JUDGMENT OF THE COURT
11 July 2002 *

In Case C-224/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal du travail de Liège (Belgium) for a preliminary ruling in the proceedings pending before that court between

Marie-Nathalie D'Hoop

and

Office national de l'emploi,

on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475),

* Language of the case: French.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann (Rapporteur), F. Macken and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, R. Schintgen, V. Skouris, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges,

Advocate General: L.A. Geelhoed,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Ms D'Hoop, by N. Simar and M. Strongylos, avocats,

— the Office national de l'emploi, by J.-E. Derwael, avocat,

— the Belgian Government, by J. Devadder, acting as Agent,

— the Commission of the European Communities, by M. Wolfcarius and P.J. Kuijper, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms D'Hoop, represented by M. Strongylos and R. Capart, avocat, of the United Kingdom Government, represented by D. Wyatt QC, and of the Commission, represented by M. Wolfcarius and D. Martin, acting as Agents, at the hearing on 20 November 2001,

after hearing the Opinion of the Advocate General at the sitting on 21 February 2002,

gives the following

Judgment

1 By judgment of 17 June 1998, received at the Court on 22 June 1998, the Tribunal du travail de Liège (Labour Court, Liège) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Article 48 of the EC Treaty (now, after amendment, Article 39 EC) and Article 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475).

2 That question was raised in proceedings between Ms D'Hoop and the Office national de l'emploi (Belgian National Employment Office, 'ONEM') concerning its refusal to grant her the tideover allowance provided for by Belgian legislation.

National legislation

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

4 Those allowances enable recipients to be regarded as 'wholly unemployed and on benefit' within the meaning of the legislation on employment and unemployment and give them access to special employment programmes.

5 Article 36(1), first subparagraph, of the Royal Decree of 25 November 1991 on unemployment (*Moniteur belge* of 31 December 1991, p. 29888) provides:

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

(1) completed his compulsory education;

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

...'.

6 By judgment of 12 September 1996 in Case C-278/94 *Commission* v *Belgium* [1996] ECR I-4307, the Court ruled that by requiring that dependent children of migrant workers of the Community residing in Belgium have completed their secondary education in an establishment subsidised or approved by the Belgian State or by one of its communities in order to be eligible for tideover allowances, the Kingdom of Belgium had failed to fulfil its obligations under Article 48 of the Treaty and Article 7 of Regulation No 1612/68.

7 In order to make national legislation consistent with Community law, a Royal Decree of 13 December 1996 (*Moniteur belge* of 31 December 1996, p. 32265) inserted, under the letter (h), a new provision in the abovementioned Article 36(1), first subparagraph, point 2. That provision, which entered into force on 1 January 1997, is worded as follows:

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

...

(2) ...

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

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

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

...'.

The main proceedings and the question submitted for a preliminary ruling

8 Ms D'Hoop, who has Belgian nationality, completed her secondary education in France where she obtained the baccalauréat in 1991. That diploma was recognised in Belgium as equivalent to the approved certificate of higher secondary education together with the approved diploma of aptitude for access to higher education.

9 Ms D'Hoop then studied at university in Belgium until 1995.

10 In 1996, Ms D'Hoop claimed tideover allowance from ONEM.

11 By decision of 17 September 1996 ONEM refused to grant her the allowance claimed on the ground that she did not fulfil the condition set out in Article 36(1), first subparagraph, point (2)(a) of the Royal Decree of 25 November 1991.

12 Ms D'Hoop challenged that decision before the Tribunal du travail de Liège which decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Given that the Court of Justice has already interpreted Article 48 of the EC Treaty and Article 7 of Regulation No 1612/68 to mean that Article 36 of the Royal Decree of 25 November 1991 cannot prevent a dependent child of a Community migrant worker who has completed his secondary education in an establishment in a Member State other than Belgium from being eligible to receive the tideover allowance, are those provisions to be interpreted as meaning that Article 36 of the aforesaid royal decree also cannot prevent a Belgian student who has completed his secondary education in an establishment in a Member State other than Belgium and is seeking his first employment from being eligible to receive the tideover allowance?'

