OPINION OF ADVOCATE GENERAL
STIX-HACKL
delivered on 14 September 2006 [1]

I — Introduction

1. By the three questions which it referred for a preliminary ruling pursuant to an order of 1 February 2005, the Överklagandeämd för Högskolan (Swedish Board of Appeals for Higher Education) essentially wishes to ascertain whether it is compatible with Community law, in particular Article 12 EC, for participation in a special teacher training programme (särskild lärarutbildning; the 'SÄL programme'), intended in the short term to meet the need for teachers in Sweden, to be made subject to the condition that applicants must be employed in a Swedish school.

2. These proceedings have their origin in an appeal which Mr Lyyski has brought against the decision of the Umeå universitet (University of Umeå) to deny him access to the teacher training in question on the ground that he is not employed in a Swedish school.

1 — Original language: English.

II — The national rules governing teacher training in general and the contested SÄL teacher training programme in particular

A — *The Skollag*

3. The conditions governing employment as a teacher in the State school system in Sweden are laid down in the skollagen (Law on schools) (Law No 1985: 1100).

4. Under Chapter 2, Paragraph 4, subparagraphs 1 and 2, of the skollagen, a person is eligible for employment without limit as to time as a teacher, pre-school teacher or recreation instructor in the State school system if he has passed the Swedish teaching examination or the child and youth education examination (or has successfully completed corresponding previous training) or

has received from the Högskoleverk (National Agency for Higher Education) a certificate of competence in accordance with Paragraphs 4a and 4b of that law.

5. The latter paragraphs provide for the issue of a certificate of competence in respect of equivalent training acquired outside Sweden.

6. However, under Chapter 2, Paragraph 4, subparagraph 2, of the skollagen, where there are insufficient qualified candidates, a person who does not hold the aforementioned qualifications may also, in certain circumstances, be employed without limit as to time as a teacher, if he holds a professional qualification appropriate to the subjects concerned and there is reason to believe that the candidate is suited to teaching.

7. Persons who do not fulfil the conditions governing employment without limit as to time under Chapter 2, Paragraph 4, subparagraphs 1 and 2, of the skollagen may work as teachers in the State school system for a limited period of time. As the Swedish Government confirmed at the hearing, such short-term appointments are not subject to any minimum conditions.

B — *The SÄL programme*

8. As the referring court and the Swedish Government have explained, in Sweden, the sharp increase in the number of pupils and the large number of staff retiring from the profession have led to a considerable need for additional teachers in the years ahead. In Sweden, there is, in particular, a shortage of students who satisfy the conditions necessary for entry into higher education, especially in fields such as mathematics, the natural sciences and technology. As the number of school leavers going on to study those subjects cannot at present be adequately increased through standard higher education courses, the Swedish Government introduced the SÄL special teacher training programme, which is intended in the short term to increase the number of qualified teachers within the next few years. The Swedish Parliament earmarked special funds for the SÄL programme, which involves enhanced cooperation between the municipal employers and the academic teacher training institutions.

9. The rules governing the SÄL programme are laid down in Förordning (2001:740) om särskilda lärarutbildningar (Regulation No 740 of 2001 on special teacher training; the 'SÄL Regulation'). Under that regulation, the Swedish Government gave six universities

and colleges special responsibility for training teachers not qualified for employment without limit as to time in a Swedish school.

10. Persons eligible for admission to the special teacher training are, on the one hand, in accordance with Paragraph 6, subparagraph 1, of the SÄL Regulation, those who do not satisfy the conditions governing employment without limit as to time under Chapter 2, Paragraph 4, subparagraphs 1 and 2, of the skollagen. Such persons must, on the basis of earlier higher education or work experience, have the capacity to pass a teaching examination in the subject or subject area to which the training relates, and must be employed as a teacher under the principal of a school at which the practical components of the training can take place.

11. On the other hand, under Paragraph 6, subparagraph 2, of the SÄL Regulation, an applicant qualified for employment without limit as to time under Chapter 2, Paragraphs 1 and 2, of the skollagen is eligible for admission to the special teacher training if, as a result of that training, he will be qualified to teach one or more additional subjects or subject areas.

