

JUDGMENT OF THE COURT
2 February 1988 *

In Case 24/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal de première instance (Court of First Instance), Liège, for a preliminary ruling in the proceedings pending before that court between

Vincent Blaizot, a student, residing at Ottignies-Louvain La Neuve (Belgium), and
16 other students,

and

(1) **University of Liège**,

(2) **Catholic University of Louvain**,

(3) **Free University of Brussels**,

(4) **University Centre of Notre Dame de la Paix, Namur**,

Third party:

Belgian State

on, in particular, the interpretation of Article 7 of the EEC Treaty,

* Language of the Case: French.

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due, 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: D. Louterman, Administrator

after considering the observations submitted on behalf of

the applicant, by L. Misson, avocat,

the University of Liège, by P. Henry, avocat,

the Catholic University of Louvain, by R. Van Lint, avocat,

the Free University of Brussels, by M. Waelbroeck, avocat,

the University Centre of Notre Dame de la Paix, by Mr Van der Heyden, avocat,

the Kingdom of Belgium, by P. Deltenre, avocat,

the United Kingdom, by Mr McHenry, acting as Agent, and Mr Mummery, Barrister,

the Commission, by G. H. Beauthier, avocat,

having regard to the Report for the Hearing and further to the hearing on 18 February 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 27 January 1986, which was received at the Court Registry on 30 January 1986, the President of the tribunal de première instance, Liège, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question mainly concerning the interpretation of Article 7 of the Treaty, with a view to resolving a problem regarding the financial conditions governing admission to university.
- 2 That question was raised in the course of summary proceedings brought by Mr Blaizot and 16 other plaintiffs (hereinafter referred to as 'the plaintiffs') against the refusal of the University of Liège, the Catholic University of Louvain, the Free University of Brussels and the University Centre of Notre Dame de la Paix, Namur, (hereinafter referred to as 'the defendants') to repay the supplementary enrolment fees ('minerval') which they had paid before 13 February 1985, the date on which judgment was delivered in the *Gravier* case (Case 293/83 [1985] ECR 593). The defendants brought third party proceedings against the Belgian State.
- 3 It appears from the documents before the Court that the plaintiffs are all French nationals who obtained residence permits as students allowing them to reside in Belgium for the sole purpose of studying veterinary medicine at university. The course involves three years of study leading to the award of a preliminary diploma ('candidature') and a further three years leading to the award of a doctorate. In each academic year they were required to pay, in addition to the enrolment fee paid by all students, a supplementary enrolment fee as a personal contribution to running costs, which Belgian students were not charged. Pursuant to the royal decrees on the application of the supplementary enrolment fee, its amount varies between BFR 80 000 and BFR 265 000 per academic year.
- 4 In its judgment of 13 February 1985, referred to above, the Court held that the imposition on students who are nationals of other Member States of a charge, a registration fee or the minerval as a condition of access to vocational training, where the same fee is not imposed on students who are nationals of the host Member State, constitutes discrimination on grounds of nationality contrary to Article 7 of the Treaty.

- 5 After the delivery of that judgment, the plaintiffs brought interlocutory proceedings claiming the repayment of the supplementary enrolment fees which they had paid. At the hearing, the proceedings were stayed pending the amendment of the relevant Belgian legislation. The amendment was contained in the Law of 21 June 1985 on education (*Moniteur belge* of 6 July 1985).
- 6 According to that law, supplementary enrolment fees charged between 1 September 1976 and 31 December 1984 are in no event to be refunded; an exception is made for such fees paid by pupils and students who are nationals of a Member State of the Community and have undertaken vocational training, which are to be refunded in accordance with judicial decisions made in proceedings for repayment brought before the courts before 13 February 1985, the date on which the judgment in *Gravier* was delivered.
- 7 The national court stayed the proceedings and referred the following question to the Court for a preliminary ruling:

‘Do the financial conditions governing access to university courses leading to the award of a preliminary diploma (“candidature”) and a final degree (“doctorat”) in veterinary medicine fall within the scope of application of the Treaty, within the meaning of Article 7 thereof, as regards both the 1985/86 academic year and the academic years from 1979 to 1985?’
- 8 Reference is made to the Report for the Hearing for a fuller account of the legal background and facts of the case and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 9 It must be observed first of all that in its single question the national court has in fact raised two separate issues:
 - (i) The first issue is whether university studies in veterinary medicine fall within the meaning of the term ‘vocational training’, so that a supplementary enrolment fee charged to students who are nationals of other Member States and wish to enrol for such studies constitutes discrimination on grounds of nationality contrary to Article 7 of the EEC Treaty;

- (ii) The second issue is whether, if that is the case, that interpretation is valid only in respect of the period after delivery of the judgment or whether it applies also to the past.