13 By letters of 22 July and 11 September 1998, the Tribunal du travail de Liège informed the Court that an appeal against that judgment had been brought before the Cour du travail de Liège (Higher Labour Court, Liège) (Belgium) and requested, because of the suspensory effect of that appeal, that proceedings before the Court be stayed.

14 On 23 March 2001 the Court was informed that, by judgment of 16 March 2001, the Cour du travail de Liège had upheld the judgment making the reference. Accordingly, proceedings before the Court were resumed on 26 March 2001.

15 According to the judgment of the Cour du travail de Liège ONEM argued before that court that Ms D'Hoop did not satisfy the second condition imposed by Article 36(1), first subparagraph, point (2)(h) of the Royal Decree of 25 November 1991, as amended by the Royal Decree of 13 December 1996. In that regard, that court held that although the new provision of the Royal Decree of 25 November 1991 entered into force only on 1 January 1997, that is, after the application for the tideover allowance had been made, 'in the light of the case-law of the [Court] it should be applied to the present case, and indeed neither of the parties disputes this.'

The question referred for a preliminary ruling

16 By its question, the national court seeks essentially to ascertain whether Community law precludes a Member State from refusing to grant the tideover allowance to one of its nationals, a student seeking her first employment, on the sole ground that that student completed her secondary education in another Member State.

Applicability of Article 48 of the Treaty and of Regulation No 1612/68

17 As a preliminary point, it should be recalled that the Court has already held that the tideover allowance provided for young people seeking their first employment constitutes a social advantage within the meaning of Article 7(2) of Regulation No 1612/68 (Case 94/84 *Deak* [1985] ECR 1873, paragraph 27, and *Commission* v *Belgium,* cited above, paragraph 25).

18 However, the Court has consistently held that the application of Community law on freedom of movement for workers in relation to national rules concerning unemployment insurance requires that a person invoking that freedom must have already participated in the employment market by exercising an effective and genuine occupational activity which has conferred on him the status of a worker within the Community meaning of that term (see with regard to the grant of tideover allowances *Commission* v *Belgium*, cited above, paragraph 40). By definition, that is not the case where young people are seeking their first employment (*Commission* v *Belgium*, cited above, paragraph 40).

19 In answer to a question raised at the hearing, Ms D'Hoop stated that her parents continued to reside in Belgium while she pursued and completed her secondary education in France.

20 It follows that Ms D'Hoop cannot rely on either the rights conferred by Article 48 of the Treaty and Regulation No 1612/68 on migrant workers or the derived rights which that regulation confers on members of the families of such workers.

Applicability of the Treaty provisions on citizenship of the Union

Observations submitted to the Court

21 At the hearing Ms D'Hoop and the Commission examined the question referred to the Court in the light of the Treaty provisions on citizenship of the Union. They argued that, as a national of a Member State who resided lawfully on the territory of another Member State in order to pursue her studies there, Ms D'Hoop falls within the scope *ratione personae* of those provisions. On that basis, in their submission, Ms D'Hoop enjoys the rights that Article 8 of the EC Treaty (now, after amendment, Article 17 EC) attaches to the status of citizen of the Union, including that under Article 6 of the EC Treaty (now, after amendment, Article 12 EC) of not being subject to discrimination on grounds of nationality within the scope *ratione materiae* of the Treaty.

22 The United Kingdom Government disputed that analysis. It considers that the simple fact of lawfully residing in another Member State does not enable a Community national to invoke the Treaty provisions on citizenship of the Union. It is also necessary for the activity pursued to be within the scope of Community law. Such would have been the case if Ms D'Hoop had resided in France in order to follow a course of vocational training there. Such is not, by contrast, true of the general course of study which Ms D'Hoop pursued in France.

Assessment of the Court

The scope *ratione temporis* of the Treaty provisions on citizenship of the Union

23 The reason given by ONEM for its refusal to grant Ms D'Hoop the tideover allowance which she applied for in 1996 was that she had completed her secondary education in France. Since that event took place in 1991, the question arises whether the discrimination alleged by Ms D'Hoop can be assessed in the light of the provisions on citizenship of the Union which entered into force subsequently.

24 It is important to note that the main proceedings do not concern the recognition of Community law rights allegedly acquired before the entry into force of the provisions on citizenship of the Union, but relate to an allegation of current discriminatory treatment of a citizen of the Union.

