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Advocate General's Opinion in Joined Cases C-11/06 and C-12/06

Rhiannon Morgan v Bezirksregierung Köln and Iris Bucher v Landrat des Kreises Düren

**ADVOCATE GENERAL RUIZ-JARABO TAKES THE VIEW THAT THE
REQUIREMENTS OF THE GERMAN LAW ON STUDY GRANTS UNDULY
RESTRICT FREEDOM OF MOVEMENT FOR STUDENTS**

In his view, making grants to study in other Member States subject to the condition that the study should represent the continuation of a course of study of at least one year in a German establishment and denying grants to students who live in border towns for the purposes of study constitute criteria which deter students from exercising their freedom of movement and are excessive in relation to the aims pursued

Having completed her secondary education in Germany and passed her school-leaving examination, Rhiannon Morgan, a German national, moved to Great Britain where she worked for a year as an *au pair* before commencing her university studies, for which she applied to the German authorities for a grant. Her application was rejected because, under German legislation¹, the grant was subject to the condition that the course of study should constitute the continuation of a course of study of one year in a German establishment.

Iris Bucher, who is also a German national, lived with her parents in Bonn until she decided to move to Düren, a German town on the Dutch border, and pursue a course of study in the Dutch town of Heerlen. Ms Bucher applied to the authorities in Düren for a grant, which she was refused on the ground that she was not 'permanently' resident near a border as required by the German legislation.

The administrative court in Aachen before which both women brought an action, asked the Court of Justice to rule on the question of freedom of movement for European students and grants to study in other Member States.

In his opinion delivered today, Dámaso Ruiz-Jarabo takes the view that the German provisions hinder freedom of movement for students, since they deter them from exercising that freedom and impose conditions which are excessive in relation to the aims pursued.

¹ Bundesgesetz über individuelle Förderung der Ausbildung. New version published on 6 June 1983, BGBl I, p. 645; last amended by the Law of 22 September 2005, BGBl I, p. 2809.

First, the Advocate General points out that the Court of Justice has held that the conditions of access to vocational training, which includes both higher education and university education, fall within the scope of the Treaty. Access covers not only the commencement of studies but also their continuation.

In that connection, a **Member State has a wide discretion in awarding grants to study outside the country and in fixing the conditions for them. However, it must respect Community law, safeguarding its fundamental principles, such as freedom of movement.**

As regards the fact that the subsidy is subject to the condition that the studies should constitute the continuation of studies pursued for one year at a German establishment, the Advocate General observes that that requirement deters students from registering at universities in other Member States for a full course of study, since that entails forgoing the financial advantages conferred on those who, in similar circumstances, remain in their country of origin. There is, therefore, a restriction on freedom of movement for students.

In the view of Mr Ruiz-Jarabo, the requirement that the person concerned should have a real link with his place of origin may justify the restriction of financing of study in other Member States of the Union. However, to associate an individual with the State at the time of the beginning of the course of study does not accurately represent the real and effective level of the link and does not strengthen it.

On the other hand, the justification based on scarcity of public funds does not explain the requirement that study outside the country must be preceded by study of at least a year within the country.

As regards the compatibility of freedom of movement with the denial of grants to cross-border students on the ground that their place of residence is not their habitual one as it was chosen merely for the purpose of study, the Advocate General states that this requirement infringes freedom of movement to the detriment of those who, in order to attend classes in the neighbouring country more regularly, move to adjacent localities.

Mr Ruiz-Jarabo accepts that considerations of regional policy require measures to compensate for the negative effect on citizens who live a short distance from another State and feel that the borders distort their ability to select establishments close to home. However, in the case of Ms Bucher, he rejects the requirement that her residence should be 'permanent'. The residence link is sufficient, since the habitual residence of the person concerned, both at the start of her studies and throughout the period of study, was in Germany.

In the view of the Advocate General, in both cases, adjusting grants on the basis of academic performance would be less restrictive of freedom of movement.

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: ES, CS, DE, EN, EL, FR, IT, NL, PL

*The full text of the Opinion may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-11/06>*

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

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*Pictures of the delivery of the Opinion are available on EbS "Europe by Satellite",
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