JUDGMENT OF THE COURT (Grand Chamber)

18 November 2008 *

In Case C-158/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Centrale Raad van Beroep (Netherlands), made by decision of 16 March 2007, received at the Court on 22 March 2007, in the proceedings

Jacqueline Förster

v

Hoofddirectie van de Informatie Beheer Groep,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and T. von Danwitz, Presidents of Chambers, A. Tizzano, J.N. Cunha Rodrigues (Rapporteur), R. Silva de Lapuerta, K. Schiemann, A. Arabadjiev, C. Toader and J.-J. Kasel, Judges,

* Language of the case: Dutch.

Advocate General: J. Mazák,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 23 April 2008,

after considering the observations submitted on behalf of:

— Ms Förster, by A. Noordhuis, advocaat,

— the Netherlands Government, by C. Wissels and M. de Mol, acting as Agents,

— the Belgian Government, by L. Van den Broeck, acting as Agent,

— the Danish Government, by B. Weis Fogh, acting as Agent,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Finnish Government, by J. Himmanen, acting as Agent,

— the Swedish Government, by A. Falk and S. Johannesson, acting as Agents,

— the United Kingdom Government, by T. Harris, acting as Agent, assisted by S. Lee, Barrister,

— the Commission of the European Communities, by G. Rozet and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2008,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 12 EC, Article 18 EC, Article 7 of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402), and Article 3 of Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students (OJ 1993 L 317, p. 59).

2 The reference was made in the course of proceedings between Ms Förster and the Hoofddirectie van de Informatie Beheer Groep (the administrative body charged

with the enforcement of Netherlands legislation relating to the financing of studies; 'the IB-Groep') concerning the partial annulment of a maintenance grant which Ms Förster had received under the Law of 2000 on the financing of studies (Wet studiefinanciering 2000, 'the WSF 2000').

Legal context

Community legislation

3 Article 7(2) 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), as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1), ('Regulation No 1612/68') provides that a worker who is a national of a Member State is to enjoy in the territory of another Member State 'the same social and tax advantages as national workers'.

4 Article 2 of Regulation No 1251/70 provides, inter alia:

'1. The following shall have the right to remain permanently in the territory of a Member State:

(a) a worker who, at the time of termination of his activity, has reached the age laid down by the law of that Member State for entitlement to an old-age pension and

who has been employed in that State for at least the last twelve months and has resided there continuously for more than three years;

(b) a worker who, having resided continuously in the territory of that State for more than two years, ceases to work there as an employed person as a result of permanent incapacity to work….

(c) a worker who, after three years' continuous employment and residence in the territory of that State, works as an employed person in the territory of another Member State, while retaining his residence in the territory of the first State, to which he returns, as a rule, each day or at least once a week.

…'

5 Pursuant to Article 7 of Regulation No 1251/70:

'The right to equality of treatment, established by Council Regulation (EEC) No 1612/68, shall apply also to persons coming under the provisions of this Regulation.'

6 Article 1 of Directive 93/96 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.'

7 Article 3 of Directive 93/96 states:

'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.'

8 Directive 93/96 was repealed, with effect from 30 April 2006, by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 158, p. 77, and corrigendum OJ 2004 L 229, p. 35), which should, pursuant to Article 40, have been transposed by the Member States before 30 April 2006.

National legislation

9 From 1 September 2000 to 21 November 2003, Article 2.2 of the WSF 2000 was worded as follows:

'1. Study finance may be granted to:

(a) students who possess Netherlands nationality,

(b) students who do not possess Netherlands nationality but are resident in the Netherlands and are treated as Netherlands nationals in respect of the financing of studies by virtue of a treaty or a decision of an organisation of public international law, or

(c) students who do not have Netherlands nationality but are resident in the Netherlands and belong to a group of persons who, by administrative order, are treated as Netherlands nationals in respect of the financing of studies.'

10 With effect from 21 November 2003 a second paragraph was added to Article 2.2 of the WSF 2000. It reads as follows:

'In derogation from Article 2.2(1)(b), the requirement that a student be resident in the Netherlands shall not apply to a student on whom that requirement may not be imposed because of a Treaty or a decision of an organisation of public international

law. By or pursuant to an administrative order, rules may be laid down in connection with the satisfactory implementation of this paragraph.'

