



Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 11 September 2018¹

Case C-457/17

Heiko Jonny Maniero
v
Studienstiftung des deutschen Volkes eV

(Request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany))

(Directive 2000/43/EC — Equal treatment of persons irrespective of racial or ethnic origin — Article 3(1)(g) — Education — Scholarships awarded to students having passed the First State Law Examination)

1. ‘Nobody would dispute that the education of the young requires the special attention of the legislator ... but consideration must be given to the question, what constitutes education ...’²
2. The European legislature has indeed adopted legislation in that respect, which, inter alia recognises the right to education as a fundamental right.³ However, it has not defined the concept of ‘education’. This reference for a preliminary ruling requires the Court to give an answer to that ancient question, now raised in the context of EU law, and more precisely of Council Directive 2000/43/EC.⁴ What constitutes education?

Legal framework

Directive 2000/43

3. The purpose of Directive 2000/43 is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin.⁵

1 Original language: English.

2 ‘τι μὲν οὐκ ἐστὶν νομοθέτῃ μάλιστα πραγματευτέον περὶ τῶν νέων παιδείαν, οὐδὲς ἄν μὴ βίβηται ... τίς δ’ ἔσται παιδεία ... δεῖ μὲν λαμβάνειν.’ Aristotle, *Politics*, book 8.

3 Article 14 of the Charter of Fundamental Rights of the European Union (OJ 2000 C 364, p. 1) (‘the Charter’).

4 Directive of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22).

5 Article 1.

4. Article 2(1) prohibits both direct and indirect discrimination on the grounds of racial or ethnic origin. Article 2(2) defines direct discrimination as occurring ‘where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin’ and indirect discrimination as occurring ‘where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary’.

5. Article 3(1) defines the scope of the directive as applying ‘within the limits of the powers conferred upon the Community, ... to all persons, as regards both the public and private sectors, including public bodies, in relation to: ... (g) education ...’.

National legislation

6. Directive 2000/43 was transposed in Germany by the Allgemeines Gleichbehandlungsgesetz (General Law on equal treatment, ‘the AGG’).

7. Paragraph 1 of the AGG prohibits all discrimination on the grounds of, inter alia, race or ethnic origin. Paragraph 2(1)(7), transposing Article 3(1)(g) of Directive 2000/43, defines the scope of prohibition as including discrimination in relation to, inter alia, education. Paragraph 3(1) and (2) defines direct and indirect discrimination prohibited by that law.

Facts, procedure and the questions referred

8. Mr Maniero is an Italian national born and residing in Germany. In 2013, he obtained a Bachelor of Laws from a university in Armenia.

9. On 11 December 2013, Mr Maniero contacted the Studienstiftung des deutschen Volkes eV (German Academic Scholarship Foundation, ‘the Foundation’), a registered association awarding scholarships, with a view to applying for a ‘Bucerius Law Programme’ scholarship, related to the promotion of projects of legal research and studies abroad.⁶

10. The Foundation responded on 17 January 2014 indicating that applicants had to have passed the First State Law Examination. Mr Maniero replied stating that the ‘five-year degree’ that he obtained in Armenia was comparable to the Second State Law Examination since it qualifies the holder to hold judicial office or to act as a lawyer in that country. He suggested that the Foundation’s requirement could infringe the AGG as discrimination based on ethnic or social origin.

11. Mr Maniero did not apply for the scholarship. In subsequent correspondence with the Foundation, he contended that it was the Foundation’s negative attitude that had deterred him from doing so.

12. Mr Maniero brought an action before the Landgericht (Regional Court, Germany) requesting that the Foundation be ordered to cease and refrain from discrimination on the grounds of his age or origin and to pay him EUR 18 734.60 in damages and compensation for travel costs. That action, as well as the appeal that followed, were dismissed.

13. Mr Maniero then introduced an appeal on a point of law before the Bundesgerichtshof (Federal Court of Justice, Germany) (‘the referring court’).

⁶ The Foundation’s objective is, according to its statutes, to promote higher education for young people whose great scientific or artistic talent and personality give rise to expectations of particular achievements in the service of the community. The objective of the ‘Bucerius Law Programme’ is to provide particularly qualified law graduates in Germany with knowledge of foreign legal systems and languages as well as the experience of being abroad.

