Reports of Cases

OPINION OF ADVOCATE GENERAL
MEDINA
delivered on 7 April 2022 [1]

Case C-638/20

MCM
v
Centrala studiestödsnämnden

(Request for a preliminary ruling from the Överklagandenämnden för studiestöd (National Board of Appeal for Student Aid, Sweden))

(Reference for a preliminary ruling – Free movement of workers – Equal treatment – Social advantages – Article 45 TFEU – Regulation (EU) No 492/2011 – Article 7(2) – Financial aid for higher education studies abroad – Condition of residence – Condition of social integration for non-resident students – Student who is a national of the State granting the aid, always residing in the State where they are studying – Parent previously a migrant worker in the State of studies)

1. By the present reference for a preliminary ruling, the Överklagandenämnden för studiestöd (National Board of Appeal for Student Aid, Sweden) seeks an interpretation of Article 45 TFEU and Article 7(2) of 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. [2] The reference arose in the context of an appeal by the applicant in the main proceedings, MCM, against the Centrala studiestödsnämnden (Swedish Board of Student Finance, which is responsible for providing financial aid to students; 'the CSN') in relation to MCM's claim to obtain student financial aid from the Swedish State for his studies in Spain.

I. The facts giving rise to the dispute in the main proceedings and the question referred for a preliminary ruling

2. MCM, like his father, is a Swedish national, but he has lived in Spain since birth.

[1] Original language: English.
[2] OJ 2011 L 141, p. 1.

3. In March 2020, MCM applied to the CSN in connection with university studies in Spain, which had begun in January 2020.[3] MCM based his application, among other things, on the fact that although his father has been living and working in Sweden since November 2011, he had previously been active as a migrant worker in Spain for approximately 20 years. Therefore, MCM claimed that, as a child of a migrant worker, he should be entitled to the student financial aid.

4. The CSN rejected MCM's application on the ground that he did not satisfy the requirement of residence in Sweden under the first subparagraph of Paragraph 23 of Chapter 3 of the studiestödslagen (1999:1395)[4] and that it was not possible to grant him financial aid under any of the exceptions laid down in Chapter 12, Paragraphs 6 to 6b, of the CSN's föreskrifter och allmänna råd om beviljning av studiemedel (CSNFS 2001:1).[5]

5. In support of its decision, the CSN also stated that there was no EU law basis for an exception to be made to the residence requirement. The authority regarded MCM as failing to satisfy the alternative requirement of being integrated into Swedish society, which the authority laid down for those who fail to satisfy the residence requirement and who apply for student financial aid to study in another EU country.

6. The CSN stated, in addition, that MCM could not derive any right to student financial aid from the fact that his father had previously exercised his right to freedom of movement as a worker by migrating to Spain. In that regard, the CSN was of the view that the father could no longer be considered a migrant worker as he had lived and worked in Sweden since 2011.

7. MCM appealed against that decision. In his statement of appeal, MCM principally referred to circumstances which, he submitted, supported his argument that he should be regarded as a person integrated into Swedish society and that his father should still be regarded as having a connection with Spain.[6]

8. In its observations on the appeal to the referring court, which, under the first subparagraph of Paragraph 11 of Chapter 6 of the Law on student financial aid, is designated as the appellate body, the CSN maintained its earlier assessment. At the same time, the CSN observed that denying student financial aid to MCM for studies abroad could be regarded as an obstacle to the father's right to freedom of movement, since knowledge of such a consequence could have deterred the father from migrating to Spain at all.

9. However, according to the CSN, it was not clear whether the situation in question remained within the scope of EU law since such a long period of time had passed since the father had exercised his right to freedom of movement. In that context, the CSN also queried whether a migrant worker who returns to his or her country of origin can, with respect to that country and for an indefinite period of time, rely on the guarantees which apply to migrant workers and members of their families under Regulation No 492/2011.

[3] In his observations to the Court, MCM explains that he started the university studies on 15 September 2018 and is now a second-year student of political science. MCM claimed the aid for studies abroad only as from January 2020, since he was unaware of the procedure to be followed and since the aid cannot be claimed retroactively.

