JUDGMENT OF THE COURT (Fifth Chamber)

8 June 1999 *

In Case C-337/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Commissie van Beroep Studiefinanciering (Netherlands) for a preliminary ruling in the proceedings pending before that court between

C.P.M. Meeusen

and

Hoofddirectie van de Informatie Beheer Groep,

on the interpretation of Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC) and of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475),

* Language of the case: Dutch.

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, P. Jann (Rapporteur), J.C. Moitinho de Almeida, C. Gulmann and D.A.O. Edward, Judges,

Advocate General: A. La Pergola,

Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Miss Meeusen, by P.J.M. Meeusen, father of the applicant in the main proceedings,

— the Netherlands Government, by A.H.M. Nierman, Ambassador of the Kingdom of the Netherlands to Luxembourg, acting as Agent,

— the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent,

— the Commission of the European Communities, by P.J. Kuijper, Legal Adviser, and B.J. Drijber, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Miss Meeusen, represented by P.J.M. Meeusen, of the Netherlands Government, represented by M.A. Fierstra, Head of the European Law Department in the Ministry of Foreign Affairs, acting as

Agent, and of the Commission, represented by P.J. Kuijper, at the hearing on 19 November 1998,

after hearing the Opinion of the Advocate General at the sitting on 28 January 1999,

gives the following

Judgment

1 By order of 26 September 1997, received at the Court on 29 September 1997, the Commissie van Beroep Studiefinanciering (Study Finance Tribunal) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) several questions on the interpretation of Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC) and of Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475).

2 Those questions were raised in proceedings between Miss Meeusen, the plaintiff in the main proceedings, and the Hoofddirectie van de Informatie Beheer Groep (governing board of the information management group, the 'IBG'), the defendant in the main proceedings, relating to an application for a study grant made by Miss Meeusen under the Wet op de Studiefinanciering (Law on the financing of studies, 'the WSF') when she registered at the Provincial Higher Technical Institute for Chemistry, Antwerp, an institution of higher education.

3 Article 7 of Regulation No 1612/68 provides:

'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...

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

4 Under Article 7 of the WSF, that Law applies to:

'(a) students who possess Netherlands nationality;

(b) students who do not possess Netherlands nationality but are resident in the Netherlands and are treated as Netherlands nationals in respect of the financing of studies under provisions in agreements with other States or in a decision of an organisation in public international law which is binding on the Netherlands;

(c) ...'

5 The finance provided for in the WSF is granted directly to students aged 18 and over. It consists of a basic grant, the level of which is independent of the parents' income, and a supplementary grant, the level of which varies according to parental income.

6 Under Article 9(1) of the WSF, only studies pursued in a Netherlands institution give rise to an entitlement to study finance. Article 9(3) provides, however, for an exception to that rule in the case of certain foreign institutions which are treated as Netherlands institutions for the purpose of applying the WSF. It is common ground that the Provincial Higher Technical Institute for Chemistry, Antwerp, is covered by that exception.

7 It is clear from the order for reference that Miss Meeusen, of Belgian nationality and residing at the material time in Belgium, began her studies in August 1993 at the Provincial Higher Technical Institute for Chemistry, Antwerp. Her father and mother are both of Belgian nationality and resident in Belgium. Her father is the director and sole shareholder of a company established in the Netherlands. Her mother is employed by that company for two days a week. The national court takes the view that her activity is effective and genuine.

8 On 14 October 1993, Miss Meeusen applied to the IBG for study finance under the WSF.

9 Finance was initially granted to Miss Meeusen, who obtained a basic grant for the period from November 1993 to March 1994, but her application was later rejected by a decision of 2 October 1994, by which she was also required to refund the sums already received. A complaint against that refusal of finance was also dismissed by decision of the IBG of 12 January 1995.

10 After her complaint was dismissed, Miss Meeusen brought proceedings before the Commissie van Beroep Studiefinanciering. Before that tribunal, she claimed that the right to study finance could not be made subject to the requirement that the child live or be resident in the territory of the Member State where his parents are employed, any more than it could be related to nationality. In its defence, the IBG contended that the applicant's parents could not be regarded as migrant workers within the meaning of Article 48 of the Treaty, since they do not live in the

Netherlands. For a person to be classified as a migrant worker he would have to have the status of an employee and have established his residence in the host country. As for frontier workers, to which the preamble to Regulation No 1612/68 refers, these are persons working in the immediate proximity of a border.

11 In those circumstances the national court decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. (a) Does a situation such as that in the present case, in which the plaintiff's mother is employed by the limited company of which her husband is the director and sole shareholder, preclude her from being regarded as a migrant worker within the meaning of Article 48 of the EC Treaty and of Regulation (EEC) No 1612/68?

