

BIDAR

JUDGMENT OF THE COURT (Grand Chamber)

15 March 2005^{*}

In Case C-209/03,

REFERENCE for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), made by decision of 12 February 2003, received at the Court on 15 May 2003, in the proceedings

The Queen (on the application of Dany Bidar)

v

London Borough of Ealing,

Secretary of State for Education and Skills,

^{*} Language of the case: English.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts (Rapporteur) and A. Borg Barthet, Presidents of Chambers, J.-P. Puissechot, R. Schintgen, N. Colneric, M. Ilešič, J. Malenovský, J. Klučka and U. Lohmus, Judges,

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

having regard to the written procedure and further to the hearing on 28 September 2004,

after considering the observations submitted on behalf of:

- Mr Bidar, by R. Scannell and M. Soorjoo, Barristers, and J. Luqmani, Solicitor,
- the United Kingdom Government, by R. Caudwell, acting as Agent, E. Sharpston QC and C. Lewis, Barrister,
- the Danish Government, by J. Molde, acting as Agent,
- the German Government, by C.-D. Quassowski and A. Tiemann, acting as Agents,

- the French Government, by G. de Bergues and C. Bergeot-Nunes, acting as Agents,

- the Netherlands Government, by C.M. Wissels and H.G. Sevenster, acting as Agents,

- the Austrian Government, by E. Riedl, acting as Agent,

- the Finnish Government, by T. Pynnä, acting as Agent,

- the Commission of the European Communities, by N. Yerrell and M. Condou, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 November 2004,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the first paragraph of Article 12 EC and Article 18 EC.

- 2 The reference was made in the course of proceedings between Mr Bidar and the London Borough of Ealing and the Secretary of State for Education and Skills concerning the refusal of his application for a subsidised student loan to cover his maintenance costs.

Legal background

Community legislation

- 3 The first paragraph of Article 12 EC provides:

‘Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.’

- 4 Article 18(1) EC reads as follows:

‘Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.’

5 Article 149 EC provides:

'1. The Community shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

2. Community action shall be aimed at:

- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,

- encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,

- promoting cooperation between educational establishments,

- developing exchanges of information and experience on issues common to the education systems of the Member States,

- encouraging the development of youth exchanges and of exchanges of socio-educational instructors,

- encouraging the development of distance education.

...

4. In order to contribute to the achievement of the objectives referred to in this Article, the Council:

- acting in accordance with the procedure referred to in Article 251, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,
- acting by a qualified majority on a proposal from the Commission, shall adopt recommendations.⁶

⁶ Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26) provides in Article 1(1) that the Member States are to grant the right of residence to nationals of Member States who do not enjoy this right under other provisions of Community law and to members of their families, provided that they themselves and the members of their families are covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on that State's social assistance system during their period of residence.

7 Under Article 3 of that directive, the right of residence is to remain for as long as the beneficiaries of that right fulfil the conditions laid down in Article 1 of the directive.

8 According to the seventh recital in the preamble to Council Directive 93/36/EEC of 29 October 1993 on the right of residence for students (OJ 1993 L 317, p. 59):

'... in the present state of Community law, as established by the case-law of the Court of Justice, assistance granted to students, does not fall within the scope of the [EEC] Treaty within the meaning of Article 7 thereof [later Article 6 of the EC Treaty, now, after amendment, Article 12 EC]'.

9 Article 1 of that directive provides:

'In order to lay down conditions to facilitate the exercise of the right of residence and with a view to guaranteeing access to vocational training in a non-discriminatory manner for a national of a Member State who has been accepted to attend a vocational training course in another Member State, the Member States shall recognise the right of residence for any student who is a national of a Member State and who does not enjoy that right under other provisions of Community law, and for the student's spouse and their dependent children, where the student assures the relevant national authority, by means of a declaration or by such alternative means as the student may choose that are at least equivalent, that he has sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence, provided that the student is enrolled in a recognised educational establishment for the principal purpose of following a vocational training course there and that he is covered by sickness insurance in respect of all risks in the host Member State.'

