# OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 25 January 1989 *

*Mr President,*
*Members of the Court,*

1. The difficulties encountered by Mr Echternach and Mr Moritz, both German nationals, in obtaining finance for their studies in the Netherlands under the Netherlands Wet op de Studiefinanciering (Law on Study Finance, hereinafter referred to as the 'Study Finance Law') prompted the Commissie van Beroep Studiefinanciering (Study Finance Appeals Committee, hereinafter referred to as 'the Appeals Committee'), Groningen, to refer to the Court a number of very detailed questions in each of the two cases.

2. The refusal by the competent Netherlands ministry to grant study finance to Mr Echternach and to Mr Moritz was based on similar grounds: they were not Netherlands nationals, nor did they belong to a category of aliens treated in the same way as Netherlands nationals under the Study Finance Law. More precisely, it appears that the Netherlands authorities considered that neither of them held a residence permit as referred to in the Vreemdelingenwet (Aliens Law), to which the Study Finance Law refers for the purpose of defining the categories of foreign students to be treated in the same way as national students.

3. Besides those points of similarity, there were a number of differences between Mr Echternach's situation and that of Mr Moritz.

4. In Mr Echternach's case, the fact that he had no residence permit of the type referred to in the Vreemdelingenwet was due to the fact that he was exempted from that requirement by reason of his father's position as an official of the European Space Agency (hereinafter referred to as 'the ESA') at Noordwijk, in the Netherlands. Because of his status as an international civil servant, Mr Echternach senior and the members of his family belonged, in the words of the request for a preliminary ruling, 'to the category of aliens to whom privileges are granted by virtue of an international agreement and to whom the Netherlands Vreemdelingenwet is not applicable'. [1] The request also states that the ESA issued to Mr Echternach 'an identity document which exempted him from the requirement to have authorization to reside in the Netherlands within the meaning of the Vreemdelingenwet'. [2]

5. In Mr Moritz's case, the reason why the Netherlands authorities considered that he did not have a residence permit allowing him to be placed, for the purposes of the Study Finance Law, in the category of foreign students treated in the same way as national students was that, after having lived since 1972 with his parents in the Netherlands, where his father worked, he returned to the Federal Republic of Germany, still with his parents, in 1985, and then came back alone to the Netherlands in 1986 in order to continue his studies. On his return to the Netherlands, he was issued with a residence permit only for a temporary purpose. Under the Study Finance Law, such a document does not entitle its holder, if a student, to be treated in the same way as Dutch students.

* Original language: French.

1 — Request for a preliminary ruling in the Echternach case, p. 2 of the English translation.

2 — Ibid.

6. Through the detailed and complex questions put by the Appeals Committee, a number of legal questions may be discerned, some of which are common to both cases while others are specific to one case or the other.

7. First of all, the Court will have to consider to what extent a system for providing public financial assistance for studies may fall within the scope of Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (hereinafter referred to as 'the regulation').[3] That question will therefore concern the substantive scope of that provision. Secondly, in the Echternach case, the Court will have to determine whether an official of the ESA is deprived, by virtue of that capacity, of his status as a migrant worker for the purposes of Community law and prevented, together with his family, from enjoying the rights conferred by that status. Thirdly, in the Moritz case, the Court will have to decide whether the rights which a child derives in the host Member State from his parent's status as a migrant worker are affected by the fact that the parent leaves that State and the child returns to continue his studies after a brief absence. The two latter points will require the Court to define the persons covered by Article 12 of the regulation. Fourthly, and lastly, the Court will have to rule whether a child of a migrant worker may be prevented from claiming any financial assistance for his studies from the host Member State by reason of requirements relating to his right to reside in that State.

3 — OJ, English Special Edition 1968 (II), p 475.

## I — Substantive scope of Article 12 of the regulation

8. Questions 5 and 6 in the Echternach case and Questions 1 and 5 in the Moritz case relate to two aspects of the substantive scope of Article 12 of the regulation. The first concerns the nature of the studies to which that provision relates; its first paragraph provides that: '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 second aspect is the content of the concept of conditions of access, and more particularly the question whether the principle of equal treatment as regards conditions of access laid down in Article 12 of the regulation can be relied upon with regard to a system of study finance such as that set up under the Study Finance Law.

9. In recent years, the Court has clarified a number of points relating to the definition in Community law of vocational training or education.

