OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 17 September 1987

My Lords,

This reference for a preliminary ruling under Article 177 of the EEC Treaty from the Court of Session, Scotland, raises important issues as to the rights of a person to vocational training in a university, and in particular as to rights to a maintenance grant. It is the last in the series of five cases in the others of which I have already given Opinions which in part deal with the matters in issue. I shall make reference to those Opinions to avoid repetition. The agreed relevant facts stated, if I may say so, with the utmost clarity, in the Order for Reference can be summarized as follows.

Stephen Malcolm Brown, the petitioner in the proceedings before the national court, was born in France in 1966. His British father and French mother have both worked in England but not since 1965 when they moved to France, where they still lived at the time relevant to these proceedings. The petitioner, who has dual French and British nationality, attended French schools, obtaining his baccalauréat in June 1983. He was accepted for a place at Cambridge University to read electrical engineering, the course beginning in the autumn of 1984.

Before going to Cambridge, he was employed from 9 January 1984 as a trainee engineer with Ferranti plc in Edinburgh. His employment was full-time, salaried employment described as 'pre-university industrial training' and national insurance contributions were paid. After a 12-week induction course, he was set to work and 'carried out electrical engineering tasks of a practical nature which the company required to be carried out as part of its normal trading activity', in the words of the Order for Reference. It was a pre-condition of being accepted for such training that he should have been awarded a university place. He left Ferranti for Cambridge on 14 September 1984.

In October 1984, Ferranti agreed to sponsor him under their University Sponsorship Scheme. That entitled him to a sum of money each term and further industrial training in the form of paid employment during the summer vacations. It did not oblige him to work for Ferranti on completion of his course or oblige Ferranti to employ him then. Ferranti normally awards sponsorship only to those who have completed their first year at university, but that requirement was waived in his case, his

performance when employed in the earlier part of 1984 being taken into account.

Cambridge University recommends but does not require electrical engineering students to obtain industrial experience before starting the course. However, it is obligatory to acquire eight weeks experience before the end of the second year.

The petitioner's intention is to qualify and to work as an electrical engineer and to become a member of the professional body for electrical engineers, the Institution of Electrical Engineering.

His degree course aims to provide students with wide knowledge of certain skills in engineering and electrical engineering. It also includes courses in mathematics and industrial organization. Significant specialization in electrical engineering is deferred until the third year.

The main classes of membership of the Institution are student members, associate members, members and fellows. Members and fellows are known as 'corporate members'. A first- or second-class honours degree in electrical engineering or in a relevant discipline such as physics, maths, computer science or information processing, awarded after following a course accredited by the Institution, as is the petitioner's course, satisfies the Institution's educational requirements and enables the graduate immediately to become an associate member. To become a corporate member, further requirements of practical training and experience must be met. The candidate must also satisfy a 'professional test' comprising a written submission recording his experience and an interview in relation to that submission. While a person may carry on business in the United Kingdom as an engineer and use the title 'engineer' without possessing any formal qualifications and without being a member of a particular institution, a person registered in the professional engineers' section of the Engineering Council's register is entitled to use the title 'Chartered Engineer' and the designatory letters 'C.Eng.' provided that he is a member of a nominated institution. Corporate membership of the Institution of Electrical Engineers entitles a person to be so registered.

Under statutory powers, the Secretary of State for Scotland has made the following relevant regulations governing payment of student allowances from public funds: the Students' Allowance (Scotland) Regulations 1971 (SI 1971/124), as amended by the Students' Allowances (Scotland) Amendment Regulations 1983 (SI 1983/798) and the Students' Allowances (Scotland) Amendment (No 2) Regulations 1983 (SI 1983/1536). The two principal elements of students' allowances are the maintenance allowance (the amount of which depends on the parental contribution, which is means tested) and the tuition fees which are paid directly by the Scottish Education Department (SED) to the university irrespective of the student's income or that of his parents.

I do not think it is necessary to set out the provisions of the regulations in detail.