10 Article 3 of that directive provides:

‘This Directive shall not establish any entitlement to the payment of maintenance grants by the host Member State on the part of students benefiting from the right of residence.’

11 Directives 90/364 and 93/96 were repealed with effect from 30 April 2006 by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004 L 229, p. 35), which, in accordance with Article 40, must be transposed by the Member States by 30 April 2006.

National legislation

12 In England and Wales, financial assistance for students to cover maintenance costs is, under the Education (Student Support) Regulations 2001 (‘the Student Support Regulations’), provided essentially by means of loans.

13 Under the Student Support Regulations, students who are recipients of a loan receive 75% of the maximum amount of the loan, while the remaining 25% is granted on the basis of the financial position of the student and of his parents or partner. The loan is provided at an interest rate which is linked to the rate of

inflation and is therefore below the normal rate for a commercial loan. The loan is repayable after the student completes his studies, provided that he is earning in excess of GBP 10 000. If that is the case, he pays an annual amount equivalent to 9% of the income earned above GBP 10 000, until the loan is repaid in full.

- 14 Under regulation 4 of the Student Support Regulations, a person is eligible for a student loan for a designated course if he falls within one of the situations mentioned in Schedule 1 to those regulations.
- 15 Under paragraph 1 of that schedule, a person is eligible to receive a student loan if he is settled in the United Kingdom within the meaning of the Immigration Act 1971 and meets the residence conditions referred to in paragraph 8 of the schedule, namely:
- (a) he is ordinarily resident in England and Wales on the first day of the first academic year of the course;
 - (b) he has been ordinarily resident throughout the three-year period preceding that day in the United Kingdom and Islands; and
 - (c) his residence in the United Kingdom and Islands has not during any part of that three-year period been wholly or mainly for the purpose of receiving full-time education.

- 16 As regards migrant workers and members of their families covered by 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), paragraphs 4 to 6 of Schedule 1 to the Student Support Regulations do not require them to be settled in the United Kingdom and make their eligibility for a student loan subject to the same residence conditions, while considering that they satisfy the condition of ordinary residence in paragraph 8(b) of that schedule from the time when they reside in the European Economic Area.
- 17 Under the Immigration Act 1971 a person is settled in the United Kingdom if he is ordinarily resident there without being subject to any restriction on the period for which he may remain in the territory.
- 18 However, it is apparent from the case-file that under United Kingdom law a national of another Member State cannot, in his capacity as a student, obtain the status of being settled in the United Kingdom.
- 19 As regards tuition fees, the Student Support Regulations provide for financial support on the same conditions for nationals of the United Kingdom and those of other Member States.

The main proceedings and the questions referred for a preliminary ruling

- 20 In August 1998 Mr Bidar, a French national, entered the territory of the United Kingdom, accompanying his mother who was to undergo medical treatment there. It

is common ground that in the United Kingdom he lived with his grandmother, as her dependant, and pursued and completed his secondary education without ever having recourse to social assistance.

21 In September 2001 he started a course in economics at University College London.

22 While Mr Bidar received assistance with respect to tuition fees, his application for financial assistance to cover his maintenance costs, in the form of a student loan, was refused on the ground that he was not settled in the United Kingdom.

23 In the proceedings brought by him against that refusal, Mr Bidar submits that, by making the grant of a student loan to a national of a Member State conditional on his being settled in the United Kingdom, the Student Support Regulations introduced discrimination prohibited under Article 12 EC. He submits, in the alternative, that, even if it were accepted that the provision of a grant falls outside the scope of the Treaty, that is not the case with an application for assistance in the form of a subsidised loan.

24 The Secretary of State for Education and Skills, who is the responsible authority for making the Student Support Regulations, contends, on the other hand, that the provision of assistance for maintenance costs, whether in the form of a grant or a loan, does not fall within the scope of Article 12 EC, as the Court acknowledged in Case 39/86 *Lair* [1988] ECR 3161 and Case 197/86 *Brown* [1988] ECR 3205. Even if such assistance were to fall within the scope of the Treaty, the conditions for granting that assistance would guarantee the existence of a direct link between the recipient of the assistance and the State which finances it.

