Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

18 July 2013 *

(Citizenship of the Union — Articles 20 TFEU and 21 TFEU — Right of freedom of movement and residence — Education or training grant awarded to nationals of a Member State in order to pursue their studies in another Member State — Requirement of residence in the home Member State for at least three years prior to the commencement of studies)

In Joined Cases C-523/11 and C-585/11,

REQUEST for a preliminary ruling under Article 267 TFEU made by the Verwaltungsgericht Hannover (Germany) and the Verwaltungsgericht Karlsruhe (Germany), by decisions of 5 October and 16 November 2011 respectively, received at the Court on 13 October and 24 November 2011, in the proceedings

Laurence Prinz

v

Region Hannover (C-523/11),

and

Philipp Seeberger

v

Studentenwerk Heidelberg (C-585/11),

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as Judge of the Third Chamber, E. Jarašiūnas, A. Ó Caoimh (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 29 November 2012,

after considering the observations submitted on behalf of:

— Mr Seeberger, by M.Y. Popper, Rechtsanwalt,

* Language of the case: German.

— the German Government, by T. Henze and J. Möller, acting as Agents,

— the Danish Government, by V. Pasternak Jørgensen and C. Thorning, acting as Agents,

— the Greek Government, by G. Papagianni, acting as Agent,

— the Netherlands Government, by B. Koopman and C. Wissels, acting as Agents,

— the Austrian Government, by C. Pesendorfer and G. Eberhard, acting as Agents,

— the Finnish Government, by M. Pere and J. Leppo, acting as Agents,

— the Swedish Government, by A. Falk, C. Stege and U. Persson, acting as Agents,

— the European Commission, by S. Grünheid, D. Roussanov and V. Kreuschitz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 February 2013,

gives the following

Judgment

1 The requests for a preliminary ruling concern the interpretation of Articles 20 TFEU and 21 TFEU.

2 Those requests have been made in proceedings between Ms Prinz, a German national and Region Hannover (Hanover Region, Department for Education and Training Grants) and Mr Seeberger, also a German national and Studentenwerk Heidelberg, Amt für Ausbildungsförderung (Student Administration, Heidelberg, Office for Education and Training Assistance; 'Studentenwerk') concerning the right to a grant for studies in educational establishments in Member States other than the Federal Republic of Germany.

Legal context

3 Under the heading 'Education and training abroad', Paragraph 5 of the Federal Law on assistance for education and training [Bundesgesetz über individuelle Förderung der Ausbildung (Bundesausbildungsförderungsgesetz)], as amended on 1 January 2008, by the twenty-second law amending the Federal Law on assistance for education and training (BGBl. I, p. 3254; 'the BAföG'), states:

'1. Permanent residence for the purposes of this Law shall be established in the place where, in a manner which is not merely temporary, the person concerned has his centre of family interests, without any requirement that he intends to be permanently established there. A person who resides in a place solely for the purposes of education or training has not established his permanent residence there.

2. Students who have their permanent residence in Germany shall be awarded an education or training grant for attending an education or training establishment abroad if:

…

(3) the student commences or continues his education or training in an educational establishment in a Member State of the European Union or in Switzerland.

…’

4 Paragraph 6 of the BAföG, entitled ‘Grants for education or training for German citizens abroad’ provides that German nationals whose permanent residence is situated in a foreign State and who attend an educational institution there or who attend an establishment situated in a neighbouring State from that residence may receive an education or training grant where the particular circumstances of a specific case justify one.

5 Paragraph 16 of the BAföG, entitled ‘Duration of the grant for education or training abroad’ is worded as follows:

‘1. For education or training abroad within the meaning of Paragraph 5(2)(1) or (5), the education or training grant shall be paid for a maximum period of one year …

…

3. In the cases referred to in Paragraph 5(2)(2) and 5(2)(3) receipt of the education or training grant is not subject to the time limit laid down in Paragraph 5(1) and (2). However, as regards the cases referred to in Paragraph 5(2)(3), the grant shall be paid for more than one year only if, when the student commenced his residence abroad after 31 December 2007, his permanent residence was situated in Germany for a minimum of 3 years.’

Background to the disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-523/11

6 Ms Prinz, who was born in Germany in 1991, lived with her family for 10 years in Tunisia where her father was employed by a German company. On her return to Germany, in January 2007, Ms Prinz finished her studies in Frankfurt (Germany) where she obtained the baccalaureat (Abitur) in June 2009. She commenced her studies at the Erasmus University in Rotterdam (Netherlands) on 1 September 2009.

7 In response to an application for an education grant for the academic year 2009/2010 made by Ms Prinz on 18 August 2009, the Region Hannover, by decision of 30 April 2010, awarded that grant for the period from September 2009 to August 2010.