10. First of all, in its judgment of 13 February 1985 in *Gravier*, the Court stated the general rule 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'. [4]

11. In judgments delivered in 1988, the Court subsequently ruled on the application of that general rule to university studies and courses followed in technical training establishments.

12. In its judgment of 2 February 1988 in *Blaizot*, the Court observed that:

'neither the provisions of the Treaty, in particular Article 128, nor the objectives which these provisions seek to achieve, in particular those relating to freedom of movement for persons, give any indication that the concept of vocational training is to be restricted so as to exclude all university education',

and that:

'it is accepted in all the Member States that some university studies are indeed intended to provide students, at the academic level, with certain knowledge, training and skills as preparation for specific occupations'.

It also pointed out that:

'Article 10 of the European Social Charter, to which most of the Member States are contracting parties, treats university education as a type of vocational training'. [5]

13. With regard to the question whether university studies prepare students for a qualification for a particular profession, trade or employment or provide the necessary training and skills for such a profession, trade of employment, the Court emphasized that

'that is the case not only where the final academic examination directly provides the required qualification for a particular profession, trade or employment but also in so far as the studies in question provide specific training and skills, that is to say where a student needs the knowledge so acquired for the pursuit of a profession, trade or employment, even if no legislative or administrative provisions make the acquisition of that knowledge a prerequisite for that purpose'. [6]

It then stated that

'in general, university studies fulfil these criteria. The only exceptions are certain courses of study which, because of their particular nature, are intended for persons wishing to improve their general knowledge rather than prepare themselves for an occupation'. [7]

4 — Case 293/83 *Gravier* v *City of Liège* [1985] ECR 593, paragraph 30.

5 — Case 24/86 *Blaizot* v *University of Liège* [1988] ECR 379, paragraph 17.

6 — Ibid., paragraph 19.

7 — Ibid., paragraph 20.

14. In its judgment of 21 June 1988 in *Lair*, the Court summed up those various considerations by stating that

'in general, university studies fulfil the conditions required in order to be regarded as vocational training for the purposes of the EEC Treaty'. [8]

15. Although those judgments dealt with the concept of vocational training appearing in Article 128 of the EEC Treaty, there is no reason, in my view, to adopt a different interpretation of vocational training within the meaning of the first paragraph of Article 12 of the regulation as far as university studies are concerned. The expression is identical in both provisions, and does not, in my opinion, call for a more restrictive interpretation in the context of the regulation than in the context of the Treaty. I have not been able to find any argument based on the text or the context which might warrant distinguishing two meanings of the term vocational training. I consider that the judgements cited above, whilst formally referring to Article 128 of the Treaty, establish a Community definition of vocational training.

16. It would therefore appear that there is no reason to consider that a university course in economics, such as that followed by Mr Echternach in the Netherlands, does not also fall within the definition of vocational training for the purposes of Article 12 of the regulation and I therefore propose that the Court should answer Question 6 in the Echternach case in the affirmative.

17. Furthermore, given the Court's wide view, according to which university studies in general belong to vocational training within the meaning of Community law, I do not think that it can adopt a narrower view with regard to technical education. On the contrary, technical education belongs almost by definition to the category of vocational training. That point of view, moreover, would appear to have been taken by the Court in its judgment of 27 September 1988 in Case 42/87 *Commission* v *Belgium*, [9] in which it considered that 'courses provided by a higher education establishment not of university level' fall within the scope of Article 12 of the regulation.

18. I therefore consider that 'advanced vocational training . . . at a hogere technische school (technical college) in the Netherlands', to use the precise wording of Question 5 in the Moritz case, is undoubtedly vocational training within the meaning of Article 12 of the regulation, and propose that the Court should answer that question also in the affirmative.

19. This brings us to the question whether the principle of equal treatment regarding conditions of access to 'general educational, apprenticeship and vocational training' laid down in Article 12 of the regulation applies to study finance assistance as provided in the Netherlands.

20. The description of the Netherlands system of study finance provided in the

8 — Case 39/86 *Lair* v *Universität Hannover* [1988] ECR 3161, paragraph 12.

9 — Case 42/87 *Commission* v *Belgium* [1988] ECR 5445.

present proceedings by both the Netherlands Government and the Commission leaves no doubt about one of its essential characteristics. The study finance provided under the Study Finance Law is intended to cover the student's maintenance costs and not only the costs of access to education in the strict sense, such as the payment of registration fees.

