JUDGMENT OF THE COURT
21 June 1988 *

In Case 39/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Hannover (Administrative Court, Hanover) for a preliminary ruling in the proceedings pending before that court between

Sylvie Lair, a student of French nationality, residing in Hanover,

and

Universität Hannover (University of Hanover),

on, in particular, the interpretation of Article 7 of the EEC Treaty and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475),

THE COURT,

composed of: Lord Mackenzie Stuart, President, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

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

after considering the observations submitted on behalf of:

Sylvie Lair, by H. Vogt,

the Federal Republic of Germany, by M. Zuleeg, acting as Agent,

* Language of the Case: German.

the Kingdom of Denmark, by L. Mikaelsen, acting as Agent,

the United Kingdom, by R. N. Ricks, H. R. L. Purse and D. Donaldson QC, acting as Agents,

the Commission, by J. Pipkorn and J. R. Currall, acting as Agents,

having regard to the Report for the Hearing and further to the hearing on 21 May 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 17 September 1987,

gives the following

Judgment

1 By an order of 19 November 1985, which was received at the Court on 12 February 1986, the Verwaltungsgericht Hannover referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions relating in particular to the interpretation of Article 7 of the EEC Treaty and Article 7 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).

2 Those questions arose in proceedings brought by Mrs Lair, the plaintiff in the main proceedings (hereinafter referred to as 'the plaintiff'), contesting the refusal by the University of Hanover, the defendant in the main proceedings (hereinafter 'the University'), to award her a maintenance and training grant for the pursuit of her university studies.

3 It is apparent from the documents before the Court that the plaintiff is a French national and has been resident since 1 January 1979 in the Federal Republic of Germany, where she worked as a bank clerk until 30 June 1981. Between 1 July 1981 and 30 September 1984, she went through alternate periods of unemployment and retraining, interspersed with brief periods of employment, the last of which came to an end on 21 July 1983. Since 1 October 1984, she has been studying Romance and Germanic languages and literature at the University. It has not been disputed in the main proceedings that that course of study leads to a professional qualification.

4 Under Paragraph 8 of the German Law on grants for training and further education (Bundesausbildungsförderungsgesetz — hereinafter referred to as 'the Law on training grants') as published on 6 June 1983 (BGBl. I p. 645, corrigendum p. 1680) and subsequently amended, assistance for training, including university study, may be awarded not only to German nationals but also to certain categories of foreigners, *inter alia* those who have resided and been engaged in regular occupational activity in the Federal Republic for a total period of five years prior to the commencement of the part of the training course for which assistance is available; there is no requirement of previous occupational activity where German nationals are concerned.

5 Under Paragraph 1 of the Law on training grants, applicants are entitled to such a grant where they have no other means of supporting themselves and financing their training. Grants are awarded, *inter alia*, for training 'for the purpose of acquiring a professional qualification' until its conclusion by the award of a diploma (see Paragraph 7 of the Law on training grants). They are made for 'maintenance and training' and their amount is fixed at a flat rate for various categories of beneficiary in Paragraphs 12 to 14b, no distinction being made between what is required for maintenance and for training. Under Paragraph 17 of the Law, in the case of university study assistance is awarded in the form of interest-free loans to be reimbursed in instalments beginning five years after the end of the maximum duration of the training in respect of which they were made. Under Paragraph 10 (3) of the Law on training grants, as a rule no grants are made to applicants who are aged 30 or over at the beginning of the part of the training course for which aid is available.

6 The grant for which the plaintiff applied was refused by the University on the ground that she did not fulfil the condition for the award of assistance to foreigners inasmuch as she had not been engaged in occupational activity in the

Federal Republic of Germany for at least five years. The University considered that only periods during which a foreigner is engaged in occupational activity and in that capacity pays taxes and social security contributions, which are ultimately what enable the Federal Republic of Germany to make social investments such as maintenance and training grants, can be regarded as periods of occupational activity for the purposes of Paragraph 8 of the Law on training grants.

7 The national court, to which the plaintiff appealed against that decision, is uncertain whether she may claim assistance under Paragraph 8 of the Law on training grants in conjunction with Articles 48 and 49 of the EEC Treaty and Article 7 of Regulation No 1612/68 or, if not, whether refusal of such a grant constitutes a breach of the prohibition of discrimination contained in the first paragraph of Article 7 of the EEC Treaty.

8 The national court therefore referred the following questions to the Court:

'(1) Does Community law entitle nationals of Member States of the European Community who take up employment in another Member State and there, after giving up their employment, commence a course of higher education leading to a professional qualification (in this case, a university course in Romance and Germanic languages and literature) to claim a training grant on the same basis of aptitude and need as that social advantage is accorded to nationals of the host Member State?