11 On 4 March 2005, the IB-Groep adopted the Policy rule on the monitoring of migrant workers (Beleidsregel controlebeleid migrerend werknemerschap, AG/OCW/MT 05.11). That Policy rule entered into force on 23 March 2005 and concerns the monitoring of periods for which maintenance grants have been awarded from the 2003 calendar year. It provides that any student who has worked for an average of 32 hours or more per month in the period subject to monitoring automatically enjoys the status of Community worker. If a student does not satisfy the 32-hour criterion, the IB-Groep undertakes a more detailed investigation into the specific circumstances of that student.

12 Following the judgment in Case C-209/03 *Bidar* [2005] ECR I-2119, the IB-Groep adopted on 9 May 2005 the Policy rule on the adaptation of applications for study finance for students from the European Union, European Economic Area and Switzerland (Beleidsregel aanpassing aanvraag studiefinanciering voor studenten uit EU, EER en Zwitserland, 'the Policy rule of 9 May 2005'), which was published on 18 May 2005.

13 Article 2(1) of that Policy rule provides:

'1. A student who is a national of a Member State of the European Union… may, on application, be eligible for study finance pursuant to the WSF 2000… if, prior to the application, he has been lawfully resident in the Netherlands for an uninterrupted period of at least five years. The other provisions of the WSF 2000… shall apply without qualification.'

14 Article 5 of the Policy rule of 9 May 2005 is worded as follows:

'This Policy rule will enter into force on its publication with retroactive effect from 15 March 2005.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 On 5 March 2000, Ms Förster, a German national aged 20, settled in the Netherlands, where she enrolled for training as a primary school teacher and, from 1 September 2001, for a course in educational theory leading to a bachelor's degree at the Hogeschool van Amsterdam (the College of Amsterdam).

16 During her studies, Ms Förster had various kinds of paid employment.

17 From October 2002 until June 2003, Ms Förster completed a paid work placement in a Dutch special school providing secondary education to pupils with behavioural and/or psychiatric problems.

18 After that placement, Ms Förster did not undertake any further employment.

19 Having passed the final examination for the bachelor's degree in educational theory in the middle of 2004, Ms Förster accepted a post as a social worker in an institution for people with psychiatric problems on 15 June 2004.

20 From September 2000, the IB-Groep granted Ms Förster a maintenance grant. That grant was periodically renewed by the IB-Groep. It took the view that Ms Förster was to be regarded as a 'worker' within the meaning of Article 39 EC and, consequently, should be treated in the same way as a student of Netherlands nationality as regards maintenance grants, under Article 7(2) of Regulation No 1612/68.

21 Following a check, the IB-Groep ascertained that between July 2003 and December 2003 Ms Förster had not been gainfully employed. It therefore held, by decision of 3 March 2005, that she could no longer be regarded as a worker. As a result, the decision concerning the maintenance grant paid in respect of the period from July to December 2003 was annulled and Ms Förster was requested to repay the excess sums.

22 By judgment of 12 September 2005, the action brought by Ms Förster before the Rechtbank Alkmaar (Alkmaar District Court) was held to be unfounded on two grounds. First, that court held that, since Ms Förster had not had any real and genuine employment in the second half of 2003, she could no longer be regarded as a Community worker during that period. Second, that court held that Ms Förster could not claim entitlement to a maintenance grant pursuant to *Bidar* because, before her degree in educational theory, she had not been in any way integrated into Dutch society.

23 Ms Förster appealed against that judgment before the Centrale Raad van Beroep (Higher Social Security Court), claiming primarily that, during the period at issue, she was already sufficiently integrated into Dutch society to be able to claim a maintenance grant for the second half of 2003 under Community law. In the alternative, Ms Förster submitted that she should be regarded as a Community worker for the whole of 2003.

24 Accordingly, the Centrale Raad van Beroep decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 7 of Regulation (EEC) No 1251/70 also apply to students who came to the Netherlands principally to study and initially worked as employed persons on a limited scale while continuing to study but have meanwhile ceased to work?

(2) Does Directive 93/96/EEC preclude students as referred to in the first question from successfully relying on Article 12 EC to claim [a maintenance grant]?

