



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

24 October 2013*

(Citizenship of the Union — Articles 20 TFEU and 21 TFEU — Right of free movement and residence — National of a Member State — Studies pursued in another Member State — Education or training grant — Conditions — Duration of course greater than or equal to two years — Obtaining a vocational qualification)

In Case C-275/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Hannover (Germany), made by decision of 22 May 2012, received at the Court on 4 June 2012, in the proceedings

Samantha Elrick

v

Bezirksregierung Köln,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 21 March 2013,

after considering the observations submitted on behalf of:

- the German Government, by T. Henze and J. Möller, acting as Agents,
- the Danish Government, by V.P. Jørgensen and C. Thorning, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the European Commission, by V. Kreuschitz and D. Roussanov, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 20 TFEU and 21 TFEU.
- 2 The request has been made in proceedings between Ms Elrick, a German national, and the Bezirksregierung Köln (Local Administrative Authority, Cologne) concerning the latter's refusal to grant Ms Elrick an education grant for an educational course pursued in the United Kingdom.

Legal context

- 3 Under the title 'Principle', Paragraph 1 of the Federal Law on assistance for education and training (Bundesgesetz über individuelle Förderung der Ausbildung (Bundesausbildungsförderungsgesetz)), as amended on 23 December 2007 by the twenty-second law on the amendment of the Federal Law on assistance for education and training (BGBl. I, p. 3254, 'the BAföG') provides:

'By virtue of this law, there exists a right to an individual education or training grant for education or training corresponding to the student's interests, abilities and results if he does not otherwise have available to him the means necessary for his maintenance and education or training.'

- 4 Under the title 'Educational Establishments', Paragraph 2 of the BAföG, provides:

'1. Education or training grants shall be conferred in respect of attendance at:

- (1) general secondary schools ["weiterführende allgemeinbildende Schulen"] and vocational schools ["Berufsfachschulen"], including classes in all forms of basic vocational education or training, from class 10 [corresponding to the 10th year of schooling] upwards and at trade or technical schools ["Fach- und Fachoberschulklassen"], attendance at which does not require prior completion of a course of vocational education or training, provided that the student meets the requirements of subparagraph 1a,
- (2) classes in vocational schools and trade or technical schools ["Berufsfachschulklassen und Fachschulklassen"], attendance at which does not require prior completion of a course of vocational education or training, provided that they lead to a vocational qualification after a course of at least two years' duration,

...

Classification depends on the nature and content of the education or training. The education or training grant shall be granted where the education or training is pursued in a public establishment – with the exception of private establishments of higher education – or a private alternative school ["Ersatzschule"].

...

1a. Education or training grants shall be made available for attendance at the educational establishments referred to in point 1 of subparagraph 1 above only where the student does not reside with his parents and

- (1) if there is no equivalent educational establishment at a reasonable distance from the parental home;

...

5. Education or training grants shall be made available only where the period of education or training is of a duration of at least one semester of school or university studies, and where the student is generally required to devote himself fully to that education or training.'

5 In accordance with Paragraph 4 of the BAföG, subject to Paragraphs 5 and 6, an education or training grant is to be awarded for education or training in Germany.

6 Paragraph 5 of the BAföG, entitled 'Education and training abroad', is worded as follows:

'1. The permanent residence within the meaning of the law is established at the location which is, not merely on a temporary basis, the centre of that person's interests, but does not require an intention to settle there permanently; a person who resides at a location solely for the purposes of education or training has not established his permanent residence there.

2. 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) the student ... takes up or continues a course at an educational establishment in a Member State of the European Union or in Switzerland.

...

4. ... point 3 of subparagraph 2 above applies only to studies at an educational establishment equivalent to attendance at vocational school classes ["Berufsfachschulklassen"] within the meaning of point 2 of Paragraph 2(1), higher trade or technical schools ["höhere Fachschulen"], institutes of technology ["Akademien"] or universities ["Hochschulen"]. Assessment of equivalence shall be carried out *ex officio* in the context of the approval procedure [for an education or training grant].'

