# JUDGMENT OF THE COURT
26 February 1992 *

In Case C-3/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the College van Beroep Studiefinanciering (Netherlands) for a preliminary ruling in the proceedings pending before that court between

**M. J. E. Bernini**

and

**Minister van Onderwijs en Wetenschappen**

on the interpretation of Article 48 of the EEC Treaty and of Articles 7(2) and 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),

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, R. Joliet, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), C. N. Kakouris, G. C. Rodríguez Iglesias, M. Díez de Velasco and M. Zuleeg, Judges,

Advocate General: W. Van Gerven,
Registrar: J. A. Pompe, Deputy Registrar,

* Language of the case: Dutch.

after considering the written observations submitted on behalf of:

— the Netherlands Government by H. J. Heinemann, Secretary-General of the Ministry of Foreign Affairs, acting as Agent;

— the French Government, by P. Pouzoulet, Deputy Director, in the Directorate of Legal Affairs, acting as Agent, and C. Chavance, acting as substitute agent;

— the Italian Government, by O. Fiumara, Avvocato dello Stato, acting as Agent;

— the Danish Government, by J. Molde, Legal Adviser, acting as Agent;

— the Belgian Government, by P. Busquin of the Ministry of Social Security, acting as Agent;

— the Commission of the European Communities, by B. J. Drijber, a member of its Legal Service, acting as Agent;

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Bernini, the Netherlands Government, represented by Mr De Zwaan, acting as Agent, the Italian Government and the Commission at the hearing on 28 May 1991,

after hearing the Opinion of the Advocate General at the sitting on 11 July 1991,

gives the following

## Judgment

1 By order of 22 December 1989, which was received at the Court on 5 January 1990, the College van Beroep Studiefinanciering (Study Finance Tribunal), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Article 48 of the EEC Treaty and of Articles 7(2) and 12 of Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).

2 Those questions were raised in proceedings between Mrs M. J. E Bernini, the plaintiff, and the Minister van Onderwijs en Wetenschappen, the defendant, concerning an application for financial assistance made by Mrs Bernini under the Wet op de Studiefinanciering (Law on Study Finance of 24 April 1986).

3 It is apparent from the order for reference that Mrs Bernini, an Italian national, has resided in the Netherlands since the age of two years, that is to say since 1964. It is also undisputed that her father, also an Italian national, is a migrant worker within the meaning of the EEC Treaty and Regulation No 1612/68. After completing her primary and secondary schooling in the Netherlands, Mrs Bernini underwent occupational training in that country in the course of which she was employed for a period of ten weeks between March and May 1985 as a paid trainee in the design and planning department of a furniture factory in Haarlem.

4 In November 1985 Mrs Bernini commenced studies in architecture at the University of Naples and, in July 1986, applied to the Minister van Onderwijs en Wetenschappen (Minister for Education and Sciences) for study finance under the Netherlands legislation.

5 That application was refused. A complaint lodged against that refusal was similarly dismissed by the Minister, on the ground, in particular that Mrs Bernini could not be assimilated to a Netherlands national under the financing scheme established by the Netherlands legislation because, according to the Minister, she was not resident in the Netherlands but in Italy. It is common ground that a Netherlands national studying architecture at the same university as Mrs Bernini could have claimed financial assistance under that legislation.

6 Following the dismissal of her complaint Mrs Bernini brought proceedings before the College van Beroep Studiefinanciering, whose decisions on matters concerning the grant of study finance under the Netherlands legislation are final. Before that tribunal Mrs Bernini submitted that she had acquired the status of worker within the meaning of Article 48 of the EEC Treaty by virtue of her training period and thus under the legislation was entitled to study finance which, according to her, was to be regarded as a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.

7 Mrs Bernini also maintained that Article 12 of Regulation No 1612/68 conferred on her a right to study finance in her capacity as the child of a migrant worker and, finally, that the grant to her of study finance constituted a social advantage in favour of her father for the purposes of Article 7(2) of that regulation.

8 In those circumstances the national court decided to stay the proceedings until the Court had given a preliminary ruling on the following questions:

'1. Must a person such as Mrs Bernini, where that person has been employed in one Member State (in this case, the Netherlands) as a trainee in the framework of training be regarded, on subsequently going to study in the Member State of which he or she is a national, as a migrant worker falling within the scope of Articles 48 and 49 of the EEC Treaty and of Regulation (EEC) No 1612/68?

