OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 17 September 1987

My Lords,

In the proceedings before the President of the tribunal de première instance at Liège which have given rise to this reference, the plaintiffs are 17 French nationals, who have at various times followed courses in the gunsmithing section of the Institut communal d'enseignement technique de la fine mécanique, de l'armurerie et de l'horlogerie (Municipal Technical Institute for precision engineering, gunsmithing and clockmaking) in Liège. All of them were required to pay a foreign student's enrolment fee ('minerval') for the academic years during which they attended the Institute until the academic year beginning in 1985. The first year in which one or some of them attended a course was, it seems, the academic year 1979-80. On 7 March 1985, very promptly after the Court's ruling on 13 February 1985 in Case 293/83 *Gravier* v *City of Liège* [1985] ECR 593, the plaintiffs began interlocutory proceedings against the Belgian State seeking repayment of the minervals paid before 13 February 1985. On 12 June 1985, they sought the joinder of the City of Liège as third party in the proceedings.

The course of the proceedings was interrupted by the adoption of the 1985 Law, the provisions of which are set out in my Opinion in Case 293/85 *Commission* v *Belgium* (the 'direct action') and which I do not repeat here in detail. These proceedings are only concerned with Article 63, limiting the possibility of reclaiming the minerval to those who had brought court proceedings before the date of the *Gravier* judgment, read with Article 69 (which limits the exemption from paying the minerval conferred in Article 16 (1) to the period after 1 October 1983) and Article 71 (which imposes the obligation to pay the minerval with effect from 1 September 1976 and makes effective the exemption given by Article 59 (2) from 1 January 1985).

The 1985 Law does not make any special provision for the coming into force of Article 63 and so that article was not in force between 13 February 1985 and the coming into force of the 1985 Law.

The President of the tribunal de première instance at Liège asks the Court two questions about its interpretation of the Treaty in *Gravier* to test the compatibility of Article 63 with Community law:

'In its judgment of 13 February 1985 in Case 293/83 *Gravier* v *Belgian State*, the Court of Justice held that the imposition on students who are nationals of other Member States of a charge, registration fee or "minerval" as a condition of access to vocational training, where the same fee is not imposed on students who are nationals of the host Member State, constitutes discrimi-

nation on the grounds of nationality contrary to Article 7 of the Treaty.

(1) Is that interpretation of the Treaty limited to applications for admission to vocational training courses made after the date of the judgment or does it also apply to the period between 1 September 1976 and 31 December 1984?

(2) If the interpretation applies also to that period before the date of the judgment, is it compatible with Community law that pupils and students from other Member States who have been improperly obliged to pay a charge, registration fee or "minerval" should be deprived by national legislation of their right to repayment if they did not bring legal proceedings before the date of that judgment?'

In the order for reference, it is stated that it is uncontested that the institute at Liège is a vocational school. That is not necessarily the same thing as saying that the course followed by each plaintiff respectively is vocational. As stated in my Opinion in the direct action, I consider that attention has to be directed to the course rather than the institution. The Belgian Government in its observations gives two reasons why, in its view, the courses were not vocational. First they are said to be at the secondary level; second, it has not been shown that such training is not available in the plaintiffs' home State, France. Neither is decisive. The *Gravier* definition makes it clear that training may be vocational irrespective of the level of studies or the age of the pupils or students. The question is whether the ourse prepares for a qualification or provides the necessary skills and training for a particular profession, trade or employment. If it does so then it is not excluded because given in a 'secondary level' school, though such courses may in general secondary schools be less frequent than in, for example, technical or other higher educational institutions. The Belgian Government refers to paragraph 24 of *Gravier* in which the Court said that 'access to vocational training is *in particular* likely to promote free movement of persons throughout the Community . . . by enabling them to complete their training and develop their particular talents in the Member State whose vocational training programmes include the special subject desired'. I emphasize the words 'in particular'. I do not read that paragraph as derogating from the rule that there may be no discrimination on grounds of nationality in conditions of access to vocational training. It merely illustrates one reason why students may choose a particular course.

It is in my view irrelevant to the classification of a course as vocational training whether it is available elsewhere. In my view, as expressed in *Gravier*, training falls

within the scope of application of the Treaty without the intending student being required 'to show that there was any objective reason why he had chosen a particular school or country to carry out his training'. I reject the contention that a student has to show that he could not find the course in his home State.