25 The national court observes that student loans represent a cost to the State, because of the reduced rates of interest and possible problems with repayment, a cost which the Secretary of State for Education and Skills estimates at the equivalent of 50% of the amount of the loans. The average loan made to a student for the academic year 2000/01 is said to be GBP 3 155. If the 41 713 nationals of the European Union who studied in England and Wales during that year without being settled there had received student loans, the probable cost to the State would thus have been GBP 66 million.

26 According to the national court, Mr Bidar is not covered by Regulation No 1612/68 and cannot claim any right to a student loan on the basis of Directive 93/96.

27 In those circumstances, the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘1. Whether, given the decisions of the Court of Justice of the European Communities in ... *Lair* ... and ... *Brown* ... and developments in the law of the European Union, including the adoption of Article 18 EC and developments in relation to the competence of the European Union in the field of education, assistance with maintenance costs for students attending university courses, such assistance being given by way of either (a) subsidised loans or (b) grants, continues to fall outside the scope of the application of the EC Treaty for the purposes of Article 12 EC and the prohibition on discrimination on grounds of nationality?

2. If either part of question 1 is answered in the negative, and if assistance with maintenance costs for students in the form of grants or loans [does] now fall

within the scope of Article 12 EC, what criteria should the national court apply in determining whether the conditions governing eligibility for such assistance are based on objectively justifiable considerations not dependent on nationality?

3. If either part of question 1 is answered in the negative, whether Article 12 EC may be relied upon to claim entitlement to assistance with maintenance costs from a date prior to the date of the judgment of the Court of Justice in the present case and, if [not], whether an exception should be made for those who initiated legal proceedings before that date?

The questions referred for a preliminary ruling

Question 1

²⁸ By its first question, the national court asks essentially whether, in the present state of Community law, assistance to students in higher education intended to cover their maintenance costs, in the form of a subsidised loan or a grant, falls outside the scope of the Treaty, in particular the first paragraph of Article 12 EC.

²⁹ According to the order for reference, the claimant in the main proceedings is not covered by Regulation No 1612/68.

- 30 In that context, the national court wishes to know whether assistance granted to students to cover their maintenance costs is within the scope of application of the Treaty within the meaning of the first paragraph of Article 12 EC, which states that, without prejudice to any special provisions contained in the Treaty, any discrimination on grounds of nationality is prohibited within that scope of application.
- 31 To assess the scope of application of the Treaty within the meaning of Article 12 EC, that article must be read in conjunction with the provisions of the Treaty on citizenship of the Union. Citizenship of the Union is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to receive 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, paragraphs 30 and 31, and Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraphs 22 and 23).
- 32 According to settled case-law, a citizen of the European Union lawfully resident in the territory of the host Member State can rely on Article 12 EC in all situations which fall within the scope *ratione materiae* of Community law (Case C-85/96 *Martínez Sala* [1998] ECR I-2691, paragraph 63, and *Grzelczyk*, paragraph 32).
- 33 Those situations 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 within the territory of the Member States, as conferred by Article 18 EC (see Case C-274/96 *Bickel and Franz* [1998] ECR I-7637, paragraphs 15 and 16, *Grzelczyk*, paragraph 33, and *Garcia Avello*, paragraph 24).

