

Case C-638/20**Request for a preliminary ruling****Date lodged:**

25 November 2020

Referring court:

Överklagandenämnden för studiestöd (Sweden)

Date of the decision to refer:

14 October 2020

Applicant:

MCM

ÖVERKLAGANDENÄMNDEN FÖR STUDIESTÖD (National Board of Appeal for Student Aid, 'ÖFS')

[...]

DECISION UNDER APPEAL

Decision of the Centrala studiestödsnämnden (The Swedish Board of Student Finance, Sweden; 'the CSN') of 8 April 2020 [...]

IN THE MATTER OF

Financial aid for students for studies abroad; now a request for a preliminary ruling from the Court of Justice of the European Union

The Överklagandenämnden (Board of Appeal, Sweden; 'the Överklagandenämnden') takes the following

DECISION

A preliminary ruling shall be requested in this case under Article 267 [TFEU]

The Överklagandenämnden orders the proceedings to be suspended pending the answer from the Court of Justice of the European Union.

[Or. 3] THE REQUEST FOR A PRELIMINARY RULING

Facts of the case

- 1 MCM, like his father a Swedish national, has lived in Spain since birth. In March 2020 MCM applied to the CSN (the body responsible for providing financial aid to students in Sweden) in connection with university studies in Spain, which had begun in January 2020. MCM stated in the application, among other things, that his father had lived and worked in Sweden since November 2011 but that the father had previously been active as a migrant worker in Spain for approximately 20 years.
- 2 The CSN rejected MCM's application on the ground that he did not satisfy the requirement of residence in Sweden under the first subparagraph of Paragraph 23 of Chapter 3 of the studiestödslagen (1999:1395) (Law (1395:1999) on student financial aid; 'the Law on student financial aid') and that it was not possible to grant him financial support under any of the exceptions laid down in Chapter 12, Paragraphs 6-6(b), of the CSN's föreskrifter och allmänna råd om beviljning av studiemedel (CSNFS 2001:1) (the CSN regulations and general guidelines on the granting of financial aid to students (CSNFS 2001:1)).
- 3 In support of its decision, the CSN also stated that there was no ground based on EU law to make an exception to the residence requirement. The authority regarded MCM as not satisfying the alternative requirement of being integrated into [Swedish] society, which the authority lays down for those who do not satisfy the residence requirement and who apply for student financial aid to study in another EU country.
- 4 The CSN stated, in addition, that MCM could not derive any right to student financial aid from the fact that his father had earlier exercised his right to freedom of movement as a worker by migrating to Spain. In that regard, the authority was of the view that the father could no longer be considered a migrant worker as he had lived and worked in Sweden since 2011.
- 5 MCM appealed against that decision. In his statement of appeal, MCM principally referred to circumstances which, he submitted, supported his argument that he should be regarded as someone who was integrated into Swedish society and that his father should still be regarded as having a connection with Spain.
- 6 In its observations on the appeal to the Överklagandenämnden, which, under Chapter 6, Paragraph 11, first subparagraph, of the Law on student financial aid, is designated as the appellate body, the CSN confirmed its earlier assessment. **[Or. 4]** At the same time, the CSN observed that denying student financial aid to MCM for studies abroad could be regarded as an obstacle to the father's right to freedom of movement, since knowledge of such a consequence could have deterred the father from migrating to Spain at all.

- 7 However, according to the CSN, it was not clear whether the situation in question remained within the scope of EU law since such a long time had passed since the father had exercised his right to freedom of movement. In that context, the CSN also queried whether a migrant worker who returns to his or her country of origin can, with respect to that country and for an indefinite period of time, rely on the guarantees which apply to migrant workers and members of their families under Regulation (EU) No 492/2011 of the Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union [(OJ L 141 2011, p. 1)].

The legal framework and the need for a preliminary ruling

- 8 Financial aid for students provided by the Swedish state can be granted, inter alia, to Swedish nationals and certain foreign nationals ¹ for post-secondary studies abroad. Some 26.5 billion Swedish Kronor (SEK) (approximately EUR 2.6 billion) of student financial aid was paid out in 2019 for post-secondary studies. Of that amount, some SEK 2.4 billion (approximately EUR 235 million) was provided for studies abroad. ² Financial aid for students consists of a grant (student grant) and a loan (student loan) and amounts to SEK 10 860 (approximately EUR 1 050) a month for full-time studies. In addition, students can obtain student loans for certain supplementary costs which normally arise in connection with studies abroad. That mainly concerns the costs of tuition fees, travel and insurance. Students with children are, in addition, entitled to a higher grant, the amount being dependent on the number of children.
- 9 In Sweden, eligibility for student financial aid and the amount provided are not dependent on parental income or other social factors. However, student financial aid can be denied in full or in part to students who themselves have income above a certain ceiling. Financial aid for students can, in general, be granted for a total period of study of 240 weeks, which equates to approximately 12 semesters. The entitlement to [Or. 5] student financial aid decreases gradually with age and ceases to apply completely from the age of 56. Student loans are to be repaid over a maximum period of 25 years and are to be fully paid off at the latest in the calendar year the person reaches the age of 60.
- 10 Student financial aid for studies abroad may be granted, under Chapter 3, Paragraph 23, first subparagraph, of the Law on student financial aid, if the student has been resident in Sweden for a continuous period of at least two years in the preceding five years.
- 11 If the student does not satisfy the residence requirement, then student financial aid can also be granted if there are compelling reasons, in accordance with

¹ Including individuals who can derive a right from EU law and who, under Chapter 1, Paragraphs 4 to 7, of the Law on student finance, are to be given the same status as Swedish nationals.

² Calculated using exchange rates as at 11 November 2020.