12. Furthermore, Paragraph 7 of the SÄL Regulation provides that the applicant must have completed higher education to such a level that the teaching examination under Paragraph 6, subparagraph 1, of the Regulation or the additional qualification under Paragraph 6, subparagraph 2, of the Regulation can be attained. Corresponding knowledge which the applicant has acquired in or outside Sweden is deemed to be equivalent to the higher education required.

13. Under Paragraph 9 of the SÄL Regulation, admission to the training must be effected by the college within the period from 1 November 2001 to 31 December 2005.

14. Under Paragraph 10 of the SÄL Regulation, the training must be delivered on at least a half-time basis and must be completed by 31 December 2006 at the latest. The total period of training for an individual student must be no longer than three terms and may represent a credit of no more than 60 study points. Since, as became clear from the Swedish Government's submissions at the hearing, the teaching examination generally equates to 140 points, the only candidates eligible to take part in the SÄL programme are therefore those who have already completed a course of higher education and/or acquired work experience equal to at least 80 points.

15. The special teacher training is tailored to each individual candidate on the basis of his

previous education, his work experience and the qualification which he wishes to obtain.

16. According to the information from the Swedish Government, the special teacher training consists essentially of a theoretical component and a practical component, it being important to distinguish the practical component from the teaching activities performed by the teacher (on a part-time basis) in the school at which he is employed. Considered as a whole, the special teacher training is the product of collaboration between the colleges, the municipal school and the teacher. During the period of study, the municipality or the employer guarantees employment at a school on at least a half-time basis, with study being combined with work/practice. The relationship between the theoretical and practical components of the special teacher training and the content of that training are themselves very much dictated by the individual candidate. It is worth noting here that the Commission has submitted — without contradiction in this regard — that the training in question essentially constitutes a distance learning course, which requires little physical attendance.

17. According to information from the Swedish Government, a person who successfully completes the special teacher training has no right to employment without limit as to time as a teacher but will in practice usually be taken onto the staff of the school at which he is already working.

III — Facts, procedure and questions referred

18. The Swedish national Kai Lyyski applied in the autumn term 2004 to the Umeå universitet for a place on the SÄL special teacher training programme, in the subject option woodwork and metalwork, which carries a credit of 40 to 60 points. In his application, he stated that, for the training period 2004 to 2006, he would be employed as a teacher in the senior forms (of the combined primary and secondary 'compulsory school') at a Swedish-language school in Åbo, Finland. In the decision at issue in the main proceedings, the Umeå universitet took the view that Mr Lyyski had not thereby shown that he was eligible for admission to the training, since he was not employed in a Swedish school. As a result of that decision, which the university took on the basis of an interpretation of the SÄL Regulation, Mr Lyyski was denied admission to the special teacher training programme.

19. Mr Lyyski appealed against that decision by the university to the Överklagandenämd för Högskolan, the referring court, and sought a declaration recognising his eligibility for admission.

20. Before the referring court, the Umeå universitet justifies its decision primarily by reference to the main purpose of the SÄL programme, as laid down in Paragraph 3 of

the SÄL Regulation, that is to say to meet in the short term the need for qualified teachers in Swedish schools. In the view of the university, the only persons eligible for the SÄL programme are those who are employed in a Swedish school at which they can also complete the practical component of that training.

21. The national court refers to Articles 12 and 149(1) EC and states that the training in question is to be regarded as 'vocational training' within the meaning of the Court's relevant case-law on the free movement of persons. In the light of that case-law, it finds, the requirement of employment in a Swedish school imposed by the Umeå universitet as a precondition for admission to the teacher training must be regarded as a restriction of the freedom of movement.

22. Against that background, the Överklagandenämd has referred the following questions to the Court for a preliminary ruling:

'(1) Does Community law, in particular Article 12 EC, prevent the imposition, on assessment of an applicant's eligibility for admission to teacher training intended in the short term to meet the need for qualified teachers in Sweden, of a requirement of employment in a Swedish school? Can such a requirement be considered justified and proportional?

(2) Does it make a difference to the answer to the first question if an applicant for the training course who is employed in a school in a Member State other than Sweden is a Swedish national or a national of another Member State?

(3) Does it make a difference to the answer to the first question if the teacher training is intended to be of limited duration or if the teacher training is of a longer duration?'

