

JUDGMENT OF THE COURT
13 February 1985 ¹

In Case 293/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the President of the Tribunal de Première Instance [Court of First Instance], Liège, for a preliminary ruling in the proceedings pending before that court between

Françoise Gravier

and

City of Liège

Third parties:

Belgian State and the Communauté Française

on, in particular, the interpretation of Articles 7 and 59 of the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and C. Kakouris (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn

Registrar: D. Louterman, Administrator

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¹ — Language of the Case: French.

* after considering the observations submitted on behalf of the plaintiff Gravier by Mr L. Mission, the City of Liège by Mr J.E. Derwal, the Belgian State and the French Community by Mr B. Perin and Mr F. Herbert, the Danish Government by Mr L. Mikaelsen, acting as Agent, the United Kingdom by Mr J.R.J. Braggins, acting as Agent, the Commission of the European Communities by Mrs C. Durand and Mr G. Kremlis, acting as Agents, after hearing the Opinion of the Advocate General delivered at the sitting on 16 January 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced).

Decision

- 1 By an order of 23 December 1983 which was received at the Court on 28 December 1983 the President of the Tribunal de Première Instance, Liège, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Article 7 of the Treaty.
- 2 The questions were raised in the course of summary proceedings in which Françoise Gravier, a student at the Académie Royale des Beaux-Arts, Liège, claimed that the City of Liège should be prohibited from requiring her to pay a fee called the 'minerval' (enrolment fee) which students of Belgian nationality are not required to pay. The City of Liège joined as third parties the Belgian State, which issued the circulars requiring that the fee be charged, and the Communauté Française, the regional institution responsible for art education.
- 3 It appears from the documents in the proceedings that in Belgium, pursuant to Article 12 of the Law of 29 May 1959 amending certain provisions of the laws on education (Moniteur Belge of 19 June 1959), primary and secondary education is free of charge in the State system and in subsidized establishments, and institutions of post secondary or higher education may charge only low registration fees intended to finance their social services. Each year since the academic year 1976-77, however, the laws setting out the national education budget have, in derogation from Article 12, authorized the Minister to establish 'an enrolment fee for foreign pupils and students whose parents are not resident in Belgium and who attend a State educational institution or an institution supported by the State at pre-school, primary, special, secondary, higher (short or long type) and technical (second and third degree) level'.

- 4 On the basis of such a provision — in this case Article 15 of the 1983 budget law — the Minister for Education issued circular No 83.24 G of 30 June 1983 (Moniteur Belge of 3 February 1984), which laid down 'for the year 1983-84, as for previous years, an enrolment fee . . . or pupils and students who are not of Belgian nationality and who attend an institution of full-time artistic education organized or subsidized by the State'. The circular exempts from the obligation to pay the fee *inter alia* students having one parent of Belgian nationality, students of Luxembourg nationality, and students whose father or mother resides in Belgium and carries on a principal occupation or receives social security income or a pension and pays income tax there.
- 5 The plaintiff in the main proceedings, Françoise Gravier, who is of French nationality and whose parents reside in France, went to Belgium in 1982 in order to study strip cartoon art at the Académie Royale des Beaux-Arts in Liège, in a four-year course of higher art education. For the 1982-83 academic year she sought exemption from payment of the enrolment fee of BFR 24 622 demanded of foreign students in higher art education. By a letter of 7 October 1983 the Académie Royale informed her that her request had been rejected on the ground that 'all foreign students must be aware that such education is not free of charge and must anticipate payment of an enrolment fee'.
- 6 After her request was rejected, Miss Gravier was asked to pay the fee for the academic years 1982-83 and 1983-84. Since the sums demanded were not paid in time, her enrolment for the 1983-84 year was refused. As a result her Belgian residence permit was not extended. It was in those circumstances that she brought proceedings before the President of the Tribunal de Première Instance, Liège, claiming exemption from payment of the fee and the issuance of all certificates necessary for the extension of her stay in Belgium.
- 7 During the proceedings before the President of the Tribunal, the plaintiff challenged the validity of the circulars which imposed the enrolment fee in question. She argued that she could not be obliged to pay a fee which was not required of Belgian nationals since on the one hand such an obligation constituted discrimination on grounds of nationality prohibited by Article 7 of the Treaty and

on the other hand a national of another Member State going to Belgium to study must be free to do so as a person to whom services are provided according to Article 59 of the Treaty.

8 The defendant in the main proceedings, the City of Liège, ensured that a provisional registration certificate was issued to the plaintiff, who was thus able to comply with Belgian residence formalities. It took the view, however, that it was for the Belgian State and the Communauté Française, third parties, to reply to the claim made with regard to the circulars concerning payment of the fee.