If question 1(a) is answered in the negative:

(b) In the *Bernini* judgment (Case C-3/90 *Bernini* v *Minister van Onderwijs en Wetenschappen* [1992] ECR I-1071) the Court ruled that study finance awarded by a Member State to children of workers constitutes a social advantage to a migrant worker, as provided for in Article 7(2) of Regulation (EEC) No 1612/68, where the worker continues to support the child. In such a case the child may rely on Article 7(2) in order to obtain study finance under the same conditions as are applicable to children of national workers, and in particular without any further requirement as to place of residence.

Does this rule equally apply if the migrant worker must be regarded as a frontier worker?

(c) Does the rule of law in *Bernini*, as stated in question 1(b) above, also apply if the child of a migrant worker, as in the present case, has never lived in the Netherlands?

2. Must Article 52 of the EC Treaty be interpreted in such a way that the safeguard provided for under the rule laid down in *Bernini*, as mentioned above in question 1(b), also applies to the child of a national of a Member State who pursues activities in another Member State as a self-employed person?

To what extent is it also decisive in that connection that the child has never been resident in the Netherlands, and that the parent is not resident in the country in which the activity as a self-employed person is pursued?'

Question 1(a)

12 By this question the national court seeks to ascertain, in substance, whether the fact that a person is related by marriage to the director and sole shareholder of the company for which he pursues his activity precludes that person from being classified as a 'worker' within the meaning of Article 48 of the Treaty and of Regulation No 1612/68.

13 The Court has consistently held that the concept of 'worker', within the meaning of the abovementioned provisions, has a specific Community meaning and must not be interpreted narrowly. Any person who pursues activities which are effective and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. The essential feature of an employment relationship is, according to that case-law, that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (see, in

particular, Case 66/85 *Lawrie-Blum* v *Land Baden-Württemberg* [1986] ECR 2121, paragraphs 16 and 17; and Case C-85/96 *Martínez Sala* v *Freistaat Bayern* [1998] ECR I-2691, paragraph 32).

14 The fact that that person is related by marriage to the director and sole owner of the undertaking is not, of itself, such as to affect that classification.

15 The Court did indeed hold, in Case C-107/94 *Asscher* v *Staatssecretaris van Financiën* [1996] ECR I-3089, paragraph 26, that the director of a company of which he is the sole shareholder is not carrying out his activity in the context of a relationship of subordination, and so he is not to be regarded as a 'worker' within the meaning of Article 48 of the Treaty. However, that result cannot be automatically transposed to his spouse. The personal and property relations between spouses which result from marriage do not rule out the existence, in the context of the organisation of an undertaking, of a relationship of subordination characteristic of an employment relationship.

16 The existence of a relationship of subordination is a matter which it is for the national court to verify.

17 The answer to question 1(a) must therefore be that the fact that a person is related by marriage to the director and sole shareholder of the company for which he pursues an effective and genuine activity does not preclude that person from being classified as a 'worker' within the meaning of Article 48 of the Treaty and of Regulation No 1612/68, so long as he pursues his activity in the context of a relationship of subordination.

Question 1(b) and (c)

18 By these questions, which it is appropriate to examine together, the national court seeks to ascertain, in substance, whether the dependent child of a national of one Member State who pursues an activity as an employed person in another Member State while maintaining his residence in the State of which he is a national can rely on Article 7(2) of Regulation No 1612/68 in order to obtain study finance under the same conditions as are applicable to children of nationals of the State of employment, and in particular without any further requirement as to the child's place of residence.

19 As is clear from *Bernini*, paragraph 25, study finance awarded by a Member State to children of workers constitutes for a migrant worker a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 where the worker continues to support the child.

20 The Netherlands and German Governments submit that that rule cannot be extended to cover the case of a frontier worker. The equality of treatment provided for in Article 7(2) of Regulation No 1612/68 aims, as is evident from the fifth recital in its preamble, only to facilitate the mobility of workers and the integration of the migrant worker and his family in the host State. The granting by the host State, for the child of a worker resident with his family in another Member State, of finance for the pursuit of studies abroad does not come within that context. A residence requirement, as imposed by the national legislation at issue in the main proceedings, is thus objectively justified and proportionate to the objective pursued by Regulation No 1612/68.

21 As the Court held in Case C-57/96 *Meints* v *Minister van Landbouw, Natuurbeheer en Visserij* [1997] ECR I-6689, paragraph 50, that argument disregards the wording of Regulation No 1612/68. It is expressly stated in the fourth recital in the preamble to that regulation that the right of free movement must be enjoyed 'without discrimination by permanent, seasonal and frontier

workers and by those who pursue their activities for the purpose of providing services' and Article 7 of the Regulation refers, without reservation, to a 'worker who is a national of a Member State'. The Court deduced from that and ruled, in *Meints*, that a Member State may not make the grant of a social advantage within the meaning of Article 7 of the Regulation dependent on the condition that the beneficiaries be resident within its territory.

