JUDGMENT OF THE COURT (Grand Chamber)

23 October 2007 *

In Joined Cases C-11/06 and C-12/06,

REFERENCES for a preliminary ruling under Article 234 EC, by the Verwaltungsgericht Aachen (Germany), made by decisions of 22 November 2005, received at the Court on 11 January 2006, in the proceedings

Rhiannon Morgan (C-11/06)

v

Bezirksregierung Köln,

and

Iris Bucher (C-12/06)

v

Landrat des Kreises Düren,

* Language of the case: German.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts, G. Arestis and U. Lõhmus, Presidents of Chambers, P. Kūris, E. Juhász, A. Borg Barthet, J. Malenovský, J. Klučka and A. Ó Caoimh (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 30 January 2007,

after considering the observations submitted on behalf of:

— Ms Morgan, by P. Kreierhoff, Rechtsanwalt,

— Ms Bucher, by K.-D. Kucznierz, Rechtsanwalt,

— the Bezirksregierung Köln, by E. Frings-Schäfer, acting as Agent,

— the Landrat des Kreises Düren, by G. Beyß, acting as Agent,

— the German Government, by M. Lumma, acting as Agent,

— the Italian Government, by I.M. Braguglia, acting as Agent, and by W. Ferrante, avvocato dello Stato,

— the Netherlands Government, by H.-G. Sevenster, M. de Mol and P.P.J. van Ginneken, acting as Agents,

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

— the Finnish Government, by E. Bygglin, acting as Agent,

— the Swedish Government, by A. Falk, acting as Agent,

— the United Kingdom Government, by C. Gibbs, acting as Agent, and by D. Anderson QC, and T. Ward, Barrister,

— the Commission of the European Communities, by M. Condou-Durande and S. Grünheid, and by W. Bogensberger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 March 2007

gives the following

Judgment

1 The references for a preliminary ruling relate to the interpretation of Articles 17 EC and 18 EC.

2 Those references were made in the context of two sets of proceedings, the first between Ms Morgan and the Bezirksregierung Köln (Regional Authority, Cologne) and the second between Ms Bucher and the Landrat des Kreises Düren (Chief Officer of the District Authority of Düren), regarding the entitlement of the applicants in the main proceedings to an education or training grant in order to pursue studies in a higher education establishment outside the Federal Republic of Germany.

National legal context

3 Paragraph 5(1) of the Bundesgesetz über individuelle Förderung der Ausbildung — Bundesausbildungsförderungsgesetz (Federal Law on the encouragement of education and training; 'the BAföG') states:

'An education or training grant shall be awarded to students referred to in Paragraph 8(1) where they attend an education or training establishment abroad each day from

their permanent residence in Germany. The permanent residence within the meaning of this Law shall be established at the place which is the centre of interests, not only temporarily, of the person concerned, irrespective of the intention to become permanently established; a person who resides at a place only for education or training purposes has not established his permanent residence there.'

4 As provided in Paragraph 5(2) of the BAföG:

'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. having attended a German education or training establishment for a period of at least one year, the students continue their education or training at an education or training establishment in a Member State of the European Union,

and [they] possess sufficient language knowledge. ...'

5 Paragraph 8(1) of the BAföG is worded as follows:

'An education or training grant shall be awarded to

1. Germans within the meaning of the Basic Law,

...

8. Students who have a right of entry or residence as spouses or children, under the conditions laid down in Paragraph 3 of the Law on general freedom of movement for citizens of the Union, or who do not enjoy such rights as a child of a citizen of the Union only because they are 21 years of age or older and do not receive support from either parent or from the spouse of a parent,

9. Students who are nationals of another Member State of the European Union or another State party to the Agreement on the European Economic Area and who have been employed in Germany before commencing education or training;

...'

The disputes in the main proceedings

Case C-11/06

6 Having completed her secondary education in Germany, Ms Morgan, a German national born in 1983, spent one year working as an au pair in the United Kingdom.

7 On 20 September 2004 she began studies in applied genetics at the University of the West of England in Bristol (United Kingdom).

8 During August 2004 she applied to the Bezirksregierung Köln, defendant in the main proceedings, for an education or training grant for her studies in the United Kingdom, claiming in particular that courses in genetics were not offered in Germany.

9 By decision of 25 August 2004, that application was rejected on the ground that Ms Morgan did not meet the conditions laid down in Paragraph 5(2) of the BAföG for an education or training grant for studies at an education or training establishment outside Germany. In particular, since she was not continuing, in another Member State, studies pursued in Germany for at least one year, she did not satisfy the condition laid down in point 3 of Paragraph 5(2), in accordance with which courses of study attended outside Germany have to represent the continuation of education or training pursued for at least one year in Germany ('the first-stage studies condition').