14. The latter observes that the appeal can only succeed if the award of scholarships is covered by the concept of education in Paragraph 2(1)(7) of the AGG, transposing Article 3(1)(g) of Directive 2000/43. If that is the case, the next issue is whether or not the requirement to have passed the First State Law Examination constitutes indirect discrimination prohibited by Paragraph 3(2) of the AGG, transposing Article 2(2)(b) of Directive 2000/43. Against that background the referring court asks this Court the following questions:

- (1) Is the award by a registered association of scholarships intended to promote projects for research and studies abroad covered by the concept of “education” within the meaning of Article 3(1)(g) of Directive 2000/43?
- (2) If Question 1 is to be answered in the affirmative:

In the case of the award of scholarships referred to in Question 1, does the participation requirement relating to the passing of the First State Law Examination in Germany constitute indirect discrimination against an applicant within the meaning of Article 2(2)(b) of Directive 2000/43 where the applicant, who is a Union citizen, has indeed acquired a comparable qualification in a State which does not belong to the European Union, without the choice of this place of qualification being related to the ethnic origin of the applicant, but, on account of his residence in national territory and fluent command of German, had, in the same way as a national, the possibility of taking the First State Law Examination after studying law in national territory?

Is any difference made by the fact that the objective pursued by the scholarship programme is, without being linked to any discriminatory characteristics, to provide law graduates in Germany with knowledge of foreign legal systems, experience of being abroad and knowledge of languages by promoting a project for research and studies abroad?

15. Written observations were submitted by the Foundation, the German Government and the European Commission. Mr Maniero, the Foundation, the German Government and the Commission made oral submissions at the hearing on 30 May 2018.

16. As requested by the Court, I shall limit myself in this Opinion to examining the first question.

Assessment

17. The referring court asks whether the award of scholarships intended to promote projects for research and studies abroad by a registered association falls within the scope of Article 3(1)(g) of Directive 2000/43 as being related to ‘education’. I note at the outset that this case concerns the concept of ‘education’ in the context of Directive 2000/43 and *not* the possible implications for recognition of diplomas or free movement of persons.

18. The Foundation and the German Government submit that the concept of education should be interpreted as not including the award of scholarships. They base their arguments principally on the legislative history and the scheme of the directive.

19. The Commission on the other hand argues that Directive 2000/43 should be interpreted broadly, a submission with which Mr Maniero is in agreement. Accordingly, the award of scholarships should be included within the scope of the word ‘education’ in Article 3(1)(g).

20. According to settled case-law, the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union. Whilst the wording of Directive 2000/43 does not give specific guidance on how the term ‘education’ is to be understood, neither does it contain any reference to national laws as regards the meaning of that term. It follows that ‘education’ must be regarded, for the purposes of the directive, as designating an autonomous concept of EU law which must be interpreted in a uniform manner throughout the Member States.⁷

21. As the Court has consistently held, the meaning and scope of a term for which EU law provides no definition must be determined by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part.⁸

22. Education is commonly perceived as ‘the act or process of acquiring knowledge, especially systematically during childhood and adolescence’.⁹ Illustrative definitions of ‘education’ are not lacking;¹⁰ Thus, the International Standard Classification of Education (2011) proposes ‘the processes by which societies deliberately transmit their accumulated information, knowledge, understanding, attitudes, values, skills, competencies and behaviours across generations. It involves communication designed to bring about learning’.¹¹ It follows that education is an intellectual process. Education is thus composed of two aspects, the one substantial (it is ‘intellectual’) and the other functional (it is a ‘process’). Usually, but not always, education takes place at a school or at a university. I would include research, when it takes place in an educational establishment, within the term, as the purpose of such research is to acquire and transmit knowledge rather than to further commercial objectives. Although one thinks primarily of young persons when referring to education, it is important to emphasise that education concerns all ages. Lifelong learning today plays an important role in the professional and personal evolution of individuals.¹² Thus, one also finds initiatives such as the ‘université du troisième âge’ enabling those who have retired from active economic life to expand their knowledge.

23. From the usual meaning of the word ‘education’, which is, I observe, very broad, it is not apparent that the award of scholarships is necessarily included within its scope.

24. I shall therefore turn to the context and the objective of the rules of which that term forms part.

⁷ See, to that effect, judgment of 2 March 2017, *J. D.*, C-4/16, EU:C:2017:153, paragraphs 23 and 24 and the case-law cited.