Chapter 12, Paragraph 6(b), of the CSN regulations and general guidelines on the grant of student financial aid.

- 12 In view of Article 7(2) [of] Regulation [No] 492/2011, the residence requirement in Chapter 3, Paragraph 23, first subparagraph, of the Law on student financial aid is not applied to individuals in Sweden whom the CSN regards as migrant workers or to their family members. Except, where the family member is a child, the CSN requires instead that there be a connection with Swedish society for student financial aid to be granted.³
- 13 Nor is the residence requirement applied to individuals – including Swedish nationals – who do not satisfy that requirement and who apply for financial aid for to study abroad within the EU. That is because the Court of Justice of the European Union has found similar residence requirements to be incompatible with the right to freedom of movement of EU nationals laid down in Articles 20 and 21 [TFEU] (see, in that regard, judgment of the Court of Justice of 24 October 2013, *Meneses*, C-220/12, EU:C:2013:683, paragraph 27 and the case-law cited).
- 14 In the latter situation, the CSN requires instead that there be a connection with Swedish society for student financial aid to be granted in accordance with the criteria set out in the judgment of the Court of Justice of 18 July 2013, *Prinz and Seeberger*, C-523/11 and C-587/11, EU:C:2013:524, paragraph 38. [Or. 6]

The request for a preliminary ruling from the Court of Justice

- 15 As stated above, the CSN has decided that MCM cannot derive any entitlement to student financial aid to study abroad from his father's earlier activity as a migrant worker in Spain. Furthermore, it is clear from the abovementioned judgment in *Prinz and Seeberger* that, notwithstanding the rights to freedom of movement for EU nationals set out in Articles 20 and 21 TFEU, a Member State can, for budgetary reasons, lay down a requirement that a national who applies for student financial aid for studies in another country within the EU is to show that there is a connection with that Member State (see, in particular, paragraph 36 of that judgment).
- 16 The question which arises in the present case is whether a requirement for such a connection may be applied to a migrant worker's child who resides in the EU, where the migrant worker has returned to the country of origin.
- 17 According to the Överklagandenämnden, such a requirement could run counter to Article 7(2) of Regulation [No] 492/2011. In addition, the application of a requirement for a connection could – given the generous Swedish system of student financial aid – possibly deter current or future parents from exercising their freedom of movement as workers provided for under Article 45 [TFEU].

³ CSN internal instructions, ref. 2013-113-9290 and ref. 2014-112-8426.

- 18 In connection with the latter issue, the Överklagandenämnden is of the view that a restriction on the freedom of movement of workers provided for by Article 45 TFEU in the form of a requirement for a connection to society for student financial aid should be justifiable, for systematic reasons, under Article 45(3) TFEU with reference to the same budgetary considerations which have been accepted in the case-law of the Court of Justice of the European Union for similar requirements in relation to Articles 20 and 21 TFEU.
- 19 The Överklagandenämnden notes, however, that there is no specific support in the case-law for such a conclusion. There is therefore some uncertainty as to whether the scope to justify restrictions on the freedom of movement for EU nationals is the same as the scope for restrictions on the freedom of movement of workers in the context at issue.
- 20 In relation to Regulation [No] 492/2011, the CSN's assessment raises a question about the temporal scope of the protections under that regulation for returning migrant workers who do not engage in cross-border activities. The question is whether a worker of that kind can be regarded as coming within the scope of the special guarantees of that regulation even where, as in [Or. 7] the present case, a long time has passed since the worker returned to his or her country of origin.
- 21 Furthermore, it is unclear in that case whether such a protected status as a migrant worker in the country of origin means that the worker may, for a child *who has not returned to the country of origin*, rely on a *better entitlement* to student financial aid to study abroad than that which otherwise applies to nationals in the country of origin who do not satisfy the residence requirement, or whether the country of origin can lay down a proportionate requirement of a connection with the country of origin with regard also to such a child.
- 22 In other words, a question arises as to whether that child, as to the question of eligibility for student financial aid for studies abroad, is to be treated, under Article 7(2) of Regulation [No] 492/2011, as a national in the country of origin who satisfies the residence requirement or as such a national who does not satisfy the residence requirement and who must therefore show that he or she is sufficiently connected with the country of origin in order to be granted student financial aid for studies abroad.
- 23 The Överklagandenämnden, which is a special decision-making body within the state administrative authority the ÖFS, and which, in accordance with national case-law,⁴ also satisfies the requirements for a review body to be considered a court or tribunal within the meaning of Article 6(1) of the European Convention on Human Rights and is the court of final instance in questions related to the grant of financial support for students, finds that, in the light of the above

⁴ Judgment of the Högsta förvaltningsdomstolen (Supreme Administrative Court, Sweden) of 17 March 2015 in Case No 4160-14 (HFD 2015 ref. 6).

considerations, it is necessary to refer a question to the Court of Justice of the European Union, in accordance with Article 267(3) TFEU.

The question

- 24 May a Member State (the country of origin), in respect of a returning migrant worker's child, notwithstanding Article 45 TFEU and Article 7(2) of Regulation [No] 492/2011, and taking into consideration the budgetary interests of the country of origin, lay down a requirement for the child to have a connection with the country of origin in order to grant that child student financial aid to study abroad in the other EU Member State where the child's parent previously worked (the host country), where
- (i) after returning from the host country, the child's parent has lived and worked in the country of origin for at least eight years, **[Or. 8]**
 - (ii) the child did not accompany his or her parent to the country of origin, but has remained since birth in the host country, and
 - (iii) the country of origin lays down the same requirement of a connection for other nationals in the country of origin who do not satisfy the residence requirement and who apply for student financial aid for studies abroad in another country in the EU?