[4] Law (1999:1395) on student financial aid; 'the Law on student financial aid'.

[5] Regulations and general guidelines on the granting of financial aid to students (CSNFS 2001:1).

[6] See point 13 of the present Opinion.

10. In view of the foregoing, the Överklagandenämnden för studiestöd (National Board of Appeal for Student Aid) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'May a Member State (the country of origin), in respect of a returning migrant worker's child, notwithstanding Article 45 TFEU and Article 7(2) of Regulation [No] 492/2011, and taking into consideration the budgetary interests of the country of origin, lay down a requirement for the child to have a connection with the country of origin in order to grant that child student financial aid to study abroad in the other EU Member State where the child's parent previously worked (the host country), where

(i) after returning from the host country, the child's parent has lived and worked in the country of origin for at least eight years,

(ii) the child did not accompany his or her parent to the country of origin, but has remained since birth in the host country, and

(iii) the country of origin lays down the same requirement of a connection for other nationals in the country of origin who do not satisfy the residence requirement and who apply for student financial aid for studies abroad in another country in the EU?'

II. Procedure before the Court of Justice

11. In line with the request by the Court of Justice, the present Opinion will address only the substance of the present case.

12. Written observations were submitted by MCM, by the Austrian, Danish, Norwegian and Swedish Governments and by the European Commission. No hearing was requested by the parties and none was held.

III. Brief summary of the observations of the parties

13. MCM claims that the connection to his Member State of origin is sufficient to enable him to receive financial aid for studies.[7] Furthermore, the fact that his father currently resides in Sweden does not in any way detract from his situation as a migrant worker. Since 2011, the father has been making regular visits to Spain, where he has accommodation in order to be able to work there additionally.[8]

14. The Swedish Government submits, in essence, that it is possible to adopt derogations from the residence requirement, whereby the person benefiting from the aid is required to be integrated into Swedish society. The requirement that there be a connection is not, however, imposed on the children of migrant workers.

[7] MCM refers to the fact that he is a Swedish national, has a Swedish parent, that other members of his family are Swedish and that he regularly spends time in Sweden.

[8] MCM submits that his father exercised his right to free movement between Stockholm (Sweden) and Barcelona (Spain), each month staying for between 4 and 14 days. MCM argues that those stays cannot be regarded as 'holidays', given that all of those stays represented a certain number of working days (telework), which is why his father has retained accommodation in Spain.

15. The Danish and Swedish Governments submit, first, that MCM's father has not exercised his freedom of movement since his return to Sweden and so he must be regarded as having lost his status as a migrant worker. As regards the status of former migrant worker, the Swedish Government contends that, in the present case, in so far as financial assistance for studies abroad is not granted to workers or their children *because of their employment relationship*, the worker in question can no longer rely on those rights under Article 7(2) of Regulation No 492/2011 or Article 45 TFEU.

16. Secondly, the Swedish Government concedes, however, that the scope of Article 45 TFEU goes beyond that of Article 7(2) of Regulation No 492/2011, with the result that it cannot be totally ruled out that a restriction in the form of a residence requirement may dissuade certain parents or future parents from exercising their freedom of movement.

17. The Danish Government submits, in the first place, that Article 45 TFEU and Article 7(2) of Regulation No 492/2011 do not apply in the main proceedings.

18. The Danish Government considers that the rules on the freedom of movement for workers do not apply *ratione materiae*. It submits that the Swedish legislation on financial assistance should be understood as meaning that a student who does not reside in Sweden can benefit from such financial assistance if he or she can show that he or she has either the status of child of a migrant worker or a connection with Swedish society.

19. In the second place, even if there were a restriction, the Danish Government considers that it would be justified in the present case by an overriding reason in the public interest.

20. The Austrian Government submits, in essence, in relation to Article 45 TFEU, that the national legislation in no way excludes the children of migrant workers from student financial aid, but grants them the same assistance as that given to the children of workers who remain in Sweden, with the sole difference that the requirement of proof of residence is replaced by the requirement for a connection with Swedish society. In any case, the Austrian Government considers that the national legislation at issue allows the necessary flexibility required by case-law when assessing the degree of connection and must, therefore, be regarded as proportionate to the objective of integration.