Background to the dispute and the questions referred

7 It is clear from the order for reference that Ms Elrick, a German national who was born in Germany on 1 June 1989 and who has her permanent residence, within the meaning of Paragraph 5(1) of the BAföG, at her parents' home in that Member State, has resided mainly in the United Kingdom since 1998.

8 After completing her secondary school education at a school in Devon (United Kingdom), she was enrolled, from 8 September 2008, as a full-time student at South Devon College on a course leading to the award of the 'First Diploma in Travel, Level 2'. That was a one-year course, attendance at which did not require prior completion of other vocational education or training. Ms Elrick had her permanent residence at her parents' home in Germany during her secondary school education and while she was enrolled at South Devon College.

9 On 5 July 2008, Ms Elrick made an application for an education grant in respect of her studies at South Devon College from September 2008.

10 By decision of 13 August 2008, that application was rejected by the Bezirksregierung Köln on the ground that the course chosen by Ms Elrick, which did not lead to a vocational qualification in accordance with the criteria laid down in the first sentence of Paragraph 2(1)(2) of the BAföG, was comparable to a one-year course providing professional orientation at a German vocational school ('Berufsfachschule'), and that such courses did not qualify for a grant for studies pursued abroad.

- 11 On 11 September 2008, Ms Elrick brought an action against that decision, in support of which she claimed that her exclusion from entitlement to the education and training grants provided for in the BAföG breached Articles 20 TFEU and 21 TFEU. If she had undertaken a comparable course in Germany, she would have qualified for an education grant, even if that course was of only one year's duration. The national legislation therefore gives her the choice of either refraining from exercising her right to freedom of movement within the European Union in her choice of educational establishment or foregoing an education grant under the law of her home Member State. Her right to freedom of movement is thus unreasonably restricted on grounds which are not objectively justified.
- 12 The Verwaltungsgericht Hannover seeks to ascertain whether the national law is compatible with Articles 20 TFEU and 21 TFEU. It notes, as a preliminary, that, in accordance with Paragraph 5(2)(3) of the BAföG, concerning education or training undertaken entirely abroad, a grant can be awarded in the case of attendance at an educational establishment equivalent to that at a vocational school ('Berufsfachschulklasse') in Germany, only if the conditions of Paragraph 2(1)(2) of the BAföG are met. Under the latter provision, the course in question must lead to a vocational qualification after a course of at least two years' duration. In respect of the course undertaken by Ms Elrick in the United Kingdom, that condition was not met.
- 13 According to the referring court, if Ms Elrick had undertaken in Germany a course equivalent to that which she undertook in the United Kingdom, she would have been entitled, in principle, to an education grant under Paragraphs 1, 2(1)(1), and 4, read in conjunction with Paragraph 2(1a)(1) of the BAföG.
- 14 According to that court, in order to attend the establishment nearest to her parents' home in Germany offering such a course, the applicant would have had to spend over an hour each way travelling to and from the establishment, which does not constitute, for the purposes of the guidelines on the BAföG (Verwaltungsvorschriften zum BAföG), a reasonable time. Accordingly, if Ms Elrick had taken up residence in an area in Germany where a comparable educational establishment was located, she would, in principle, have been entitled to an education grant for that course.
- 15 The referring court expresses its doubts as to the compatibility of the national law at issue with EU law. Since the course undertaken in the United Kingdom does not give rise to an entitlement to an education grant under the BAföG, contrary to what would have been the case in respect of a comparable course undertaken in Germany, Ms Elrick had no choice but to refrain from the exercise of her right to freedom of movement or to forego her entitlement to an education grant.
- 16 In those circumstances, the Verwaltungsgericht Hannover decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Do Articles 20 TFEU and 21 TFEU preclude a rule of national law according to which a German national who has her permanent residence in Germany and attends an educational establishment in a Member State of the European Union is refused an education grant under the [BAföG] in respect of her attendance at that foreign educational establishment because the educational course attended abroad is of only one year's duration, whereas she could have received an education grant under the BAföG for comparable studies in Germany, which would also have lasted for one year?'