The term 'vocational training'

- 10 With regard to the first issue raised by the national court, it appears from the Belgian legislation on the supplementary enrolment fee that it is paid only by foreign students, including students from Community countries. The inequality of treatment between them and Belgian students is thus based on nationality.
- 11 Such unequal treatment must be regarded as discrimination prohibited by Article 7 of the EEC Treaty if it falls within the scope of the Treaty. As the Court held in its judgment of 13 February 1985, the conditions of access to vocational training do fall within the scope of the Treaty.
- 12 It must therefore be determined whether university studies in veterinary medicine constitute vocational training.
- 13 The defendants and the Kingdom of Belgium submit that for the purposes of Article 128 of the EEC Treaty the term 'vocational training' refers not to university education, which is essentially academic in nature, but to apprenticeship or technical training. With regard to university studies in Belgium, they argue that studies leading to the preliminary diploma ('candidature') cannot in any event be regarded as vocational training since in order to take up and pursue an occupation a student must complete a further period of study ('doctorat') to obtain his final degree.
- 14 The Commission argues that studies at Belgian universities fall within the scope of vocational training for the purposes of Article 128 of the EEC Treaty. It adopts the view expressed by the plaintiffs that there are not two separate categories,

academic education and vocational training; instead, vocational training may be acquired through academic education provided in universities.

- 15 In view of that difference of opinion it should be pointed out first of all that, as the Court held in its judgment of 13 February 1985, any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary training and skills for such a profession, trade or employment is vocational training, whatever the age and level of training of the pupils or students, and even if the training programme includes an element of general education.
- 16 In order to determine whether university studies fulfil these criteria, a distinction must be drawn between the issue whether university studies can, by their nature, constitute vocational training for the purposes of Community law and the issue of the circumstances in which such studies may be said to prepare for a qualification for a particular profession, trade or employment or provide the necessary training and skills for such a profession, trade or employment.
- 17 With regard to the first issue, neither the provisions of the Treaty, in particular Article 128, nor the objectives which these provisions seek to achieve, in particular those relating to freedom of movement for persons, give any indication that the concept of vocational training is to be restricted so as to exclude all university education. It is accepted in all the Member States that some university studies are indeed intended to provide students, at the academic level, with certain knowledge, training and skills as preparation for specific occupations. It should be added that Article 10 of the European Social Charter, to which most of the Member States are contracting parties, treats university education as a type of vocational training.
- 18 It should also be borne in mind that there are significant variations in that regard among the Member States and that certain studies are undertaken in universities in some Member States but not in others. The exclusion of university education from the definition of the term 'vocational training' would thus result in unequal application of the Treaty in different Member States.

- 19 With regard to the issue whether university studies prepare for a qualification for a particular profession, trade or employment or provide the necessary training and skills for such a profession, trade or employment, it must be emphasized that that is the case not only where the final academic examination directly provides the required qualification for a particular profession, trade or employment but also in so far as the studies in question provide specific training and skills, that is to say where a student needs the knowledge so acquired for the pursuit of a profession, trade or employment, even if no legislative or administrative provisions make the acquisition of that knowledge a prerequisite for that purpose.
- 20 In general, university studies fulfil these criteria. The only exceptions are certain courses of study which, because of their particular nature, are intended for persons wishing to improve their general knowledge rather than prepare themselves for an occupation.
- 21 The fact that university education is divided into two stages — in Belgium, the ‘candidature’ and the ‘doctorat’ — cannot be taken into account. Access to the second stage, leading to the final diploma or degree, is conditional on completion of the first stage, so that the two stages together must be regarded as a single unit, and it is not possible to make a distinction between one stage which does not constitute vocational training and a second which does.
- 22 The defendants argue that the imposition of a supplementary enrolment fee is justified by overriding requirements, which include the survival of Belgian universities. These universities, they argue, would be endangered by the removal of the supplementary enrolment fee, which would considerably increase the influx of foreign students to Belgium and thus increase the universities’ financial burdens to an intolerable extent. The Council Resolution of 25 June 1980 approving the General Report of the Education Committee established by the Resolution of the Council and of the Ministers of Education meeting within the Council of 9 February 1976 comprising an action programme in the field of education (Official Journal 1976, C 38, p. 1) gives guidelines for a reasonable interpretation of the relevant provisions of the EEC Treaty.

- 23 It is true that in that resolution the Council considered it generally acceptable that the Member States should take appropriate measures to keep the effects of numerical limitations in other Member States on the influx of students within reasonable limits. Such a declaration of principle is not intended to allow, and cannot have the effect of allowing, a Member State to adopt measures resulting in discrimination prohibited by Article 7 of the EEC Treaty.
- 24 With regard to the first issue raised, the answer to the question referred by the national court must therefore be that university studies in veterinary medicine fall within the meaning of the term 'vocational training', and consequently a supplementary enrolment fee charged to students who are nationals of other Member States and wish to enrol for such studies constitutes discrimination on grounds of nationality contrary to Article 7 of the EEC Treaty.