(2) Does the fact that a Member State accords grants for higher education leading to vocational qualifications to its own nationals on the basis of aptitude and need but accords the same grant to nationals of other Member States only if they have worked in the host Member State for at least five years before the start of the course concerned constitute discrimination contrary to Article 7 of the EEC Treaty?'

9 Reference is made to the Report for the Hearing for a fuller account of the relevant legal provisions and the background to the main proceedings and of the observations submitted to the Court, which are mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

10 The national court's second question, which raises the general problem whether a student is entitled, by reason solely of being a national of another Member State, to such a grant, should be examined first.

Interpretation of Article 7 of the EEC Treaty (the second question)

11 This question seeks in essence to determine whether the first paragraph of Article 7 of the EEC Treaty applies to grants for maintenance and training made by a Member State to its nationals for the purpose of university studies.

12 It should be pointed out first of all that in its judgment of 13 February 1985 in Case 293/83 *Gravier* v *City of Liège* [1985] ECR 593, at p. 593, the Court held that unequal treatment based on nationality is to be regarded as discrimination prohibited by Article 7 of the Treaty if it falls within the scope of the Treaty and that conditions for access to vocational training do fall within its scope. In its judgment of 2 February 1988 in Case 24/86 *Blaizot* v *University of Liège* [1988] ECR 379, the Court further ruled that, in general, university studies fulfil the conditions required in order to be regarded as vocational training for the purposes of the EEC Treaty.

13 On the other hand, the Court did not have occasion to express a view in those judgments as to whether a national of another Member State is entitled, when undertaking such studies, to assistance given by a Member State to its own nationals.

14 It is only to the extent to which assistance of that kind is intended to cover registration and other fees, in particular tuition fees, charged for access to education that by virtue of the judgment in *Gravier* it falls, as relating to conditions of access

to vocational training, within the scope of the EEC Treaty and that, consequently, the prohibition of discrimination on grounds of nationality laid down by Article 7 of the EEC Treaty is applicable.

15 Subject to that reservation, it must be stated that at the present stage of development of Community law assistance given to students for maintenance and for training falls in principle outside the scope of the EEC Treaty for the purposes of Article 7. It is, on the one hand, a matter of educational policy, which is not as such included in the spheres entrusted to the Community institutions (see *Gravier*) and, on the other, a matter of social policy, which falls within the competence of the Member States in so far as it is not covered by specific provisions of the EEC Treaty (see the judgment of 9 July 1987 in Joined Cases 281, 283 to 285 and 287/85 *Germany and Others* v *Commission* — migration policy — [1987] ECR 3203).

16 The answer to the second question must therefore be that at the present stage of development of Community law the first paragraph of Article 7 of the EEC Treaty applies to assistance for maintenance and training given by a Member State to its nationals for the purposes of university studies only in so far as such assistance is intended to cover registration and other fees, in particular tuition fees, charged for access to education.

Interpretation of Article 7 of Regulation No 1612/68 (the first question)

17 The first question, relating to the interpretation of Article 7 of Regulation No 1612/68, comprises three distinct branches involving, respectively, the following questions:

Whether maintenance and training grants awarded for university studies leading to a professional qualification constitute a 'social advantage' within the meaning of Article 7 (2) of Regulation No 1612/68.

Whether a national of another Member State who undertakes university studies in the host State after having engaged in occupational activity in that State is to be

regarded as having retained his status as a 'worker' and is entitled in that capacity to the benefit of Article 7 (2) of Regulation No 1612/68.

Finally, whether a host Member State may make the right to the 'same social advantages' provided for in Article 7 (2) of Regulation No 1612/68 conditional upon a minimum period of prior occupational activity within its territory.

The concept of social advantage

18 In order to define the concept of social advantage within the meaning of Article 7 (2) of Regulation No 1612/68, it must first be recalled that the aim of that regulation is to enable the objectives laid down in Articles 48 and 49 of the EEC Treaty in the field of freedom of movement for workers to be achieved. That freedom forms part of the freedom of movement for persons referred to in Article 3 (c) of the EEC Treaty and the fundamental freedoms guaranteed by the Treaty.

19 A worker who is a national of a Member State and who has exercised that fundamental freedom is, under Article 7 (2) of Regulation No 1612/68, to enjoy 'the same social . . . advantages as national workers' in the host Member State.

20 In addition to the specific right mentioned in Article 7 (1) of that regulation not to be treated differently from national workers in respect of any conditions of employment and work, in particular as regards reinstatement or re-employment, 'social advantages' include all other advantages by means of which the migrant worker is guaranteed, in the words of the third recital in the preamble to the regulation, the possibility of improving his living and working conditions and promoting his social advancement.