The question referred for a preliminary ruling

- 17 By that question, the referring court asks, in essence, whether Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which makes the award of an education grant, to a national permanently resident in that Member State, for a course pursued in another Member State, subject to the requirement that the course in question lead to a vocational qualification equivalent to that provided by a vocational school in the

State awarding the grant, following a course of at least two years' duration, whereas an education grant would have been awarded if the national had chosen to undertake, in the State awarding the grant, a course equivalent to that which she wished to pursue in another Member State, and which is of less than two years' duration.

- 18 First of all, it must be recalled that, as a German national, Ms Elrick enjoys the status of a citizen of the Union under Article 20(1) TFEU 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; Joined Cases C-11/06 and C-12/06 *Morgan and Bucher* [2007] ECR I-9161, paragraph 22; and Joined Cases C-523/11 and C-585/11 *Prinz and Seeberger* [2013] ECR, paragraph 23 and the case-law cited).
- 19 As the Court has held on numerous occasions, the status of citizen of the Union is destined to be the fundamental status of nationals of the Member States, enabling those among such nationals who find themselves in the same situation to receive, as regards the material scope of the FEU Treaty, the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for in that regard (Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 28; Case C-46/12 *N.* [2013] ECR, paragraph 27; and *Prinz and Seeberger*, paragraph 24).
- 20 The situations falling within the scope of EU 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 21 TFEU (*Morgan and Bucher*, paragraph 23, and *Prinz and Seeberger*, paragraph 25 and the case-law cited).
- 21 In that respect, although the Member States are competent, under Article 165(1) TFEU, as regards the content of teaching and the organisation of their respective education systems, they must exercise that competence in compliance with EU law 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 21(1) TFEU (see, *Morgan and Bucher*, paragraph 24 and the case-law cited, and *Prinz and Seeberger*, paragraph 26 and the case-law cited).
- 22 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 21(1) TFEU on every citizen of the Union (Case C-406/04 *De Cuyper* [2006] ECR I-6947, paragraph 39; *Morgan and Bucher*, paragraph 25; and *Prinz and Seeberger*, paragraph 27). In that respect, a national of a Member State who goes to another Member State and pursues secondary education there exercises the freedom of movement guaranteed by Article 20 TFEU (see, to that effect, *D'Hoop*, paragraphs 29 to 34, and Case C-209/03 *Bidar* [2005] ECR I-2119, paragraph 35).
- 23 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 *D'Hoop*, paragraph 31; *Morgan and Bucher*, paragraph 26; and *Prinz and Seeberger*, paragraph 28).
- 24 That consideration is particularly important in the field of education in view of the aims pursued by Article 6(e) TFEU and the second indent of Article 165(2) TFEU, namely, inter alia, encouraging mobility of students and teachers (see *D'Hoop*, paragraph 32; Case C-147/03 *Commission v Austria* [2005] ECR I-5969, paragraph 44; *Morgan and Bucher*, paragraph 27; and *Prinz and Seeberger*, paragraph 29).

