JUDGMENT OF THE COURT
27 September 1988 *

In Case 263/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the justice de paix (Cantonal Court), Neufchâteau (Belgium), for a preliminary ruling in the proceedings pending before that court between the

Belgian State

and

René Humbel and **Marie-Thérèse Humbel, née Edel**, his wife, in their capacity as guardians of their son Frédéric Humbel, a minor, residing together at 2 rue Federspiel, Luxembourg,

on the interpretation in particular of Articles 59 and 128 of the EEC Treaty,

THE COURT

composed of: G. Bosco, President of a Chamber, Acting President, J. C. Moitinho de Almeida, President of a Chamber, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet and F. A. Schockweiler, Judges,

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

after considering the observations submitted on behalf of

the plaintiff, by Mr Dardenne,

the defendant, by L. Misson,

* Language of the Case: French.

the United Kingdom, by H. R. L. Purse, acting as Agent,

the Italian Republic, by L. Ferrari Bravo, Head of the Department of Contentious Diplomatic Affairs, acting as Agent,

the Grand Duchy of Luxembourg, by the Director of International Economic Relations, acting as Agent,

the Commission of the European Communities, by Georgios Kremlis, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 26 November 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 15 March 1988,

gives the following

Judgment

1 By an order of 16 May 1986, which was received at the Court on 21 October 1986, the justice de paix, Neufchâteau (Belgium), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation in particular of Articles 59 *et seq.* and 128 of the Treaty for the purpose of settling a dispute relating to the payment of a fee (the 'minerval') charged to nationals of other Member States for access to a State educational establishment.

2 Those questions were raised in the course of proceedings brought by the Belgian State against Mr and Mrs Humbel, the defendants in the main proceedings, in their capacity as guardians of their son Frédéric, claiming payment of the sum of BFR 35 000, the amount of the minerval due in respect of the course of secondary education followed by Frédéric during the school year 1984-85 at the Institut d'enseignement général et technique de l'État (State Institute for General and Technical Education) at Libramont (Belgium).

3 It is apparent from the case file that Frédéric Humbel and his parents are French nationals. They reside in Luxembourg, where the father is employed.

4 According to the file, the education provided in the establishment in question is secondary education provided under the national education system. The programme of study followed by Frédéric Humbel lasts a total of six years, made up of three consecutive stages — an 'observation' stage, a 'guidance' stage and a 'determination' stage — each lasting two years. The course for which he was enrolled for the 1984-85 year was the second year of study in the guidance stage. It forms part of the basic general education element and does not, therefore, include any specifically vocational subjects. The course subsequently followed by him during the determination stage, however, is considered under national law to be vocational training, and no minerval is charged for attending such courses.

5 When Frédéric Humbel refused to pay a minerval of BFR 35 000, which was not charged to Belgian students, the Belgian State brought the proceedings.

6 The national court hearing the case stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) Does the course of study attended by Frédéric Humbel at the Institut technique de l'État, Libramont, constitute vocational training?

(2) If the said course of study does not constitute vocational training, can Frédéric Humbel be regarded as a person for whom services are intended within the meaning of Article 59 *et seq.* of the EEC Treaty and can he be required to pay a "minerval" as a condition for admission to a course of general education?

(3) In so far as Luxembourg nationals are entitled to enrol their children in Belgian educational establishments without paying any "minerval" whatsoever, is not a French worker resident in the Grand Duchy of Luxembourg entitled to claim the same treatment?'

7 Reference is made to the Report for the Hearing for fuller details of the legal background, the 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.

First question

8 The first question seeks to determine whether a course of study such as the one described above may be considered to constitute vocational training for the purposes of the EEC Treaty.

9 In that regard the defendants maintain that even if the year of study in question, taken in isolation, does not appear to meet the criteria for vocational training as formulated by the Court in its judgment of 13 February 1985 in Case 293/83 (*Gravier* v *City of Liège* [1985] ECR 593), it nevertheless constitutes such training inasmuch as it enables pupils to carry on to the 'determination' stage and thus to strictly technical education. The Belgian State, on the other hand, argued at the hearing that the course attended by Frédéric Humbel constitutes general secondary education which does not provide vocational training as defined in the *Gravier* judgment. The United Kingdom considers that the course of study in question is a course of general secondary education and thus does not constitute 'vocational training' for the purposes of the EEC Treaty. The Commission, finally, feels that the documents before the Court are insufficient to enable the nature of the course attended to be determined.

10 In its judgment in the *Gravier* case, cited above, the Court ruled that 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.

11 The present case raises more particularly the question whether a year of study which does not in itself meet that definition is to be considered to constitute vocational training when it is an integral part of a study programme which must be regarded as such.