22 It should also be added that the Court has consistently held that the principle of equal treatment laid down in Article 7 of Regulation No 1612/68 is also intended to prevent discrimination to the detriment of descendants dependent on the worker (see Case 94/84 *ONEM* v *Deak* [1985] ECR 1873, paragraph 22). Those descendants can thus rely on Article 7(2) in order to obtain study finance under the same conditions as are applicable to children of national workers (*Bernini*, paragraph 28).

23 It follows that, in a situation where national legislation, such as that in point in the main proceedings, does not impose any residence requirement on the children of national workers for the financing of their studies, such a requirement must be regarded as discriminatory if it is imposed on the children of workers who are nationals of other Member States.

24 Such a requirement would operate to the detriment of, in particular, migrant workers who, by definition, are resident in a Member State where, as a general rule, the members of their family are also resident.

25 In the light of the foregoing, the answer to the questions referred must be that the dependent child of a national of one Member State who pursues an activity as an employed person in another Member State while maintaining his residence in the State of which he is a national can rely on Article 7(2) of Regulation No 1612/68

in order to obtain study finance under the same conditions as are applicable to children of nationals of the State of employment, and in particular without any further requirement as to the child's place of residence.

The second question

26 By this question, the national court seeks to ascertain, in substance, whether the dependent child of a national of one Member State who pursues an activity as a self-employed person in another Member State while maintaining his residence in the State of which he is a national can obtain study finance under the same conditions as are applicable to children of nationals of the State of establishment, and in particular without any further requirement as to the child's place of residence.

27 In that regard, it should be observed that Article 52 of the Treaty confers on nationals of one Member State who wish to pursue activities as self-employed persons in another Member State the benefit of the same treatment as the host State's own nationals and prohibits any discrimination based on nationality which hinders the taking up or pursuit of such activities. As the Court held in Case C-111/91 *Commission* v *Luxembourg* [1993] ECR I-817, paragraph 17, that prohibition covers not only specific rules on the pursuit of occupational activities, but also, as emerges from the General Programme for the abolition of restrictions on the freedom of establishment (OJ, English Special Edition, Second Series (IX), p. 7), any measure which, pursuant to any provision laid down by law, regulation or administrative action in a Member State, or as the result of the application of such a provision, or of administrative practices, hinders nationals of other Member States in their pursuit of activities as self-employed persons by treating nationals of other Member States differently from nationals of the country concerned.

28 That prohibition thus applies to the imposition of a residence requirement in respect of the grant of a social advantage where it has been established that that requirement is discriminatory in nature (*Commission* v *Luxembourg*, cited above, paragraph 18).

29 The principle of equal treatment thus laid down is also intended to prevent discrimination to the detriment of descendants who are dependent on a self-employed worker. It precludes, therefore, the imposition of a residence requirement such as that provided for in the national legislation concerned which, as stated in paragraph 23 of this judgment, must be regarded as discriminatory.

30 In the light of the foregoing, the answer to the second question must be that the dependent child of a national of one Member State who pursues an activity as a self-employed person in another Member State while maintaining his residence in the State of which he is a national can obtain study finance under the same conditions as are applicable to children of nationals of the State of establishment, and in particular without any further requirement as to the child's place of residence.

Costs

31 The costs incurred by the Netherlands and German Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Commissie van Beroep Studiefinanciering by order of 26 September 1997, hereby rules:

1. **The fact that a person is related by marriage to the director and sole shareholder of the company for which he pursues an effective and genuine activity does not preclude that person from being classified as a 'worker' within the meaning of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, so long as he pursues his activity in the context of a relationship of subordination;**

2. **The dependent child of a national of one Member State who pursues an activity as an employed person in another Member State while maintaining his residence in the State of which he is a national can rely on Article 7(2) of Regulation No 1612/68 in order to obtain study finance under the same conditions as are applicable to children of nationals of the State of employment, and in particular without any further requirement as to the child's place of residence;**

3. **The dependent child of a national of one Member State who pursues an activity as a self-employed person in another Member State while maintain-**

ing his residence in the State of which he is a national can obtain study finance under the same conditions as are applicable to children of nationals of the State of establishment, and in particular without any further requirement as to the child's place of residence.

Puissochet Jann Moitinho de Almeida

Gulmann Edward

Delivered in open court in Luxembourg on 8 June 1999.

R. Grass J.-P. Puissochet

Registrar President of the Fifth Chamber