IV — Answers to the questions

23. By its three questions, which I shall henceforth address jointly, the referring court essentially wishes to ascertain whether a teacher training programme such as the SÄL programme, eligibility for admission to which is restricted to teachers employed in a school of the Member State concerned, is

compatible with the principle of non-discrimination laid down by Community law in Article 12 EC, the dispute in the main proceedings being concerned with a national of the Member State in question who is employed as a teacher at a school in another Member State.

24. In this case, observations have been submitted by the Swedish and Polish Governments and the Commission, the aforementioned governments being of the view that restricting admission to the SÄL programme to teachers who are already employed in a Swedish school is compatible with Community law, the Commission, on the other hand, considering that the admission requirement in question constitutes discrimination contrary to Articles 12 EC and 39 EC, as well as Article 7(3) of Regulation (EEC) No 1612/68. [2]

25. By way of a preliminary observation, it should be pointed out that the fact that the national court has referred for a preliminary ruling a question which mentions specific provisions of Community law does not prevent the Court, irrespective of the references made by the national court in its questions, from providing the latter with all those elements by way of interpretation of Community law which may enable it to reach a decision in the case before it. [3]

26. Article 12 EC provides that, within the scope of application of that Treaty, and 'without prejudice to any special conditions contained therein', any discrimination on grounds of nationality is to be prohibited. Consequently, as the Commission has rightly submitted, the question whether the SÄL programme is compatible with Community law must first be examined by reference to the special principle of non-discrimination in the field of the free movement of workers laid down in Article 39(2) EC and clarified in Regulation No 1612/68. [4]

27. In the first place, therefore, it must be examined whether admission to a teacher training programme such as the SÄL programme in circumstances such as those in the main proceedings falls within the scope *ratione personae* and *ratione materiae* of the principle of non-discrimination in the field of the free movement of workers laid down in Article 39(2) EC and Regulation No 1612/68.

2 — Regulation of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475).

3 — See, inter alia, Case C-241/89 *SARPP* [1990] ECR I-4695, paragraph 8, and Case C-456/02 *Trojani* [2004] ECR I-7573, paragraph 38.

4 — See, inter alia, Case C-258/04 *Ioannidis* [2005] ECR I-8275, paragraph 37; Case C-293/03 *My* [2004] ECR I-12013, paragraph 33; Case C-138/02 *Collins* [2004] I-2703, paragraph 55; Case C-419/92 *Ingetraut Scholz* [1994] ECR I-505, paragraph 6; and Case 305/87 *Commission* v *Greece* [1989] ECR 1461, paragraphs 12 and 13.

If that is so, it will then be necessary to examine whether there is a case of prohibited discrimination here.

A — *Applicability of the principle of non-discrimination in the field of the free movement of workers*

28. It must first be clarified whether the provisions governing the free movement of workers are applicable *ratione personae* in a case such as that of Mr Lyyski, who is in dependent employment in another Member State but seeks access to training in his Member State of origin, a fact which is clear from the documents before the Court and has not been disputed.

29. It is the settled case-law of the Court that the provisions of the Treaty on freedom of movement and the measures adopted to implement them cannot be applied to activities which have no factor linking them with any of the situations governed by Community law and all significant elements of which are purely internal to a single Member State. [5]

30. However, the situation in this case is not purely internal. Mr Lyyski exercised his right to freedom of movement as a worker in so far as he, as a Swedish national, took up employment as a teacher in a Swedish school. As the Court has repeatedly held, any Community national who, irrespective of his place of residence and his nationality, exercises the right to freedom of movement for workers and who is or has been employed in another Member State falls within the scope of the provisions on freedom of movement for workers. [6]

31. Consequently, even though Mr Lyyski seeks to rely as a Swedish national proceeding against the Swedish authorities on the provisions governing freedom of movement in order to secure admission to the SÄL programme, this has no bearing on the applicability of those provisions. After all, from this point of view, the alleged discrimination or unequal treatment actually derives of course from the fact that he has taken up an activity at a school in another Member State. [7] In this regard, a person such as Mr Lyyski is therefore in a

5 — Case C-332/90 *Steen* [1992] ECR I-341, paragraph 9; Case C-134/95 *USSL n° 47 di Biella* [1997] ECR I-195, paragraph 19; Joined Cases C-64/96 and C-65/96 *Uecker und Jacquet* [1997] ECR I-3171, paragraph 16; Joined Cases C-225/95 to C-227/95 *Kapasakalis and Others* [1998] ECR I-4239, paragraph 22; see also to this effect Case C-33/99 *Hassan Fahmi* [2001] ECR I-2415, paragraph 38.