21. The Norwegian Government considers, in essence, that the legislation in the main proceedings is, in principle, justified under Article 45 TFEU.

22. The Commission submits that, since MCM is not a worker and has not left the Member State in which he lives, he does not fall within the scope of Article 45 TFEU or of Article 7(2) of Regulation No 492/2011. As far as MCM's father is concerned, the Commission considers that, in the present case, there is no restriction on the freedom of movement for workers.

IV. Assessment

A. Introduction

23. The present case has two distinctive characteristics vis-à-vis the previous cases, which I shall discuss below: first, the migrant worker returned (from Spain) to his country of origin (Sweden) more than eight years previously; and, secondly, his child, who is requesting the student financial aid from Sweden for studies abroad (in Spain, which is his country of birth and of residence), has never resided in that country of origin.

24. First of all, it must be borne in mind that 'Article 45(2) TFEU expressly provides that freedom of movement for workers is to entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'. [9]

25. According to Article 7(1) and (2) of Regulation No 492/2011, a worker, who is a national of a Member State, shall – in the territory of another Member State – enjoy the same social and tax advantages as national workers.

26. That provision is 'the particular expression, in the specific area of the grant of social advantages, of the principle of equal treatment enshrined in Article 45(2) TFEU, and must be accorded the same interpretation as that provision'. [10]

27. According to settled case-law, 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 492/2011. [11]

28. The Court has also held that student financial aid granted by a Member State to the children of workers constitutes, for the migrant worker, a social advantage within the meaning of Article 7(2) of Regulation No 492/2011, where the worker continues to support the child. [12]

29. Moreover, the Court made clear that the members of a migrant worker's family are the indirect recipients of the equal treatment granted to the worker under Article 7(2) of Regulation No 492/2011. Since the grant of funding for studies to a child of a migrant worker constitutes a

[9] Judgment of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411, paragraph 34) ('the judgment in *Giersch*'). See, in relation to that judgment, Michel, V., *Travailleurs frontaliers*, Europe, No 8, August 2013; Carlier, J.-Y., *La libre circulation des personnes dans l'Union européenne*, Chroniques, Journal de droit européen, No 208 – 4/2014, p. 170; and O'Leary, S., *The Curious Case of Frontier Workers and Study Finance: Giersch*, CMLR, 51, p. 601 (arguing that the objective justifications permitted by the Court in the field of healthcare – the risk of seriously undermining the financial balance of a social security system or the objective of maintaining a balanced medical and hospital service – appear to be a more appropriate tool than the genuine link test to cater for the type of student mobility and related costs at issue in cases such as that giving rise to the judgment in *Giersch*). In that connection, see also Opinion of Advocate General Slynn in *Humbel and Edel* (263/86, not published, EU:C:1988:151, p. 5380).

[10] See the judgment in *Giersch*, paragraph 35. That judgment relates to 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, Series I 1968(II), p. 475). Given that Article 7(2) of that regulation is identical to Article 7(2) of Regulation No 492/2011, the Court's case-law on the interpretation of the former provision applies *mutatis mutandis* to the interpretation of the latter.

[11] See the judgment in *Giersch*, paragraph 38. See also judgment of 10 July 2019, *Aubriet* (C-410/18, EU:C:2019:582, paragraph 25) (see, in relation to that judgment, Rigaux, A., *Bourse d'enseignement supérieur*, Europe, No 10, October 2019, p. 24; and Lhernould, J.-Ph., *Comment établir le degré de rattachement des travailleurs frontaliers à leur Etat de travail* ?, RJS, 11/19, p. 770).

[12] See the judgment in *Giersch*, paragraph 39.

social advantage for the migrant worker, the child may himself or herself rely on that provision in order to obtain that funding if, under national law, such funding is granted directly to the student. [13]

30. According to the Court's case-law, 'the principle of equal treatment laid down in Article 45 TFEU and in Article 7 of Regulation No 492/2011 prohibits not only direct discrimination on grounds of nationality but also all indirect forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result'. [14]

31. The Court has already ruled that Article 7(2) of Regulation No 492/2011 applies to social security benefits in the Member State of the worker's nationality, to the extent that that worker would lose those benefits due to his or her employment in another Member State. [15]

32. I will now demonstrate that it follows from the above case-law that neither Article 45 TFEU nor Article 7(2) of Regulation No 492/2011 precludes the laying down of provisions such as those in the main proceedings.