9 After holding that the claim was of an urgent nature, the court hearing the matter considered that a problem of interpretation of Community law had been raised and that it should stay the proceedings until such time as this Court had ruled on the following preliminary questions:

- (1) Is it in accordance with Community law to consider that nationals of Member States of the European Community who enter the territory of another Member State for the sole purpose of duly following courses there in an institution offering instruction relating in particular to vocational training fall, with regard to that institution, within the scope of Article 7 of the Treaty of Rome of 25 March 1957?
- (2) If that question is answered in the affirmative, by what criterion may it be decided whether a course on strip cartoon art falls within the scope of the Treaty of Rome?

10 According to the order making the reference, the national court considered that the argument that since enrolment at an institution such as the Académie Royale des Beaux-Arts of the City of Liège is free of charge for Belgians it should also be free for nationals of other Member States could only be upheld if the plaintiff, who came to Belgium solely to study there, was able to rely on the provisions of the EEC Treaty. After finding that there is no clear answer to the question whether students should be considered as persons to whom services are provided, the order of the national court points out that even if the answer to that question is in the negative, it cannot be inferred that access to education lies outside the

scope of the Treaty. In the judgment of the Court of Justice of 13 July 1983 (Case 152/82, *Forcheri*, [1983] ECR 2323) it was held that in certain circumstances to make access to vocational training for nationals of other Member States subject to payment of a registration fee which is not required of home students may fall within the scope of the Treaty.

- 11 That is the background to the questions referred; it must therefore first be considered whether or not the establishment of a fee such as that which is the subject of the order making the reference constitutes 'discrimination on grounds of nationality' within the meaning of Article 7 of the Treaty.
- 12 The Belgian State and the Communauté Française argued before the Court that the reason why foreign students in Belgium are required to contribute to the financing of education is the imbalance which has existed since 1976 between the number of foreign students studying in Belgium and the number of Belgian students living abroad. Since that imbalance had serious consequences for the national education budget the Belgian Government was compelled to ask students who are nationals of other Member States and who normally do not pay taxes in Belgium to make a proportional contribution to the cost of education. Far from being discriminatory, such a contribution puts foreign students on the same footing as Belgian nationals.
- 13 The Commission provided the Court with figures showing that the mobility of students within the Community is limited in scope but that Belgium is the Member State in which the percentage of students who are nationals of other Member States, in relation to the total number of students, is the highest. The information provided also shows that Belgium is the only Member State which requires foreign students to pay an enrolment fee, although Greece requires an identical payment, for reasons of reciprocity, from Belgian students enrolled in Greek universities. The Commission considers, moreover, that the imposition of the fee establishes a difference in treatment between students of Belgian nationality, whether or not their parents or they themselves pay taxes in Belgium, and nationals of other Member States, a difference which is based on the nationality of the students.
- 14 In that regard it is clear from the content of the Belgian legislation and from the practice followed in relation to the fee, as summarized above, that the cost of

higher art education is not borne by students of Belgian nationality, whereas foreign students must bear part of that cost. The inequality of treatment is therefore based on nationality, and that finding is not affected by the mere fact that there are certain exceptions to the distinction made between Belgian and foreign students, some based on nationality, such as the special situation of Luxembourg students, and some on other criteria such as the residence in Belgium of parents who pay taxes in that country.

- 15 Such unequal treatment based on nationality must be regarded as discrimination prohibited by Article 7 of the Treaty if it falls within the scope of the Treaty.
- 16 The Danish Government and the United Kingdom expressed concern on that point. They consider that this case raises problems of principle whose importance goes beyond the questions referred by the Belgian court. After challenging the argument that anyone wishing to study in another Member State may be regarded as a person to whom services are provided, they argue that Article 7 of the Treaty does not prevent a Member State from treating its own nationals more favourably in the area of education, particularly as regards access to education, scholarships and grants, other social facilities provided for students and the contribution by students to the cost of education. On those points each Member State has special responsibilities toward its own nationals.
- 17 For its part the Commission argues principally that the imposition of the fee on students who are nationals of other Member States is contrary to Article 59 of the Treaty, in so far as students who are nationals of the State in question are not obliged to pay it. It is only in the alternative that the Commission contends that such a requirement amounts to discrimination on grounds of nationality contrary to Article 7 of the Treaty. Participation in vocational training is, it maintains, covered by the provisions of Articles 48, 52, 59 and 128 of the Treaty, and therefore falls within the scope of the Treaty.
- 18 In view of this difference of opinion it is first necessary to define precisely the nature of the problem. In the first place, the questions referred concern neither the organization of education nor even its financing, but rather the establishment of a

financial barrier to access to education for foreign students only. Secondly, they concern a particular type of education, referred to as 'vocational training' in the first question and as 'a course in strip cartoon art' in the second question.