2. Should the case-law of the Court, as laid down in its judgments in Case 39/86 *(Lair)* and in Case 197/86 *(Brown)* be understood as meaning that a migrant worker, in a case such as the present one, in which there must be considered to be (some) demonstrable link as regards content between the nature of the (genuine and effective) work previously undertaken and the studies subsequently undertaken by the worker, retains the status of migrant worker within the meaning of Article 48 of the EEC Treaty and Article 7 of Regulation (EEC) No 1612/68 even if he did not become unemployed involuntarily (for example where the worker gave up his previous activities wholly of his own volition in order to study) and if he goes on to study, not immediately after completing the work previously undertaken, but some considerable time later?

3. What criteria should be applied in order to determine whether a child of a national of a Member State who is or has been employed in the territory of another Member State is "residing" within that other Member State within the meaning of Article 12 of Regulation (EEC) No 1612/68? In that connection, is it possible that a child who has remained outside that other Member State for some years in order to pursue his studies may none the less be regarded as residing there?

4. Does Community law require a Member State (such as the Netherlands) which, subject to specified conditions, offers the children of its national workers an opportunity in financial terms of following specified training in another Member State without imposing a requirement of residence in the Member State of origin (the Netherlands) to offer this opportunity under the same conditions to children of Community workers employed in that Member State even if, at least after the commencement of the studies, those children could no longer be said to be "residing" in that Member State within the meaning of Article 12 of Regulation (EEC) No 1612/68? Should the requirement of residence in the host Member State imposed on the child of a Community worker in this regard then no longer be imposed for the purpose of the application of Article 12, because otherwise such application is contrary to Article 48 of the EEC Treaty?

5. May the grant of study finance (such as that established by the Netherlands Wet op de Studiefinanciering) to a child of a worker within the meaning of Article 7 of Regulation (EEC) No 1612/68 be considered a social advantage within the meaning of Article 7(2) of that regulation where the worker in

question would otherwise himself have to bear wholly or in part the maintenance and tuition costs of that child and where such a grant therefore demonstrably entails a financial saving for the worker in question?

If so, does this mean that the child of the worker may claim an independent right to study finance in the case in which the national rules of the Member State (such as the Netherlands legislation) confer such a right solely upon the child who is studying and not upon the working parent? Is there, a *full* right to study finance or, for example, only a right corresponding to the extent to which the grant of study finance to the child entails a demonstrable financial saving for the worker concerned? Does it make any difference whether or not the said child resides in the Member State in which the working parent in question is employed, in a situation in which the national legislation of the Member State (such as the Netherlands legislation) does not impose the requirement of residence in the Member State on children of its own national workers?'

9 By letter dated 1 March 1991, the acting President of the College van Beroep Studiefinanciering informed the Court, that following the judgment in Case C-308/89 *Di Leo* [1990] ECR I-4185, the Minister had altered his view and considered that, as the child of a migrant worker, Mrs Bernini could claim student financing. However, the letter stated that the tribunal making the reference wished to receive as complete a reply as possible to the preliminary questions, 'still unresolved', put to the Court in the present case. Moreover, at the hearing, the agent of the Netherlands Government affirmed that the study finance to which Mrs Bernini claimed had been awarded and paid to her.

10 Although the finance applied for by Mrs Bernini has been granted to her, neither the abovementioned letter nor the observations submitted at the hearing give reason to believe that Mrs Bernini has withdrawn her application. It follows that a dispute remains pending before the national tribunal making the reference, in the context of which that tribunal is called upon to give a decision capable of taking into account a preliminary ruling.

11 It is for the national court or tribunal to assess the relevance of the questions of law raised by the dispute before it and the necessity for a preliminary ruling so as to enable it to give judgment (see in particular the judgment in Case 338/85 *Pardini* v *Ministero del Commercio con l'Estero* [1988] ECR 2041, paragraph 8). In that connection the abovementioned letter indicates that the tribunal making the reference considers that the reply to the third and fourth questions may be deduced from the case-law of the Court, in particular from the judgment in *Di Leo*, cited above. On the other hand, it wishes to receive a reply to the other questions put by it. In those circumstances it is necessary to reply only to the first, second and fifth questions submitted by the tribunal.