⁸ Judgment of 3 September 2014, *Deckmyn and Vrijheidsfonds*, C-201/13, EU:C:2014:2132, paragraph 19 and the case-law cited.

⁹ That definition of education is to be found in the *Collins English Dictionary*. The *Oxford English Dictionary* has ‘the process of giving or receiving systematic instruction, especially at a school or University’. Taken together, the two definitions correspond to a usual understanding of what ‘education’ means.

¹⁰ In French, the definition of ‘education’ by the *Petit Robert* seems to me even broader: ‘mise en œuvre des moyens propres à assurer la formation et le développement d’un être humain’. In German, the language of the procedure in the present case, the *Duden — Deutsches Universalwörterbuch* offers, under ‘Bildung’, ‘(a) das Bilden (5), Erziehung: die B. der Jugend; mehr für die B. tun; (b) das Gebildetein; das Ausgebildetein; erworbenes Allgemeinwissen: eine wissenschaftliche, künstlerische, humanistische B.; seine B. vervollständigen, vertiefen; eine umfassende B. besitzen; eine vorzügliche B. erhalten; ein Mann von B. (ein gebildeter Mann); das gehört zur allgemeinen B. (das sollte jeder Gebildete wissen); (c) (seltener) gutes Benehmen: sie hat keine B. (weiß nicht, was sich schickt)’.

From an etymological perspective, a survey of the different linguistic versions of the directive shows that seven of them (English: ‘education’, French: ‘éducation’, Maltese: ‘edukazzjoni’, Polish: ‘edukacja’, Portuguese: ‘educação’, Romanian: ‘educația’, and Spanish: ‘educación’) use a word etymologically deriving from the latin verb *educare* ‘bring up, rear, educate’, related to *educere* ‘bring out, lead forth’.

¹¹ The International Standard Classification of Education is the reference for international classification for organising education programmes and related qualifications by levels and fields proposed by the United Nations Educational, Scientific and Cultural Organisation. That definition is partially reproduced as the definition of ‘education’ by Article 2(d) of Regulation (EC) No 452/2008 of the European Parliament and of the Council of 23 April 2008 concerning the production and development of statistics on education and lifelong learning (OJ 2008 L 145, p. 227).

¹² Regulation (EU) No 1288/2013 of the European Parliament and of the Council of 11 December 2013 establishing ‘Erasmus+’: the Union programme for education, training, youth and sport and repealing Decisions No 1719/2006/EC, No 1720/2006/EC and No 1298/2008/EC (OJ 2013 L 347, p. 50) defines ‘lifelong learning’ as ‘all general education, vocational education and training, non-formal learning and informal learning undertaken throughout life, resulting in an improvement in knowledge, skills and competences or participation in society within a personal, civic, cultural, social and/or employment-related perspective, including the provision of counselling and guidance services’.

25. The purpose of Directive 2000/43 is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.¹³ It gives specific expression, in its field of application, to the principle of non-discrimination on grounds of race and ethnic origin which is enshrined in Article 21 of the Charter.¹⁴ The preamble of the directive describes protection against discrimination as a universal right and refers to that effect to various international agreements that recognise that right.¹⁵

26. Furthermore, in recitals 9, 12 and 13, the EU legislature sought to make clear that: (i) discrimination based on racial or ethnic origin may hinder the achievement of the objectives of the Treaty, in particular attaining a high level of employment and of social protection, raising of the standard of living and quality of life, and promoting economic and social cohesion and solidarity, and may also undermine the development the European Union as an area of freedom, security and justice; and (ii) the prohibition of any discrimination of that type is intended, in particular, to ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin.¹⁶

27. The scope of Directive 2000/43 is broad. *Ratione personae*, it covers all natural persons and protects them against discrimination on grounds of racial or ethnic origin.¹⁷ That protection applies to both the public and private sectors, including public bodies.¹⁸ *Ratione materiae*, it goes beyond access to employed and self-employed activities and covers all the areas listed exhaustively in Article 3(1).¹⁹

28. As the Court has consistently held, in the light of the objective of Directive 2000/43 and the nature of the rights which it seeks to safeguard, its scope cannot be defined restrictively.²⁰ That conclusion applies to the terms of the directive that define its substantive scope, such as employment, vocational guidance and training, working conditions, social protection and advantages and, of course, education.²¹

29. Does that broad interpretation of the term ‘education’ also cover the award of scholarships?

30. The award of scholarships does not correspond, as such, to the intellectual process that constitutes education. It concerns access to education.