In my view the answer to the first question, leaving aside the question whether the Court can in this case limit the effect of its judgment in this case, is that the ruling in *Gravier* (that 'the imposition on students who are nationals of other Member States of a charge, a registration fee or the so-called "minerval" as a condition of access to vocational training, where the same fee is not imposed on students who are nationals of the host Member State, constitutes discrimination on grounds of nationality contrary to Article 7 of the Treaty') is not limited to applications for admission to vocational training courses made after the date of the judgment and it does apply to the period prior to that date. The ruling was in no sense prospective only: it declared what the law was and that law fell to be applied generally.

The answer to the second question is that only the Court can limit the temporal effects of such a ruling and it is incompatible with Community law for such a Member State, whether by legislation or judicial decision, to deprive students who have been required to pay such fees of their right to repayment if they did not institute proceedings before the date of the judgment in *Gravier* (for example, Case 68/79 *Just* v *Danish Ministry of Fiscal Affairs* [1980] ECR 501; *Amministrazione delle Finanze dello Stato* v *Ariete* [1980] ECR 2545; *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595). The President of the tribunal de première instance at Liège has, it seems, concluded that Article 63 of the 1985 Law does have the effect of making it more difficult for foreign students than for Belgian students to recover sums paid which were not due; for the reasons given in my Opinion in the direct action I have come to the conclusion that that article does make it *ex facie* impossible for students to recover sums paid which were not due.

If the *Gravier* ruling has this effect in respect of all vocational training (other than in respect of universities) and the Court cannot make any temporal limitations in respect of vocational training courses in other institutions, then the sums paid since 1976 are recoverable subject to the generally applicable Belgian rules on limitation of actions. There are strong arguments, as I recognized in the direct action, for accepting that the position of students who undertook vocational training, at any rate outside universities, is wholly regulated by *Gravier*, in which case the present students, it seems, should succeed. The number of students involved is apparently less (642 in such institutions as opposed to a much larger number of potential claimants in universities) so that the cost is that much lower. There is also no intrinsic difference between students who took their courses at one time rather than another so that, to say that some can recover but others not, is unsatisfactory.

On the other hand, to distinguish between vocational training courses in universities

and elsewhere seems to me to be even less satisfactory.

I consider that the Court can limit the effect of its judgment in this case, despite arguments to the contrary that *Gravier* resolved the issue and that it is now too late to do so. It seems to be right to say, and I would accept, that some limitation on the right of recovery is reasonable in view of the development of ideas about vocational training, the cost involved to the State or institutions liable to make refunds, and the fact that few students have thought fit so far to commence proceedings. In my view therefore it would be just to limit the right of recovery as in the case of university students, as I recommend in my Opinion in the direct action, to those students who were taking vocational training in institutions other than universities on 13 February 1985 or who have subsequently received such training or who instituted proceedings for the recovery of the minerval before the date of this Opinion in respect of the whole of their courses. It goes without saying that judgments in favour of students already given stand. This is obviously a compromise and like most compromises is not wholly satisfactory. It seems to me less unsatisfactory than the extreme position that all students since 1976 should recover or that *Gravier* should only have prospective effect.

On that basis, if the national court is satisfied that these applicants were undergoing vocational training and that they paid the minerval, they are entitled to recover.

Another issue which has been discussed is that one or more Member States have either paid directly or reimbursed the minerval charged on their nationals by Belgian education establishments. It is said that it is wrong for students who did not actually pay the minerval to recover it. Article 63 made no provision for such cases. However, as *Just* made clear, there would be no objection in Community law to Belgian rules concerning unjust enrichment which apply generally (that is, to comparable domestic actions) operating to limit or prevent recovery by such students: my Opinion in Joined Cases 331, 376 and 378/85 *Les fils de Jules Bianco* v *Directeur général des douanes et droits indirects* [1988] ECR 1107.

The answers to be given to the President of the tribunal de première instance, Liège, in my view should therefore be to the effect that, as regards non-university vocational training, the imposition of a charge or fee as a condition of access to vocational training, where the same charge was not imposed on students of a host Member State, constitutes discrimination on grounds of nationality contrary to Article 7 of the Treaty, whether or not the courses were undertaken before or

after 13 February 1985, and national rules cannot, compatibly with Community law, deprive students who have paid such fees in respect of the period 1976 to 1984 of the right of recovery or limit it to those who instituted proceedings before that date. On the other hand it would be just that this Court should rule that the recovery of such fees should be limited to those who were undertaking vocational training (other than in universities) on 13 February 1985 or who have subsequently received such training or who instituted proceedings for the recovery of such fees before the date of this Opinion and in respect of the whole of their courses.

The costs of the parties to the main action fall to be dealt with by the national court. The Commission's costs are not recoverable.