10 The administrative appeal lodged by Ms Morgan against that rejection having itself been dismissed by decision of 3 February 2005 of the Bezirksregierung Köln, the dispute was brought before the referring court.

Case C-12/06

11 On 1 September 2003 Ms Bucher, a German national, began studies in ergotherapy at the Hogeschool Zuyd in Heerlen (Netherlands), very close to the German border.

12 Until 1 July 2003 Ms Bucher lived with her parents in Bonn (Germany). Then, together with her partner, she moved to accommodation in Düren (Germany), which she registered as her principal residence and from which she travelled to Heerlen for study purposes.

13 During January 2004 she applied to the Landrat des Kreises Düren, defendant in the main proceedings, for an education or training grant for her studies in the Netherlands.

14 That application was rejected by decision of 7 July 2004, on the ground that Ms Bucher did not satisfy the conditions laid down in Paragraph 5(1) of the BAföG. According to that decision, Ms Bucher had established her residence in a border area for the sole purpose of pursuing her professional education or training.

15 The administrative appeal lodged by Ms Bucher against that rejection having itself been dismissed by decision of 16 November 2004 of the Bezirksregierung Köln, the dispute was brought before the referring court. According to that court, Ms Bucher does not satisfy either the conditions laid down in Paragraph 5(1) of the BAföG or those flowing from Paragraph 5(2)(3) thereof.

The questions referred for a preliminary ruling

16 The claims of Ms Morgan and Ms Bucher having thus been brought before it, the Verwaltungsgericht Aachen (Administrative Court, Aachen) seeks to know whether Articles 17 EC and 18 EC preclude the alternative conditions laid down in Paragraph 5(2)(3) and Paragraph 5(1) of the BAföG for the award of an education or training grant for studies in a Member State other than the Federal Republic of Germany.

17 In those circumstances, the Verwaltungsgericht Aachen decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling, the first of which — common to both disputes before the referring court — is the only question in Case C-11/06:

'(1) Does the freedom of movement guaranteed for citizens of the Union under Articles 17 EC and 18 EC prohibit a Member State, in a case such as the present, from refusing to award an education or training grant to one of its nationals for a full course of study in another Member State on the ground that the course does not represent the continuation of studies pursued at an education or training establishment located in the national territory for a period of at least one year?

(2) Does the freedom of movement guaranteed for citizens of the Union under Articles 17 EC and 18 EC prohibit a Member State, in a case such as the present, from refusing to award an education or training grant to one of its nationals, who as a cross-border commuter is pursuing her course of study in a neighbouring Member State, on the grounds that she is residing at a border location in [the first-mentioned Member State] only for education or training purposes and that that place of abode is not her permanent residence?'

The questions referred for a preliminary ruling

The question common to Cases C-11/06 and C-12/06

18 By that question, the referring court asks, in essence, whether Articles 17 EC and 18 EC preclude a condition such as the first-stage studies condition. That condition consists, as is apparent from the references for a preliminary ruling, in a twofold obligation which must be fulfilled in order to obtain an education or training grant for studies in a Member State other than that of which the students applying for such assistance are nationals: first, to have attended an education or training course for at least one year in the Member State of which they are nationals and, second, to continue only that same education or training in another Member State.

19 Ms Morgan and Ms Bucher claim in particular that, because professional education and training courses in applied genetics and ergotherapy, respectively, are not available in Germany, they are obliged to forego a grant under the BAföG for education or training in another Member State.

20 The German Government and the defendants in the main proceedings contend that the first-stage studies condition does not amount to a restriction of the right of freedom of movement and of residence provided for in Article 18 EC and, in the alternative, they contend that, even if there is such a restriction, it is justifiable and proportionate. That view is essentially shared by the Netherlands, Austrian and United Kingdom Governments as well as by the Commission of the European Communities.

21 According to the Italian, Finnish and Swedish Governments, the first-stage studies condition amounts to a restriction of freedom of movement for citizens of the Union. The Italian Government, contrary to the submissions of the Swedish Government in this respect, takes the view that that restriction is not justified in the circumstances of the cases before the referring court. According to the Finnish Government, it is for the referring court to assess whether that restriction may be justified by objective considerations which are proportionate to the objective being legitimately pursued.

22 It should be noted that, as German nationals, Ms Morgan and Ms Bucher enjoy the status of citizens of the Union under Article 17(1) EC 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).

23 The situations falling within the scope of Community law include those involving the exercise of the fundamental freedoms guaranteed by the EC Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 18 EC (Case C-76/05 *Schwarz and Gootjes-Schwarz* [2007] ECR I-6849, paragraph 87, and the case-law cited). In the main proceedings, the assistance at issue relates specifically to studies pursued in another Member State.

