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Press and Information

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Opinion of Advocate General Geelhoed in Case C-209/03

The Queen v London Borough of Ealing and Secretary of State for Education, ex parte Dany Bidar

ADVOCATE GENERAL GEELHOED SUGGESTS THAT FOLLOWING THE INTRODUCTION OF EU CITIZENSHIP, ASSISTANCE WITH MAINTENANCE COSTS FOR STUDENTS ATTENDING UNIVERSITY COURSES IN THE FORM OF LOANS OR GRANTS FALLS WITHIN THE SCOPE OF THE EC TREATY

Whilst a residency requirement may in principle be used to determine eligibility, any eligibility conditions must not go beyond what is necessary to establish the existence of a real link between the student and the national education system and society.

In the UK, assistance with living costs for students is primarily provided by means of a student loan from the State. This is offered at a rate linked to inflation which is lower than commercial rates and the student begins to pay back the loan only once they start earning above a certain amount. A national of a Member State is entitled to receive this loan if they are "settled" in the UK and have been resident in the UK for the three years prior to commencing their course. In order to be "settled" a person has to have lived in the UK for four years other than for the purposes of receiving full-time education.

Dany Bidar, a French national, moved to the UK in August 1998 and completed his final three years of secondary education in London. In September 2001 he enrolled on a course at University College London and applied to the London Borough of Ealing for funding. While he was granted assistance with tuition fees, he was refused a maintenance loan on the basis that he was not "settled" in the UK.

Mr Bidar challenged this decision, claiming that the residence requirement constituted discrimination on grounds of nationality, prohibited by the EC Treaty. The High Court asked the Court of Justice whether, following changes to the EC Treaty, notably the introduction of EU citizenship, assistance with living costs for students still remained outside the scope of the EC Treaty and if not what criteria should be used to determine whether the eligibility conditions were based on objective considerations.

Today, Advocate General Geelhoed delivered his Opinion in this case.

The Advocate General notes that the past case law of the Court stated that assistance with maintenance costs fell outside the substantive scope of the EEC Treaty. However, the inclusion, by the Treaty of Maastricht, of provisions bringing education within the sphere of Community action indicates that the subject of assistance with maintenance costs could now fall within the scope of the Treaty. Moreover, in light of the introduction of EU citizenship, and the Court's case law in this area, the Advocate General opines that assistance with maintenance costs now falls within the scope of community law. Just as citizenship has extended the right to move and reside within the territory of a Member State to economically non-active persons it could equally be said to extend, in certain circumstances, to economically inactive persons a right to benefits, such as that at issue, which would normally be granted to workers.

In relation to the criteria for determining whether eligibility conditions are objectively justifiable and independent of nationality, the Advocate General firstly observes that, where eligibility conditions are more cumbersome for EU citizens resident in the host Member State than for nationals, this constitutes, *prima facie*, indirect discrimination on grounds of nationality contrary to the Treaty. However such discrimination may be valid if it is justified and proportionate to a legitimate aim.

Whilst the Advocate General concedes that Member States do have a legitimate interest in preventing abuse of student support schemes and in preventing "benefit tourism", he notes that the manner in which this interest is ensured should not undermine the fundamental rights of EU citizens. Therefore, while the Member State may impose conditions which ensure that the applicant has a real link with the national education system and society, these conditions must be appropriate and they must not go beyond what is necessary for achieving that aim.

The Court has previously recognised that a residence requirement is, in principle, an appropriate way of ascertaining whether this connection exists. However, if such a requirement were to exclude a person who can demonstrate a genuine link with the national education system or society from the enjoyment of maintenance assistance, this result would be disproportionate. Notably, where a person has followed his secondary education in a Member State which is more adapted to preparing him for entry into a third level institution in that Member State than elsewhere, his link with the educational system of the Member State is evident.

Finally, the Advocate General points out that a decision that maintenance grants fall within the scope of Community law amounts to a new and unforeseen development in Community law, of which the UK government would not have been aware at the time of drafting their legislation. Furthermore he notes that the financial implications of a judgment in favour of Mr Bidar are not clear. Therefore he suggests that it would be justified to limit the temporal effect of a judgment in his favour to legal relationships established as from the date of that judgment, except where legal proceedings were initiated prior to that date for the purpose of challenging decisions refusing entitlement to assistance with maintenance costs for students.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. 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 of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, EN, ES, DE, FI, GR, IT, NL, PT

The full text of the Opinion may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day of delivery.

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