JUDGMENT OF THE COURT (First Chamber)

15 September 2005 *

In Case C-258/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Cour du travail de Liège (Belgium), made by decision of 7 June 2004, received at the Court on 17 June 2004, in the proceedings

Office national de l'emploi

v

Ioannis Ioannidis,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric, J.N. Cunha Rodrigues (Rapporteur), M. Ilešič and E. Levits Judges,

* Language of the case: French.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Office national de l'emploi, by Y. Denoiseux and G. Lewalle, avocats,

— the Belgian Government, by Y. Denoiseux and G. Lewalle, avocats,

— the Greek Government, by S. Bodina, Z. Chatzipavlou and M. Apessos, acting as Agents,

— the Commission of the European Communities, by M. Condou and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 June 2005,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Articles 12 EC, 17 EC and 18 EC.

2 This reference has been made in the course of proceedings between Mr Ioannidis and the Office national de l'emploi (National Employment Office, hereinafter 'ONEM') regarding the latter's decision to refuse to grant the respondent the tideover allowance provided for under Belgian law.

Law

Community law

3 The first paragraph of Article 12 EC provides:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

4 Article 17 EC states:

'1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union ...

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.'

5 Article 18(1) EC provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give it effect.

6 Under Article 39(2) EC freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

7 Under Article 39(3) freedom of movement for workers '... shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

...'

8 According to Article 7(2) 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), as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1), (hereinafter 'Regulation No 1612/68'), a worker who is a national of a Member State shall enjoy, in the territory of another Member State, the same social and tax advantages as national workers.

National law

9 Belgian legislation provides for the grant of unemployment benefits, known as 'tideover allowances', to young people who have just completed their studies and are seeking their first employment

10 Article 36(1), first subparagraph, of the Royal Decree of 25 November 1991 on unemployment (*Moniteur belge* of 31 December 1991, p. 29888), as amended by the Royal Decree of 13 December 1996 (*Moniteur belge* of 31 December 1996, p. 32265), (hereinafter 'the Royal Decree'), provides:

'To qualify for a tideover allowance, the young worker must have:

(1) completed his compulsory education;

(2) (a) completed full-time higher secondary education or technical or vocational training at an educational establishment run, subsidised or approved by a [Belgian] community;

...

(h) pursued education or training in another Member State of the European Union provided that both the following conditions are fulfilled:

— the young person provides documentation which shows that the education or training is of the same level as, and equivalent to, that mentioned under the previous headings of this point;

— at the time of the application for the allowance the young person is the dependent child of migrant workers for the purposes of Article 48 of the EC Treaty who are residing in Belgium.

...'

The main proceedings and the question submitted for a preliminary ruling

11 After completing his secondary education in Greece, Mr Ioannidis, who is of Greek nationality, arrived in Belgium in 1994. The certificate of education issued to him in Greece was recognised as being equivalent to the approved certificate of higher secondary education giving access to vocational higher education in Belgium.

12 After a three-year period of study, Mr Ioannidis obtained a graduate diploma in physiotherapy from the Haute école de la province de Liège André Vésale on 29 June 2000 and then registered as a job-seeker looking for full-time employment at the Office communautaire et régional de la formation professionnelle et de l'emploi (Community and Regional Office for Vocational Training and Employment).

13 From 10 October 2000 to 29 June 2001 Mr Ioannidis followed, in France, a paid training course in vestibular rehabilitation under an employment contract as a technician with a professional partnership of doctors specialising in oto-rhino-laryngology.

14 On 7 August 2001, after having returned to Belgium, Mr Ioannidis submitted an application for a tideover allowance to ONEM.

15 By decision of 5 October 2001, ONEM rejected that application on the ground that Mr Ioannidis had not completed his secondary education at an educational establishment run, subsidised or approved by one of the three communities in Belgium, as required by heading 2(a) of the first subparagraph of Article 36(1) of the Royal Decree.