24 In this respect, it should first of all be pointed out that, although, as the German, Netherlands, Austrian, Swedish and United Kingdom Governments as well as the Commission have observed, the Member States are competent, under Article 149(1) EC, 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 Community law (see, to that effect, Case C-308/89 *di Leo* [1990] ECR I-4185, paragraphs 14 and 15; Case C-337/97 *Meeusen* [1999] ECR I-3289, paragraph 25; Case C-147/03 *Commission* v *Austria* [2005] ECR I-5969, paragraphs 31 to 35, and *Schwarz and Gootjes-Schwarz*, paragraph 70) 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 18(1) EC (see, to that effect, *Schwarz and Gootjes-Schwarz*, paragraph 99).

25 Next, it should be recalled that national legislation which places certain nationals of the Member State concerned at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State constitutes 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-6947, paragraph 39; *Tas Hagen and Tas*, paragraph 31; and *Schwarz and Gootjes-Schwarz*, paragraph 93).

26 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, Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 31; Case C-224/02 *Pusa* [2004] ECR I-5763, paragraph 19; and *Schwarz and Gootjes-Schwarz*, paragraph 89).

27 That consideration is particularly important in the field of education in view of the aims pursued by Article 3(1)(q) EC and the second indent of Article 149(2) EC,

namely, inter alia, encouraging mobility of students and teachers (see *D'Hoop*, paragraph 32, and *Commission* v *Austria*, paragraph 44).

28 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 (see, by analogy, as regards Article 39 EC, Case C-109/04 *Kranemann* [2005] ECR I-2421, paragraph 27).

29 In the present case, it is undisputed that the applicants in the main proceedings, who commenced their higher education studies in a Member State other than the Federal Republic of Germany, were made subject, in order to obtain an education or training grant, to the first-stage studies condition, which is to be imposed, however, only in the case of studies pursued outside Germany.

30 The twofold obligation — set out at paragraph 18 of this judgment — flowing from the first-stage studies condition, is liable, on account of the personal inconvenience, additional costs and possible delays which it entails, to discourage citizens of the Union from leaving the Federal Republic of Germany in order to pursue studies in another Member State and thus from availing themselves of their freedom to move and reside in that Member State, as conferred by Article 18(1) EC.

31 Thus, the requirement that students spend one year at an educational establishment in Germany before they are entitled to receive assistance for an education or training course attended in another Member State is liable to discourage them from moving

subsequently to another Member State in order to pursue their studies. This is *a fortiori* the case where that year of study in Germany is not taken into account for the purposes of calculating the duration of studies in the other Member State.

32 Contrary to what the German Government in effect contends, the restrictive effects created by the first-stage studies condition cannot be regarded as too uncertain or too insignificant, in particular for those whose financial resources are limited, to constitute a restriction on the freedom to move and reside within the territory of the Member States, as conferred by Article 18(1) EC.

33 Such a restriction can be justified in the light of Community 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 *Schwarz and Gootjes-Schwarz*, paragraph 94). It follows from the case-law of the Court that a measure is proportionate if, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in order to attain that objective (*De Cuyper*, paragraph 42).

34 It is in the light of the requirements of the case-law recalled in the previous paragraph that the arguments submitted to the Court seeking to justify the first-stage studies condition should be examined.

35 First, according to the Bezirksregierung Köln, that condition is justified by the concern to ensure that education or training grants are granted only to students who have the capacity to succeed in their studies. Similarly, at the hearing, the German Government stated that the purpose of that condition is to enable students to show their willingness to pursue and complete their studies successfully and without delay.

36 There is no doubt that the objective of ensuring that students complete their courses in a short period of time, thus contributing in particular to the financial equilibrium of the education system of the Member State concerned, may constitute a legitimate aim in the context of the organisation of such a system. However, there is nothing before the Court to support the conclusion that the first-stage studies condition is or could be appropriate, in itself, to ensure that the students concerned complete their courses. In addition, the imposition of that condition in the disputes before the referring court, to the extent that it may, in practice, bring about an increase in the overall duration of studies for which the assistance at issue in the main proceedings is awarded, appears to be inconsistent with that objective and, therefore, inappropriate for achieving it. Such a condition cannot therefore be regarded as proportionate to the objective pursued.

37 Second, the German Government also stated, at the hearing, that the purpose of the first-stage studies condition is to enable students to determine whether they have made 'the right choice' in respect of their studies.

38 However, in so far as that condition requires continuity between the studies pursued for at least one year in Germany and those pursued in another Member State, it appears to run counter to that purpose. That requirement of continuity is liable not only to discourage, or even prevent, students from pursuing in a Member State other than the Federal Republic of Germany education or training different from that pursued for at least one year in Germany, but also, by the same token, to discourage them from abandoning the education or training course initially chosen where they form the view that the choice is no longer the right one and that they wish to pursue their education or training in a Member State other than the Federal Republic of Germany.