(3) (a) Does the rule that citizens of the Union who are not economically active can rely on Article 12 EC only if they have resided lawfully in the host Member State for a certain period or are in possession of a residence permit also apply to assistance to cover the maintenance costs of students?

(b) If so, is it permissible to impose during that period a residence duration requirement only on nationals of Member States other than the host Member State?

(c) If so, is the application of a five-year residence duration requirement consistent with Article 12 EC?

(d) If not, what residence duration may be required?

(4) Should a shorter period of lawful residence be required in individual cases if factors other than the duration of residence indicate a substantial degree of integration into the society of the host Member State?

(5) If, as is evident from a judgment of the Court of Justice with retroactive effect, persons are able to derive from Article 12 EC more rights than was previously assumed, may justified requirements connected therewith be imposed in respect of periods in the past if those requirements were published shortly after the publication of the judgment?'

On the questions referred for a preliminary ruling

The first question

25 By that question, the referring court is essentially enquiring whether a student in the situation of the applicant in the main proceedings may rely on Article 7 of Regulation No 1251/70 in order to obtain a maintenance grant.

26 Regulation No 1251/70 entitles a worker who has ceased his or her employment activity to remain permanently in the territory of a Member State after having worked there as an employed person and to continue to be entitled to equality of treatment with nationals, as laid down in Regulation No 1612/68. Those rights are extended to the members of the worker's family who reside with him or her in the territory of that Member State.

27 The conditions of entitlement to the worker's right to remain in the host Member State are set out exhaustively in Article 2 of Regulation No 1251/70 (see Case C-257/00 *Givane and Others* [2003] ECR I-345, paragraph 29).

28 In addition to complying with the conditions linked to the duration of employment and residence, a worker who has been employed in a host Member State has the right to remain there in three cases. First, where that worker, when he or she terminates his or her activity, has reached the age laid down in that Member State to claim an old-age pension. Second, where the termination of the employment is due to a permanent incapacity to work. Third, where that worker is employed in another

Member State, while retaining his or her residence in the territory of the first State, to which he or she returns, as a rule, each day or at least once a week.

29 As the order for reference shows, the applicant's situation does not fall within any of the cases set out in Article 2 of Regulation No 1251/70.

30 It must be added that Ms Förster ceased all employment during the period at issue in order to pursue her studies, without however having abandoned her plan to continue her career in the Netherlands, where she maintained her residence.

31 In those circumstances, Ms Förster cannot be regarded as a '[national] of a Member State who [has] worked as [an employed person] in the territory of another Member State' within the meaning of Article 1 of Regulation No 1251/70.

32 Regulation No 1251/70 is thus not applicable in the present case.

33 Therefore, the answer to the first question must be that a student in the situation of the applicant in the main proceedings cannot rely on Article 7 of Regulation No 1251/70 in order to obtain a maintenance grant.

The second to fourth questions

34 By these questions, which should be examined together, the referring court is essentially enquiring whether, and in what conditions, a student who is a national of a Member State and travels to another Member State in order to study there can rely on the first paragraph of Article 12 EC in order to obtain a maintenance grant. The referring court also asks whether the application to nationals of other Member States of a prior residence requirement of five years may be regarded as compatible with the first paragraph of Article 12 and, if so, if it is necessary, in individual cases, to take into account other criteria pointing to a substantial degree of integration into the society of the host Member State.

35 The first paragraph of Article 12 EC prohibits, within the scope of application of the EC Treaty and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality.

36 It is settled case-law that 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 *Bidar*, paragraph 32).

37 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 conferred by Article 18 EC (see Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraph 24, and Case C-403/03 *Schempp* [2005] ECR I-6421, paragraph 18).

38 In this connection, the Court has already held that 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 (see Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraphs 29 to 34, and *Bidar*, paragraph 35).

39 With regard to social assistance benefits, the Court has held that a citizen of the Union who is not economically active may rely on the first paragraph of Article 12 EC where he or she has been lawfully resident in the host Member State for a certain time (*Bidar*, paragraph 37).

40 A student who travels to another Member State to start or pursue education can benefit from a right of residence on the basis of Article 18 EC and Directive 93/96 when he or she fulfils the conditions set out in Article 1 of that directive as regards having sufficient resources and sickness insurance and being enrolled in a recognised educational establishment for the principal purpose of following a vocational training course.

