



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

15 November 2018*

(Reference for a preliminary ruling — Equal treatment between persons irrespective of racial or ethnic origin — Directive 2000/43/EC — Article 3(1)(g) — Scope — Concept of ‘education’ — The award by a private foundation of scholarships aimed at promoting projects for research and studies abroad — Article 2(2)(b) — Indirect discrimination — Award of scholarships conditional on applicants having first passed the First State Law Examination (*Erste Juristische Staatsprüfung*))

In Case C-457/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 1 June 2017, received at the Court on 31 July 2017, in the proceedings

Heiko Jonny Maniero

v

Studienstiftung des deutschen Volkes eV,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President, acting as President of the First Chamber, A. Arabadjiev (Rapporteur), E. Regan, C.G. Fernlund and S. Rodin, Judges,

Advocate General: E. Sharpston,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 30 May 2018,

after considering the observations submitted on behalf of

- Mr Maniero, by S. Mennemeyer, P. Rädler and U. Baumann, Rechtsanwälte,
- Studienstiftung des deutschen Volkes eV, by E. Waclawik, Rechtsanwalt, and by G. Thüsing, Professor of Law,
- the German Government, by T. Henze, M. Hellmann and E. Lankenau, acting as Agents,
- the European Commission, by D. Martin and B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 September 2018,

* Language of the case: German.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(2)(b) and 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 (OJ 2000 L 180, p. 22).
- 2 The request has been made in proceedings between Mr Heiko Jonny Maniero and the Studienstiftung des deutschen Volkes eV (German Academic Scholarship Foundation; ‘the Foundation’) concerning an action for an injunction and prohibition of discrimination allegedly suffered by Mr Maniero as a result of his age or origin.

Legal context

EU law

- 3 Recitals 12 and 16 of Directive 2000/43 state:

‘(12) To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services.

...

(16) It is important to protect all natural persons against discrimination on grounds of racial or ethnic origin. ...’
- 4 Article 2 of that directive, entitled ‘Concept of discrimination’, provides in its paragraphs 1 and 2:

‘1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

2. For the purposes of paragraph 1:

...

(b) indirect discrimination shall be taken to occur 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 of Directive 2000/43, entitled ‘Scope’, states in its paragraph 1:

‘Within the limits of the areas of competence conferred on the [European Union], this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

...

(g) education;

...

German law

6 Directive 2000/43 was transposed into German law by the Allgemeines Gleichbehandlungsgesetz (General Law on equal treatment) of 14 August 2006 (BGBl. 2006 I, p. 1897, 'the AGG').

7 Paragraph 1 of the AGG, entitled 'Objective of the law', provides:

'The objective of this law is to prevent or eliminate discrimination on grounds of race, ethnic origin, sex, religion or belief, disability, age or sexual identity.'

8 Paragraph 2 of the AGG, entitled 'Field of application', provides in its paragraph 1:

'Discrimination on one of the grounds listed in Paragraph 1 is prohibited under this law as regards:

...

(7) education.'

9 Paragraph 3 of the AGG, headed 'Definitions', states in its paragraphs 1 and 2:

'1. Direct discrimination occurs when, for one of the reasons referred to in Paragraph 1, one person is treated less favourably than another in a comparable situation is, has been or would be treated. ...

2. Indirect discrimination shall be taken to occur 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.'

10 Paragraph 19 of the AGG, headed 'Prohibition of discrimination in relationships under civil law', provides in its paragraph 2:

'Furthermore, any disadvantage on the grounds of race or ethnic origin is also unlawful in the creation, implementation or termination of those other legal relationships under civil law within the meaning of points 5 to 8 of Paragraph 2(1).'

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

11 Mr Maniero is an Italian national born and residing in Germany. In 2013, he obtained the academic title of Bachelor of Laws from the Haybusak University of Yerevan (Armenia).

12 The Foundation is an association registered in Germany whose goal is to promote, notably by awarding scholarships, the university education of young people, whose great scientific or artistic talent and personality give rise to expectations of particular achievements in the service of the community.

13 By email of 11 December 2013, Mr Maniero contacted the Foundation to enquire about the conditions for a scholarship under a programme of the Foundation called 'Bucerius Jura' ('the Bucerius Law programme'), which aims to promote legal research projects and legal studies abroad.