25 The provisions on citizenship of the Union are applicable as soon as they enter into force. Therefore they must be applied to the present effects of situations arising previously (see, to that effect, Case C-195/98 *Österreichischer Gewerkschaftsbund* [2000] ECR I-10497, paragraphs 54 and 55, and Case C-290/00 *Duchon* [2002] ECR I-3567, paragraphs 43 and 44).

26 It follows that the discrimination alleged by Ms D'Hoop can be assessed in the light of those provisions.

The scope *ratione personae* and *ratione materiae* of the Treaty provisions on citizenship of the Union

27 Article 8 of the Treaty confers the status of citizen of the Union on every person holding the nationality of a Member State. Since she possesses the nationality of a Member State, Ms D'Hoop enjoys that status.

28 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 Treaty the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for (Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31).

29 The situations falling within the scope of Community law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 8a of the EC Treaty (now, after amendment, Article 18 EC) (Case C-274/96 *Bickel and Franz* [1998] ECR I-7637, paragraphs 15 and 16, and *Grzelczyk*, paragraph 33).

30 In that a citizen of the Union must be granted in all Member States the same treatment in law as that accorded to the nationals of those Member States who find themselves in the same situation, it would be incompatible with the right of freedom of movement were a citizen, in the Member State of which he is a national, to receive treatment less favourable than he would enjoy if he had not availed himself of the opportunities offered by the Treaty in relation to freedom of movement.

31 Those opportunities could not be fully effective if a national of a Member State could be deterred from availing himself of them by obstacles raised on his return to his country of origin by legislation penalising the fact that he has used them (see, to that effect, Case C-370/90 *Singh* [1992] ECR I-4265, paragraph 23).

32 That consideration is particularly important in the field of education. The objectives set for the activities of the Community include, in Article 3(p) of the

EC Treaty (now, after amendment, Article 3(1)(q) EC), a contribution to education and training of quality. That contribution must, according to the second indent of Article 126(2) of the EC Treaty (now the second indent of Article 149(2) EC), be aimed, *inter alia*, at encouraging mobility of students and teachers.

33 In situations such as that in the main proceedings, national legislation introduces a difference in treatment between Belgian nationals who have had all their secondary education in Belgium and those who, having availed themselves of their freedom to move, have obtained their diploma of completion of secondary education in another Member State.

34 By linking the grant of tideover allowances to the condition of having obtained the required diploma in Belgium, the national legislation thus places at a disadvantage certain of its nationals simply because they have exercised their freedom to move in order to pursue education in another Member State.

35 Such inequality of treatment is contrary to the principles which underpin the status of citizen of the Union, that is, the guarantee of the same treatment in law in the exercise of the citizen's freedom to move.

36 The condition at issue could be justified only if it were based on objective considerations independent of the nationality of the persons concerned and were proportionate to the legitimate aim of the national provisions (*Bickel and Franz*, paragraph 27).

37 Neither the Belgian Government nor ONEM has submitted any observations on that point.

38 The tideover allowance provided for by Belgian legislation, which gives its recipients access to special employment programmes, aims to facilitate for young people the transition from education to the employment market. In such a context it is legitimate for the national legislature to wish to ensure that there is a real link between the applicant for that allowance and the geographic employment market concerned.

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

40 Accordingly the answer to the question referred must be that Community law precludes a Member State from refusing to grant the tideover allowance to one of its nationals, a student seeking her first employment, on the sole ground that that student completed her secondary education in another Member State.

Costs

41 The costs incurred by the Belgian and United Kingdom Governments and by the Commission, which have submitted observations to the Court, 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.

On those grounds,

THE COURT,

in answer to the question referred to it by the Tribunal du travail de Liège by judgment of 17 June 1998, hereby rules:

Community law precludes a Member State from refusing to grant the tideover allowance to one of its nationals, a student seeking her first employment, on the sole ground that that student completed her secondary education in another Member State.

Rodríguez Iglesias	Jann	Macken
von Bahr	Gulmann	Edward
La Pergola	Schintgen	Skouris
Cunha Rodrigues		Timmermans

Delivered in open court in Luxembourg on 11 July 2002.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President