6 — See, inter alia, Case C-419/92 *Scholz* [1994] ECR I-505, paragraph 9, and Case C-18/95 *Terhoeve* [1999] ECR I-345, paragraph 27.

7 — See to this effect, inter alia, *Terhoeve* (cited in footnote 6), paragraph 26; Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraphs 30 and 31; and Case C-403/03 *Schempp* [2005] ECR I-6421, paragraph 24.

position comparable with that of anyone else who benefits from the rights and freedoms guaranteed by the Treaty.

32. Moreover, as the Court has held in this connection, the opportunities offered by the Treaty in relation to freedom of movement could not be fully effective if a national of a Member State could be deterred from availing himself of them by obstacles raised in his country of origin by legislation penalising the fact that he has used them, which is particularly true in the field of education. [8]

33. It must therefore be concluded that a person in Mr Lyyski's position can in principle rely on the provisions governing the free movement of workers, in particular the principle of non-discrimination.

34. It must next be clarified whether admission to the SÄL programme falls within the scope *ratione materiae* of the principle of non-discrimination laid down in Article 39(2) EC and in Regulation No 1612/68, which the Swedish and Polish Governments have disputed. In particular, the Polish Government has submitted that the programme at issue is merely further or advanced vocational training and not vocational training the conditions governing access to which are subject to Community law, in accordance with the Court's case-law.

35. It must first be noted in this regard that, under the Court's case-law, 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. [9] Furthermore, as the Court has repeatedly held, in general, college or university studies fulfil those criteria. [10]

36. As the Commission has submitted, vocational training is a broad term and thus, for example, includes university studies not only in so far as these provide a qualification for a particular trade, profession or employment but also in so far as they provide specific training and skills, that is to say

8 — See to this effect, inter alia, *D'Hoop* (cited in footnote 7), paragraphs 31 and 32, and Case C-19/92 *Kraus* [1993] ECR I-1663, paragraphs 15 and 16.

9 — See, inter alia, Case 293/83 *Gravier* [1985] ECR 593, paragraph 25; Case 24/86 *Blaizot and Others* [1988] ECR 379, paragraph 15; and Case C-65/03 *Commission* v *Belgium* [2004] ECR I-6427, paragraph 25.

10 — See *Blaizot and Others* (cited in footnote 9), paragraph 20; Case 42/87 *Commission* v *Belgium* [1988] ECR 5445, paragraphs 7 and 8; and Case C-147/03 *Commission* v *Austria* [2005] ECR I-5969, paragraph 33.

where a student needs the knowledge so acquired for the pursuit of a profession, trade or employment, even if no legislative or administrative provisions made the acquisition of that knowledge a prerequisite for that purpose. [11]

37. However, the Court drew a distinction between these forms of vocational training and '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'. [12]

38. In the light of the case-law outlined above, it must in my view be concluded that the SÄL programme fulfils the criteria for classification as vocational training.

39. After all, as represented in the documents before the Court and in the submissions of the interested parties — in particular those of the Swedish Government, [13] the SÄL programme is certainly not a course of study intended merely to improve general knowledge.

40. Rather, it is intended, on the one hand, to provide teachers who did not previously satisfy the conditions governing employment without limit as to time as a teacher in the State school system with the appropriate qualifications, that is to say to enable them to take the teaching examination. On the other hand, the SÄL programme serves to train teachers who are already qualified for employment without limit as to time to teach other subjects. The SÄL programme is thus intended to provide the necessary training, skills or qualifications for a particular trade, profession or employment.