- 34 Moreover, there is nothing in the text of the Treaty to suggest that students who are citizens of the Union, when they move to another Member State to study there, lose the rights which the Treaty confers on citizens of the Union (*Grzelczyk*, paragraph 35).
- 35 As is apparent from Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraphs 29 to 34, a national of a Member State who goes to another Member State and pursues secondary education there exercises the freedom to move guaranteed by Article 18 EC.
- 36 Furthermore, a national of a Member State who, like the claimant in the main proceedings, lives in another Member State where he pursues and completes his secondary education, without it being objected that he does not have sufficient resources or sickness insurance, enjoys a right of residence on the basis of Article 18 EC and Directive 90/364.
- 37 With regard to social assistance benefits, the Court held in Case C-456/02 *Trojani* [2004] ECR I-7573, paragraph 43, that a citizen of the Union who is not economically active may rely on the first paragraph of Article 12 EC where he has been lawfully resident in the host Member State for a certain time or possesses a residence permit.
- 38 It is true that the Court held in *Lair* and *Brown* (paragraphs 15 and 18 respectively) that 'at the present stage of development of Community law assistance given to students for maintenance and for training falls in principle outside the scope of the EEC Treaty for the purposes of Article 7 thereof [later Article 6 of the EC Treaty, now, after amendment, Article 12 EC]'. In those judgments the Court considered that such assistance was, on the one hand, a matter of education policy, which was

not as such included in the spheres entrusted to the Community institutions, and, on the other, a matter of social policy, which fell within the competence of the Member States in so far as it was not covered by specific provisions of the EEC Treaty.

39 However, since judgment was given in *Lair* and *Brown*, the Treaty on European Union has introduced citizenship of the Union into the EC Treaty and added to Title VIII (now Title XI) of Part Three a Chapter 3 devoted inter alia to education and vocational training (*Grzelczyk*, paragraph 35).

40 Thus Article 149(1) EC gives the Community the task of contributing to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of those States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

41 Under paragraphs 2 and 4 of that article, the Council may adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States, and recommendations aimed in particular at encouraging the mobility of students and teachers (see *D'Hoop*, paragraph 32).

42 In view of those developments since the judgments in *Lair* and *Brown*, it must be considered that the situation of a citizen of the Union who is lawfully resident in another Member State falls within the scope of application of the Treaty within the meaning of the first paragraph of Article 12 EC for the purposes of obtaining assistance for students, whether in the form of a subsidised loan or a grant, intended to cover his maintenance costs.

- 43 That development of Community law is confirmed by Article 24 of Directive 2004/38, which states in paragraph 1 that all Union citizens residing in the territory of another Member State on the basis of that directive are to enjoy equal treatment 'within the scope of the Treaty'. In that the Community legislature, in paragraph 2 of that article, defined the content of paragraph 1 in more detail, by providing that a Member State may in the case of persons other than workers, self-employed persons, persons who retain such status and members of their families restrict the grant of maintenance aid in the form of grants or loans in respect of students who have not acquired a right of permanent residence, it took the view that the grant of such aid is a matter which, in accordance with Article 24(1), now falls within the scope of the Treaty.
- 44 That interpretation is not invalidated by the argument put forward by the governments which have submitted observations and by the Commission concerning the limitations and conditions referred to in Article 18 EC. Those governments and the Commission observe that, while citizenship of the Union enables nationals of the Member States to rely on the first paragraph of Article 12 EC when they exercise the right to move and reside within the territory of those States, their situation falls within the scope of application of the Treaty within the meaning of Article 12 EC only, in accordance with Article 18(1) EC, subject to the limitations and conditions laid down in the Treaty and by the measures adopted to give it effect, which include those laid down by Directive 93/96. Since Article 3 of that directive excludes the right to payment of maintenance grants on the part of students benefiting from the right of residence, those grants are still outside the scope of the Treaty.
- 45 In this respect, it is indeed the case that students who go to another Member State to start or pursue higher education there and enjoy a right of residence there for that purpose under Directive 93/96 cannot base any right to payment of maintenance assistance on that directive.