Suffice it to say that, by letters of 6 August and 18 October 1984, the SED refused the petitioner's application for a student's allowance on the following grounds; he would have been entitled to an allowance if he had satisfied the conditions set out respectively in any one of the three heads of refusal:

(1) he had not been ordinarily resident in the British Isles for the three years ending 31 August 1984;

(2) although resident within the European Community for that period, he had not been in employment in Scotland for at least nine of the 12 months preceding that date *and* he was not seeking an allowance in respect of the course at a 'vocational training establishment' (being a 'vocational school' within the meaning of Council Regulation (EEC) No 1612/68 (Official Journal, English Special Edition 1968, p. 475)), *both* of which conditions had to be satisfied for an EEC national resident within the Community elsewhere than in Scotland to obtain an allowance. It is to be noted that another condition which must be satisfied under that head is that the person seeking the allowance must have entered the United Kingdom wholly or mainly for the purpose of taking up or seeking employment;

(3) although resident within the European Community and the child of an EEC national, neither of his parents was employed in Scotland on, or had been in employment in Scotland for an aggregate period of not less than one year during the three years preceding, the 'qualifying date' (*in casu* 30 June 1984).

In proceedings for judicial review of the SED's refusal, the petitioner claims that he is entitled to an allowance, and the regulations are overridden, by virtue of one or other of the following provisions of Community law: (a) Article 7 of the EEC Treaty as interpreted in Case 293/83 *Gravier* v *City of Liège* [1985] ECR 593, (b) Article 7 (3) of Regulation 1612/68, (c) Article 7 (2) of that regulation, or (d) Article 12 thereof.

His claims are contested by the Secretary of State for Scotland (under whose authority the SED comes) and the Court of Session has referred certain questions to this Court relating to those articles of the Treaty and the regulation.

Article 7 of Regulation No 1612/68 reads as follows (as far as is relevant):

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.'

Article 12 of Regulation No 1612/68 provides:

'The children of a national of a Member State who is or has been employed in the territory of another Member State shall 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 Danish Government objects as a preliminary matter that as he is a British national he cannot rely, as against the United Kingdom, on any provision of the Treaty dealing with discrimination. The United Kingdom Government takes no such point and apart from the brief reference in the Danish Government's observations the question has not been discussed in argument. I proceed on the basis that as a French national he can claim rights as such, France being the country in which he has resided and with which, apart from the fact that he is the son of a British national, he has the closest connection.

Question 1

'Does a course of full-time study in engineering at a university leading to the award of a degree which enables the holder of the degree to satisfy the educational requirements for associate membership of the professional body for electrical engineers which in turn may enable him, after completion of further practical experience, to be registered as a professional engineer and to use the title "Chartered Engineer" constitute either or both of:

(a) vocational training falling within the scope of the EEC Treaty for the purpose of Article 7 thereof as interpreted in Case 152/82 *Forcheri* v *Belgium* and Case 293/83 *Gravier* v *City of Liège*;

and

(b) training in a vocational school referred to in Article 7 (3) of Council Regulation (EEC) No 1612/68?'

This question has to be decided in the light of the Court's judgments in Case 152/82 *Forcheri* v *Belgium* [1983] ECR 2323 and *Gravier*, cited above, though the national court in deciding the issue finally will have the benefit of the Court's ruling in Cases 293/85 *Commission* v *Belgium* and 24/86 *Blaizot* v *University of Liège and Others* [1988] ECR 305, at p. 379, in which the question as to when university education may constitute vocational training, if at all, was argued at length.

My views are set out in my Opinions in those cases, particularly that in *Belgium*, and I do not repeat them here *in extenso*. Briefly, they are that a university course constitutes vocational training if it 'prepares for a qualification' or 'provides the necessary training and skills' for a particular profession, trade or employment, even if it includes 'an element' of general education. In answer to the Court's written questions the German Government appeared to accept that all forms of university level education which prepare for a profession or

employment is vocational training and the Danish Government equally accepted that all training conferring competence in an occupation over and above general education is vocational training.

On the other hand the Federal Republic submitted in its observations that a university course may be vocational only if completion of it is a prerequisite for entry to a particular profession. I do not accept that submission. There are some professions which may be entered both by graduates of a given discipline and by non-graduates with certain academic or practical qualifications or experience. To hold that university courses leading to such professions were not vocational because they were not a prerequisite of entry would unjustifiably restrict the *Gravier* definition.