31. In my view, however, access to education is an essential component of education itself, especially in the context of a legal instrument combating discrimination.

32. Indeed, for the purposes of combating discrimination, if access to education were omitted, what would be left in the concept of ‘education’? In a classroom (to take the very classic view of education), everyone can sit in the front and everyone can ask questions. It would be nowadays unimaginable that a certain ethnic group has to sit at the back and is not allowed to address the teacher. Equally self-evidently, all students should be graded according to the same criteria, according to their merits

¹³ Article 1.

¹⁴ Judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraphs 58 and 72 and the case-law cited.

¹⁵ Recital 3.

¹⁶ See also judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 74.

¹⁷ Article 3(1) and recital 16. The afforded protection extends, where appropriate, to legal persons where these suffer discrimination because of the racial or ethnic origin of their members.

¹⁸ Article 3(1).

¹⁹ See recital 12 of the directive and judgment of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraphs 41 and 42. In this regard, its scope is broader than that of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

²⁰ Judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 42 and the case-law cited.

²¹ See, to that effect, for the access to and supply of goods (Article 3(1)(h) of Directive 2000/43), judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 43.

and not their race or ethnic origin; and all students should obtain the same diploma after successfully following the same classes.²² But the possibility to be admitted under the same conditions to all schools and to all classes corresponds to *access* to education. Without that access, there can be no education. To be clear, the word ‘education’ necessarily implies the words ‘access to’ education; they are co-existent and co-dependent and to divorce them would denude the directive of its purpose to combat discrimination related to education.

33. Of course, access to education has many component parts. It could be physical access to a building; imposing a *numerus clausus* system to keep student numbers controlled; the ability to borrow or purchase books; the ability to pay for living expenses (amongst many others). Accordingly, schools, universities and other institutions frequently award scholarships to cover the fees of educational programmes, travel costs incurred in studying abroad or maintenance costs (whether in money or in kind, such as the provision of free accommodation or meals).

34. Financing is an essential aspect of access to education. Excluding a certain ethnic group from that finance means, especially for educational programmes for which the fees are very high, excluding that group from education. That perpetuates any existing discrimination against the group in question. As the Commission stated in its proposal for the directive, high quality education is a prerequisite for successful integration into society and equal treatment in selection procedures (that is to say, in access to education) should not be neglected.²³ A teleological interpretation of ‘education’ pleads clearly in favour of including aspects of access to education within the scope of the directive.

35. An analysis of the term ‘education’ in the more general context of EU law points to the same conclusion. The right to education (and access to vocational training) as well as protection from discrimination on grounds of race or ethnic origin are fundamental rights recognised by Articles 14 and 21 of the Charter respectively. When deciding how to interpret ‘education’ within the context of Directive 2000/43, it is important to bear in mind that the question is situated at the crossroads of two fundamental rights.

36. The Court’s case-law has already interpreted the concept of education broadly in cases concerning equal treatment, so as to include aspects of access to education. Thus, in proceedings brought by two German students to whom the Netherlands refused to grant study financing in the same way as for Dutch students, the Court held that the principle of equal treatment for admission to educational courses for the children of migrant workers in Article 12 of Regulation (EEC) No 1612/68²⁴ refers not only to the rules concerning admission itself, but also to general measures intended to facilitate educational attendance.²⁵

²² I pause to observe that segregation in education on racial or ethnic grounds was the norm under the apartheid regime of South Africa; and women, even though they sat exactly the same examinations as their male counterparts, were not admitted to degrees at Cambridge University until December 1947.

²³ Proposal for a Council directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, COM(1999) 566 final (‘the Commission Proposal’), p. 5.

²⁴ Regulation of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475), repealed by Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1). I note that that regulation served as inspiration for the Commission and its explanation of some of the terms used in Directive 2000/43; Commission Proposal, p. 7.