21 In that connection the Court has ruled that it follows from Regulation 1612/68 as a whole and from the objective pursued that the advantages which that regulation extends to workers who are nationals of other Member States are all those which, whether or not linked to a contract of employment, are generally granted to

national workers primarily because of their status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community (judgments of 27 March 1985 in Case 249/83 *Hoeckx* v *Openbaar Centrum voor Maatschappelijk Welzijn, Kalmthout* [1985] ECR 973, and Case 122/84 *Scrivner* v *Centre public d'aide sociale de Chastre* [1985] ECR 1027).

22 It follows that a worker who is a national of another Member State and has exercised his right as such to freedom of movement is entitled in the same way as national workers to all the advantages available to such workers for improving their professional qualifications and promoting their social advancement.

23 It must now be considered whether or not a grant such as that at issue in the present case is covered by the concept of social advantage as interpreted above. It should be pointed out that such assistance, awarded for the student's maintenance and training, is particularly appropriate from a worker's point of view for improving his professional qualifications and promoting his social advancement. Moreover, the grant and the repayment of the benefits received are linked in national law to the beneficiary's means, and are thus dependent on social criteria.

24 It follows that such a grant constitutes a social advantage within the meaning of Article 7 (2) of Regulation No 1612/68.

25 It was argued before the Court that the application of Article 7 (2) of Regulation No 1612/68 was precluded by Article 7 (3) of the same regulation by virtue of the specific content of the latter, which provides that a worker who is a national of a Member State 'shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres'.

26 In that regard, it should be noted that in order for an educational institution to be regarded as a vocational school for the purposes of that provision the fact that some vocational training is provided is not sufficient. The concept of a vocational

school is a more limited one and refers exclusively to institutions which provide only instruction either alternating with or closely linked to an occupational activity, particularly during apprenticeship. That is not true of universities.

27 However, while it is true that Article 7 (3) of the regulation provides for a specific social advantage, that does not mean that a grant awarded for maintenance and training with a view to the pursuit of studies in an institution which does not fall within the concept of a vocational school under that provision cannot be held to be a social advantage within the meaning of Article 7 (2).

28 The answer to the first branch of the first question must therefore be that a grant awarded for maintenance and training with a view to the pursuit of university studies leading to a professional qualification constitutes a social advantage within the meaning of Article 7 (2) of Regulation No 1612/68.

The concept of worker

29 In this connection, the three Member States which have submitted observations argue that a person loses the status of worker, on which the social advantages depend, when, in the host State, he gives up either his previous occupational activity or, if unemployed, his search for employment in order to pursue full-time studies. The Commission disagrees with that view.

30 It should be noted first of all that neither Article 7 (2) of Regulation No 1612/68 nor Articles 48 or 49 of the EEC Treaty provides an express answer to the question whether a migrant worker who has interrupted his occupational activity in the host State in order to pursue university studies leading to a professional qualification is to be regarded as having retained his status as a migrant worker for the purposes of Article 7 of the regulation.

31 Although the wording of those provisions does not provide an express answer to that question, there is nevertheless a basis in Community law for the view that the rights guaranteed to migrant workers do not necessarily depend on the actual or continuing existence of an employment relationship.

32 With regard to nationals of another Member State who have not yet taken up employment in the host State, it should first be noted that Article 48 (3) (a) and (b) guarantees such persons the right to accept offers of employment actually made and to move freely within the territory of the Member States for that purpose. Those provisions were implemented by Part I, Title I of Regulation No 1612/68.

33 Persons who have previously pursued in the host Member State an effective and genuine activity as an employed person as defined by the Court (see the judgments of 23 March 1982 in Case 53/81 *Levin* v *Staatssecretaris van Justitie* [1982] ECR 1035, and 3 June 1986 in Case 139/85 *Kempf* v *Staatssecretaris van Justitie* [1986] ECR 1741) but who are no longer employed are nevertheless considered to be workers under certain provisions of Community law.

34 First, under Article 48 (3) (d) of the EEC Treaty, persons who remain in the territory of a Member State after having been employed in that State are regarded as workers. Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (Official Journal, English Special Edition 1970 (II), p. 402), which implemented that provision of the Treaty, gives workers whose occupational activity has terminated and their families the right, under certain conditions, to remain permanently in the territory of a Member State. Secondly, Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (Official Journal, English Special Edition 1968 (II), p. 485) prohibits Member States in certain circumstances from withdrawing a residence permit from a worker solely on the ground that he is no longer in employment. Thirdly, and lastly, under Article 7 (1) of Regulation No 1612/68 a migrant worker who has become unemployed may not be treated differently from national workers in the same position as regards reinstatement or re-employment.