21. It must be pointed out that, according to the Court's judgment of 3 July 1974 in Case 9/74 *Casagrande*, Article 12 of the regulation, in providing that the children of migrant workers are to be admitted to educational courses under the same conditions as nationals of the host State, refers

'not only to rules relating to admission, but also to general measures intended to facilitate educational attendance'. [10]

22. Essentially the Court must therefore decide whether study finance such as that provided for in the Study Finance Law is a 'general measure intended to facilitate educational attendance'.

23. In order to avoid any danger of confusion, it must be borne in mind that there is a distinction to be drawn between the provisions of Community law which relate to the conditions of access to vocational training for Community nationals in general and those which relate to the conditions of access to vocational training for migrant workers and members of their families.

24. Community nationals who cannot claim the status of migrant worker, either on their own account or through a parent, can derive rights which are limited, though appreciable, in scope from the EEC Treaty. It is true that the conditions of access to vocational training for such nationals fall within the scope of the Treaty, as was stressed in the Court's judgment in *Gravier*, cited above, and that vocational training includes university studies, according to the judgment in *Blaizot*, also cited above. Any unequal treatment, based on nationality, relating to the conditions of access to vocational training thus defined must be regarded as 'discrimination on grounds of nationality contrary to Article 7 of the Treaty'. [11] But that prohibition refers only to discrimination in terms of conditions of access to vocational training, which has led the Court to emphasize, in connection with assistance given by a State to students who are its own nationals, that

'it is only to the extent to which assistance of that kind is intended to cover registration and other fees, in particular tuition fees, charged for access to education that . . . it falls, as relating to conditions of access to vocational training, within the scope of the EEC Treaty and that, consequently, the prohibition of discrimination on grounds of nationality laid down by Article 7 of the EEC Treaty is applicable'. [12]

25. The status of migrant worker entails markedly more favourable treatment under Community law, as is particularly well illustrated in the Court's judgment in *Lair*, cited above. There, after considering, in

10 — Case 9/74 *Casagrande* v *Landeshauptstadt München* [1974] ECR 773, paragraph 4.

11 — Case 293/83 *Gravier*, cited above, paragraph 26.

12 — Case 39/86 *Lair*, cited above, paragraph 14.

accordance with the analysis set forth above, that

'at the present stage of development of Community law assistance given to students for maintenance and for training falls in principle outside the scope of the EEC Treaty for the purposes of Article 7', [13]

the Court nevertheless held, in answer to a question from the national court based on different legal premisses, that:

'a grant awarded for maintenance and training with a view to the pursuit of university studies leading to a professional qualification constitutes a social advantage within the meaning of Article 7(2) of Regulation No 1612/68'. [14]

According to that provision, it will be remembered, a worker who is a national of a Member State is to enjoy, in the territory of the other Member States, 'the same social and tax advantages as national workers'.

26. The refusal, therefore, of such assistance 'awarded for maintenance and training with a view to the pursuit of . . . studies' is lawful under Community law if it concerns a national who cannot claim the status of migrant worker on any grounds, but becomes unlawful if it concerns a migrant worker.

27. The cases now referred to the Court concern two students who do not rely on their status as Community nationals in general but on their status of children of migrant workers within the meaning of Article 12 of the regulation. And in my opinion that status of child of a migrant worker also entails, as far as the grant of State study assistance is concerned, a right to a more favourable treatment under Community law than that enjoyed by 'ordinary' nationals — a reinforcement, as it were, of Community protection.

28. If Article 12 of the regulation is taken literally, one observes first of all that the scope of the wording used therein might appear to be wider than the prohibition of discrimination as regards conditions of access to courses of vocational training as laid down in the judgment in *Gravier*. Article 12 provides that the children of migrant workers are to be admitted to courses 'under the same conditions' as the nationals of the host Member State. According to the Treaty, the prohibition of discrimination as regards conditions of access requires, *inter alia*, that Community nationals should not in any way be charged registration fees or other fees from which nationals are, in law or in fact, exempted, but does not on the other hand require the host State to maintain foreign students given access to education in the same manner as it maintains its own nationals. In the context of Article 12, admission to courses under the same conditions as nationals would seem, however, to suppose absolutely identical treatment, not confined to 'conditions of access' in the narrow sense.