12 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

**Question 1**

13 In its first question the national tribunal seeks to ascertain whether a national of a Member State who has worked in another Member State as a trainee in the context of occupational training must be classified as a worker within the meaning of Article 48 of the EEC Treaty and of Regulation No 1612/68.

14 It must be recalled at the outset that the Court has consistently held that the concept of worker within the meaning of Article 48 of the EEC Treaty has a specific Community meaning. To come within the definition of worker a person must pursue an activity which is effective and genuine to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary. The essential characteristic of the employment relationship is that for a certain period a person performs services for and under the direction of another person in return for which he receives remuneration (see in particular the judgment in Case 197/86 *Brown* v *Secretary of State for Scotland* [1988] ECR 3205, paragraph 21).

15 As the Court held in its judgment in Case 66/85 *Lawrie-Blum* v *Land Baden Württemberg* [1986] ECR 2145, paragraphs 19 to 21, a person engaged in preparatory training in the course of occupational training must be regarded as a worker if the training period is completed under the conditions of genuine and effective activity as an employed person.

16 That conclusion cannot be invalidated by the fact that the trainee's productivity is low, that he works only a small number of hours per week and, consequently, receives limited remuneration (see the judgment in *Lawrie-Blum*, cited above, paragraph 21, and the judgment in Case 344/87 *Bettray* v *Staatssecretaris van Justitie* [1989] ECR 1621, paragraph 15). However, since a training period completed in the context of occupational training is intended above all to develop occupational aptitude, the national court is entitled, when assessing the genuine and effective nature of the services in question, to examine whether in all the circumstances the person concerned has completed a sufficient number of hours in order to familiarize himself with the work.

17 The reply to the first question must therefore be that a national of a Member State who has worked in another Member State in the context of occupational training must be regarded as a worker within the meaning of Article 48 of the EEC Treaty and of Regulation No 1612/68 if he has performed services in return for which he has received remuneration, provided that his activities are genuine and effective.

**The second question**

18 In its second question the national court seeks to ascertain whether a migrant worker retains the status of worker and may therefore claim the advantages guaranteed by Article 7(2) of Regulation No 1612/68, if he voluntarily leaves his employment in the host country in order to devote himself, after a period of time, to full-time studies which are in some manner related to his previous occupational activity.

19 It should be borne in mind that, in the field of grants for university education, the Court has already held that, except in the case of involuntary unemployment, in order to retain the status of worker there has to be a relationship between the previous occupational activity and the studies undertaken (judgment in Case 39/86 *Lair* v *Universität Hannover* [1988] ECR 3161, paragraph 37). It is for the national court to assess whether all the occupational activities pursued previously in the host country, whether or not interrupted by periods of training, re-training or readaptation, disclose a relationship with the subject-matter of the studies in question. In that connection it is for that court to take into account the various factors which are useful in making that assessment, such as the nature and the diversity of the activities pursued and the duration of the period between the end of those activities and the commencement of the studies.

20 With regard to the argument put forward by the Danish Government to the effect that a worker leaving the host Member country to pursue studies in the Member State of which he is a national cannot rely on the provisions of Article 7(2) of Regulation No 1612/68, it should be borne in mind that, once a Member State offers to its national workers grants to pursue studies in another Member State, that opportunity must be extended to Community workers established within its territory (see the judgment in Case 235/87 *Matteucci* v *Communauté Française of Belgium* [1988] ECR 5589, paragraph 16). As is apparent from the judgment in *Di Leo*, cited above, the fact that the studies are pursued in the State of which the person concerned is a national is without significance in this connection.

21 Accordingly, the reply to the second question submitted by the national court should be that a migrant worker who voluntarily ceases his employment in order to devote himself, after the lapse of a certain period of time, to full-time studies in the country of which he is a national, retains his status as a worker, provided that there is a relationship between his previous occupational activity and the studies in question.