B. Depending on the facts, one of two scenarios arises in the present case

33. The referring court will have to decide which of the following scenarios applies to the facts of the case in the main proceedings: either (a) the father, a (former) migrant worker, continues to support the child, MCM, so the student financial aid at issue constitutes a social advantage for the father, which means that it falls within the scope of Article 45 TFEU and/or of Article 7(2) of Regulation No 492/2011 ('scenario A'); or (b) the father no longer supports MCM, which results in neither of those two articles applying in the present case ('scenario B').

34. I consider, as does the Commission, that the Swedish student financial aid constitutes, above all, a social advantage for the student himself. It is MCM who is requesting that aid and it is MCM who would receive that aid. The family context, such as the parents' income, is not taken into consideration. If the present case falls within scenario B, then the student himself, MCM, does not, a priori, fall within the scope of Article 45 TFEU or Article 7(2) of Regulation No 492/2011 as far as the application for the student financial aid at issue is concerned. Indeed, MCM is not a (former) migrant worker, nor has he left for other reasons (nor, it appears, does he intend to leave) the Member State where he was born and where he has lived all his life (Spain).

35. The wording of Article 7(2) of that regulation is clear and is directed at 'workers' (or former workers [16]), but not at 'students'.

36. As a result, I consider that the scope *ratione personae* of that article should not be extended by the Court to students of higher education.

37. The Danish Government and the Commission also refer to Article 10 of Regulation No 492/2011. Suffice it to point out that that article is concerned with the access of the children of a national of a Member State who is or has been employed in the territory of another Member

[13] See the judgment in *Giersch*, paragraph 40.

[14] Judgment of 10 July 2019, *Aubriet* (C-410/18, EU:C:2019:582, paragraph 26).

[15] Judgment of 2 April 2020, *Landkreis Südliche Weinstraße* (C-830/18, EU:C:2020:275, paragraphs 22 to 24).

[16] See judgment of 6 October 2020, *Jobcenter Krefeld* (C-181/19, EU:C:2020:794, paragraphs 45 to 55).

State to that State's 'general educational' training courses and not to higher education such as that followed by MCM in the case in the main proceedings. Moreover, that article is not the subject of the question referred in the present case.

38. If, on the other hand, the present case falls within scenario A, the student financial aid constitutes a social advantage also for the (former) migrant worker (MCM's father), but only on condition that he continues to support his son.[17] It is only in that situation that the student financial aid reduces the father's financial obligations.

39. Unfortunately, the paucity of information in the order for reference prevents a clear understanding of the case in the main proceedings. For instance, it is not clear whether or not the father, the (former) migrant worker, continues to support the child, MCM.

40. In Sweden, as the Commission pointed out, under Article 1 of Chapter 7 of the Föräldrabalken (1949:381) (parental code), the parents' legal obligation to support a child who is a university student ceases when that child reaches 18 years of age. The referring court has not indicated whether the application for student financial aid covered a period when MCM was under 18 years of age. It is also not apparent from the order for reference whether MCM's father continues for other reasons to be responsible for providing maintenance to MCM after MCM has reached 18 years of age, such as due to Spanish law, a civil law contract or the voluntary payment of a periodic aid of a certain amount.

41. As I noted in point 34 of the present Opinion, if we are dealing with scenario B, then the student financial aid at issue does not constitute a social advantage for the father and so does not fall within the scope of Article 45 TFEU or of Article 7(2) of Regulation No 492/2011.

42. As a result, the answer to the question referred would be in the negative.

43. However, if the father continues to support MCM and, therefore, the student financial aid at issue constitutes also a social advantage for the father, it is first necessary to establish whether the (former) migrant worker falls within the scope of both Article 45 TFEU and Article 7(2) of Regulation No 492/2011. That will be for the referring court to establish on the facts of the case in the main proceedings.

