EU citizenship and the free movement of EU citizens, precludes a Member State from making the funding of studies abroad dependent on a residence requirement such as the three-year rule.

The German Courts have to decide the cases of two German students who were refused funding for their (entire) studies in, respectively, the Netherlands and in Spain. Laurence Prinz, who was born in Germany and had lived several years with her parents in Tunisia before completing her secondary education in Germany, started her business management studies at Erasmus University Rotterdam in autumn 2009. As she did not meet the three-year residence requirement, she was granted funding only for the first year of her studies. Philipp Seeberger was also born in Germany and lived several years with his parents in Spain before returning to Germany. He began his studies in economics at the University of the Balearics in Palma de Mallorca in autumn 2009. As he could not show three years of residence in Germany before commencing these studies, he was refused funding.

Advocate General Eleanor Sharpston notes that EU law does not oblige Member States to award funding for studies pursued either within their territory or elsewhere. However, if they do so, the funding must comply with EU law such as the right of EU citizens to move and reside freely within the territory of the Member States. She concludes that **the three-year rule constitutes a restriction on the free movement rights of EU citizens**. By its very nature, such a residence requirement is likely to discourage an EU citizen from exercising his right to move to another Member State and pursue secondary education there prior to applying for funding for tertiary education ('the chilling effect'). It also disadvantages any EU citizen who has already exercised his freedom of movement rights before applying for the funding.

If such a restriction may, in principle, be justified by **the economic objective** of avoiding an unreasonable burden which could have consequences for the overall level of assistance,¹ it is **not sufficient** for a Member State **merely to assert**, without more, that the measure pursues **such an objective**. The Member State must, rather, assess the actual or potential risks arising from making particular types of funding available. Based on that assessment, it may then determine what would be an unreasonable financial burden and define measures aimed at avoiding or limiting the risk that such a burden will be created. Thus, in the Advocate General's view, the mere fact that in 2008 approximately one million German nationals lived in other Member States says nothing about the existence of an actual or potential risk of an unreasonable financial burden if the residence requirement for student funding were to be eliminated.

According to Advocate General Sharpston, whether the three-year rule is appropriate to achieve the economic objective will depend on whether the risk is reduced to a reasonable level by the application of the three-year rule. And whether the rule is proportionate in relation to that objective will depend on whether it imposes no greater restriction than is needed to bring the financial burden within the limits of the reasonable. To make that assessment, the national courts have to know (i) what is considered to be an unreasonable financial burden and (ii) what the quantitative impact of the three-year rule on that burden is estimated to be.

As regards the argument that funding should be limited to those students showing a certain degree of integration into national society (**'the integration objective'**), Advocate General Sharpston reads the existing case law² in the sense that requiring a certain degree of integration does **not** amount to **an independent legitimate objective, but is rather a means to avert an unreasonable financial burden**. However, she does not exclude the possibility that the case law should be read differently and invites the Court to clarify its case law in this respect.

If the integration objective is accepted as a separate legitimate objective independent from the economic objective, Advocate General Sharpston agrees that the three-year rule is **prima facie** an **appropriate** means of achieving that objective. However, the Advocate General considers that the rule is more restrictive than necessary and therefore not proportionate. **The three-year rule is too rigid. It risks excluding from funding students who, despite not having resided for an uninterrupted period of three years in Germany immediately prior to studying abroad, are nevertheless sufficiently connected to German society** due to their German nationality, residence, schooling or employment there, language skills, family and other social or economic ties, or other elements capable of showing that connection.

Without recommending any particular less restrictive rule, Advocate General Sharpston mentions the possibility of using residence as the primary or usual means of demonstrating the required degree of integration, without precluding the applicant or the authority from putting forward facts showing the existence (or the absence) of a real and effective connection. Such a rule would be more transparent and efficient than a rule requiring individual circumstances to be examined in each case but less restrictive than a measure like the three-year rule.

Finally, as to **the social objective** to award funding only to those students who would, following their studies abroad, become effective members of the German workforce or otherwise be absorbed into its economy and society, Advocate General Sharpston accepts that that objective is capable of justifying the three-year rule. However, the Advocate General is not convinced that there is an obvious link between the place where students reside prior to their studies abroad and the place where they will reside and work after their studies. She therefore doubts whether the rule is appropriate to achieve the social objective. The rule is also **disproportionate** because it is too exclusive. In that regard, the Advocate General is not convinced that past residence in one Member State can be used as the sole criterion to predict future residence following an intervening residence in another Member State.³

¹ See Judgments in Case [C-209/03](#), *Bidar*, see also Press Release [No 25/05](#), and in Joined Cases [C-11/06 and C-12/06](#), *Morgan and Bucher*, see also Press Release [No 77/07](#).

² See footnote 1.

³ See Judgment in Case [C-542/09](#), *Commission v Netherlands*, see also Press Release [No 79/12](#).

Advocate General Sharpston therefore suggests that the Court answer that **the rules on the EU citizenship and the free movement of EU citizens preclude a Member State from making an education grant for attending an educational establishment abroad for the full duration of those studies dependent on the fulfilment of a condition requiring any EU citizen, including its own nationals, to have resided in its territory during an uninterrupted period of three years immediately prior to the start of those studies abroad.**

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.

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

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