

Case C-209/03

The Queen, on the application of Dany Bidar

v

**London Borough of Ealing and Secretary of State for Education
and Skills**

(Reference for a preliminary ruling from the
High Court of Justice of England and Wales, Queen's Bench
Division (Administrative Court))

(Citizenship of the Union — Articles 12 EC and 18 EC — Assistance for students in
the form of subsidised loans — Provision limiting the grant of such loans to students
settled in national territory)

Opinion of Advocate General Geelhoed delivered on 11 November 2004 . . . 1 - 2122
Judgment of the Court (Grand Chamber), 15 March 2005 1 - 2151

Summary of the Judgment

- 1. EC Treaty — Scope of application for the purposes of the prohibition of any discrimination on grounds of nationality — Assistance provided to students to cover their maintenance*

costs — Included — National legislation reserving the grant of such assistance to students settled in the national territory — Not possible for students who are nationals of other Member States to be regarded as settled — Not permissible

(Art. 12 EC)

2. *Preliminary rulings — Interpretation — Temporal effect of interpretative judgments — Retroactive effect — Limits imposed by the Court — Conditions — Significance for the Member State concerned of the financial consequences of a judgment — Not decisive*

(Art. 234 EC)

1. Assistance, whether in the form of subsidised loans or of grants, provided to students lawfully resident in the host Member State to cover their maintenance costs falls within the scope of application of the Treaty for the purposes of the prohibition of discrimination laid down in the first paragraph of Article 12 EC.

It is indeed legitimate for a Member State to grant such assistance only to students who have demonstrated a certain degree of integration into the society of that State. It cannot, however, require the students concerned to establish a link with its employment market. On the other hand, the existence of a certain degree of integration may be regarded as established by a finding that the student in question has resided in the host Member State for a certain length of time.

That provision must be interpreted as precluding national legislation which grants students the right to such assistance only if they are settled in the host Member State, while excluding a national of another Member State from obtaining, as a student, the status of settled person, even if that national is lawfully resident and has received a substantial part of his secondary education in the host Member State and has consequently established a real link with the society of that State.

However, by precluding any possibility of a national of another Member State obtaining settled status as a student, that legislation makes it impossible for such a national, whatever his actual degree of integration, to enjoy the right to assistance, and consequently prevents him from being able to pursue his studies

under the same conditions as a national of that State who is in the same situation.

(see paras 48, 57-59, 61-63, operative part 1, 2)

2. The interpretation the Court gives to a rule of Community law is limited to clarifying and defining the meaning and scope of that rule as it ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that

in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied. It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict the possibility for any person concerned of relying on a provision it has interpreted with a view to calling in question legal relationships established in good faith. The financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effect of the ruling.

(see paras 66-68, operative part 3)