44. I would point out that 'provisions of national legislation which preclude or deter a national of a Member State from leaving his [or her] country of origin in order to exercise his [or her] right to freedom of movement constitute obstacles to that freedom even if they apply without regard to the nationality of the workers concerned'.[18] In order for a measure to be treated as being indirectly discriminatory, 'it is unnecessary for it to have the effect of placing at an advantage all the nationals of the State in question or of placing at a disadvantage only nationals of other Member States, but not nationals of the State in question'.[19]

45. According to the same case-law, 'all the provisions of the Treaty on the Functioning of the European Union relating to freedom of movement for persons are intended, as are those of Regulation No 492/2011, to facilitate the pursuit by nationals of the Member States of

[17] See the judgment in *Giersch*, paragraph 39.

[18] Judgment of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken Betriebs* (C-514/12, EU:C:2013:799, paragraph 30).

[19] Judgment of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken Betriebs* (C-514/12, EU:C:2013:799, paragraph 31).

occupational activities of all kinds throughout the European Union, and preclude measures which might place nationals of Member States at a disadvantage if they wish to pursue an economic activity in the territory of another Member State'. [20]

46. Against that background, 'nationals of the Member States have in particular the right, which they derive directly from the Treaty, to leave their Member State of origin to enter the territory of another Member State and reside there in order to pursue an activity there. As a result, Article 45 TFEU precludes any national measure which is capable of hindering or rendering less attractive the exercise by EU nationals of the fundamental freedoms guaranteed by that article'. [21]

47. MCM's father moved, first, from Sweden to Spain and then returned to Sweden; in both cases, he did so for the purposes of work. Article 45 TFEU could be relied upon against the country of origin by nationals of a Member State with regard to measures liable to prevent or deter those nationals from leaving their country of origin. [22]

48. Contrary to the position of the Danish and Swedish Governments, I consider that the fact that a significant amount of time (more than eight years) has elapsed since the father of MCM exercised that right has, in principle, no bearing on whether that article (or Article 7(2) of Regulation No 492/2011) applies. A migrant worker must be able to plead the right to equal treatment even in a situation where he or she has ceased to carry on a professional activity in the host Member State. Indeed, the Court has accepted that the status of former migrant worker may produce effects after the termination of the employment relationship. [23]

49. The question whether the Swedish student financial aid for university studies abroad, under the first subparagraph of Paragraph 23 of Chapter 3 of the Law on student financial aid, would be available or not in a situation such as that in the main proceedings depends on a long series of future and hypothetical events: that the worker would actually go on to have children in the future, that those (hypothetical) children would choose to stay in the host Member State even though the father returned to Sweden and that they would not be integrated in Swedish society or that they would not be able to rely on other exceptional reasons in order to benefit from that aid.

50. As the Danish Government and the Commission pointed out, on the basis of the case-law of the Court, [24] in the present case, the chain of events is too uncertain and its eventual impact on the choice of the worker to exercise his freedom of movement is too indirect for the above national provision to be regarded as liable to hinder the free movement of workers.

51. As a result, the provisions at issue should not be considered to constitute a restriction of the free movement of workers. [25]

[20] Judgment of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken Betriebs* (C-514/12, EU:C:2013:799, paragraph 32).

[21] Judgment of 10 October 2019, *Krah* (C-703/17, EU:C:2019:850, paragraph 41).

[22] Judgment of 15 December 1995, *Bosman* (C-415/93, EU:C:1995:463, paragraph 96).

[23] Judgment of 19 June 2014, *Saint Prix* (C-507/12, EU:C:2014:2007, paragraph 35).

[24] Judgment of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach* (C-437/17, EU:C:2019:193, paragraph 40).

[25] Judgments of 27 January 2000, *Graf* (C-190/98, EU:C:2000:49, paragraphs 24 and 25), and of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach* (C-437/17, EU:C:2019:193, paragraph 40).