29. But the wide interpretation which I am proposing seems to be borne out most clearly not so much by the wording of Article 12 as by the Court's previous

13 — Ibid., paragraph 15
14 — Ibid., paragraph 28

decisions. In its judgments in *Casagrande*, cited above, and of 29 January 1975 in *Alaimo*, [15] relating to two refusals to award educational grants, the first to the son of an Italian worker in the Federal Republic of Germany and the second to the daughter of another Italian worker in France, the Court classified those educational grants among the conditions for admission to courses which Article 12 requires to be the same, without drawing any distinction in either case between that part of the assistance which might have covered access to education in the strict sense and that part which might have covered the student's maintenance. Thus, in the field of educational grants for the children of migrant workers, the Court in no way established the distinctions recently applied in the *Lair* and *Brown* cases as regards Community nationals not affected by the provisions of Community law relating to migrant workers.

30. The wide view thus adopted by the Court for the purposes of applying Article 12 of the regulation was made perfectly clear in a passage in the *Casagrande* judgment, repeated in almost identical terms in the judgment in *Alaimo*. In the latter decision, it stated that the integration of a migrant worker's family into the society of the host country

'presupposes that, in the case of the child of a foreign worker who wishes to be admitted to an educational course, that child may take advantage of benefits provided by the laws of the host country relating to educational grants, under the same conditions as nationals who are in a similar position'. [16]

15 — Case 68/74 *Alaimo* v *Préfet du Rhône* [1975] ECR 109.

16 — Ibid., paragraph 5.

31. Those observations, based essentially on an examination of the Court's previous decisions, lead me therefore to consider that a system of study finance such as the one set up by the Study Finance Law falls within the scope of Article 12 of the regulation, and to propose in consequence that the Court should answer Question 5 in the Echternach case and Question 1 in the Moritz case in the affirmative.

## II — The persons covered by Article 12 of Regulation No 1612/68

32. In the Echternach case, it was suggested that the applicant could not rely on Article 12 of the regulation because his father, by reason of his employment as an official of an international organization, did not have the status of migrant worker for the purposes of Community law. Reference was made in that connection to Article 48(4) of the EEC Treaty, according to which the other provisions of that article do not apply to employment in the public service, which was how the post held by Mr Echternach senior with the ESA was classified. The Netherlands Government considers, moreover, that because the ESA has the status of an international organization governed by public law its employees 'may derive rights and obligations only from that employment relationship and from the Protocol on the Privileges and Immunities' of the agency's staff, and that they cannot therefore rely on the provisions of the Treaty relating to freedom of movement for workers.

33. The first observation which springs to mind provides the answer, in my opinion, to Question 1. It seems clear to me, as it does

to the Commission, that Article 48(4), which provides that 'the provisions of this article shall not apply to employment in the public service', does not refer to employment in an international organization governed by public international law. I believe that the provision refers to certain posts in the public services of the Member States and not to posts in organizations of a supranational nature. Moreover, the Court's judgment of 12 February 1974 in *Sotgiu* refers, in relation to the 'derogation' contained in Article 48(4), only to 'the interests which this derogation allows Member States to protect'.[17] That would appear to confirm that the only public service referred to by the provision in question is the public service of each Member State, and not international organizations. On that basis I consider a negative answer to Question 1 justified.

34. Furthermore, I am of the opinion that however the post held by Mr Echternach senior is classified the application of the provisions of the Treaty or of secondary legislation relating to freedom of movement of workers cannot be affected.

35. Even assuming that his post is to be regarded as employment in the public service within the meaning of Article 48(4), it must be borne in mind that, according to the judgment in *Sotgiu*, cited above, that provision offers only

'the opportunity of restricting admission of foreign nationals to certain activities in the public service',

while, on the other hand, it

'cannot justify discriminatory measures with regard to remuneration or other conditions of employment against workers once they have been admitted to the public service',

and the judgment adds that

'the very fact that they have been admitted shows indeed that those interests which justify the exceptions to the principle of non-discrimination permitted by Article 48(4) are not at issue'.[18]

That means, in my opinion, that any Community national who has been admitted to employment, even in the public service, in a Member State other than his own, is entitled to have the provisions of Community law guaranteeing freedom of movement for workers applied to him and must therefore be regarded, for the purposes of those provisions, as a migrant worker.

36. If the occupational situation of Mr Echternach senior is considered not from the point of view of the public service within the meaning of Article 48(4) but from that of international organizations with their special status, I do not believe that a different conclusion can be reached.