39 Moreover, as regards education or training courses in respect of which there are no equivalents in Germany, that requirement of continuity, as the referring court observed, obliges the students concerned — among whom, as is apparent from paragraph 19 of this judgment, the applicants in the main proceedings submit that

they are included — to choose between foregoing entirely the education or training course that they had planned to attend in another Member State and losing entirely their entitlement to an education or training grant. That condition cannot therefore be regarded as proportionate to the objective of facilitating an appropriate choice of education or training course on the part of the students concerned.

40 Third, the German Government further submitted at the hearing that the German system of education or training grants, taken as a whole, is intended to promote the pursuit of studies in Member States other then the Federal Republic of Germany. Provided that the students concerned satisfy the first-stage studies condition, they could be entitled to an education or training grant for an additional year if they return to Germany in order to complete their studies in a German education establishment and could also claim contributions in respect of certain travel costs and, as the case may be, and within certain predefined limits, in respect of registration fees and medical insurance.

41 In this respect, it suffices to observe that such factors, whilst admittedly useful for students who satisfy the first-stage studies condition, are not of themselves capable of justifying the restriction of the right of freedom of movement and of residence provided for in Article 18 EC which that condition constitutes, particularly in the case of students who move to another Member State in order to pursue their entire higher education and who will not therefore complete their studies in an educational establishment in Germany.

42 Fourth, the Bezirksregierung Köln as well as the Netherlands and Austrian Governments contend, in essence, that a restriction such as that arising from the implementation of the first-stage studies condition may be justified by the interest in preventing education or training grants awarded in respect of studies pursued entirely in a Member State other than that of origin from becoming an unreasonable

burden which could lead to a general reduction in study allowances granted in the Member State of origin. The Swedish Government and the Commission take the view that it is legitimate for a Member State, so far as concerns the award of training or education grants, to ensure a link between the students concerned and its society in general as well as its education system.

43 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 (Case C-209/03 *Bidar* [2005] ECR I-2119, paragraphs 56 and 57).

44 In principle, if a risk of such an unreasonable burden exists, similar considerations may apply as regards the award by a Member State of education or training grants to students wishing to study in other Member States.

45 However, in the main proceedings, as the referring court essentially observed, the degree of integration into its society which a Member State could legitimately require must, in any event, be regarded as satisfied by the fact that the applicants in the main proceedings were raised in Germany and completed their schooling there.

46 In those circumstances, it is apparent that the first-stage studies condition, in accordance with which higher education studies of at least one year must have been undertaken beforehand in the Member State of origin, is too general and exclusive in this respect. It unduly favours an element which is not necessarily representative of

the degree of integration into the society of that Member State at the time the application for assistance is made. It thus goes beyond what is necessary to attain the objective pursued and cannot therefore be regarded as proportionate (see, by analogy, *D'Hoop*, paragraph 39).

47 Fifth, the Austrian, Swedish and United Kingdom Governments as well as the Commission refer to the absence of coordinating provisions between the Member States so far as concerns education or training grants. They submit that, in the absence of such provisions, there is a risk of duplication of entitlements if a condition such as the first-stage studies condition were to be abolished.

48 In that respect, the United Kingdom Government referred, both in its written observations and at the hearing, to that the fact that it appears that Ms Morgan received from the United Kingdom authorities, in respect of her studies at the University of the West of England, financial support in the form of an allowance for tuition fees and maintenance costs, as well as a loan.

49 On that point, the German Government stated at the hearing, in reply to the questions put by the Court, that Paragraph 21(3) of the BAföG contains a provision which aims to take into account, in the calculation of the relevant income for the purposes of applying that law, any education or training grants or other allowances of the same type which may have been received from sources other than the provisions of that law.

50 In contrast, the first-stage studies condition is in no way intended to prevent or take account of grants of the same nature which may be received in another Member State. It cannot therefore be usefully argued that that condition is appropriate or necessary, by itself, to ensure that those grants are not duplicated.

51 In the light of all the foregoing, the answer to the question common to both disputes before the referring court must be that Articles 17 EC and 18 EC preclude, in circumstances such as those in the cases before the referring court, a condition in accordance with which, in order to obtain an education or training grant for studies in a Member State other than that of which the students applying for such assistance are nationals, those studies must be a continuation of education or training pursued for at least one year in the Member State of origin of those students.

The second question in Case C-12/06

52 According to the referring court, the action which was brought before it by Ms Bucher should be upheld if the question common to both cases in the main proceedings is answered in the affirmative.

53 In those circumstances, since that question has been answered in the affirmative, there is no need here to reply to the second question referred in Case C-12/06.

Costs

54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

Articles 17 EC and 18 EC preclude, in circumstances such as those in the cases before the referring court, a condition in accordance with which, in order to obtain an education or training grant for studies in a Member State other than that of which the students applying for such assistance are nationals, those studies must be a continuation of education or training pursued for at least one year in the Member State of origin of those students.

[Signatures]