- 14 By email of 17 January 2014, the Foundation informed Mr Maniero that to be awarded a scholarship applicants must first have successfully completed the First State Law Examination (*Erste Juristische Staatsprüfung*).
- 15 By an email of the same day, the applicant replied to the Foundation that the academic title that he obtained in Armenia after five years of study was comparable to the Second State Law Examination (*Zweite Juristische Staatsprüfung*), since it enabled its holder to hold judicial office or to work as a lawyer in that third country. He further claimed that the requirement for the award of a scholarship under the Bucerius Law programme could be contrary to the principle of equal treatment, since it constituted discrimination on grounds of ethnic or social origin.
- 16 Mr Maniero did not submit, within the period prescribed for that purpose, his application for a scholarship under that programme. During a subsequent exchange of correspondence with the Foundation, he argued that the negative attitude of the Foundation had deterred him from submitting his application.
- 17 Mr Maniero brought an action seeking that the Foundation be ordered to cease and refrain from discrimination on grounds of his age or origin, to pay EUR 18 734.60, and to pay additional compensation for travel costs.
- 18 Since the German courts of first instance and appeal did not uphold the action, Mr Maniero brought an appeal on a point of law ('Revision') before the Bundesgerichtshof (Federal Court of Justice, Germany).
- 19 The referring court considers that the resolution of the dispute turns, first, on whether or not the award by a registered association of scholarships intended to promote projects for research and studies abroad is covered by the concept of 'education' within the meaning of Article 3(1)(g) of Directive 2000/43. In that respect, the Bundesgerichtshof (Federal Court of Justice) points out that the European Commission proposal at the origin of that directive referred to 'education, including in terms of access based on the award of grants and scholarships', which requirement 'fully respects the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity'. The referring court wonders why only the term 'education' was ultimately selected.
- 20 Secondly, if the first question is answered in the affirmative, that court considers that the outcome of the proceedings also depends on whether, in the context of the award of those scholarships, the requirement that candidates hold the First State Examination in law amounts to indirect discrimination, within the meaning of Article 2(2)(b) of Directive 2000/43, against a Union citizen who has obtained a comparable degree outside the Union where the choice of place of graduation has no connection with the ethnic origin of the person concerned and that that person, resident in Germany and proficient in German, had the opportunity to study in Germany and sit the First State Examination in law there.
- 21 Admittedly, as argued by Mr Maniero, such a requirement has the effect of placing people of foreign ethnic origin with an equivalent diploma acquired abroad at a disadvantage if they were unable to study in Germany, at least not with ease.
- 22 However, the Bundesgerichtshof (Federal Court of Justice) harbours doubts as to whether Mr Maniero belongs to such a disadvantaged group. According to that court, first, he has a fluent command of German, lives in Germany and could therefore easily study in that Member State. In addition, his choice to obtain a diploma in Armenia was unrelated to his ethnic origin.

- 23 Secondly, the referring court notes that, as is apparent from paragraph 60 of the judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria* (C-83/14, EU:C:2015:480), the concept of ‘discrimination on the grounds of ethnic origin’, referred to in Article 1 and in Article 2(1) of Directive 2000/43, is intended to apply without distinction, irrespective of whether the measure concerned affects persons who have a certain ethnic origin or those who, without possessing that origin, suffer, together with the former, the particular disadvantage resulting from that measure.
- 24 Thirdly, if the answer is in the affirmative, according to the referring court, the question thus arises as to whether the objective of the education policy pursued by the Bucerius Law programme, although not linked to discriminatory criteria, constitutes an objective justification within the meaning of Article 2(2)(b) of Directive 2000/43.
- 25 According to the call for applications, the objective of the Bucerius Law programme is to provide particularly qualified law graduates in Germany with knowledge of foreign legal systems, experience of being abroad and knowledge of languages by promoting projects for research and studies abroad. However, since this objective is not linked to any discriminatory criteria, the referring court considers that the Foundation’s practice does not constitute indirect discrimination.
- 26 In those circumstances the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(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 Germany 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?

Consideration of the questions referred

The first question

- 27 By its first question, the referring court asks the Court whether Article 3(1)(g) of Directive 2000/43 must be interpreted as meaning that the allocation, by a private foundation, of scholarships to support research projects or studies abroad is covered by the concept of ‘education’ within the meaning of that provision.

- 28 As a preliminary point, it should be noted, as is apparent from the documents before the Court, that the Bucerius Law programme was essentially intended to promote access to research projects and university law studies abroad through the award of financial payments to participants of a full scholarship of EUR 1 000 per month, or if the studies are in Great Britain or the United States, EUR 1 500, a one-off payment of EUR 500, reimbursement of travel expenses and payment of tuition fees up to a maximum of EUR 12 500. Tuition fees are covered in full up to EUR 5 000 and 50% of the remainder is covered beyond that amount.
- 29 Consequently, it is necessary to ascertain whether the concept of ‘education’ within the meaning of Article 3(1)(g) of Directive 2000/43 includes access to education and, if so, whether scholarships such as those awarded under the Bucerius Law programme, are capable of falling within that concept.
- 30 It should be noted, in that regard, that, since Directive 2000/43 provides no definition at all of the concept of ‘education’, the meaning and scope of that term must, as the Court has consistently held, 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 (see, by analogy, judgment of 3 September 2014, *Deckmyn and Vrijheidsfonds*, C-201/13, EU:C:2014:2132, paragraph 19 and the case-law cited).
- 31 First of all, as observed by the Advocate General in points 22 and 23 of her Opinion, the term ‘education’ has the usual meaning it has in everyday language, so as to include acts or the process by which is transmitted or acquired, inter alia, information, knowledge, understanding, attitudes, values, skills, competences, or behaviours.
- 32 Although there is no doubt that the concept of ‘education’ in its usual meaning in everyday language covers research and university law studies, access to which the Bucerius Law programme aims to facilitate, it is clear that that concept does not, by itself, include, prima facie, access to education or financial benefits such as those at issue in the main proceedings.
- 33 Next, as regards the regulatory context in which the concept of ‘education’ is used, it should be noted that that concept appears in Article 3 of Directive 2000/43. However, this article is on the material scope of the directive whose purpose is, according to Article 1 thereof, 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.
- 34 Finally, as regards the objectives pursued by that directive, recital 16 thereof states that it is important to protect all natural persons against discrimination on grounds of racial or ethnic origin.
- 35 As regards, specifically, the material scope of Directive 2000/43, it is apparent from recital 12 of the directive that, in order to ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should in particular cover areas such as those listed in Article 3(1) of that directive (judgments of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 41, and of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 40).
- 36 Consequently, as the Court has already held, in the light of the objective of Directive 2000/43 and the nature of the rights which it seeks to safeguard, and in view of the fact that that directive is merely an expression, within the area under consideration, of the principle of equality, which is one of the general principles of EU law, as recognised in Article 21 of the Charter of Fundamental Rights of the European Union, the scope of that directive cannot be defined restrictively (judgments of 12 May 2011, *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 43, and of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 42).