41 The situation of a student who is lawfully resident in another Member State thereby 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 a maintenance grant (see *Bidar*, paragraph 42).

42 Admittedly, in accordance with Article 3 of Directive 93/96, that does 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.

43 However, that provision does not preclude a national of a Member State who, by virtue of Article 18 EC and the provisions adopted to implement that article, is lawfully resident in the territory of another Member State where he or she intends to start or pursue education from relying during that residence on the fundamental principle of equal treatment enshrined in the first paragraph of Article 12 EC (see, to that effect, *Bidar*, paragraph 46).

44 For that purpose, the fact that Ms Förster came to the Netherlands principally in order to study there is irrelevant.

45 Moreover, pursuant to the Policy rule of 9 May 2005, a student who is a national of a Member State of the European Union may be eligible for a maintenance grant if, prior to the application, he or she has been lawfully resident in the Netherlands for an uninterrupted period of at least five years. Since that requirement concerning the duration of residence is not applicable to students of Netherlands nationality, the issue is raised of what restrictions may be imposed on the right of students who are nationals of other Member States to a maintenance grant without the different treatment of those students in comparison to national students which may result being considered discriminatory and, consequently, prohibited under the first paragraph of Article 12 EC.

46 That issue was examined by the Court in *Bidar*.

47 Unlike the present case, the *Bidar* case concerned national legislation which, in addition to imposing a residence requirement, required students from other Member

States claiming assistance to cover their maintenance expenses to be established in the host Member State. In so far as the legislation at issue in the main proceedings in that case made it impossible for a national of another Member State to acquire, as a student, the status of established person, that legislation placed such nationals, whatever their actual degree of integration into the society of the host Member State, in a position in which they could not satisfy that condition, and consequently could not enjoy the right to assistance to cover their maintenance costs.

48 In *Bidar*, the Court 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, 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 (see *Bidar*, paragraph 56).

49 The Court also pointed out that it is legitimate for a Member State to grant assistance covering maintenance costs only to students who have demonstrated a certain degree of integration into the society of that State (*Bidar*, paragraph 57).

50 On the basis of those considerations, the Court held that 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 (*Bidar*, paragraph 59).

51 As regards, specifically, the compatibility with Community law of a condition of five years' uninterrupted residence, as required by the national legislation at issue in the main proceedings, it is necessary to examine whether such a requirement can be justified by the objective, for the host Member State, of ensuring that students who are nationals of other Member States have to a certain degree integrated into its society.

52 In the present case, such a condition of five years' uninterrupted residence is appropriate for the purpose of guaranteeing that the applicant for the maintenance grant at issue is integrated into the society of the host Member State.

53 That requirement must also be proportionate to the legitimate objective pursued by the national law in order to be justified in the light of Community law. It may not go beyond what is necessary in order to attain that objective.

54 A condition of five years' continuous residence cannot be held to be excessive having regard, inter alia, to the requirements put forward with respect to the degree of integration of non-nationals in the host Member State.

55 In that connection, Directive 2004/38, although not applicable to the facts in the main proceedings, provides in Article 24(2) that, in the case of persons other than workers, self-employed persons, persons who retain such status and members of their families, the host Member State is not obliged to grant maintenance assistance for studies, including vocational training, consisting in student grants or student loans, to students who have not acquired the right of permanent residence, while

also providing, in Article 16(1), that Union citizens will have a right of permanent residence in the territory of a host Member State where they have resided legally for a continuous period of five years.

56 The Court has also stated that, in order to be proportionate, a residence requirement must be applied by the national authorities on the basis of clear criteria known in advance (see Case C-138/02 *Collins* [2004] ECR I-2703, paragraph 72).

57 By enabling those concerned to know, without any ambiguity, what their rights and obligations are, the residence requirement laid down by the Policy rule of 9 May 2005 is, by its very existence, such as to guarantee a significant level of legal certainty and transparency in the context of the award of maintenance grants to students.

58 It must therefore be stated that a residence requirement of five years, such as that laid down in the national legislation at issue in the main proceedings, does not go beyond what is necessary to attain the objective of ensuring that students from other Member States are to a certain degree integrated into the society of the host Member State.