- 25 Moreover, it must be noted that EU law does not impose any obligation on the Member State to provide a system of education or training grants for studies pursued in another Member State. However, where a Member State provides for a system of education or training grants which enables students to receive such grants, 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, to that effect, *Morgan and Bucher*, paragraph 28, and *Prinz and Seeberger*, paragraph 30).
- 26 In the present case, it is not disputed that, if the applicant had undertaken in Germany a comparable course to that which she pursued in the United Kingdom, she would have been entitled to an education grant, given that there was no establishment offering an equivalent course within a reasonable distance from her parents' home in Germany.
- 27 The German Government claims that the legislation at issue in the main proceedings does not restrict the freedom of movement and of residence, since the German legislature legitimately chose not to establish a right to an education or training grant for the type of course undertaken by Ms Elrick and EU law does not require it to do so. According to that government, the purpose of the BAföG is to carry out a qualitative selection of the types of education or training courses subsidised by the Federal Republic of Germany. Such a regulation does not constitute a restriction on the fundamental freedoms of movement and of residence.
- 28 However, legislation such as that at issue in the main proceedings, which makes the award of an education or training grant for a course undertaken abroad subject to the condition that the course in question be equivalent to a course provided by a vocational school ('Berufsfachschulklasse') leading to a vocational qualification following a course of study of two years, constitutes a restriction within the meaning of Article 21 TFEU, since a grant would be awarded to an applicant in the same personal situation as Ms Elrick to undertake in Germany a course equivalent to that which she pursued in another Member State.
- 29 Such a condition is likely to dissuade European Union citizens, such as Ms Elrick, from exercising their right to freedom of movement and residence in another Member State, given the impact that exercising that freedom is likely to have on the right to an education or training grant (*Prinz and Seeberger*, paragraph 32). Moreover, the restrictive effects created by that condition cannot be regarded as too uncertain or too insignificant to constitute a restriction on the freedom of movement and residence (see, to that effect, *Morgan and Bucher*, paragraph 32).
- 30 In accordance with settled case-law, legislation which is such as to restrict a fundamental freedom guaranteed by the Treaty can be justified in the light of EU 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 *Morgan and Bucher*, paragraph 33). 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; *Morgan and Bucher*, paragraph 33; and *Prinz and Seeberger*, paragraph 33).
- 31 The German Government submits that the national legislation at issue in the present proceedings is justified by the German legislature's choice to award education or training grants for studies pursued abroad on the basis of the normal foreseeable utility of the course, and on the basis of the link between the stay abroad and the total length of the course. According to the German Government, the general objective of the legislation at issue in the main proceedings is, therefore, to award education or training grants for studies pursued abroad only in respect of those courses which offer the student the highest chance of success in the labour market. In that regard, a course which leads to

a weak qualification, such as that at issue in the main proceedings, provides general vocational guidance, but can only slightly improve the student's chances in the labour market. For those reasons, such a course does not merit the award of an education or training grant for studies pursued abroad.

- 32 However, it is not clear from the arguments made by the German government how the objective of subsidising only those courses abroad which improve students' chances on the labour market is attained by the legislation at issue in the main proceedings and, in particular, by the condition set out in Paragraph 2(2) of the BAföG requiring that the course in question be of at least two years' duration, irrespective of the nature and content of that course, whereas a course which does not satisfy that condition, but which is undertaken in Germany, is subsidised in certain situations, such as, inter alia, that of the applicant. The requirement that the course chosen be of at least two years' duration therefore appears to be devoid of any link to the standard of that course.
- 33 Accordingly, the imposition of a condition concerning duration such as that at issue in the main proceedings appears to be inconsistent and cannot be regarded as proportionate to that objective (see, by analogy, *Morgan and Bucher*, paragraph 36).
- 34 In view of the foregoing, the answer to the question referred is that Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, that makes the award of an education or training grant, to a national resident in that Member State, for a course pursued in another Member State, subject to the requirement that the course in question lead to a vocational qualification equivalent to that provided by a vocational school in the State awarding the grant, following a course of at least two years' duration, whereas an education or training grant would have been awarded if the national had chosen to undertake, in the State awarding the grant, a course equivalent to that which she wished to pursue in another Member State, and which is of less than two years' duration.

Costs

- 35 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 (Third Chamber) hereby rules:

Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, that makes the award of an education or training grant, to a national resident in that Member State, for a course pursued in another Member State, subject to the requirement that the course in question lead to a vocational qualification equivalent to that provided by a vocational school in the State awarding the grant, following a course of at least two years' duration, whereas an education or training grant would have been awarded if the national had chosen to undertake, in the State awarding the grant, a course equivalent to that which she wished to pursue in another Member State, and which is of less than two years' duration.

[Signatures]