35 Furthermore, Article 7 (3) of Regulation No 1612/68 guarantees migrant workers access, by virtue of the same right and under the same conditions as national workers, to training in vocational schools and retraining centres. That right to specific training, guaranteed by Community legislation, does not depend on the continued existence of an employment relationship.

36 It is therefore clear that migrant workers are guaranteed certain rights linked to the status of worker even when they are no longer in an employment relationship.

37 In the field of grants for university education, such a link between the status of worker and a grant awarded for maintenance and training with a view to the pursuit of university studies does, however, presuppose some continuity between the previous occupational activity and the course of study; there must be a relationship between the purpose of the studies and the previous occupational activity. Such continuity may not, however, be required where a migrant has involuntarily become unemployed and is obliged by conditions on the job market to undertake occupational retraining in another field of activity.

38 Such a conception of freedom of movement for migrant workers corresponds, moreover, to current developments in careers. Continuous careers are less common than was formerly the case. Occupational activities are therefore occasionally interrupted by periods of training or retraining.

39 The answer to the second part of the first question should therefore be that a national of another Member State who has undertaken university studies in the host State leading to a professional qualification, after having engaged in occupational activity in that State, must be regarded as having retained his status as a worker and is entitled as such to the benefit of Article 7 (2) of Regulation No 1612/68, provided that there is a link between the previous occupational activity and the studies in question.

The fixing of a minimum period of prior occupational activity as a condition for the granting of the same social advantages

40 In this regard, the three Member States which have submitted observations argue that any Member State is entitled to require that a national of another Member State applying for a maintenance and training grant with a view to the pursuit of university studies must first have engaged in occupational activity for a minimum period within its territory. The Commission disagrees with that point of view.

41 It should be stressed that a student who is a national of another Member State may claim such a grant for university training only in his capacity as a worker within the meaning of Article 48 of the EEC Treaty and Regulation No 1612/68. The Court has held (see the judgments of 19 March 1964 in Case 75/63 *Hoekstra* v *Bedrijfsvereniging Detailhandel* [1964] ECR 177, and 23 March 1982 in Case 53/81 *Levin*, cited above) that the concept of worker has a specific Community meaning and may not be defined on the basis of criteria laid down in national legislation.

42 Member States cannot therefore unilaterally make the grant of the social advantages contemplated in Article 7 (2) of the above regulation conditional upon the completion of a given period of occupational activity (see judgment of 6 June 1985 in Case 157/84 *Frascogna* v *Caisse des dépôts et consignations* [1985] ECR 1739, at p. 1744).

43 In so far as the arguments submitted by the three Member States in question are motivated by a desire to prevent certain abuses, for example where it may be established on the basis of objective evidence that a worker has entered a Member State for the sole purpose of enjoying, after a very short period of occupational activity, the benefit of the student assistance system in that State, it should be observed that such abuses are not covered by the Community provisions in question.

44 The answer to the third part of the first question must therefore be that the host Member State cannot make the right to the same social advantages provided for in Article 7 (2) of Regulation No 1612/68 conditional upon a minimum period of prior occupational activity within the territory of that State.

Costs

45 The costs incurred by the Federal Republic of Germany, the Kingdom of Denmark, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in reply to the questions referred to it by the Verwaltungsgericht Hannover, by order of 19 November 1985, hereby rules:

(1) At the present stage of development of Community law the first paragraph of Article 7 of the EEC Treaty applies to assistance for maintenance and training given by a Member State to its nationals for the purposes of university studies only in so far as such assistance is intended to cover registration and other fees, in particular tuition fees, charged for access to education.

(2) A grant awarded for maintenance and training with a view to the pursuit of university studies leading to a professional qualification constitutes a social advantage within the meaning of Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

(3) A national of another Member State who undertakes university studies in the host State leading to a professional qualification, after having engaged in occupational activity in that State, must be regarded as having retained his status as a worker and is entitled as such to the benefit of Article 7 (2) of Regulation No 1612/68, provided that there is a link between the previous occupational activity and the studies in question.

(4) The host Member State cannot make the right to the same social advantages provided for in Article 7 (2) of Regulation No 1612/68 conditional upon a minimum period of prior occupational activity within the territory of that State.

Mackenzie Stuart	Moitinho de Almeida		Rodríguez Iglesias
Koopmans	Everling	Bahlmann	Galmot
Kakouris	Joliet	O'Higgins	Schockweiler

Delivered in open court in Luxembourg on 21 June 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President