# JUDGMENT OF THE COURT
3 May 1994 *

In Case C-47/93,

**Commission of the European Communities,** represented by Marie Wolfcarius, of its Legal Service, and Théophile Margellos, Avocat, Maître de Conférences at the University of Picardie, on secondment to the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

**Kingdom of Belgium,** represented by J. Devadder, Directeur d'Administration in the Legal Service of the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that, by maintaining in force legislation on teaching which discriminates against students who are nationals of Member States other than Belgium as regards both access to vocational training establishments and conditions for the reimbursement of supplementary fees unduly paid by those students, the Kingdom of Belgium has failed to fulfil its obligations under Articles 5 and 7 of the EEC Treaty,

* Language of the case: French.

THE COURT,

composed of: G. F. Mancini, President of Chambers, for the President, J. C. Moitinho de Almeida and D. A. O. Edward (Rapporteur) (Presidents of Chambers), R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg and J. L. Murray, Judges,

Advocate General: C. Gulmann,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 15 December 1993,

after hearing the Opinion of the Advocate General at the sitting on 2 February 1994,

gives the following

## Judgment

1 By application lodged at the Court Registry on 17 January 1993, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing, in Article 16 of the Law of 21 June 1985 on education, to exempt from payment of the 'minerval étudiants étrangers' (supplementary enrolment fees for foreign students) nationals of other Member States who come to Belgium for the sole purpose of studying in a Belgian university institution, by conferring on the rectors of university institutions the right to refuse to register such students, by restricting in an *ad hoc* manner the possibilities of obtaining reimbursement of minervals unduly paid under Community law only

to Community nationals who commenced legal proceedings before 13 February 1985 and by bringing into force the exemptions granted to workers and their spouses and to those who are merely students who are nationals of other Member States on 1 October 1983 in respect of university studies and on 1 January 1985 in respect of non-university studies, as provided by Articles 63, 69 and 71 of that Law, the Kingdom of Belgium has failed to fulfil its obligations under Articles 5 and 7 of the EEC Treaty.

2 So far as university teaching is concerned, Article 25 of the Belgian Law on the finance and control of university institutions of 27 July 1971 (*Moniteur Belge* of 17 September 1971) ('the 1971 Law') provides for an annual contribution by the Belgian State to the operating expenses of university institutions. The contribution is calculated *inter alia* by reference to the number of students duly registered. Article 27 of the 1971 Law, as amended by Article 85 of the Law of 5 January 1976 (*Moniteur Belge* of 6 January 1976), provides that the ordinary operating expenses of the university institutions are to be covered by reference to the number of students who are regularly charged to the national education budgets as regards, in particular, students of Belgian or Luxembourg nationality. Certain foreign students may also be taken into account for the financing of university institutions, in particular those whose parents are resident in Belgium and carry on or have carried on an occupation there and students residing themselves in Belgium whose parents are Community nationals who work or have worked in Belgium. The number of other foreign students cannot exceed 2% of the total number of Belgian students. Foreign students who are not charged to the national education budgets contribute to the ordinary operating expenses of the university institution at which they are enrolled. In particular, they must pay a supplementary enrolment fee, generally called the 'minerval'.

3 The Law of 21 June 1985 on education (*Moniteur Belge* of 7 July 1985) ('the 1985 Law') amended the legislative provisions on the financing of university institutions and the minerval. Article 16(1) of the 1985 Law adds to the category of foreign students who may be charged to the Belgian State students who are nationals of a Member State of the Community who are duly established in Belgium and pursue or have pursued an occupation there and also students whose spouses meet those

conditions. Article 16(2) of the 1985 Law provides that rectors of university institutions may, from the 1985/86 academic year, refuse to register students who may not be taken into account for the purposes of the financing of university institutions.

4 In 1987 Royal Decree No 543 of 31 March 1987 (*Moniteur Belge* of 16 April 1987) provided that the ordinary operating expenses of the university institutions would also be covered by the Belgian State by reference to the number of students who are nationals of a Member State of the Community and are studying in Belgium for one academic year provided that they establish that they are admitted to an identical course of study in the country of which they are nationals and that they have paid the corresponding enrolment fee there.

