



Press and Information

Court of Justice of the European Union

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Luxembourg, 20 June 2013

Judgment in Case C-20/12

Elodie Giersch and Others v Luxembourg

**While stating that the Luxembourg legislation which excludes the children of frontier workers from entitlement to financial aid for higher education studies pursues a legitimate objective, the Court holds that the current system goes beyond what is necessary to attain that objective**

*The objective of increasing the number of persons in the Luxembourg population with a higher education degree may be attained using less restrictive measures*

EU law<sup>1</sup> requires Member States to grant migrant workers the same social and tax advantages as national workers.

Luxembourg grants financial aid, in the form of a grant and a loan, in order to promote higher education studies by students in its territory or in the territory of any other State. That aid is granted to students holding Luxembourg nationality or the nationality of another Member State, who are resident in Luxembourg when they are about to embark on higher education studies. Thus, the children of cross-border workers, who usually reside in a country bordering upon Luxembourg, are not entitled to the aid.

A number of children of cross-border workers to whom financial aid had been denied are contesting the lawfulness of their exclusion from the category of beneficiaries of the aid before the Luxembourg courts. The tribunal administratif (Luxembourg), before which those disputes have been brought, asks the Court of Justice whether the Luxembourg legislation relating to the grant of that aid is compatible with the principle of the freedom of movement of workers.

In its judgment of today's date, the Court recalls that aid granted in order to finance the university studies of the child of a migrant worker constitutes, for that worker, a social advantage which must be granted to him under the same conditions as those applying to national workers. The Court makes clear in that regard that that equal treatment must not be limited to migrant workers residing in a host Member State but must extend to cross-border workers who, while employed as a worker in that Member State, reside in another Member State. In addition, where the social advantage is granted directly to the child of a migrant worker, that child may himself or herself rely on the principle of equal treatment.

Second, the Court holds that the **condition of residence** required by Luxembourg legislation **amounts to indirect discrimination on grounds of nationality in so far as it is liable to operate mainly to the detriment of nationals of other Member States, as non-residents are in the majority of cases foreign nationals**. In that context, the Court states that such discrimination cannot be justified by budgetary considerations, since the application and the scope of the principle of non-discrimination on grounds of nationality cannot depend on the state of the public finances of the Member States.

The Court nevertheless considers that **the condition of residence is appropriate for attaining the objective pursued by Luxembourg of promoting higher education studies and of**

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<sup>1</sup> Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475), as amended by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 158, p. 77 and corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34).

**significantly increasing the proportion of Luxembourg residents who hold a higher education degree.** Students who are resident in Luxembourg when they are about to embark on their higher education studies may be more likely than non-resident students to settle in Luxembourg and become integrated in the Luxembourg labour market after completing their studies, even if those studies were undertaken abroad.

However, the Court holds that **the system of financial aid in question is too exclusive in nature.** By imposing a prior condition of residence by the student in Luxembourg territory, **the law favours an element which is not necessarily the sole representative element of the actual degree of attachment of the person concerned to Luxembourg.**

Thus, it is possible that a non-resident student may also have an attachment to the Grand Duchy sufficient to make it reasonably probable that he or she will return to settle in Luxembourg and make himself or herself available to the labour market of that Member State. That is the case where that student resides alone or with his or her parents in a Member State which borders upon the Grand Duchy of Luxembourg and where, for a significant period of time, his or her parents have worked in Luxembourg and live near to that Member State.

The Court points out in that regard that less restrictive measures are available which make it possible to attain the objective sought by the Luxembourg legislature. For example, where the aid granted consists in a loan, a system of financing which made the grant of that loan, or even the outstanding balance thereof, or its non-reimbursement, conditional on the student who receives it returning to Luxembourg after his or her studies abroad in order to work and reside there, would be better adapted to the special situation of the children of cross-border workers. In addition, **in order to avoid 'study grant forum shopping'** and to ensure that the cross-border worker parent of the student has a sufficient link with Luxembourg society, **the financial aid could be made conditional on that parent having worked in Luxembourg for a certain minimum period of time.**

Finally, the risk of duplication with equivalent financial aid paid in the Member State in which the student resides, with or without his parents, could be avoided by taking that aid into account in the grant of the aid paid by Luxembourg.

In those circumstances, **the Court replies that the contested Luxembourg legislation goes beyond what is necessary to attain the objective pursued by the legislature. Therefore, that legislation is contrary to the principle of the freedom of movement for workers.**

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**NOTE:** A request 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 judgment is published on the CURIA website on the day of delivery.

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