37. In that connection, both the Commission and the Portuguese Government very appositely referred to the

17 — Case 152/73 *Sotgiu* v *Deutsche Bundespost* [1974] ECR 153, paragraph 4

18 — Ibid, paragraph 4

Court's judgment of 13 July 1983 in the *Forcheri* case, which concerned the position of the spouse of an official of the European Communities. On that occasion, the Court pointed out that

'the legal position of officials of the Community in the Member States in which they are employed comes within the scope of the Treaty on a dual basis by reason of their post with the Community and because they must enjoy all the benefits flowing from Community law for the nationals of Member States in relation to freedom of movement, freedom of establishment and social security'. [19]

What seems to me to be very important here is that the Court apparently recognizes the right of all Community nationals, regardless of whether or not they are employed by a Community institution, to enjoy 'all the benefits flowing from Community law', in particular in relation to freedom of movement for workers. I agree on this point with the view taken by the Portuguese Government which emphasizes, on the basis of that judgment, that any national of a Member State employed in another Member State enjoys the rights attached in Community law to the status of migrant worker, without any distinction having to be drawn in that regard according to the nature of the employment or the status of the employer.

38. I therefore consider that the fact that a national of a Member State is employed by an international organization situated in the territory of another Member State cannot deprive that person, with regard to that other Member State, of the benefits he derives from his position as a Community worker. Indeed, I am touching on the foundation stones of the Court's case-law when I make the simple point that a Member State cannot in principle unilaterally exclude Community nationals working in its territory from the effect of Community law, whether by provisions of internal law or by commitments entered into under international agreements.

39. I therefore propose that the Court should answer Question 2 in the affirmative.

40. In the Moritz case, the fact that Mr Moritz's parents and in particular his father, who had worked in the Netherlands since 1972, had left the country when Mr Moritz applied for financial assistance is relied upon as a ground for refusing to apply Article 12 of the regulation in his case. In short, it is claimed that since Mr Moritz senior no longer has the status of migrant worker in the Netherlands, his son cannot claim in that country rights deriving solely from that status.

41. That view prompts a number of observations.

42. First of all, I consider it useful to recall the actual wording of the provision in question. Article 12 begins as follows: 'The children of a national of a Member State who is or has been employed in the territory of another Member State . . . '. The phrase

19 — Case 152/82 *Forcheri* v *Belgium* [1983] ECR 2323, paragraph 9.

'is or has been employed' means that the children's enjoyment of the rights provided for in Article 12 does not necessarily require the parent in question to be still employed in the territory of the Member State concerned. The wording does not exclude the possibility that the children may continue to enjoy those rights after the parent has left the host State.

43. Next, I should like to quote a passage from the Opinion of Advocate General Sir Gordon Slynn in the *Brown* case:

'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'. [20]

I agree wholly with that point of view.

44. And it seems to me that in its judgment in *Brown* the Court also adopted it, albeit implicitly, for it stated that Article 12 was to be interpreted

'as meaning that it grants rights only to a child who has lived with his parents or either one of them in a Member State whilst at least one of his parents resided there as a worker. It cannot therefore' — and this is the important passage — 'create rights for the benefit of a worker's child who was born after the worker ceased to work and reside in the host State'. [21]

In my view, the *a contrario* argument is not being taken too far when it is deduced from that passage of the judgment that Article 12 creates rights for the benefit of a worker's child who was born after the worker ceased to work and reside in the host State.

45. A similar observation is called for, in my view, with regard to paragraph 5 of the operative part of that same judgment in *Brown*. There the Court ruled that:

'A child of a national of one Member State who resides in the territory of another Member State may not claim the benefit of Article 12 of Regulation No 1612/68 where his parent, who no longer resides in the host State, last resided there as a worker before the birth of the child.'

Apart from what we learn from the *a contrario* argument, it seems to me that, had the Court's position been that a child can no longer claim rights under Article 12 of the regulation in a State once the parent who worked there has left that State, it would probably not have worded that answer as it did. It could in that case have confined itself to a much shorter formulation. However, it seems to me that the wording it chose

20 — Opinion in Case 197/86 *Brown* v *Secretary of State for Scotland* [1988] ECR 3205, at p 3234

21 — Judgment of 21 June 1988 in *Brown*, cited above, ECR 3205, paragraph 30

expresses quite clearly that the fact that the parent who worked in the host State no longer resides there is not by itself a decisive criterion in the Court's view.