5 So far as non-university teaching is concerned, Article 59 of the 1985 Law provides that a special enrolment fee is to be charged for foreign students whose parents or legal guardian are not of Belgian nationality and do not reside in Belgium. The implementing Decree of 30 August 1985 (*Moniteur Belge* of 12 September 1985) provides, however, that certain categories of foreign students are exempt from payment of the special enrolment fee.

6 As regards the repayment of the minerval, Article 63 of the 1985 Law provides that the minerval or supplementary enrolment fees paid by pupils and students who are nationals of a Member State of the Community and have taken vocational training courses will be refunded on the basis of judicial decisions made in proceedings for repayment brought before the Belgian courts before 13 February 1985. Article 69 of the 1985 Law provides that Article 16 is to take effect on 1 October 1983.

7 The Commission considered that the said provisions of the 1985 Law were contrary to Community law and, by letter of 21 November 1989, pursuant to Art-

icle 169 of the Treaty, called on the Belgian authorities to submit their comments within two months. It received no response. On 21 March 1991 the Commission sent a reasoned opinion inviting the Kingdom of Belgium to take the necessary measures to comply with it within two months. By letter of 19 October 1992 the Belgian authorities replied to the reasoned opinion. Considering that reply unsatisfactory, the Commission brought this action.

8 The Commission stated at the hearing that of the four complaints relied on in its application it was maintaining three which must therefore be examined here.

9 The Belgian Government does not dispute the infringement with which it is charged in those three complaints but points out that amendments are in hand in order to bring the Belgian rules into line with Community law.

## The first complaint

10 The Commission claims that the minerval rules laid down by Article 16 of the 1985 Law entail discrimination on grounds of nationality because students who are nationals of another Member State who come to Belgium with the sole purpose of following university studies there are still charged the minerval, which is not, however, levied on Belgian students. The Commission believes that the amendments made by Royal Decree No 543 of 1987, cited above, which adds to the categories of students exempt from the minerval Community nationals undertaking studies in Belgium provided that they can show that they have been admitted to identical study courses in the country of which they are nationals has not eliminated the infringement since it is unlikely that a student who is already enrolled at a university in his country of origin will move to Belgium in order to follow the same course of study.

11 The minerval rules laid down by Article 16 of the 1985 Law constitute discrimination on grounds of nationality in a field coming under the Treaty in so far as students who are nationals of a Member State other than Belgium who come to Belgium with the sole object of following university studies there are charged the minerval as a condition of access to those studies where the same fee is not imposed on Belgian students (see judgment in Case 24/86 *Blaizot* v *University of Liège* [1988] ECR 379).

12 The amendment made by Article 1 of Royal Decree No 543, adding to the categories of students exempt from the minerval Community nationals who have already been admitted to courses of study in the country of which they are nationals and where they have paid the enrolment fees for those studies, has not removed that discrimination.

**The second complaint**

13 The Commission claims that Article 16 of the 1985 Law entails discrimination on grounds of nationality since students who are nationals of other Member States may be refused enrolment in university institutions whereas that cannot happen to Belgian students. It further points out that rectors of university institutions may refuse to register a Community student even if he offers to pay the minerval if he is not within the 2% category for foreign students who give rise to a right to university funding. The Commission believes that that 2% limit is a financial barrier to access to education. In support of this complaint it points out that this issue has already been resolved by the Court in so far as concerns non-university higher education in its judgment in Case 42/87 *Commission* v *Belgium* [1988] ECR 5445. The Court held that in so far as the legislation in question limited the financing of vocational higher education establishments it had the effect of excluding in practice students who were nationals of other Member States once the quota of 2% was

reached. Since such a restriction was not provided for in respect of Belgian students, it constituted discrimination on grounds of nationality prohibited under Article 7 of the Treaty.

14 It must be held that the power given to rectors of university institutions to refuse to register students who are nationals of other Member States who cannot be taken into account for the financing of those institutions also constitutes discrimination on grounds of nationality since Belgian students may not be so refused (see judgment in Case 42/87 *Commission* v *Belgium*, cited above).