59 That finding is without prejudice to the option for Member States to award maintenance grants to students from other Member States who do not fulfil the five year residence requirement should they wish to do so.

60 In the light of the foregoing, the response to the second to fourth questions must be that a student who is a national of a Member State and travels to another Member State to study there can rely on the first paragraph of Article 12 EC in order to obtain a maintenance grant where he or she has resided for a certain duration in the host Member State. The first paragraph of Article 12 EC does not preclude the application to nationals of other Member States of a requirement of five years' prior residence.

The fifth question

61 By this question, the Centrale Raad van Beroep is essentially enquiring whether Community law, in particular the principle of legal certainty, precludes the retroactive application of a residence requirement which, at the time of the facts in the main proceedings, could not have been known to the applicant.

62 It must be pointed out in this connection that the Policy rule of 9 May 2005 entered into force on its publication, with retroactive effect from 15 March 2005, that is, after the facts in the main proceedings took place.

63 The referring court, however, takes the view that the Policy rule of 9 May 2005 is relevant to the outcome of the dispute in the main proceedings, since it reflects the way in which the IB-Groep decided to implement the judgment in *Bidar*, and the effects of that judgment were not temporally limited.

64 The referring court states that its doubt on that issue originates from the judgment in *Collins*, inasmuch as the Court held, in that judgment, that a residence requirement could not be imposed on an applicant for social assistance unless that applicant could have already known of the existence of that requirement during the reference period.

65 As is apparent from paragraph 56 above, the Court held in *Collins* that, in order to be proportionate, a residence requirement must be applied by the national authorities on the basis of clear criteria known in advance.

66 With a view to answering the question, it should be recalled that, since the effects of *Bidar* were not temporally limited, the interpretation of Article 12 EC which follows from that judgment may, and must, be applied by the national courts to legal relationships arising and established before that judgment, 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, to that effect, Case 61/79 *Denkavit italiana* [1980] ECR 1205, paragraph 16, and *Bidar*, paragraph 66).

67 According to settled case-law, the principle of legal certainty — which is one of the general principles of Community law — requires, particularly, that rules of law be clear, precise and predictable in their effects, in particular where they may have negative consequences on individuals and undertakings (see, to that effect, Case C-143/93 *Van Es Douane Agenten* [1996] ECR I-431, paragraph 27, and Case C-347/06 *ASM Brescia* [2008] ECR I-5641, paragraph 69).

68 The file shows that the residence requirement laid down in the Policy rule of 9 May 2005 was introduced in order to cover the transitional period between the judgment

in *Bidar* and the transposition of Directive 2004/38. That option is said to have been chosen in order to satisfy the requirements of Articles 24(2) and 16 of that directive.

69 It therefore seems that, in a situation such as that at issue in the main proceedings, making the right of students from other Member States to a maintenance grant subject to a residence requirement, as an essential element of that right, does not have any negative consequences for the students concerned.

70 Likewise, since the Policy rule of 9 May 2005 gives greater rights to the students concerned than those to which they were entitled under the former national rules, the requirement set out in *Collins* is not applicable to the present case.

71 The answer to the question referred must therefore be that, in circumstances such as those of the main proceedings, Community law, in particular the principle of legal certainty, does not preclude the application of a residence requirement which makes the right of students from other Member States to a maintenance grant subject to the completion of periods of residence which occurred prior to the introduction of that requirement.

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) hereby rules:

1. **A student in the situation of the applicant in the main proceedings cannot rely on Article 7 of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State in order to obtain a maintenance grant.**

2. **A student who is a national of a Member State and travels to another Member State to study there can rely on the first paragraph of Article 12 EC in order to obtain a maintenance grant where he or she has resided for a certain duration in the host Member State. The first paragraph of Article 12 EC does not preclude the application to nationals of other Member States of a requirement of five years' prior residence.**

3. **In circumstances such as those of the main proceedings, Community law, in particular the principle of legal certainty, does not preclude the application of a residence requirement which makes the right of students from other Member States to a maintenance grant subject to the completion of periods of residence which occurred prior to the introduction of that requirement.**

[Signatures]