52. In that regard, it is necessary to distinguish this case from *Prinz and Seeberger*,[26] where the conditions at issue were likely to dissuade *the applicants in those cases themselves* from exercising their right to freedom of movement and residence in another Member State, given the impact that exercising that freedom was likely to have on the right to the education or training grant at issue in those joined cases. By contrast, in the present case, the facts at issue in the main proceedings do not concern the personal action of the beneficiary, but the future behaviour of another person who does not yet exist, that is, *the worker's (hypothetical) child*.

53. Next, the question arises whether Article 7(2) of Regulation No 492/2011, which recognises the right to free movement of all migrant workers (including seasonal and frontier workers; see recital 5 of that regulation[27]), applies solely to migrant workers *from another Member State* with regard to the rules of the host Member State or whether it may also be relied upon, as in the present case, by a national of the Member State of origin who moved to another Member State and who then returned to his or her country of origin.

54. Can a (former) migrant worker and/or his or her child pursuing university studies rely on the principle of equal treatment under Article 7(2) of that regulation, *not* vis-à-vis the authorities of the *host Member State*, *but*, as in the present case, vis-à-vis the authorities of their *Member State of origin*?

55. I consider that that question should be answered in the negative.

56. To my knowledge, the Court has never extended the possibility of relying on that article in relation to the (former) migrant worker's Member State of origin or the Member State of origin of his or her child. Rather, the Court has consistently held that that article *seeks to ensure equal treatment* of (former) migrant workers and national workers *in the host Member State*.[28]

57. Indeed, the EU free movement rules seek primarily to ensure protection against discriminations which students, children of (former) migrant workers, may face in the *host Member State* rather than protection against potential barriers in the *Member State of origin* in a situation where the citizen wishes to obtain from his or her own Member State student financial aid in order to exercise his or her right to free movement. That view is also supported in legal academic literature.[29]

58. My interpretation is consistent with the purpose of Regulation No 492/2011, recital 6[30] of which describes removing obstacles concerning the conditions for the integration of the worker's family in the host country.

[26] Judgment of 18 July 2013 (C-523/11 and C-585/11, EU:C:2013:524).

[27] '[The right of all workers in the Member States to pursue the activity of their choice within the Union] should be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services.'

[28] See, for instance, judgments of 27 March 1985, *Hoeckx* (249/83, EU:C:1985:139, paragraph 20), and of 6 October 2020, *Jobcenter Krefeld* (C-181/19, EU:C:2020:794, paragraph 72): 'Article 7(2) of Regulation No 492/2011, on which persons who have a right of residence based on Article 10 of that regulation can rely, … provides, in essence, that a worker who is a national of a Member State is to enjoy in the host Member State, including when he or she has become unemployed, the same social and tax advantages as the workers who are nationals of that State.'

[29] Martin, D., *Arrêts « Giersch » et « Prinz » : les différents statuts de l'étudiant*, Journal de droit européen, 2013, p. 273.

[30] 'The right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires that equality of treatment be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing, and also that obstacles to the mobility of workers be eliminated, in particular as regards the conditions for the integration of the worker's family into the host country.'

C. Preliminary conclusion: there is no restriction of the free movement of workers

59. It follows from the foregoing considerations that neither Article 7(2) of Regulation No 492/2011 nor Article 45 TFEU precludes national provisions such as those in the present case, which it will be for the referring court to verify in relation to the facts of the case in the main proceedings.

D. For the sake of completeness: even if there were a restriction, it would be justified

60. Should the Court disagree with the above and come to the conclusion that those national provisions constitute a restriction of the free movement of workers, I shall explain below that, in any event, that restriction would be justified.

61. The provisions at issue in the main proceedings provide that, as regards student financial aid for studies abroad, a student who does not reside in Sweden may obtain such aid if he or she can show a *connection with Swedish society* or if he or she is the *child of a migrant worker originating from another Member State* who is working in Sweden. Hence, all Swedish nationals residing outside of Sweden are subject to the requirement for a connection with Swedish society when they apply for student financial aid for studies in another Member State, independently of the fact whether the parent has or has not exercised his or her right to free movement. I consider that it is justified that MCM is required to demonstrate such a connection. Indeed, if a connection were not required, the applicant would then be in a more favourable situation than those students whose parents have not exercised the right to freedom of movement. That would go beyond the objective pursued by the rules on the free movement of workers, which primarily seek to guarantee that workers enjoy the same conditions in the host Member State and that they are not dissuaded from moving and taking up employment in another Member State.