41. The fact that admission to the SÄL programme is itself subject to the possession of certain qualifications — that is to say a course of higher education and/or work experience equal to at least 80 points or an existing qualification for employment without limit as to time — and to this extent has the appearance of further vocational training does nothing to alter the fact that it is in any event intended to provide the qualifications

11 — See *Blaizot and Others* (cited in footnote 9), paragraph 19, and Case 197/86 *Brown* [1988] ECR 3205, paragraph 10.

12 — See *Blaizot and Others* (cited in footnote 9), paragraph 20, and *Brown* (cited in footnote 11), paragraph 10.

13 — See points 8 to 17 above.

or training and skills necessary for employment of a higher status or of a different/wider-ranging nature and therefore has the character of vocational training.

42. Moreover, drawing a distinction in relation to the definition of vocational training between initial training and continuing training, as proposed in particular by the Polish Government, may not only prove difficult in terms of the actual structure of the various courses of study and lead to an arbitrary restriction of the meaning of vocational training in Community law, [14] but may also, in view of the considerable differences between the Member States in the organisation of university courses in general and teacher training in particular, result in unequal application of the EC Treaty in different Member States. [15]

43. I am therefore of the view that admission to a teacher training programme such as the SÄL programme, in circumstances such as those in the main proceedings, falls within the scope of the principle of non-discrimination in the context of access to vocational training, as laid down in Article 39(2) EC and in Regulation No 1612/68.

B — *Applicability of the principle of non-discrimination under Article 12 EC*

44. Even if Mr Lyyski were not to be regarded as a worker within the meaning of Article 39 EC and Regulation No 1612/68, a question which must ultimately be determined by the referring court on the basis of the specific circumstances of the case, [16] I should like to submit in the alternative that, in the context of admission to the SÄL programme, he could certainly rely, in his capacity as a citizen of the Union, on Article 12 EC, which, within the scope of application of the Treaty, prohibits any discrimination on grounds of nationality.

45. It is after all settled case-law that, in order to assess the scope of application of the Treaty within the meaning of Article 12 EC, that article must be viewed in conjunction with the provisions concerning citizenship of the Union. 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 EC Treaty the same treatment in law irrespective

14 — See Joined Cases C-51/89, C-90/89 and C-94/89 *United Kingdom, France and Germany* v *Council* [1991] ECR I-2757, paragraph 31.

15 — See to this effect *Blaizot and Others* (cited in footnote 9), paragraph 18.

16 — See, inter alia, Case C-357/89 *Raulin* [1992] ECR I-1027, paragraph 13.

of their nationality, subject to such exceptions as are expressly provided for. [17]

46. According to settled case-law, situations which fall within the scope of Community law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty and those involving the exercise of the right to move and reside freely in another Member State, as conferred by Article 18 EC. [18]

47. In pursuing the occupation of teacher in Finland, Mr Lyyski certainly avails himself of the right to move and reside freely in another Member State.

48. Furthermore, as is already clear from my comments concerning the applicability of the provisions on the free movement of workers, Mr Lyyski can rely on the right to equal treatment in law — in the context here of access to vocational training — even as against his country of origin because, otherwise, the right to freedom of movement under Article 18 EC would not be fully effective, particularly if it is assumed that the alleged disadvantage or the alleged unequal treatment has to do with the exercise of that right. [19]

C — The existence of prohibited discrimination

49. It having been established that, in a case such as that in the main proceedings, the principle of non-discrimination contained in Article 39(2) EC and in Regulation No 1612/68 or in Article 12 EC is in principle applicable, it must now be examined whether there is in fact a case of prohibited discrimination here.

50. In this regard, it should first of all be pointed out that, in accordance with settled case-law, the principle of equal treatment prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result. [20]

17 — See, inter alia, Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraphs 30 and 31, Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraphs 22 and 23, Case C-209/03 *Bidar* [2005] I-2119, paragraph 31, and *Schempp* (cited in footnote 7), paragraph 15.

18 — See the judgments in *Schempp* (cited in footnote 7), paragraph 18, *Bidar* (cited in footnote 17), paragraph 33, *Grzelczyk* (cited in footnote 17), paragraph 33, and *D'Hoop* (cited in footnote 7), paragraph 29.

19 — See in particular *D'Hoop* (cited in footnote 7), paragraphs 30 to 32, and Case C-224/02 *Pusa* [2004] ECR I-5763, paragraphs 18 and 19; see points 31 and 32 above.