- 19 The first remark which must be made in that regard is that although educational organization and policy are not as such included in the spheres which the Treaty has entrusted to the Community institutions, access to and participation in courses of instruction and apprenticeship, in particular vocational training, are not unconnected with Community law.
- 20 Article 7 of Regulation 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) provides that a worker who is a national of a Member State and who is employed in another Member State is to have access to training in vocational schools and retraining centres in that country by virtue of the same right and under the same conditions as national workers. Article 12 of the regulation provides that the children of such workers 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.
- 21 With regard more particularly to vocational training, Article 128 of the Treaty provides that the Council is to lay down general principles for implementing a common vocational training policy capable of contributing to the harmonious development both of the national economies and of the common market. The first principle established in Council Decision No 63/266/EEC of 2 April 1963 laying down those general principles (Official Journal, English Special Edition 1963-1964, p. 25) states that 'the general principles must enable every person to receive adequate training, with due regard for freedom of choice of occupation, place of training and place of work'.
- 22 The particular attention which the Community institutions have given to problems of access to vocational training and its improvement throughout the Community may be seen, moreover, in the 'general guidelines' which the Council laid down in 1971 for drawing up a Community programme on vocational training (Official

Journal, English Special Edition, Second Series IX, p. 50), in the resolution of the Council and of the Ministers for Education meeting within the Council of 13 December 1976 concerning measures to be taken to improve the preparation of young people for work and to facilitate their transition from education to working life (Official Journal C 308, p. 1) and the Council resolution of 11 July 1983 concerning vocational training policies in the European Community in the 1980s (Official Journal C 193, p. 2).

- 23 The common vocational training policy referred to in Article 128 of the Treaty is thus gradually being established. It constitutes, moreover, an indispensable element of the activities of the Community, whose objectives include *inter alia* the free movement of persons, the mobility of labour and the improvement of the living standards of workers.
- 24 Access to vocational training is in particular likely to promote free movement of persons throughout the Community, by enabling them to obtain a qualification in the Member State where they intend to work and by enabling them to complete their training and develop their particular talents in the Member State whose vocational training programmes include the special subject desired.
- 25 It follows from all the foregoing that the conditions of access to vocational training fall within the scope of the Treaty.
- 26 The answer to the first question must therefore be that the imposition on students who are nationals of other Member States, of a charge, a registration fee or the so-called '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.
- 27 In its second question the national court wishes to know what criteria must be used in deciding whether courses in strip cartoon art constitute vocational training.
- 28 According to Decision No 63/266/EEC, referred to above, the general principles for implementing a common vocational training policy cover 'the training of young

persons and adults who might be or already are employed in posts up to supervisory level'. Such a common policy must 'enable every person to acquire the technical knowledge and skill necessary to pursue a given occupation and to reach the highest possible level of training, whilst encouraging, particularly as regards young persons, intellectual and physical advancement, civic education and physical development'.

29 The general guidelines laid down by the Council in 1971, referred to above, state that 'in view of the constantly changing needs of the economy the aim' of vocational training 'should be to offer everyone the opportunity of basic and advanced training and a continuity of in-service training designed, from a general and vocational point of view, to enable the individual to develop his personality and to take up a career'.

30 It follows from those statements 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 the level of training of the pupils or students, and even if the training programme includes an element of general education.

31 The answer to the second question must consequently be that the term 'vocational training' includes courses in strip cartoon art provided by an institution of higher art education where that institution prepares students for a qualification for a particular profession, trade or employment or provides them with the skills necessary for such a profession, trade or employment.

Costs

32 The costs incurred by the United Kingdom, the Danish Government and the Commission, which submitted observations to the Court, are not recoverable. As 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, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the President of the Tribunal de Première Instance, Liège, by order of 23 December 1983, hereby rules:

- (1) The imposition on students who are nationals of other Member States of a charge, a registration fee or the so-called '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.
- (2) The term 'vocational training' includes courses in strip cartoon art provided by an institution of higher art education where that institution prepares students for a qualification for a particular profession, trade or employment or provides them with the skills necessary for such a profession, trade or employment.

Mackenzie Stuart

Bosco

Due

Kakouris

Koopmans

Everling

Bahlmann

Galmot

Joliet

Delivered in open court in Luxembourg on 13 February 1985.

P. Heim

A. J. Mackenzie Stuart

Registrar

President