

JUDGMENT OF THE COURT

27 September 1988 *

In Case 42/87

Commission of the European Communities, represented by its Legal Adviser, J. Griesmar, acting as Agent, with an address for service at the office of Georgios Kremis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by the Minister for Foreign Relations, represented by R. Hoebaer, Director of Administration at the Ministry for Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, Résidence Champagne, 4 rue des Girondins,

defendant,

APPLICATION for a declaration that, in making 'ineligible for finance' by the State various categories of students who are nationals of another Member State wishing to follow the courses provided by higher education establishments other than universities, the Kingdom of Belgium is discriminating on grounds of nationality as regards conditions of access to vocational training and is thus failing to fulfil its obligations under Community law,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and O. Due (Presidents of Chambers), T. Koopmans, K. Bahlmann, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges,

Advocate General: Sir Gordon Slynn
Registrar: B. Pastor, Administrator

* Language of the Case: French.

having regard to the Report for the Hearing and further to the hearing on 24 May 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 28 June 1988,

gives the following

Judgment

- 1 By an application lodged at the Court Registry on 9 February 1987, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Kingdom of Belgium had failed to fulfil certain of its obligations under Article 7 of the EEC Treaty and Article 12 of Regulation (EEC) No 1612/68 of 16 October 1968 of the Council on free movement of workers within the Community (Official Journal, English Special Edition 1968-69, p. 45).
- 2 The Commission's specific criticism is that the Kingdom of Belgium included in the category of students 'ineligible for finance' by the State students who are nationals of Member States other than Belgium and the Grand Duchy of Luxembourg who apply for registration for and admission to courses provided by a higher education establishment not of university level and thereby created a situation restricting the free access of such students to vocational training.
- 3 Under the Belgian legislation in force, in addition to students of Belgian or Luxembourg nationality, only certain categories of foreign students exhaustively listed and subject to various restrictive conditions are to be 'taken into consideration amongst regular students' for the purposes of the financing by the State of higher education establishments. The last of these categories comprises foreign students in general whose number cannot exceed 2% of the total number

of Belgian students registered, for the establishment concerned, in the previous academic year. According to this same legislation, 'the State shall not be responsible for the expenses of any foreign student admitted by the organizing authorities outside the categories' set out above and 'the directors of State higher education establishments may refuse to allow the registration of students who are not taken into account for the financing' (since classified as 'ineligible for finance').

- 4 In the Commission's view, that legislation constitutes a breach of the prohibition of discrimination on grounds of nationality set out in Article 7 of the Treaty, and, in so far as it also applies to the children of a migrant worker who was employed in Belgium, but who no longer resides there or is deceased, an infringement of Article 12 of Regulation No 1612/68.
- 5 Reference is made to the Report for the Hearing for a fuller account of the legal background to the dispute, the facts of the case and the arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 6 It may be observed, in the first place, that the Kingdom of Belgium has never denied that the Commission's position on the matter is correct, but has merely claimed that it had the intention of amending the legislation in question.
- 7 As regards the first submission, it should be stressed that the Court has already held that conditions of access to vocational training fall within the scope of the Treaty (judgment of 13 February 1985 in Case 293/83 *Gravier* [1985] ECR 593).
- 8 In this respect, it should be noted that the legislation in question, in so far as it limits, in the manner described above, the financing of vocational higher education establishments, has the direct effect of excluding, in practice, students who are nationals of other Member States from such vocational training once the quota of 2% is attained, whereas such a restriction is not provided for in respect of Belgian

students. Consequently this restriction constitutes discrimination on grounds of nationality prohibited under Article 7 of the Treaty.

- 9 It follows that the Commission's submission based on Article 7 of the EEC Treaty must be declared well founded.
- 10 As far as the second submission is concerned, it is sufficient to observe that, according to Article 12 (1) of Regulation 1612/68, 'the children of a national of a Member State who is or who has been employed in another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.' This entitlement to equality of treatment continues to operate in favour of the children of a deceased migrant worker, as is made clear in Regulation No 1251/70 by the combined provisions of Articles 7 and 3 thereof.
- 11 It follows that the Commission's submission based on Article 12 of Regulation No 1612/68 must also be declared well founded.
- 12 It follows from all the foregoing considerations that, by including in the category of students 'ineligible for finance' by the State students who are nationals of Member States other than Belgian and the Grand Duchy of Luxembourg who apply for registration for and admission, as part of vocational training, to courses provided by a higher education establishment not of university level, the Kingdom of Belgium has failed to fulfil its obligations under Article 7 of the EEC Treaty and Article 12 of Regulation No 1612/68.

Costs

- 13 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Belgium has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- (1) Declares that, by including in the category of students 'ineligible for finance' by the State students who are nationals of Member States other than Belgium and the Grand Duchy of Luxembourg who apply for registration for and admission, as part of vocational training, to courses provided by a higher education establishment not of university level, the Kingdom of Belgium has failed to fulfil its obligations under Article 7 of the EEC Treaty and Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on the free movement of workers within the Community;
- (2) Orders the Kingdom of Belgium to pay the costs.

Mackenzie Stuart

Bosco

Due

Koopmans

Bahlmann

Kakouris

Joliet

O'Higgins

Schockweiler

Delivered in open court in Luxembourg on 27 September 1988.

J.-G. Giraud

A. J. Mackenzie Stuart

Registrar

President