²⁵ See judgment of 15 March 1989, *Echternach and Moritz*, 389/87 and 390/87, EU:C:1989:130, paragraph 33. In a previous case also concerning Article 12 of Regulation No 1612/68, the Court held in the judgment of 3 July 1974, *Casagrande*, 9/74, EU:C:1974:74, paragraph 7, that ‘integration presupposes that, in the case of the child of a foreign worker who wishes to have secondary education, this child can take advantage of benefits ... relating to educational grants, under the same conditions as nationals who are in a similar position’.

37. Similarly, in interpreting Article 7 of the EEC Treaty (now Article 21(2) TFEU), the Court held that equality of treatment regarding the conditions of access to vocational training applies not only to the requirements laid down by the educational establishment in question, such as enrolment fees, but also to any measure that may prevent the exercise of that right, such as the right of residence in the Member State where the course takes place.²⁶

38. In *Bidar*, the Court has explained that, following the introduction of the concept of citizenship of the Union into the EC Treaty together with a chapter devoted, inter alia, to education and vocational training, the situation of a Union citizen who is lawfully resident in another Member State falls within the scope of the prohibition on discrimination on grounds of nationality for the purposes of obtaining assistance for students which is intended to cover maintenance costs, whether in the form of a subsidised loan or a grant. The Court did not there distinguish between the different aspects of access to education covered by the financing.²⁷

39. Furthermore, as the Commission submitted at the hearing, notwithstanding that Article 165 TFEU governing the European Union competence on education does not expressly mention the financing of studies, that article has served as the legal basis for establishing the Erasmus+ programme, which includes, inter alia, funding for the learning mobility of individuals.²⁸ That reflects, in my view, the importance ascribed to access to education by the EU legislature as an essential aspect of education.

40. However, in order to decide whether or not the award of a scholarship or grant is included within the scope of Article 3(1)(g) of Directive 2000/43, I would not seek guidance from Article 11(1)(b) of Council Directive 2003/109/EC (an idea that was explored at the hearing).²⁹ That provision concerns equal treatment of long-term residents with nationals of the host Member State as regards ‘education and vocational training, including study grants in accordance with national law’. It is apparent from the reference to ‘national law’ that the interpretation of that provision, insofar as what constitutes a ‘study grant’ is concerned, is not to be conducted under the principles applicable to autonomous concepts of EU law (see points 20 and 21 above). Against that background, and given the different personal and material scope of the two directives, I do not consider it appropriate to draw on Directive 2003/109 for the interpretation of ‘education’ in the context of Directive 2000/43.

41. As regards the legislative history of Directive 2000/43, Article 3(1)(g) of the Commission Proposal explained that the scope of ‘education’ was to be taken as ‘including grants and scholarships, 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’.³⁰ Those explanations were removed however from the final text of the directive adopted by the Council. The Foundation and the German Government consider that that indicates that the EU legislature deliberately chose to exclude grants and scholarships from the scope of that provision.

42. I do not agree with that interpretation.

43. The sentence that was removed from the final text also included the obligation to respect the responsibility of the Member States for the content of teaching and the organisation of their education systems. That sentence reproduces verbatim Article 165(1) TFEU setting out the Union competence on education. Although the latter is not amongst the legal basis of Directive 2000/43, the material scope of

²⁶ Judgment of 26 February 1992, *Raulin*, C-357/89, EU:C:1992:87, paragraph 34.

²⁷ Judgment of 15 March 2005, C-209/03, EU:C:2005:169, paragraphs 39 to 42. That judgment marked an evolution from previous case-law where the Court had held that, at the stage of evolution of Community law (at the time), education and assistance given to students for maintenance and for training fell outside EEC competence; see judgment of 21 June 1988, *Lair*, 39/86, EU:C:1988:322, paragraph 15.

²⁸ Regulation No 1288/2013.

²⁹ Directive of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

³⁰ Commission Proposal, p. 8.

that directive is naturally limited to the powers conferred upon the EU.³¹ Thus, the legislature's intention, when it removed the sentence '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' from Article 3(1)(g) of Directive 2000/43, cannot have been to change the scope of that provision. And whilst there is no certainty as to the legislator's intention when deleting that wording, the removal of tautologous language is certainly a plausible explanation. The deletion simplifies the provision's wording without changing its scope, whilst emphasising the autonomous nature of the terms used by removing the reference to the Member States' powers. Logically, the same conclusion applies to the first part of the sentence that was removed, namely 'including grants and scholarships'. The Foundation and the German Government argue that those words were deleted in order to narrow the definition. But the opposite might equally be true: namely that the deletion was designed to ensure a broad definition.