On the agreed facts set out in the Order for Reference it appears prima facie that the petitioner's course satisfies the test which I have set out as being the basis of *Gravier* in respect of the profession of electrical engineering. It gives him in large measure the necessary training and skills to be an electrical engineer, to be employed in electrical engineering and, if his degree is at the required level, to become an associate member of the professional institution which enables him to proceed to full membership. It is not in my opinion decisive against him that the course does not give him immediately or directly the qualification of 'Chartered Engineer'. It seems clear that the degree which entitles him to associate membership is an integral part of the full qualification in addition to being a training for the particular profession.

I do not accept the narrower interpretations urged by the German and Danish Governments namely that an additional requirement, a connection with the worker's activity as a worker, is to be read into Article 7 (3). The freedom of movement of workers which Regulation No 1612/68 sets out to facilitate is 'one of the means by which the worker is guaranteed the possibility of improving his living and working conditions and promoting his social advancement' (third recital). That objective would obviously be in part frustrated if a Community worker were not able to receive training in a new discipline, particularly at a more advanced level.

As to the second part of the first question the petitioner and the Commission take the view that no distinction can sensibly be drawn between 'vocational training' and the phrase 'training in vocational schools' in Article 7 (3) of Regulation No 1612/68. The United Kingdom considers that the Court may well so conclude. In my view any educational establishment providing one or more courses in vocational training should be regarded *pro tanto* as a 'vocational school' for the purposes of Article 7 (3).

Question 2

'Is the concept of access to vocational training for the purpose of Article 7 of the EEC Treaty as interpreted in Case 152/82 *Forcheri* v *Belgium* and Case 293/83 *Gravier* v *City of Liège* to be interpreted as including payment by a Member State under provisions of its national law to or on behalf of a person undergoing such vocational training of either or both of: (a) his tuition fees, and (b) his maintenance?'

The question refers not to the charging of fees as in *Gravier* but to payments to or on behalf of a person of the relevant tuition fees. The reason is that in the United Kingdom, broadly speaking, university fees are paid not by the United Kingdom student but by his local education authority, whereas prior to September 1986 university fees had to be paid by the Community national student directly. I see no difference in principle between charging and not charging fees on the one hand and paying and not paying them on the other. Both are discriminatory within the meaning of *Gravier.*

Does *Gravier* cover tuition fees as opposed to an enrolment fee? If it is a condition of access to the national training that tuition fees be paid, in my view plainly yes. In *Gravier* reference is made to an enrolment fee but, as the facts of the case and as *Blaizot* and Case 309/85 *Barra* v *Belgium and City of Liège* make clear, what was in issue in all the Belgian cases was not the basic enrolment fee, which all students pay, but what was called at the hearing the 'foreign students' minerval' which could be up to 50% of the cost of providing the training. That is essentially or at any rate substantially a tuition fee.

In fact, by virtue of an amendment to the relevant United Kingdom rules which came into force on 1 September 1986, tuition fees for nationals of Community States (apparently irrespective of the nature of the university studies undertaken) have been paid by the United Kingdom authorities. For this reason the United Kingdom has not contested the claim that tuition fees should not be paid by the Community national student. It seems, however, that the amendment does not give the petitioner all the relief he seeks. The amendment was not retroactive. He was required to pay fees for the academic years 1984 and 1985, and there is a suggestion that he may have had to pay them for 1986. Moreover his counsel indicated at the hearing that the amendment either does not or may not apply to those whose courses began before the amendment came into force.

For the reasons given, on the basis that he was undertaking vocational training, those fees were not payable according to the *Gravier* decision, which as I have indicated in *Blaizot* I consider not to have merely a prospective effect but to cover students

undertaking vocational training at the time of the *Gravier* judgment in respect of the whole of their courses. They are, accordingly, so far as paid, recoverable; if unpaid they are not payable.

Payments for maintenance, the second part of Question 2, raise a different issue.

The petitioner says with force, referring to Case 9/74 *Casagrande* v *Landeshauptstadt München* [1974] ECR 773 that conditions of access to vocational training include not only the conditions on which students are initially admitted to a course but also cover what is needed to make attendance at the course possible. The student must have the means of maintenance, books and equipment. Whereas national students receive maintenance grants, a student of another Member State has to provide for his own maintenance, a crucial factor in his decision whether to attend the course; there is, it is said, clearly discrimination.