16 Mr Ioannidis contested that decision before the Tribunal du travail (Labour Court), Liège. In its decision of 7 October 2002, that court annulled the decision, declaring that 'at the time of his application for the allowance, the applicant (was) himself a migrant worker, having worked in France' and that 'Article 36 of the Royal Decree ... as interpreted by the administration, is clearly contrary to Article [39 EC]'.

17 Hearing the appeal brought by ONEM against that decision, the Cour du travail (Higher Labour Court), Liège, found that Mr Ioannidis did not fulfil any of the alternative conditions laid down by the national rules. In particular, he did not satisfy either the requirements of heading 2(a) of the first subparagraph of Article 36(1) of the Royal Decree, as he had not completed his secondary education in Belgium, or

the requirements of heading (h) of that provision. The referring court observes that the respondent completed his upper secondary education in another Member State, which the documents produced show to be equivalent to and of the same level as that mentioned in heading (a) of the same provision in the Royal Decree. On the other hand, according to that court, no document or item in the file establishes that, on the date of lodging the application for a tideover allowance, Mr Ioannidis' parents were migrant workers residing in Belgium.

18 As it was unsure as to the existence of possible indirect discrimination against Mr Ioannidis due to the fact that he was refused a tideover allowance on the sole ground that he had not completed his higher secondary education at an educational establishment run, subsidised or approved by the Belgian State although he had successfully completed equivalent education in his country of origin, the Cour du travail de Liège decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is it contrary to Community law (in particular Articles 12 [EC], 17 [EC] and 18 ... [EC] for rules of a Member State (such as, in Belgium, the Royal Decree of 25 November 1991 on unemployment) which provide for a tideover allowance to be given to job-seekers who are (in principle) less than 30 years old on the basis of the secondary education they have completed to apply to job-seekers who are nationals of another Member State the condition, applicable equally to its own nationals, that the allowance is granted only if the required education has been completed in an educational establishment run, subsidised or recognised by one of the three national Communities (as laid down in the Royal Decree by heading 2(a) of the first subparagraph of Article 36(1)), with the result that the tideover allowance is refused in the case of a young job-seeker who is not a member of the family of a migrant worker, but who is a national of another Member State in which, before moving within the Union, he had pursued and completed secondary education, recognised as equivalent to the education required by the authorities of the State in which the application for the tideover allowance has been made?'

The question referred for a preliminary ruling

19 By its question the national court is asking essentially whether it is contrary to Community law for a Member State to refuse a tideover allowance to a national of another Member State who is seeking his first employment on the sole ground that he completed his secondary education in another Member State.

20 It should be noted at the outset that the fact that the national court has formulated the question referred for a preliminary ruling with reference to certain provisions of Community law does not preclude the Court from providing to the national court all the elements of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions (see, in particular, Case C-241/89 *SARPP* [1990] ECR I-4695, paragraph 8, and Case C-456/02 *Trojani* [2004] ECR I-7573, paragraph 38).

21 In this case, it must be borne in mind that nationals of a Member State seeking employment in another Member State fall within the scope of Article 39 EC and therefore enjoy the right to equal treatment laid down in paragraph 2 of that provision.

22 The Court has already held that, in view of the establishment of citizenship of the Union and the interpretation of the right to equal treatment enjoyed by citizens of the Union, it is no longer possible to exclude from the scope of Article 39(2) EC a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State (Case C-138/02 *Collins* [2004] ECR I-2703, paragraph 63).

23 It is common ground that the tideover allowances provided for by the national legislation at issue in the main proceedings are social benefits, the aim of which is to facilitate, for young people, the transition from education to the employment market (Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 38).

24 It is also common ground that, on the date of lodging the application for the allowance, Mr Ioannidis was a national of a Member State who, having completed his education, was seeking employment in another Member State.

25 In those circumstances the defendant is justified in relying on Article 39 EC to claim that he cannot be discriminated against on the basis of nationality as far as the grant of a tideover allowance is concerned.