- 46 However, Article 3 of Directive 93/96 does not preclude a national of a Member State who, by virtue of Article 18 EC and Directive 90/364, is lawfully resident in the territory of another Member State where he intends to start or pursue higher education from relying during that residence on the fundamental principle of equal treatment enshrined in the first paragraph of Article 12 EC.
- 47 In a context such as that of the main proceedings where the right of residence of the applicant for assistance is not contested, the assertion, made by some of the governments which have submitted observations, that Community law allows a Member State to take the view that a national of another Member State who has recourse to social assistance no longer fulfils the conditions of his right of residence and if appropriate to take measures, within the limits imposed by Community law, for the removal of that national (see *Grzelczyk*, paragraph 42, and *Trojani*, paragraph 45) is moreover immaterial.
- 48 In the light of all the foregoing, the answer to Question 1 must be that assistance, whether in the form of subsidised loans or of grants, provided to students lawfully resident in the host Member State to cover their maintenance costs falls within the scope of application of the Treaty for the purposes of the prohibition of discrimination laid down in the first paragraph of Article 12 EC.

Question 2

- 49 By its second question, the national court seeks to know the criteria which a national court must apply to determine whether the conditions of granting assistance to cover the maintenance costs of students are based on objective considerations independent of nationality.

- 50 For this purpose it should first be examined whether the legislation at issue in the main proceedings distinguishes on the ground of nationality between students who apply for such assistance.
- 51 It must be recalled here that the principle of equal treatment prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, lead in fact to the same result (see, inter alia, Case 152/73 *Sotgiu* [1974] ECR 153, paragraph 11; Case C-57/96 *Meints* [1997] ECR I-6689, paragraph 44; and Case C-212/99 *Commission v Italy* [2001] ECR I-4923, paragraph 24).
- 52 As regards persons not covered by Regulation No 1612/68, paragraph 1 of Schedule 1 to the Student Support Regulations requires, for the grant to students of assistance to cover their maintenance costs, that the person concerned is settled in the United Kingdom for the purposes of national law and satisfies certain residence conditions, namely that of residing in England and Wales on the first day of the first academic year and that of having resided in the United Kingdom and Islands for the three years preceding that day.
- 53 Such requirements risk placing at a disadvantage primarily nationals of other Member States. Both the condition requiring an applicant for that assistance to be settled in the United Kingdom and that requiring him to have resided there prior to his studies are likely to be more easily satisfied by United Kingdom nationals.
- 54 Such a difference in treatment can be justified only if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the legitimate aim of the national provisions (see *Bickel and Franz*, paragraph 27, *D'Hoop*, paragraph 36, and *Garcia Avello*, paragraph 31).

- 55 According to the United Kingdom Government, it is legitimate for a Member State to ensure that the contribution made by parents or students through taxation is or will be sufficient to justify the provision of subsidised loans. It is also legitimate to require a genuine link between the student claiming assistance to cover his maintenance costs and the employment market of the host Member State.
- 56 On this point, it must be observed that, although the Member States must, in the organisation and application of their social assistance systems, show a certain degree of financial solidarity with nationals of other Member States (see *Grzelczyk*, paragraph 44), it is permissible for a Member State 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.
- 57 In the case of assistance covering the maintenance costs of students, it is thus legitimate for a Member State to grant such assistance only to students who have demonstrated a certain degree of integration into the society of that State.
- 58 In this context, a Member State cannot, however, require the students concerned to establish a link with its employment market. Since the knowledge acquired by a student in the course of his higher education does not in general assign him to a particular geographical employment market, the situation of a student who applies for assistance to cover his maintenance costs is not comparable to that of an applicant for a tideover allowance granted to young persons seeking their first job or for a jobseeker's allowance (see, in this regard, *D'Hoop*, paragraph 38, and Case C-138/02 *Collins* [2004] ECR I-2703, paragraph 67, respectively).
- 59 On the other hand, the existence of a certain degree of integration may be regarded as established by a finding that the student in question has resided in the host Member State for a certain length of time.