The Member States which have submitted observations, and the Secretary of State in the national proceedings, insist that maintenance grants do not fall within the *Gravier* principle. In this case the Commission did not contend that they did so. Indeed, although it took a different position in earlier cases, it seems to me that it was ultimately accepting that they do not.

The question is not an easy one, but for the reasons given in my Opinion tentatively in *Gravier* and below, I do not consider that the conditions of access referred to in *Gravier* cover such grants.

In the first place the judgment in *Gravier* emphasizes that the fees were 'a financial barrier to access to education' in the sense that if the student did not pay them, he could not receive the education. Though of course I realize that if a student cannot eat or have a bed he cannot study, it does not seem to me that the means of subsistence have a sufficiently direct link with access to the course itself to fall within the principle of non-discrimination spelled out in *Gravier*. Direct access to a vocational training course is within the scope of application of Article 7 of the Treaty; the means of subsistence, in the absence of more specific Community provisions, are not.

Is such a result inconsistent with the contention of the Commission, and the concession of the Secretary of State, that for someone who is a worker there can be no discrimination as to maintenance grants for vocational training for the purposes of Article 7 (3) of Regulation No 1612/68? In my view it is not. There is in the regulation a specific provision that a worker is entitled 'by the same right and under the same conditions as national workers' to have either 'access to vocational training' or, as in the French text, simply 'l'enseignement des écoles professionnelles'.

In the light of the French and other texts than the English, I consider that 'access to vocational training' means the same as 'l'enseignement des écoles professionnelles' and covers not merely the right to attend but all aspects of the pursuit of a vocational course. Taking account of the objectives of the regulation as spelled out in the recitals, it seems to me, for the reasons given in my Opinion in *Lair*, that the right and conditions referred to in Article 7 (3) include maintenance grants if they are given to national workers.

Article 7 (2), if it is applicable, a question I also consider in *Lair*, is even clearer. A 'social advantage', if it applies to vocational training or education other than vocational training, clearly covers maintenance grants. If, as I think, it covers at least general education it is unthinkable that a worker has a better right in respect of general education than he has in respect of vocational training.

In my opinion the answer to (a) is yes and to (b) no.

Question 3

'Is a person who is a national of, and has been resident in, one Member State and who enters another Member State ("the host State") to be regarded as a "worker" for the purposes of Article 7 of Regulation No 1612/68 where:

(a) the person concerned is engaged in full-time paid employment covered by the social security system as a trainee electrical engineer for a period of eight months before going to university;

(b) prior to entering the host State the person concerned had already arranged that at the end of the period of eight months he would take up full-time studies in engineering at a university in the host State;

(c) he would not have been employed by his employer in the capacity in which he was employed if he had not been accepted for admission to the university;

and

(d) he took up that employment in order to obtain experience of working in the electrical engineering industry?'

Since the ultimate decision as to whether the petitioner is a worker for the purposes of Article 7 of the regulation is for the national court, the question for this Court is whether for those purposes the term 'worker' properly interpreted covers a person who carries out the activities specified in the question.

The petitioner contends that whilst with Ferranti he was a worker within the meaning of Article 48 of the Treaty. He satisfied the test in Case 66/85 *Lawrie-Blum*

v *Land Baden-Württemberg* (judgment of 3 July 1986, [1986] ECR 2121) as a person who 'for a certain period of time . . . performs services for and under the direction of another person in return for which he receives remuneration'. He was in the same position as the trainee teacher in *Lawrie-Blum*, who was also undertaking 'practical preparation directly related to the actual pursuit of the occupation in point'. Moreover he was covered by the national social security system as a trainee engineer.

The petitioner and the Commission say that this is enough. Once a worker, he is a worker for all purposes and no period can be prescribed before he can be regarded as a worker either for the purposes of Article 48 or for the purposes of the regulation. His intentions in taking up this employment are irrelevant, as is the fact that it was from the beginning intended to be for a limited period before he began his university course.