20 — See, inter alia, Case 152/73 *Sotgiu* [1974] ECR 153, paragraph 11, Case C-57/96 *Meints* [1997] ECR I-6689, paragraph 44, Case C-212/99 *Commission* v *Italy* [2001] ECR I-4923, paragraph 24, (cited in footnote 17), paragraph 51, and *Bidar* (cited in footnote 10), paragraph 41.

51. There is, however, no prohibited discrimination by reason of nationality where the requirement in question is based on objective considerations independent of nationality and is proportionate to a legitimate aim pursued by the national law. [21]

52. This case concerns the requirement that an applicant must be employed in a Swedish school in order to be eligible for admission to the SÄL programme.

53. On the question whether this constitutes discrimination on grounds of nationality, it must first be pointed out that, in settled case-law, the Court has considered covert discrimination to exist simply where there is a danger that it is primarily nationals of other Member States — or nationals of the Member State concerned who, by virtue of having exercised their right to freedom of movement, find themselves in a situation comparable with that of the former — who are placed at a disadvantage because the requirement laid down in national law can more easily be satisfied by nationals of the Member State concerned — or by nationals of the Member State concerned who have not exercised their right to freedom of movement. [22]

54. By analogy with the traditional case of a residence requirement, the requirement of employment in a Swedish school could certainly be said, in principle, to be more easily satisfiable by nationals who have not exercised their right to freedom of movement by taking up employment as a teacher in another Member State. In my view, however, it is important not to conclude rashly on this basis that there is a case of indirect discrimination here.

55. After all, there is almost always a danger, when an educational opportunity, for example, or another activity which, if only in this regard, falls within the scope of the Treaty, is tailored or restricted to a particular group of persons by way of criteria which at least indirectly exhibit some physical connection with a Member State — say because they relate to certain institutions in that Member State, that those criteria can less easily be satisfied by nationals of other Member States.

21 — See to this effect the judgment in Case C-15/96 *Schöning-Kougebetopoulou* [1998] ECR I-47, paragraph 21, and Case C-350/96 *Clean Car Autoservice* [1998] ECR I-2521, paragraph 31.

22 — See, inter alia, *Clean Car Autoservice* (cited in footnote 21), paragraph 29, *Bidar* (cited in footnote 17), paragraph 53, *Ioannidis* (cited in footnote 4), paragraph 28, and *Commission* v *Austria* (cited in footnote 10), paragraph 47.

56. However, the principle of non-discrimination laid down in Community law cannot have the function generally of eliminating or calling into question requirements and conditions laid down in national law. Rather, it should, as a rule, be ensured that Member States do not adopt measures which 'result in less favourable treatment being accorded to transnational situations than to purely national situations'. [23]

57. Consequently, in circumstances such as these, it is necessary, for the purposes of establishing the existence of covert discrimination, to make the difficult decision whether the case in question concerns legislation which is only apparently neutral in terms of nationality and in reality exhibits protectionist characteristics beneficial to the nationals of the State concerned, [24] or whether, on the other hand, it concerns legislation which is intrinsically neutral and differentiates in relation to the subject-matter in question, the fact that the condition which that legislation lays down can more easily be fulfilled by nationals of the State concerned being more a consequence, inherent in the subject-matter or measure concerned, of an intrinsically legitimate distinction.

58. In other words, a more precise examination must be carried out to determine whether, in reality, the alleged disadvantage arises merely from the exercise [25] of rights in the field of freedom of movement or from the mere fact of different nationality, or whether, on the other hand, that disadvantage is based on objective considerations independent of nationality.

59. In this case, it must be stated in this regard that, according to the information available to the Court, which I have summarised above, [26] the Swedish Government responded to an impending shortage of teachers in Swedish schools by initiating a teacher training programme in the form of the SÄL programme, which is intended to improve the qualifications of teachers employed in Swedish schools, with a view in the short term to increasing the number of qualified teachers.

60. First of all, in my opinion, it is not possible to dispute the fundamental legitimacy of the decision to enable the staff of an institution, in this case teachers employed in Swedish schools, to improve their qualifications or undertake further training by means

23 — In connection with the free movement of goods, see the Opinion of Advocate General Poiares Maduro in Joined Cases C-158/04 and C-159/04 *Alfa Vita*, point 41.