8 However, the grant application submitted by Ms Prinz for the academic year 2010/2011 was rejected, by decision of 4 May 2010, on the ground that since she did not fulfill the condition of residence laid down by the BAföG she could not claim an education grant for an unlimited period, her rights being limited, in accordance with Paragraph 16(3) of that law to a period of one year.

9 On 1 June 2010, Ms Prinz brought an action against that decision. She argued that she fulfilled the condition in question as she had resided in Germany from September 1993 until April 1994 and from January 2007 until August 2009, that is, for three years and four months. She also argued that the residence condition laid down by the BAföG is contrary to Article 21 TFEU and relied on the connections she had maintained with the Member State concerned, explaining that she was born there, has German nationality, that she left that Member State only because of her father’s work transfer and that she had always maintained links with her country of origin. According to Ms Prinz, residence of a further four months would not have significantly strengthened those links.

10 The Region Hannover submits that the minimum period of three years laid down in Paragraph 16(3) of the BAföG necessarily corresponds to a continuous period. That law does not infringe European law on freedom of movement and residence in any way since that right does not impose any obligation on Member States to award grants to its own nationals without limits.

11 The national court queries the compatibility with European Union law of a residence condition such as that at issue in the main proceedings. It takes the view that, like the condition applicable before the entry into force of the twenty-second law amending the Federal Law on assistance for education and training, which was the obligation to have attended a German educational establishment for at least one year, the condition at issue in the main proceedings might dissuade a citizen of the European Union from commencing his studies in another Member State, since, after one year, he would no longer receive an education or training grant. According to that court, although it may be legitimate for a Member State to award education or training grants only to students who have shown a certain degree of integration into the society of that State, the criterion based on continuous residence of three years in Germany prior to the start of the residence abroad is not of such a nature as to establish the existence of such integration.

12 In those circumstances, the Verwaltungsgericht Hannover decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Does it constitute a restriction of the right to freedom of movement and residence conferred on citizens of the European Union by Articles 20 and 21 TFEU, which is not justified under [EU] law, if pursuant to the [BAföG], a German national, who has her permanent residence in Germany and attends an education establishment in a Member State of the European Union, is awarded an education grant for attending that education establishment abroad for only one year because when she commenced her stay abroad she had not already had her permanent residence in Germany for at least three years?’

Case C-585/11

13 Mr Seeberger, who was born in Germany in 1983, lived there until 1994 with his parents who are also German nationals. He attended primary and then secondary school in Munich (Germany) from 1989 to 1994. From 1994 until December 2005 he lived with his parents in Majorca (Spain), where his father worked as a self-employed business consultant.

14 In January 2006, Mr Seeberger’s parents settled in Cologne (Germany). Although Mr Seeberger was registered in the Munich population register only from 26 October 2006, he maintains that from January 2006 his permanent residence was in Germany.

15 In September 2009, Mr Seeberger began a course in Economics at the University of the Balearics in Palma de Majorca (Spain) and submitted an application for an educational grant to the Studentenwerk.

16 The Studentenwerk rejected that application on the ground that the fact that Mr Seeberger did not fulfill the residence condition laid down in Paragraph 16(3) of the BAföG precluded him from receiving that grant pursuant to Paragraph 5(2), first sentence, point three thereof.

17 Relying on his rights to freedom of movement as a citizen of the European Union, Mr Seeberger brought an action against that decision which was rejected by the Studentenwerk by decision of 14 June 2010.

18 In an action brought before the Verwaltungsgericht Karlsruhe, Mr Seeberger argued that the residence condition laid down by Paragraph 16(3) of the BAföG infringed his right to freedom of movement, since it obliged him either to give up his permanent residence in another Member State or to transfer in time his permanent residence back to Germany, failing which he would risk the award of the education grant for his studies in Spain. In that connection, he submits that his right to be admitted to higher education is recognised only in Spain and that he wishes to pursue all his studies in that Member State.

19 The Studentenwerk contends that since the residence requirement laid down by the BAföG applies in the same way to all nationals, it may apply to citizens of the European Union from other Member States who have the right to freedom of movement. That obligation merely gives concrete expression to the legitimate interest of the Member State which pays social benefits that those benefits, paid from public funds financed by taxes, are reserved to categories of persons who are able to demonstrate a minimum level of integration into the Member State paying those benefits.