46. In addition to those considerations based on the actual wording of Article 12 of the regulation and on the Court's decisions, it may be pointed out that only an interpretation which does not make children's rights strictly dependent on the parent's continuing residence in the host State appears to accord with the spirit of the provisions of Community law whose purpose is to ensure, through equal treatment, the integration of workers and their families in the host country.

47. Moreover, it is unnecessary to point out that, at a time when families are less stable than before, to make the maintenance of rights derived from a parent's status of migrant worker in a host State conditional upon that parent's continuing residence in the State would place the family in a highly precarious situation, quite often dependent on the father's behaviour.

48. Mr Moritz's case provides a perfect illustration of what the integration of a family, and in particular of a child, in the host State ordinarily means. Mr Moritz completed most of his education in the Netherlands because his father was working there and the possibility of his satisfactorily continuing his education there cannot, in my view, depend solely on the place where his father happens to pursue his occupation.

49. Finally, I agree again with the Portuguese Government's analysis when it states that an interpretation of the regulation making the derivative rights of members of migrant workers' families in a host Member State strictly conditional on those workers' maintaining their residence in the host State would be likely to affect the freedom of movement of workers within the Community, given the loss of rights which their departure would entail. In my view, the Court cannot allow an interpretation limiting in practice the scope of the fundamental principle of freedom of movement for workers.

50. I therefore consider that the fact that a migrant worker leaves the host Member State does not in itself deprive that worker's children of their rights in that State under Article 12 of the regulation.

51. However, the maintenance of a child's rights derived from his parent's status of migrant worker notwithstanding that parent's departure from the host Member State cannot be considered to be unconditional. Some aspects of the questions put to the Court relating to Mr Moritz's situation call for more detailed explanations regarding the persons covered by Article 12 of the regulation.

52. The national court asks how, in the interpretation of that provision, account is to be taken of the fact that the child first accompanied the migrant worker when the latter left the host State and then returned to that State to continue his studies.

53. It must be noted that the enjoyment of the rights provided for in Article 12 is expressly made conditional upon the child's residence in the territory of the host State. On the date of the Minister's decision of refusal, Mr Moritz was residing in the Netherlands. The difficulty in applying Article 12 is that he was residing there afresh, that is to say after interrupting his residence in the Netherlands for a period of one year and three months. Does such an interruption in a child's residence prevent him from claiming the rights provided for in Article 12 of the regulation?

54. In my view, the answer to that question must take account of a circumstance such as the continuity of vocational training, that is to say school training, university training, technical training or other training in the host State. If a student, who has lived in a host State with a parent who was a migrant worker there, continues to undergo his vocational training after the departure of the parent in question from that State, he must be able, in my view, to enjoy the rights provided for in Article 12 of the regulation provided that he actually resides there and regardless of whether his period of residence has been interrupted for any time. As the Commission and the Portuguese Government have emphasized, the essential factor is the continuity of the vocational training. If that training is continued in the host State, a temporary interruption in residence does not matter. The continuance of studies in that State cannot be considered separately from the reasons explaining it, namely the fact that the child is living with a parent who was a migrant worker. It is a logical result of the integration of such a worker's family in the host country that the children belonging to that family should continue their training there, either because that is objectively preferable on account of the connection between stages of education in each country, or because it is more difficult, if not actually impossible, at the present stage of development of Community law, for those who have not previously studied in another State to gain access to that State's training courses.

55. In a manner somewhat similar to the Court's previous decisions on the maintenance of workers' rights in the event of the transfer of an undertaking, when, in the event of its temporary closure, it considers it important for the undertaking to retain its identity, the Court could, in its interpretation, justify the maintenance of the rights afforded by Article 12 of the regulation to a migrant worker's child by referring to the continuity of the child's vocational training in the host State.

## III — The rights derived from Article 12 of Regulation (EEC) No 1612/68 and residence permits

56. I shall now go on to discuss whether a student's enjoyment of the rights provided for in Article 12 of the regulation can depend on whether or not he holds a residence permit. That question has, in my view, been fully answered in the Court's previous decisions.