24 — See to this effect, not least, the Opinion of Advocate General Capotorti in Case 155/80 *Sergius Oebel* [1981] ECR 1993, point 2.

25 — See the wording, inter alia, of *Commission* v *Austria* (cited in footnote 10), paragraph 44, and *Pusa* (cited in footnote 19), paragraph 20.

26 — See points 8 to 17 above.

of a special training programme. Moreover, there is in principle no reason why the Swedish Government should not have taken the decision it did to deal with the shortage of qualified teachers by way of 'internal' measures, that is to say measures which, initially, relate only to teachers who are already employed in Swedish schools.

61. Seen in this light, the requirement that a person applying for the SÄL programme must be employed in a Swedish school is in the nature of that measure, which, in my view, is legitimate.

62. However, there is also a substantive connection between the SÄL programme and the aforementioned requirement which derives from the fact that the training programme in question is provided as part of cooperation between certain universities and colleges and the actual Swedish schools at which any practical components of the training take place. The Swedish schools in question thus share the obligation to structure the training programme, which is tailored to the individual participants, in an appropriate manner and to facilitate its delivery — in terms of both the general organisation of work and supervision of the practical component of the course.

63. In my opinion, therefore, the contested requirement for admission to the SÄL programme is based on objective considerations which arise from the nature of a training programme of this kind and are not dependent on or directed towards nationality.

64. What is more, it is settled case-law that the principle of non-discrimination requires that comparable situations must not be treated differently and different situations must not be treated in the same way. [27]

65. Accordingly, the right to the same treatment in law irrespective of nationality requires that the persons concerned should find themselves in the same situation. [28]

66. As I have already said, employment in a Swedish school is a criterion inherent in a further training programme such as the SÄL

27 — See, inter alia, Case C-354/95 *National Farmers' Union and Others* [1997] ECR I-4559, paragraph 61, and *Garcia Avello* (cited in footnote 17), paragraph 31.

28 — See, inter alia, *Pusa* (cited in footnote 19), paragraph 18, and *Commission* v *Austria* (cited in footnote 10), paragraph 45.

programme, and a characteristic which arises from the nature of that programme. As regards admission to that programme, therefore, I do not consider the situation of a teacher who is employed in a Swedish school to be comparable with that of a teacher who does not satisfy that condition. Those who do find themselves in a comparable situation as regards admission to the SÄL programme are, as the Swedish Government has submitted in this regard, persons applying for the SÄL programme who are Swedish nationals or nationals of another Member State, or applicants with or without a cross-border background provided that they are employed as teachers in a Swedish school.

67. However, as the Swedish Government has submitted without contradiction, no distinction based directly or indirectly on nationality is drawn either in connection with the admission to the SÄL programme of teachers employed in a Swedish school or in connection with employment with or without limit as to time in a Swedish school per se. Thus, for example, under Chapter 2, Paragraph 4, subparagraphs 1 and 2, of the skollagen, a teacher of Finnish nationality or any teacher who has acquired equivalent training abroad can secure employment with or without limit as to time as a teacher in a Swedish school. Such a teacher employed in a Swedish school is then eligible for admission to the SÄL programme, despite the fact that he has the nationality of another Member State or acquired part of his training abroad.

68. All of the foregoing brings me to the conclusion that Community law, in particular the principle of non-discrimination laid down in Article 39(2) EC, Regulation No 1612/68 and Article 12 EC, does not preclude a national teacher training programme, such as the SÄL programme, eligibility for admission to which is restricted to teachers employed at a school in that Member State.

V — Recovery of costs

69. The costs incurred by the Swedish and Polish Governments and by the Commission 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.

VI — Conclusion

70. I therefore propose that the Court answer the questions referred as follows:

It is compatible with the principle of non-discrimination as laid down in particular in Articles 12 EC and 39(2) EC and in Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community for eligibility to participate in a special teacher training programme such as the SÄL programme, intended in the short term to meet the need for qualified teachers in a Member State, to be restricted to teachers employed at a school in that Member State.