**The fifth question**

22 In its fifth question the national court seeks to ascertain whether the grant of study finance to the child of a migrant worker constitutes, for that worker, a social advantage within the meaning of Article 7(2) of Regulation No 1612/68, where

the worker continues to support the child. If the answer is in the affirmative, it wishes to know whether the child may rely on that provision in order to claim entitlement on its own account to such finance, where the national legislation provides that the financial assistance is granted directly to the student and whether, in that connection, the place of residence of the child has any effect where no residence requirement is imposed on the children of national workers.

23 As a preliminary point, it should be borne in mind that assistance granted for maintenance and education in order to pursue university studies evidenced by a professional qualification constitutes for the student who benefits therefrom a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 (see in particular the judgment in *Lair*, cited above, paragraph 24).

24 It is therefore necessary to consider whether the grant of such assistance to a child of a worker constitutes, for that worker, a social advantage within the meaning of Article 7(2) of Regulation 1612/68, when the worker in question continues to support his child.

25 It follows from the judgment of the Court in Case 94/84 *ONEM* v *Deak* [1985] ECR 1873 that a migrant worker may rely on Article 77(2) of Regulation No 1612/68 in order to obtain social benefits provided for in the legislation of the host Member State in favour of the children of national workers (see paragraph 24 of the judgment). However, that benefit constitutes in favour of the migrant worker a social advantage within the meaning of that provision only where the worker continues to support his descendant (see the judgment in Case 316/85 *Centre Publique d'Aide Sociale de Courcelles* v *Lebon* [1987] ECR 2811, paragraph 13).

26 The national court next wishes to know whether the child of the worker may, under Article 7(2) of Regulation No 1612/68 claim an independent right to study finance. It should be pointed out in that connection that it follows from the judgment in *Lebon*, cited above, that the dependent members of the family are the

indirect beneficiaries of the equal treatment accorded to the migrant worker. Consequently, where the grant of financing to a child of a migrant worker constitutes a social advantage for the migrant worker, the child may itself rely on Article 7(2) in order to obtain that financing if under national law it is granted directly to the student.

27 Finally, the national court wishes to know whether the grant of study finance may, as a social advantage, be subject to the condition that the child of a Community worker reside on the territory of the Member State concerned, where that condition is not imposed on the children of national workers.

28 In that connection it is sufficient to point out that the principle of equal treatment laid down in Article 7 of Regulation No 1612/68 is also intended to prevent discrimination to the detriment of descendants dependent on the worker (see the judgment in *Deak*, cited above, paragraph 22). It follows that, if the national legislation in question imposes no residence requirement on the children of national workers, such a condition may not be imposed on the children of Community workers.

29 Accordingly, the reply to the fifth question submitted by the national court should be that study finance granted by a Member State to the children of workers constitutes for a migrant worker a social advantage within the meaning of Article 7(2) of Regulation No 1612/68, where the worker continues to support the child. In such a case the child may rely on Article 7(2) in order to obtain study finance under the same conditions as are applicable to the children of national workers, and no additional residence requirement may be imposed upon him.

## Costs

30 The costs incurred by the Netherlands, French, Italian, Danish and Belgian Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action 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 College van Beroep Studiefinanciering by order of 22 December 1989, hereby rules:

1. **A national of a Member State who has worked in another Member State in the context of occupational training must be regarded as a worker within the meaning of Article 48 of the EEC Treaty and of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers, if he has performed services in return for remuneration, provided that his activities are genuine and effective.**

2. **A migrant worker who voluntarily ceases employment in order to devote himself, after the lapse of a certain period of time, to full-time studies in the country of which he is a national, retains his status as a worker on condition that there is a relationship between his previous occupational activity and the studies pursued;**

3. **Study finance granted by a Member State to the children of workers constitutes for a migrant worker a social advantage within the meaning of Article 7(2) of Regulation (EEC) No 1612/68, where the worker continues to support the child. In such a case, the child may rely upon Article 7(2) in order to obtain study finance under the same conditions as are applicable to the children of**

**national workers, and no additional residence requirement may be imposed upon him.**

Due Slynn Joliet Grévisse

Kapteyn Kakouris Rodríguez Iglesias Díez de Velasco Zuleeg

Delivered in open court in Luxembourg on 26 February 1992.

J.-G. Giraud — Registrar

O. Due — President