26 According to settled case-law, the principle of equal treatment prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, lead in fact to the same result (see, inter alia, Case 152/73 *Sotgiu* [1974] ECR 153, paragraph 11, and Case C-209/03 *Bidar* [2005] ECR I-2119, paragraph 51).

27 The national legislation at issue in the main proceedings introduces a difference in treatment between citizens who have completed their secondary education in

Belgium and those who have completed it in another Member State with only the former having a right to a tideover allowance.

28 That condition could place, above all, nationals of other Member States at a disadvantage. Inasmuch as it links the grant of that allowance to the requirement that the applicant has obtained the required diploma in Belgium, that condition can be met more easily by Belgian nationals.

29 Such a difference in treatment can be justified only if it is based on objective considerations which are independent of the nationality of the persons concerned and proportionate to the aim legitimately pursued by the national law (Case C-237/94 *O'Flynn* [1996] ECR I-2617, paragraph 19, and *Collins*, paragraph 66).

30 As the Court has already held, it is legitimate for the national legislature to wish to ensure that there is a real link between the applicant for that allowance and the geographic employment market concerned (*D'Hoop*, paragraph 38).

31 However, a single condition concerning the place where the diploma of completion of secondary education was obtained is too general and exclusive in nature. It unduly favours an element which is not necessarily representative of the real and effective degree of connection between the applicant for the tideover allowance and the geographic employment market, to the exclusion of all other representative elements. It therefore goes beyond what is necessary to attain the objective pursued (*D'Hoop*, paragraph 39).

32 Moreover, it is apparent from heading 2(h) of the first subparagraph of Article 36(1) of the Royal Decree that a job-seeker who has not completed his secondary education in Belgium nevertheless has a right to a tideover allowance if he has pursued education or training of the same level and equivalent thereto in another Member State and if he is the dependent child of migrant workers for the purposes of Article 39 EC who are residing in Belgium.

33 The fact that Mr Ioannidis' parents are not migrant workers residing in Belgium cannot in any event provide a reason for refusing to grant the allowance applied for. That condition cannot be justified by the wish to ensure that there is a real link between the applicant and the geographic employment market concerned. Admittedly it is based on an element which can be considered as representative of a real and effective degree of connection. However, it is not inconceivable that a person, like Mr Ioannidis, who, after completing secondary education in a Member State, pursues higher education in another Member State and obtains a diploma there, may be in a position to establish a real link with the employment market of that State, even if he is not the dependent child of migrant workers residing in that State. Therefore, such a condition also goes beyond what is necessary to attain the objective pursued.

34 It must be added that the tideover allowance constitutes a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 (*D'Hoop*, paragraph 17).

35 According to settled case-law, the principle of equal treatment laid down in Article 7 of Regulation No 1612/68, which extends to all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory, is also intended to prevent discrimination

to the detriment of descendants dependent on the worker (see, in particular, Case 32/75 *Cristini* [1975] ECR 1085, paragraph 19, Case 94/84 *Deak* [1985] ECR 1873, paragraph 22, and Case C-337/97 *Meeusen* [1999] ECR I-3289, paragraph 22).

36 It follows that dependent children of migrant workers who are residing in Belgium derive their right to a tideover allowance from Article 7(2) of Regulation No 1612/68 regardless of whether in that situation there is a real link with the geographic employment market concerned.

37 Having regard to the aforementioned considerations, it is not necessary to rule on the interpretation of Articles 12 EC, 17 EC and 18 EC.

38 Therefore, the answer to the question referred to the Court must be that it is contrary to Article 39 EC for a Member State to refuse to grant a tideover allowance to a national of another Member State seeking his first employment who is not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State.

Costs

39 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. The costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

It is contrary to Article 39 EC for a Member State to refuse to grant a tideover allowance to a national of another Member State seeking his first employment, who is not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State.

[Signatures]