57. It will therefore suffice to recall that the Court has held that:

'the right of nationals of a Member State to enter the territory of another Member State and reside there for the purposes intended by the Treaty — in particular to look for or pursue an occupation or activities as employed or self-employed persons, or to

rejoin their spouse or family — is a right conferred directly by the Treaty, or, as the case may be, by the provisions adopted for its implementation', [22]

and that:

'it must therefore be concluded that this right is acquired independently of the issue of a residence permit by the competent authority of a Member State'. [23]

58. After setting forth those well-known principles laid down in the Court's judgment in *Royer* I must point out that, as regards the children of migrant workers, the right of residence in the host Member State is directly conferred by Article 10 of Regulation (EEC) No 1612/68, which states: 'the following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State: (a) his spouse and their descendants who are under the age of 21 years or are dependants . . . '.

59. The right of residence thus conferred on the children of a migrant worker is proved in the Member States in accordance with the detailed rules laid down in Council Directive 68/360/EEC of 15 October 1968 [24] by the issue of a residence permit. Article 6(1)(b) of the directive provides that the residence permit must be valid for at least five years from the date of issue and be automatically renewable. That would appear to indicate, in reply to some of the questions raised, that a Community national whose right of residence is conferred by Article 10 of Regulation (EEC) No 1612/68 may not be issued with a residence permit valid for less than five years, although Community law does not require him to be issued with a permit valid for an indefinite period.

60. Taking the legal principles just mentioned with some of the conclusions reached earlier, I conclude that the child of a migrant worker enjoys a right of residence directly conferred by Article 10 of Regulation (EEC) No 1612/68, which has legal effects regardless of whether or not a residence permit has been issued to him.

61. In my view, therefore, the rights afforded to the children of migrant workers by Article 12 of that regulation are to be enjoyed irrespective of whether or not a residence permit has been issued. I do not consider it possible to interpret two provisions of that regulation separately from one another.

62. Even if the enjoyment of the rights provided for in Article 12 of the regulation were dependent on the possession of a residence permit, the competent authorities of a Member State may not, in my view, refuse to allow a student who is a national of another Member State to enjoy those rights on the ground of a situation which is contrary to Community law. Since Community law provides that as proof of his right of residence a child of a migrant worker must be issued with a renewable residence permit valid for at least five years,

22 — Judgment of 8 April 1976 in Case 48/75 *Royer* [1976] ECR 497, paragraph 31.

23 — Ibid., paragraph 32.

24 — Directive 68/360/EEC of the Council of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, OJ, English Special Edition 1968, (II), p. 485.

the authorities of a Member State may not, in my view, rely, as against a child of a migrant worker, on the fact that a residence permit has not in fact been issued to him.

63. For the reasons which I have already explained when discussing the substantive scope of Article 12 of the regulation and which remain relevant at this stage of the discussion, I consider that neither the right of residence of the child of a migrant worker nor his right to be issued documentary proof thereof is affected by the parent's departure from the host State, as long as the child is continuing in that State vocational training which he was already pursuing in part or wholly within its territory before the parent's departure.

64. On the basis of those considerations, I conclude that the Court should rule as follows:

In Case 389/87 (Echternach):

(1) Vocational training courses within the meaning of Article 12 of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community include, *inter alia*, university courses in economics;

(2) A public contribution towards the financing of studies which assists the student who receives it in bearing the cost both of registration and tuition fees as well as his maintenance costs is included among the conditions of admission to vocational training within the meaning of Article 12 of Regulation No 1612/68;

(3) A child of a national of a Member State working in the territory of another Member State may rely on Article 12 of Regulation No 1612/68 whatever the nature of the employment held there by the parent and also if the employment is held within an international organization established in that other Member State;

(4) The child may rely on Article 12 of Regulation No 1612/68 regardless of whether he has obtained documentary proof of his right of residence under Article 10 of that regulation.

In Case 390/87 (Moritz):

(1) Vocational training courses within the meaning of Article 12 of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community include, *inter alia*, studies at a technical college;

(2) A public contribution towards the financing of studies which assists the student who receives it in bearing the cost both of registration and tuition fees as well as his maintenance costs is included among the conditions of admission to vocational training within the meaning of Article 12 of Regulation No 1612/68;

(3) A child of a national of a Member State who worked in another Member State and then left that State may rely on Article 12 of Regulation No 1612/68, provided that the child has actually lived with that parent in the territory of the host State, has for that reason studied there and is still residing there in order to continue his studies, regardless of whether there has been any temporary interruption of his residence in that territory not affecting the continuity of his vocational training;

(4) The child may rely on Article 12 of Regulation No 1612/68 regardless of whether he has obtained documentary proof of his right of residence under Article 10 of that regulation.