62. As regards the question whether imposing a residence requirement on MCM constitutes discrimination, it is necessary to compare the situation in question with a situation in which the residence requirement is not satisfied and EU law applies, that is to say, the situation in which a Swedish national, by not fulfilling the residence requirement on account of his move from Sweden to Spain in order to work there, subsequently seeks financial assistance in order to pursue studies there (in the host country). It is clear that the connection with Swedish society is required in either case. As a result, there is no direct discrimination.

63. In addition, even if the Court were to find that there is indirect discrimination in the present case (*quod non*), I consider that the requirement for a connection is justified, since it pursues a legitimate objective and is appropriate and proportionate. [31]

64. The Court has held that 'it is for the national authorities, where they adopt a measure derogating from a principle enshrined in EU law, to show in each individual case that that measure is appropriate for securing the attainment of the objective relied upon and does not go beyond what is necessary to attain it. The reasons which may be invoked by a Member State by way of justification must be accompanied by an analysis of the appropriateness and proportionality of the measure adopted by that State and specific evidence substantiating its arguments'. [32]

[31] Judgment of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken Betriebs* (C-514/12, EU:C:2013:799, paragraph 36).

[32] Judgment of 14 June 2012, *Commission* v *Netherlands* (C-542/09, EU:C:2012:346, paragraph 81). See also paragraph 82 of that judgment.

65. In that regard, the Court has already held that the promotion of student mobility may constitute an overriding reason in the public interest capable of justifying a restriction, provided that the criteria adopted are appropriate and proportionate.[33] A criterion relating to residence, or, if it leads to a situation contrary to EU law, a requirement for a sufficient connection with Swedish society, seeks to ensure that such students return to Sweden after their studies abroad and acquire their knowledge ultimately to further the Swedish labour market and economy.[34] The Court has also held that a requirement for such a connection may be justified where it seeks to ensure a high level of education in relation to the resident population.[35]

66. In that regard, the Court has already held that Member States remain free to establish conditions governing the connection of their own nationals with that Member State's society for the purposes of the grant of funding for studies in another Member State, in that they may make the grant of such funding subject to providing proof of a genuine connection with the Member State which grants the finance, although 'the proof required … must not be too exclusive in nature or unduly favour one element which is not necessarily representative of the real and effective degree of connection between the claimant and this Member State, to the exclusion of all other representative elements'.[36] That case-law, which relates to Articles 20 and 21 TFEU, is also applicable to a case on the free movement of workers, because the subject of protection is the same. If the situation of MCM were to fall within the scope of Article 21 TFEU – which I cannot determine on the basis of the brief information in the order for reference – then, in order to establish whether there is a restriction of the free movement of persons, the assessment whether the measure is justified, proportionate and appropriate would be identical to that carried out under Article 45 TFEU.

67. Given that the right to the student financial aid at issue in the case in the main proceedings is not based exclusively on a minimum period of residence in Sweden, but can also be based on a sufficient connection to Swedish society, the Swedish legislation complies with the Court's case-law. I consider that that legislation allows the necessary flexibility required by the Court's case-law as regards the assessment of the degree of connection of the student with the society of the Member State granting the aid and can, therefore, be considered to be justified, proportionate and appropriate (in line with the case-law cited in points 65 and 66 of the present Opinion).

68. Indeed, in so far as the order for reference refers to the Court's existing case-law,[37] the legislation at issue is based on comparable objectives, in that both the integration of students and the desire to ascertain the existence of a connection are capable of constituting objectives in the public interest.[38]

69. The Court has already accepted that a Member State may make the grant of funding subject to proof of a certain degree of integration into the society of the State, in order to prevent the grant of such assistance to students from other Member States becoming an unreasonable burden capable of affecting the total amount of aid which may be paid by the State.[39] Moreover, the Court stated

[33] See the judgment in *Giersch*, paragraphs 53 to 56.