The United Kingdom, Germany and Denmark once again totally disagree with that conclusion. The regulation is designed to facilitate the taking-up of employment in, and the integration of migrant workers into, the host Member State. To regard a short-term period of employment, even if taken as a means of supplementing income or as useful to his course, whether before going to university or during vacations, as qualifying for student maintenance grants, perhaps over a very long period, is, it is said, to give a wholly unjustified interpretation to the object and purpose of Regulation No 1612/68.

It is plain that for the purpose of Article 48 'worker' is to be given a broad meaning (see Case 53/81 *Levin* v *Staatssecretaris van Justitie* [1982] ECR 1035, at p. 1050). It is equally clear that the work during his period at Ferranti had the indicia of a contract of employment referred to in *Lawrie-Blum*. For that purpose a worker may be part-time or receive less than the minimum subsistence wage specified by the national authorities. On the other hand *Levin* made it equally plain that the employment must be effective and genuine 'to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary' and that the rules as to freedom of movement for workers 'guarantee only the free movement of persons who pursue or are desirous of pursuing an economic activity'.

A person who is a 'worker' for the purposes of Article 48 is entitled to accept an offer of employment actually made and to move into a Member State for that purpose. The Court has accepted that he also has the right to go in search of employment (judgment of 18 June 1987 in Case 316/85 *Centre public* v *Lebon* [1987] ECR 2811). A person seeking work does not have rights under Article 7 (2) of the regulation and it does not seem to me to follow that even if a person has rights under Article 48 of the Treaty he necessarily has all the rights conferred by Article 7 of the regulation.

In my opinion for the purposes of applying for a student grant under Article 7 he must show that he does so genuinely in his capacity as a worker and he must be in the Member State in such capacity and for the purpose of being a worker.

A person who has the fixed intention of going to a Member State in any event as a student, and who has a place in a university or school for a fixed date and period, but who in order to gain useful experience does a short-term job, does not in my view qualify under Article 7 (2) and (3) as a person who can claim a grant in his capacity as a worker. In a sense the work is ancillary to the course of study and although the collateral intentions of someone who is doing a genuine job in his capacity as a worker have been said to be irrelevant, the Court's decisions do not in my view preclude an examination of the reasons for his being in a Member State and doing temporary work and of the real capacity in which he makes a claim for a grant. It seems to me that a person who goes through the stages postulated in the question is going to university in the position of a student in the ordinary course; he is in no real sense a person who is exercising the rights of a worker to take up vocational training as a means of mobility or advancement. He does not go to the university in the latter capacity.

Once it is clear that a person has moved as a genuine worker, has become a worker and then subsequently decides to apply for vocational training in his capacity as a worker, he is entitled to rely on Article 7 (2) and (3) in relation to educational grants. In such a case it seems to me that to prescribe a limitation period during which he must have worked is not acceptable (Cases 249/83 *Hoeckx* v *Openbaar Centrum voor Maatschappelijk Welzijn* [1985] ECR 973 and 122/84 *Scrivner* v *Centre public d'aide sociale de Chastre* [1985] ECR 1027). But in deciding whether a person is such a worker, if the matter is in doubt, it is in my view permissible to have regard to the length of the period during which he claims to have worked. That period must be reasonable for the purpose and it seems to me that a year is, if not an infallible yardstick, a reasonable one for the purpose.

I do not accept that the Court's decision in Case 157/84 *Frascogna* v *Caisse de dépôts et consignations* ([1985] ECR 1739) prevents the imposition of a minimum period in order to decide whether a person is genuinely in a Member State in his capacity as a worker. That case was concerned with an old-age allowance for a person resident in a Member State. She satisfied the age requirements and the Court's decision was to the effect that an additional residence requirement was unlawful. By analogy, once it is clear that a person is a worker for the purposes of Article 7 of the regulation, a minimum qualifying period is not acceptable. It is different to have regard to a period of work to decide the essential question as to whether the person is a worker for the purpose of Article 7 (2) and (3) of the regulation when dealing with student grants.

In this case it was permissible to have regard to the fact that the petitioner had only worked for 8 months in a training capacity in deciding that he was not entitled to rights as a worker under Article 7 (2) or (3) of the regulation.