12 It should be stressed in that connection that the various years of a study programme cannot be assessed individually but must be considered within the framework of the programme as a whole, particularly in the light of the programme's purpose — provided, however, that the programme forms a coherent single entity and cannot be divided into two parts, one of which does not constitute vocational training while the other does (see the judgment of 2 February 1988 in Case 24/86 *Blaizot and Others* v *University of Liège and Others* [1988] ECR 379). It is for the national court to apply those criteria to the facts of the case before it.

13 The answer to the first question should therefore be that a year of study which is part of a programme forming an indivisible body of instruction preparing for a qualification for a particular profession, trade or employment or providing the necessary training and skills for such a profession, trade or employment constitutes vocational training for the purposes of the EEC Treaty.

Second question

14 The second question seeks to determine whether courses taught in a technical institute which form part of the secondary education provided under the national education system are to be regarded as services for the purposes of Article 59 of the EEC Treaty, properly construed. If they are to be so regarded, the national court wishes to know whether Article 59 precludes the charging of a minerval which pupils who are nationals of the host State are not required to pay.

15 The first paragraph of Article 60 of the EEC Treaty provides that only services 'normally provided for remuneration' are to be considered to be 'services' within the meaning of the Treaty.

16 Even though the concept of remuneration is not expressly defined in Article 59 *et seq.* of the EEC Treaty, its legal scope may be deduced from the provisions of the second paragraph of Article 60 of the Treaty, which states that 'services' include in particular activities of an industrial or commercial character and the activities of craftsmen and the professions.

17 The essential characteristic of remuneration thus lies in the fact that it constitutes consideration for the service in question, and is normally agreed upon between the provider and the recipient of the service.

18 That characteristic is, however, absent in the case of courses provided under the national education system. First of all, the State, in establishing and maintaining such a system, is not seeking to engage in gainful activity but is fulfilling its duties towards its own population in the social, cultural and educational fields. Secondly, the system in question is, as a general rule, funded from the public purse and not by pupils or their parents.

19 The nature of the activity is not affected by the fact that pupils or their parents must sometimes pay teaching or enrolment fees in order to make a certain contribution to the operating expenses of the system. *A fortiori*, the mere fact that foreign pupils alone are required to pay a minerval can have no such effect.

20 The answer to the first branch of the second question should therefore be that courses taught in a technical institute which form part of the secondary education provided under the national education system cannot be regarded as services for the purposes of Article 59 of the EEC Treaty, properly construed.

21 In view of that answer, there is no need to consider the second branch of the question.

Third question

22 In its third question, the national court wishes to know whether Community law precludes a Member State from imposing an enrolment fee ('minerval'), as a condition for admission to schooling within its territory, on children of migrant workers residing in another Member State even when the nationals of that other Member State are not required to pay such a fee.

23 It must first of all be noted that this question arises only in cases which do not involve vocational training within the meaning of Article 128 of the EEC Treaty. The judgment in the *Gravier* case, cited above, means that the prohibition of discrimination on grounds of nationality contained in Article 7 of the EEC Treaty always applies to vocational training, whatever the circumstances.

24 In order to reply to the question, it may be observed that the only provision of Community law which may be relevant is Article 12 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), which provides that the children of a national of a Member State who is or has been employed in the territory of another Member State are to be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. The Court has interpreted that provision as referring not only to rules relating to admission, but also to general measures intended to facilitate educational attendance (judgment of 3 July 1974 in Case 9/74 *Casagrande* v *Landeshauptstadt München* [1974] ECR 773). However, the wording used in Article 12 of the regulation lays obligations only on the Member State in which the migrant worker resides.

25 The answer to the third question should therefore be that Article 12 of Regulation No 1612/68, properly construed, does not preclude a Member State from imposing an enrolment fee ('minerval'), as a condition for admission to ordinary schooling within its territory, on children of migrant workers residing in another Member State even when the nationals of that other Member State are not required to pay such a fee.

Costs

26 The costs incurred by the United Kingdom of Great Britain and Northern Ireland, the Italian Republic 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the justice de paix, Neufchâteau, by order of 16 May 1986, hereby rules:

(1) **A course year which is part of an overall course of study forming a coherent whole and preparing for a qualification for a particular profession, trade or employment or providing the necessary training and skills for such a profession, trade or employment constitutes vocational training for the purposes of the EEC Treaty.**

(2) **Courses taught in a technical institute which form part of the secondary education provided under the national education system cannot be regarded as services within the meaning of Article 59 of the EEC Treaty, properly construed.**

(3) **Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, properly construed, does not preclude a Member State from imposing an enrolment fee ('minerval'), as a condition for admission to ordinary schooling within its territory, on children of migrant workers residing in another Member State even when the nationals of that other Member State are not required to pay such a fee.**

Bosco Moitinho de Almeida Koopmans Everling

Bahlmann Galmot Kakouris Joliet Schockweiler

Delivered in open court in Luxembourg on 27 September 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President