20 In its order for reference, the Verwaltungsgericht Karlsruhe states that the residence requirement at issue in the main proceedings does not apply to a grant for education or training in Germany. It observes that such a residence condition, on account of the personal disadvantages, additional costs and possible delays that it involves, may dissuade citizens of the European Union from leaving Germany in order to study in another Member State. That court expresses doubts as to whether the requirement that the applicant for the grant must have established his residence in Germany for at least three years when he starts the education or training is justified and asks whether a certain degree of integration in the society of that Member State that the latter may legitimately require should not be recognised in the case in the main proceedings on the ground that the applicant, a German national, was raised by his parents in Germany and had completed his schooling until the 'sixth' class when he moved with his family, at 12 years of age, because his father had exercised his rights under Articles 45 TFEU and 49 TFEU. According to that court, a criterion based on a specific date and a period of three years prior to the commencement of education or training abroad appears prima facie inappropriate as a means of demonstrating the required integration.

21 Accordingly, the Verwaltungsgericht Karlsruhe decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does European Union law preclude national legislation which denies an education or training grant for studies in another Member State solely on the ground that the student, who has exercised the right to freedom of movement, has not, at the commencement of the studies, had his permanent residence in his Member State of origin for at least three years?'

Consideration of the questions referred

22 By these questions, which it is appropriate to examine together, the referring courts ask essentially whether Articles 20 TFEU and 21 TFEU must be interpreted as meaning that they preclude the legislation of a Member State which makes the award of an education grant for studies in another Member State for a period of more than one year subject to a sole condition, such as that laid down in Paragraph 16(3) of the BAföG, that requires the applicant to have a permanent residence, within the meaning of that law, in national territory for at least three years prior to commencing those studies.

23 First of all, it must be recalled that, as German nationals, Ms Prinz and Mr Seeberger enjoy the status of citizens of the Union under Article 20(1) TFEU and may therefore rely on the rights conferred on those having that status, including against their Member State of origin (see, Case C-192/05 *Tas-Hagen and Tas* [2006] ECR I-10451, paragraph 19, and Joined Cases C-11/06 and C-12/06 *Morgan and Bucher* [2007] ECR I-9161, paragraph 22).

24 As the Court has repeatedly held, Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy within the scope *ratione materiae* of the TFEU the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for (Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31; Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 28; and Case C-46/12 *N.* [2013] ECR, paragraph 27).

25 The situations falling within the scope of European Union law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 21 TFEU (*Tas-Hagen and Tas*, paragraph 22; Case C-76/05 *Schwarz and Gootjes-Schwarz* [2007] ECR I-6849, paragraph 87 and the case-law cited; and *Morgan and Bucher*, paragraph 23).

26 In that connection, it must be recalled, as the German Government and the Commission have observed, that although the Member States are competent, under Article 165(1) TFEU as regards the content of teaching and the organisation of their respective education systems, it is none the less the case that that competence must be exercised in compliance with European Union law and, in particular, in compliance with the Treaty provisions on the freedom to move and reside within the territory of the Member States, as conferred by Article 21(1) TFEU (see, *Morgan and Bucher*, paragraph 24 and the case-law cited).

27 National legislation which places at a disadvantage certain of the nationals of the Member State concerned simply because they have exercised their freedom to move and to reside in another Member State is a restriction on the freedoms conferred by Article 18(1) EC on every citizen of the Union (see Case C-406/04 *De Cuyper* [2006] ECR I-6497, paragraph 39; *Tas-Hagen and Tas*, paragraph 31; and *Morgan and Bucher*, paragraph 25).

28 Indeed, the opportunities offered by the Treaty in relation to freedom of movement for citizens of the Union cannot be fully effective if a national of a Member State can be deterred from availing himself of them by obstacles placed in the way of his stay in another Member State by legislation of his State of origin penalising the mere fact that he has used those opportunities (see, to that effect, *D'Hoop*, paragraph 31; Case C-224/02 *Pusa* [2004] ECR I-5763, paragraph 19; and *Morgan and Bucher*, paragraph 26).

29 That consideration is particularly important in the field of education in view of the aims pursued by Article 6(e) TFEU and the second indent of Article 165(2) TFEU, namely, inter alia, encouraging mobility of students and teachers (see *D'Hoop*, paragraph 32; Case C-147/03 *Commission* v *Austria* [2005] ECR I-5969, paragraph 44; and *Morgan and Bucher*, paragraph 27).

30 Consequently, where a Member State provides for a system of education or training grants which enables students to receive such grants if they pursue studies in another Member State, it must ensure that the detailed rules for the award of those grants do not create an unjustified restriction of the right to move and reside within the territory of the Member States laid down in Article 21 TFEU (see *Morgan and Bucher*, paragraph 28).

31 It must be stated that a condition of uninterrupted residence of three years, like that laid down in Article 16(3) of the BAföG, even though it applies without distinction to German nationals and other citizens of the European Union, constitutes a restriction on the right to freedom of movement and residence enjoyed by all citizens of the Union pursuant to Article 21 TFEU.