The effect *ratione temporis* of the interpretation of the term 'vocational training'

- 25 The applicants and the Commission emphasize that as a matter of principle interpretative judgments delivered in reply to a reference for a preliminary ruling have retroactive effect. The interpretation of Article 7 of the EEC Treaty given in the judgment of 13 February 1985, referred to above, must be observed by all national courts even with regard to applications for vocational training courses for the period from 1 September 1976 to 31 December 1984. A Member State cannot adopt legislation imposing a temporal restriction on the effect of such a judgment where the Court did not lay down such a restriction in its judgment.
- 26 The defendants, on the other hand, emphasize that the judgment of 13 February 1985 constitutes a new development in Community law and would have serious repercussions if it were to have effect from 1 September 1976 onwards. The situation, they say, is thus comparable to that in Case 43/75 (judgment of 8 April 1976 *Defrenne v Sabena* [1976] ECR 455).
- 27 As the Court has held (see in particular the judgment of 27 March 1980 in Case 61/79 *Amministrazione delle Finanze dello Stato v Denkavit Italiana* [1980] ECR

1205), the interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177, the Court gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or 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.

- 28 As the Court recognized in its judgment of 8 April 1976, referred to above, it is only exceptionally that it may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict for any person concerned the opportunity of relying upon the provision as thus interpreted with a view to calling in question legal relationships established in good faith. As the Court has consistently held, such a restriction may be allowed only in the actual judgment ruling upon the interpretation sought.
- 29 This judgment deals for the first time with the question whether university education may be regarded as constituting vocational training for the purposes of Article 128 of the EEC Treaty.
- 30 As the Court has held (see in particular the judgment of 8 April 1976), in determining whether or not to limit the temporal effect of a judgment it is necessary to bear in mind that although the practical consequences of any judicial decision must be weighed carefully, the Court cannot go so far as to diminish the objectivity of the law and compromise its future application on the ground of the possible repercussions which might result, as regards the past, from a judicial decision.
- 31 This case marks a development with regard to the inclusion of university studies in the scope of the term 'vocational training' for the purposes of Community law. As the Court pointed out in its judgment of 13 February 1985, the common vocational training policy referred to in Article 128 of the Treaty is gradually being established. It is only on the basis of that development that it has become possible

to regard university studies preparatory to the exercise of a trade or profession as being covered by the term 'vocational training'.

- ³² Indeed, with regard to university education, that development is reflected in the conduct of the Commission. Letters sent by the Commission to Belgium in 1984 show that at that time the Commission did not consider the imposition of the supplementary enrolment fee to be contrary to Community law. It was not until 25 June 1985, in the course of an informal meeting with officials of the Belgian Education Ministries, that the Commission stated that it had changed its position. Two days later, more than four months after the delivery of the judgment of 13 February 1985, it stated during a meeting of the Education Committee established by the Council that it had not completed its review of the matter; that is to say, it had not yet formed a definite opinion of the conclusions to be drawn from that judgment, which itself concerned technical education, as was pointed out above.
- ³³ The attitude thus adopted by the Commission might reasonably have led the authorities concerned in Belgium to consider that the relevant Belgian legislation was in conformity with Community law.
- ³⁴ In those circumstances, pressing considerations of legal certainty preclude any reopening of the question of past legal relationships where that would retroactively throw the financing of university education into confusion and might have unforeseeable consequences for the proper functioning of universities.
- ³⁵ With regard to the second issue raised, the answer to the question referred by the national court must therefore be that, in so far as access to university studies is concerned, the direct effect of Article 7 of the EEC Treaty may not be relied on in support of claims regarding supplementary enrolment fees improperly charged prior to the date of this judgment, except in respect of students who brought legal proceedings or submitted an equivalent claim before that date.

Costs

- 36 The costs incurred by the Kingdom of Belgium, the United Kingdom and the Commission of the European Communities, which submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the President of the tribunal de première instance, Liège, by order of 27 January 1986, hereby rules: :

- (1) **University studies in veterinary medicine fall within the meaning of the term 'vocational training', and consequently a supplementary enrolment fee charged to students who are nationals of other Member States and wish to enrol for such studies constitutes discrimination on grounds of nationality contrary to Article 7 of the EEC Treaty.**
- (2) **In so far as access to university studies is concerned, the direct effect of Article 7 of the EEC Treaty may not be relied on in support of claims regarding supplementary enrolment fees improperly charged prior to the date of this judgment, except in respect of students who brought legal proceedings or submitted an equivalent claim before that date.**

Mackenzie Stuart

Bosco

Due

Moitinho de Almeida

Rodríguez Iglesias

Koopmans

Everling

Bahlmann

Galmot

Kakouris

Joliet

O'Higgins

Schockweiler

Delivered in open court in Luxembourg on 2 February 1988.

P. Heim

A. J. Mackenzie Stuart

Registrar

President