Question 4

'Where a worker ceases employment in order to take up, and does take up, a degree course in electrical engineering with the intention of becoming and practising as an engineer, is he entitled under Article 7 (2) of Regulation No 1612/68 to an allowance payable, under national law, to students in respect of either or both of (a) tuition fees, and (b) maintenance?'

In view of the answer I propose to the third question, the fourth question does not call for a detailed reply. However, for the reasons given in my Opinion in *Lair*, I consider that a person who is a worker for the purpose of Article 7 (2) and (3) is entitled to receive maintenance grants and to be charged or exempted from tuition fees on the same conditions as nationals, under paragraph (2) in respect of non-vocational training or under paragraph (3) in respect of training in vocational schools or retraining centres.

Question 5

'Where the child of a national of one Member State is resident in the territory of another Member State ("the host State") may he claim the benefit of Article 12 of Regulation No 1612/68 where his parent, who now no longer works or resides in the host State, was last resident or employed in the host State before the birth of the child and the residence of the child in the host State is not due to the fact of the parent's employment in the host State?'

If Article 12 is read literally the petitioner says that he qualifies in any event. His French mother, through whom he can claim, was employed in the United Kingdom and he is resident there. He further makes the point that it would be a great restriction on the mobility of labour if, when a parent and child lived for 15 years in one Member State and then moved to live in another Member State, the child could not return to reside for the purposes of study or if children subsequently born could not do so and be entitled to the rights conferred by Article 12. The United Kingdom replies that the mother left the United Kingdom in 1965 before the United Kingdom's accession and that her children cannot have rights conferred by Community law which hinge on her employment and residence in the United Kingdom before that time. Morever it cannot be right that children whose residence has no connection with the parent's employment in a Member State should be entitled to such rights if the object of Article 12 is to facilitate integration of a worker's family into the host State where he is or was employed.

Article 12 in my view is to be read as conferring a right on a child who has lived with his parents or parent in a Member State whilst the parent was employed there. The fact that the parent moves does not deprive such a child of his rights. On the other hand it seems to me that a child born subsequent to the termination of the

parent's residence and employment in a Member State is not given such a right by this article. He was never part of the family in that State nor integrated into that State as part of a worker's family. His residence for the purpose of study is not as a child of someone who is employed nor as someone who was a child during the period of his parent's employment which has now come to an end.

In any event I am not satisfied that the child of a national of another Member State who left the United Kingdom before the United Kingdom acceded to the Treaty has such rights.

Accordingly, in my opinion the questions fall to be answered along the following lines:

'(1) (a) The term "vocational training" includes a course of full-time study in electrical engineering at a university leading to the award of a degree which enables the holder of the degree to satisfy the educational requirements for associate membership of the professional body for electrical engineers, which in turn may enable him after completion of further practical experience to be registered as a professional engineer, alternatively if the course provides him with the skills and training necessary for such a profession, trade or vocation;

(b) Such training is training in a vocational school for the purposes of Article 7 (3) of Council Regulation (EEC) No 1612/68.

(2) Article 7 of the EEC Treaty as interpreted in Case 293/83 *Gravier* v *City of Liège* prohibits discrimination on the grounds of nationality between nationals of the Member State where or from which the vocational training takes place and nationals of other Member States in respect of the payment to or on behalf of the person undergoing such training of tuition fees but not of maintenance.

(3) & (4) The term "worker" for the purposes of education grants falling within Article 7 (2) or 7 (3) of Regulation No 1612/68 does not include a person who enters a Member State and works for eight months prior to beginning on a certain date a university course for which he had already been accepted before entering that State in order to obtain experience in the field of his university studies and when the employer only agrees to give him such work

on the condition that he has been accepted for admission to the university. Such person is not entitled to a grant under Article 7 (2) or 7 (3) of Regulation No 1612/68, either for tuition fees or for maintenance.

(5) The child of a national of one Member State is not entitled to the benefit of Article 12 of Regulation No 1612/68 in respect of an educational grant when the relevant parent had ceased to work and reside in the host Member State before the child was born; nor is he so entitled when that parent worked in, but left, the host State before its accession to the European Economic Community.'

The costs of the parties to the main action fall to be dealt with by the national court. The costs of the governments which have submitted observations and the Commission are not recoverable.