44. That conclusion is not altered by the fact that other terms defining the directive's scope (in points (a) to (e) and (h) of Article 3(1)) are further explained by a sentence starting with 'including'. Nor am I convinced by the argument that the fact that vocational guidance and training are mentioned separately, in Article 3(1)(b), demonstrates an intention to narrow the scope of the concept of education.

45. Vocational guidance and training are closely linked to access to employment and are thus mentioned directly after that aspect. At the time when vocational training was the only term linked to education in the EEC Treaty, the Court found that, as a general rule, university studies constitute 'vocational training' within the meaning of Article 128 EEC and therefore a supplementary enrolment fee charged to students who were nationals of other Member States constituted discrimination on grounds of nationality contrary to Article 7 EEC. It is clear that, in that case, the Court interpreted broadly and purposively the term 'vocational training' so as to prohibit discrimination on the grounds of nationality in university education. There is, here, an analogy with the present case insofar as the same methods of interpretation should be used in order to arrive at a broader application of the rule at issue.³²

46. The Commission submitted at the hearing that the award of scholarships may also be covered by Article 3(1)(f) of Directive 2000/43 (social advantages). That issue may be important, should the Court find that the award of scholarships does not fall within the scope of education.

47. The Commission Proposal states that social advantages are of an economic or cultural nature, such as concessionary travel on public transport or subsidised meals in schools for children from low income families.³³ The Court has already held that assistance granted for maintenance and education in order to pursue university studies evidenced by a professional qualification constitutes a social advantage within the meaning of Article 7(2) of Regulation No 1612/68.³⁴ In my view, that covers study financing that is 'horizontal' — that is, granted to everyone according to criteria related for instance to the income or employment situation of the students or their parents. I consider such cases as being both related to access to 'education' and constituting a 'social advantage'. That means that an overlap in the scope of the two provisions cannot be excluded. However, where financing is awarded to a limited number of students according to criteria related to their academic performances or other merits (as seems to be the case in the main proceedings), it is my view that that financing should be considered to fall within the scope of 'education'.

³¹ Article 3(1) of the directive.

³² See judgment of 2 February 1988, *Blaizot and Others*, 24/86, EU:C:1988:43, paragraphs 10 to 24, especially 19, 20 and 24.

³³ Commission Proposal, p. 7.

³⁴ See judgment of 15 December 2016, *Depesme and Others*, C-401/15 to C-403/15, EU:C:2016:955, paragraph 38 and the case-law cited. The Commission Proposal expressly draws inspiration (at p. 7) from Regulation No 1612/68 concerning the concept of 'social advantages'.

48. It follows from all the above that the term ‘education’ in the context of Directive 2000/43 must be interpreted broadly and that it includes aspects that are related to access to education, such as financing by means of scholarships. However, there must be a genuine link between the financing and education. A scholarship has such a link when it covers, for instance, enrolment and tuition fees, travel costs associated with courses that take place in another State, or maintenance costs, when the objective is to permit students to follow their courses.³⁵ It is for the national court to verify those aspects.

49. I therefore conclude that the concept of ‘education’ within the meaning of Article 3(1)(g) of Directive 2000/43 includes the award of scholarships intended to promote projects for research and studies abroad. It is for the national court to verify the existence of a genuine link between the financing provided and ‘education’.

Conclusion

50. In the light of the foregoing considerations, I propose that the Court should answer the question referred by the Bundesgerichtshof (Federal Court of Justice, Germany) to the following effect:

The concept of ‘education’ within the meaning of Article 3(1)(g) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin includes the award of scholarships intended to promote projects for research and studies abroad. It is for the national court to verify the existence of a genuine link between the financing provided and ‘education’.

³⁵ In that respect, I am of the view that EU law has clearly evolved since the Court held, in its judgment of 21 June 1988, *Brown*, 197/86, EU:C:1988:323, at paragraph 18, 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’. See judgment of 15 March 2005, *Bidar*, C-209/03, EU:C:2005:169, paragraphs 39 to 42, cited at point 38 above. That must be the case, a fortiori, in the context of Directive 2000/43, considering its purpose and scheme, as analysed in point 24 and seq. above.