[34] See, for a similar reasoning, the judgment in *Giersch*, paragraphs 67 and 68.

[35] See judgment of 14 December 2016, *Bragança Linares Verruga and Others* (C-238/15, EU:C:2016:949, paragraph 46).

[36] Judgments of 18 July 2013, *Prinz and Seeberger* (C-523/11 and C-585/11, EU:C:2013:524, paragraphs 37 and 38), and of 24 October 2013, *Thiele Meneses* (C-220/12, EU:C:2013:683, paragraph 36).

[37] Reference is made to the judgment of 18 July 2013, *Prinz and Seeberger* (C-523/11 and C-585/11, EU:C:2013:524).

[38] Judgment of 18 July 2013, *Prinz and Seeberger* (C-523/11 and C-585/11, EU:C:2013:524, paragraph 34).

[39] Judgments of 18 July 2013, *Prinz and Seeberger* (C-523/11 and C-585/11, EU:C:2013:524, paragraph 36), and of 24 October 2013, *Thiele Meneses* (C-220/12, EU:C:2013:683, paragraph 35).

in those judgments that similar considerations may, in principle, be relied upon as regards the grant, by a Member State, of assistance to students wishing to pursue studies in other Member States.

70. I agree with the Danish Government that the connection to Swedish society thus reflects a reasonable balancing of two opposing interests, namely, the workers' interest in freedom of movement and the objective of mobility of students within the European Union, on the one hand, and the interest of financial assistance systems for studies which are provided for by the Member States, on the other.

71. Despite the fact that the applicable Swedish provisions do not expressly refer to the criterion of the student's integration into Swedish society, the case-law applicable to those provisions includes that factor among the circumstances which may constitute extraordinary grounds justifying the grant of funding for studies.

72. Although the requirements laid down by the case-law of the Court for assessing social integration into Swedish society therefore appear prima facie to be taken into account in the present case, it is nevertheless for the national court to determine on the facts whether those criteria have been correctly applied in MCM's case.

73. I consider, as does the Commission, that the information provided in the order for reference does not appear to show clearly that Sweden is the centre of interests of MCM.

74. Under Article 10 of Regulation No 492/2011, MCM, as the child of a (former) migrant worker, is entitled to Spanish education assistance under the same conditions as Spanish nationals, since the right to funding under that article is not dependent on whether or not the father continues to be responsible for MCM's maintenance. [40]

75. While it is possible that Spanish aid for studies may be less favourable than Swedish aid, EU law cannot guarantee a worker that moving to another Member State will be socially neutral for him or her or his or her family.

76. Indeed, a worker exercising his or her right to freedom of movement cannot expect neutrality in social matters, since a move to another Member State may be more or less advantageous or disadvantageous. Article 10 of Regulation No 492/2011 guarantees at most that (former) migrant workers are subject to the same conditions as workers in the host Member State. [41]

V. Conclusion

77. I propose that the Court of Justice answer the question referred for a preliminary ruling by the Överklagandenämnden för studiestöd (National Board of Appeal for Student Aid, Sweden) as follows:

Neither Article 45 TFEU nor Article 7(2) of 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 precludes a Member State (the country of origin) from laying down a requirement that the

[40] Judgments of 15 March 1989, *Echternach and Moritz* (389/87 and 390/87, EU:C:1989:130), and of 4 May 1995, *Gaal* (C-7/94, EU:C:1995:118).

[41] Judgment of 18 July 2017, *Erzberger* (C-566/15, EU:C:2017:562, paragraphs 33 and 34 and the case-law cited).

child of a (former) migrant worker, after the latter returned to his or her country of origin, have a connection with the country of origin in order to grant that child student financial aid to study abroad in the other EU Member State where the child's parent previously worked (the host country), in a situation:

(i) where that child has never resided in the country of origin, but lives from his or her birth in the host country; and

(ii) where the country of origin subjects its other nationals, who do not fulfil the condition of residence and who apply for student financial aid to study in another EU Member State, to the same requirement that there be a connection to the country of origin.