## The third complaint

15 The third complaint maintained by the Commission relates to the provisions of the 1985 Law which restrict the possibility of obtaining reimbursement of minervals unduly paid.

16 The Commission points out that Article 63 of the 1985 Law provides that a foreign student cannot obtain reimbursement of the minerval which he has paid unless he brought legal proceedings before 13 February 1985, the date of the judgment in Case 293/83 *Gravier* v *City of Liège* [1985] ECR 593, in which the Court held that the imposition on students who are nationals of other Member States of a charge, a registration fee or a minerval as a condition of access to vocational training, where the same fee is not imposed on national students, constitutes discrimination on grounds of nationality contrary to Article 7 of the Treaty. So far as concerns non-university education, the Court refused to impose temporal restrictions on the scope of the *Gravier* decision (see Case 309/85 *Barra* v *Belgium* [1988] ECR 355). In so far as university studies are concerned, the Commission

points out that the Court limited the temporal effect of the judgment in *Blaizot*, cited above, which extended the scope of the *Gravier* decision to such studies but stated that that restriction could not be relied on against students who had brought legal proceedings before that date. The Commission therefore believes that Article 63 deprives university students of the right to repayment of minervals unduly paid before 2 February 1988 even if legal proceedings concerning those minervals were brought between 13 February 1985 and 2 February 1988.

17 The Commission further claims that Article 69 of the 1985 Law, by providing that Article 16 of that Law is to come into force on 1 October 1983, confines exemption from the minerval payable for university studies by the students referred to in Article 16(1), that is nationals of Member States who are duly established in Belgium and pursue or have pursued an occupation there, to the period after 1 October 1983 even though the Court held in Case 152/82 *Forcheri* v *Belgium* [1983] ECR 2323 that it was contrary to Article 7 of the Treaty to impose on that category of students an enrolment fee which was not required of Belgian nationals.

18 The Court finds that Articles 63 and 69 of the 1985 Law constitute discrimination on grounds of nationality because they restrict the possibilities for students who are nationals of other Community countries to obtain reimbursement of minervals unduly paid under Community law (see the judgments in *Gravier*, *Barra*, *Blaizot* and *Forcheri*, cited above).

19 It must therefore be held that, by failing, in the Law of 21 June 1985 on teaching, to exempt from the 'minerval étudiants étrangers' nationals of other Member States who come to Belgium for the sole purpose of following courses in Belgian university institutions, by giving the rectors of university institutions the right to refuse to register such students, by restricting in an *ad hoc* manner the possibility of obtaining reimbursement of minervals unduly paid under Community law only to Community nationals who commenced legal proceedings before 13 February 1985, and by bringing into force the exemptions granted to workers and their spouses

who are nationals of other Member States on 1 October 1983, as provided for by Articles 63 and 69 of that Law, the Kingdom of Belgium has failed to fulfil its obligations under Articles 5 and 7 of the EEC Treaty.

## Costs

20 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Belgium has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

**1. Declares that, by failing, in the Law of 21 June 1985 on teaching, to exempt from the 'minerval étudiants étrangers' nationals of other Member States who come to Belgium for the sole purpose of following courses in Belgian university institutions, by giving the rectors of university institutions the right to refuse to register such students, by restricting in an *ad hoc* manner the possibility of obtaining reimbursement of minervals unduly paid under Community law only to Community nationals who commenced legal proceedings before 13 February 1985, and by bringing into force the exemptions granted to workers and their spouses who are nationals of other Member States on 1 October 1983, as provided for by Articles 63 and 69 of that Law, the Kingdom of Belgium has failed to fulfil its obligations under Articles 5 and 7 of the EEC Treaty;**

**2. Orders the Kingdom of Belgium to pay the costs.**

Mancini Moitinho de Almeida Edward

Joliet Schockweiler Rodríguez Iglesias

Grévisse Zuleeg Murray

Delivered in open court in Luxembourg on 3 May 1994.

R. Grass
Registrar

G. F. Mancini
President of the Second and Sixth Chambers
for the President