- 60 With respect to national legislation such as the Student Support Regulations, the guarantee of sufficient integration into the society of the host Member State follows from the conditions requiring previous residence in the territory of that State, in this case the three years' residence required by the United Kingdom rules at issue in the main proceedings.
- 61 The additional condition that students are entitled to assistance to cover their maintenance costs only if they are also settled in the host Member State could admittedly, like the requirement of three years' residence referred to in the preceding paragraph, correspond to the legitimate aim of ensuring that an applicant for assistance has demonstrated a certain degree of integration into the society of that State. However, it is common ground that the rules at issue in the main proceedings preclude any possibility of a national of another Member State obtaining settled status as a student. They thus make it impossible for such a national, whatever his actual degree of integration into the society of the host Member State, to satisfy that condition and hence to enjoy the right to assistance to cover his maintenance costs. Such treatment cannot be regarded as justified by the legitimate objective which those rules seek to secure.
- 62 Such treatment prevents a student who is a national of a Member State and who is lawfully resident and has received a substantial part of his secondary education in the host Member State, and has consequently established a genuine link with the society of the latter State, from being able to pursue his studies under the same conditions as a student who is a national of that State and is in the same situation.
- 63 The answer to Question 2 must accordingly be that the first paragraph of Article 12 EC must be interpreted as precluding national legislation which grants students the right to assistance covering their maintenance costs only if they are settled in the host Member State, while precluding a national of another Member State from obtaining the status of settled person as a student even if that national is lawfully resident and has received a substantial part of his secondary education in the host Member State and has consequently established a genuine link with the society of that State.

Question 3

- 64 By its third question, the national court asks the Court whether, if the Court were to rule that assistance to cover the maintenance costs of students falls within the scope of application of the Treaty within the meaning of the first paragraph of Article 12 EC, the effects of such a judgment should be limited in time.
- 65 The United Kingdom, German and Austrian Governments request the Court, should it so rule, to limit in time the effects of its judgment, except as regards judicial proceedings brought before the date of that judgment. In support of their request, they rely in particular on the financial implications raised by the national court.
- 66 It should be recalled that the interpretation the Court gives to a rule of Community law is limited to clarifying and defining the meaning and scope of that rule as it ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied (see Case 61/79 *Denkavit italiana* [1980] ECR 1205, paragraph 16, and Case 24/86 *Blaizot* [1988] ECR 379, paragraph 27).
- 67 It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order, be moved to restrict the possibility for any person concerned of relying on a provision it has interpreted with a view to calling in question legal relationships established in good faith (see *Blaizot*, paragraph 28; Case C-163/90 *Legros and Others* [1992] ECR I-4625, paragraph 30; and Case C-262/96 *Sürül* [1999] ECR I-2685, paragraph 108).

- 68 Moreover, it is settled case-law that the financial consequences which might ensue for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effect of the ruling (see, inter alia, *Grzelczyk*, paragraph 52).
- 69 The Court has taken that step only in quite specific circumstances, where there was a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and where it appeared that both individuals and national authorities had been led into adopting practices which did not comply with Community legislation by reason of objective, significant uncertainty regarding the implications of Community provisions, to which the conduct of other Member States or the Commission may even have contributed (see *Grzelczyk*, paragraph 53).
- 70 In the present case, it suffices to state that the information provided by the United Kingdom, German and Austrian Governments is not capable of supporting their argument that this judgment might, if its effects were not limited in time, entail significant financial consequences for the Member States. The figures referred to by those governments in fact relate also to cases which are not similar to that at issue in the main proceedings.
- 71 Consequently, the answer to Question 3 must be that there is no need to limit the temporal effects of the present judgment.

Costs

72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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) rules as follows:

- 1. Assistance, whether in the form of subsidised loans or of grants, provided to students lawfully resident in the host Member State to cover their maintenance costs falls within the scope of application of the EC Treaty for the purposes of the prohibition of discrimination laid down in the first paragraph of Article 12 EC.**
- 2. The first paragraph of Article 12 EC must be interpreted as precluding national legislation which grants students the right to assistance covering their maintenance costs only if they are settled in the host Member State, while precluding a national of another Member State from obtaining the status of settled person as a student even if that national is lawfully resident and has received a substantial part of his secondary education in the host Member State and has consequently established a genuine link with the society of that State.**
- 3. There is no need to limit the temporal effects of the present judgment.**

[Signatures]