32 Such a condition is likely to dissuade nationals, such as the applicants in the main proceedings, from exercising their right to freedom of movement and residence in another Member State, given the impact that exercising that freedom is likely to have on the right to the education or training grant.

33 According to settled case-law, legislation which is likely to restrict a fundamental freedom guaranteed by the Treaty can be justified in the light of European Union law only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and if it is proportionate to the legitimate objective pursued by the provisions of national law (see *De Cuyper*, paragraph 40; *Tas-Hagen and Tas*, paragraph 33; and *Morgan and Bucher*, paragraph 33) It also follows from the case-law that a measure is proportionate when, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in order to attain it (*De Cuyper*, paragraph 42; *Morgan and Bucher*, paragraph 33; and Case C-379/11 *Caves Krier Frères* [2012] ECR, paragraph 48 and the case-law cited).

34 In the present cases, the German Government contends that the BAföG is based on objective considerations of public interest. Paragraph 16(3) of that law guarantees that an education grant for a full course of studies abroad is paid only to students able to demonstrate a sufficient degree of integration into German society. The requirement of a minimum level of integration thus preserves the national scheme for education grants for studies abroad by protecting the State paying the grant from an unreasonable financial burden.

35 According to that government, it is therefore legitimate to provide financial support for their entire course of studies abroad only to students who demonstrate a sufficient level of integration in Germany, that evidence being invariably produced by a student in a position to fulfill the condition of three years' continuous residence.

36 In that connection, it is true that the Court has recognised that it may be legitimate for a Member State, in order to ensure that the grant of assistance to cover the maintenance costs of students from other Member States does not become an unreasonable burden which could have consequences for the overall level of assistance which may be granted by that State, to grant such assistance only to students who have demonstrated a certain degree of integration into the society of that State, and that if a risk exists that a Member State may have to bear such an unreasonable burden, similar considerations may apply as regards the award by that State of education or training grants to students wishing to study in other Member States (*Morgan and Bucher*, paragraphs 43 and 44 and the case-law cited).

37 However, according to settled case-law, the proof required to demonstrate the genuine link must not be too exclusive in nature or unduly favour one element which is not necessarily representative of the real and effective degree of connection between the claimant and this Member State, to the exclusion of all other representative elements (see, to that effect, *D'Hoop,* paragraph 39; Case C-503/09 *Stewart* [2011] ECR I-6497, paragraph 95; and Case C-75/11 *Commission* v *Austria* [2012] ECR, paragraph 62).

38 Although the existence of a certain level of integration may be regarded as established by the finding that a student has resided in the Member State where he may apply for an education or training grant for a certain period, a sole condition of residence, such as that at issue in the main proceedings, risks, as the Advocate General observes in point 95 of her Opinion, excluding from funding students who, despite not having resided for an uninterrupted period of three years in Germany immediately prior to studying abroad, are nevertheless sufficiently connected to German society. That may be the case where the student is a national of the State concerned and was educated there for a significant period or on account of other factors such as, in particular, his family, employment, language skills or the existence of other social and economic factors. Furthermore, other provisions of the legislation at issue in the main proceedings themselves permit factors distinct from the place of residence of the applicant for the grant to be relevant, both in order to establish the centre of family interests of the person concerned and to determine whether the conditions for the award of the grant are fulfilled in the case of home-country nationals who have established their permanent residence abroad.

39 Taking account of the foregoing, it is for the national court to carry out the necessary checks in order to determine whether the persons concerned can prove a sufficient level of connection with German society capable of demonstrating their integration into that society.

40 It follows that a sole condition of uninterrupted residence of three years, such as that at issue in the main proceedings, is too general and exclusive, and goes beyond what is necessary to achieve the objectives pursued and cannot, therefore, be regarded as proportionate.

41 Having regard to all of the foregoing considerations, the answer to the questions referred is that Articles 20 TFEU and 21 TFEU must be interpreted as meaning that they preclude legislation of a Member State which makes the award of an education grant for studies in another Member State for a period of more than one year subject to a sole condition, such as that laid down in Paragraph 16(3) of the BAföG, requiring the applicant to have had a permanent residence, within the meaning of that law, in national territory for at least three years before commencing those studies.

Costs

42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Articles 20 TFEU and 21 TFEU must be interpreted as meaning that they preclude legislation of a Member State which makes the award of an education grant for studies in another Member State for a period of more than one year subject to a sole condition, such as that laid down in Paragraph 16(3) of the Federal Law on assistance for education and training [Bundesgesetz über individuelle Förderung der Ausbildung (Bundesausbildungsförderungsgesetz)], as amended on 1 January 2008, by the twenty-second law amending the Federal Law on assistance for education and training, requiring the applicant to have had a permanent residence, within the meaning of that law, in national territory for at least three years before commencing those studies.

[Signatures]