- 37 As observed by the Advocate General in points 32 and 34 of her Opinion, a teleological interpretation of the concept of ‘education’, within the meaning of Article 3(1)(g) of Directive 2000/43, requires, first, that access to education be considered an essential aspect of this concept, since there can be no education without the possibility to access it and that, therefore, the directive’s objective, which is to combat discrimination in education, could not be achieved if discrimination were allowed at the access to education stage.
- 38 Secondly, costs related to the participation in a research project or in an educational programme must be considered to be part of the components of access to education and thus included in the concept of ‘education’, in so far as the availability of the financial resources necessary to ensure such participation is likely to determine who is able to access that project or programme.
- 39 Therefore, it must be held that financial payments in the form of scholarships are covered by the concept of ‘education’, within the meaning of Article 3(1)(g) of Directive 2000/43, where there is a sufficiently close link between those payments and participation in a research project or a specific educational programme covered by that concept. That is the case, in particular, where such financial payments are linked to the participation of potential candidates in such a research project or studies designed to remove all or some of the potential financial barriers to participation and where those payments are appropriate to achieve that aim.
- 40 Subject to verification by the referring court, this appears to be the case of the scholarships at issue in the main proceedings, in so far as these appear to be able to remove all or some of the potential financial barriers to participation in research projects or university law studies abroad, thereby contributing to enabling the candidates concerned to meet higher travel costs and living expenses arising from moving abroad in addition to the tuition fees related to those research projects or educational programmes.
- 41 Contrary to what is argued by the Foundation and the German Government, these findings are not undermined by arguments based on the origin of Article 3(1)(g) of Directive 2000/43 or by the broad logic of that provision.
- 42 First, as the Advocate General observed in point 43 of her Opinion, the origins of Article 3(1)(g) of Directive 2000/43 do not indicate unequivocally that the deletion, during the legislative procedure, of the words ‘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’, which appeared in the original Commission proposal at the origin of that directive, was motivated by the will of the EU legislature to restrict the scope of that provision.
- 43 Secondly, as observed by the Advocate General in points 44 and 45 of her Opinion, neither the fact that Article 3(1) of Directive 2000/43 defines the scope of most of the concepts listed therein with additional elements, nor the fact that vocational training is expressly referred to in Article 3(1)(b) of that directive require a restrictive interpretation of the concept of ‘education’, within the meaning of Article 3(1)(g) of the directive, which would run counter to the objectives of the directive, as mentioned in paragraphs 34 to 36 above.
- 44 In the light of all the foregoing considerations, the answer to the first question is that Article 3(1)(g) of Directive 2000/43 must be interpreted as meaning that the award by a private foundation of scholarships to support research projects or studies abroad falls within the concept of ‘education’, within the meaning of that provision, where there is a sufficiently close link between the assigned financial payments and participation in those research projects or studies which, themselves, fall within the concept of ‘education’. That is the case, in particular, where such financial payments are linked to the participation of potential candidates in such research projects or studies, and are designed to remove all or some of the potential financial barriers to participation, and where those payments are appropriate to achieve that aim.

The second question

- 45 By its second question, the referring court asks, in essence, whether Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that the fact that a private foundation established in a Member State restricts the award of scholarships to support research projects or legal studies abroad to candidates who have successfully completed, in that Member State, a law examination such as that at issue in the main proceedings, constitutes indirect discrimination on grounds of racial or ethnic origin within the meaning of that provision.
- 46 For the purposes of that article, indirect discrimination is to be taken to occur 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.
- 47 The concept of ‘particular disadvantage’, within the meaning of that provision, must be understood as meaning that it is particularly persons of a particular racial or ethnic origin, because of the provision, criterion or practice in question, who are disadvantaged (see, to that effect, judgments of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480, paragraph 100, and of 6 April 2017, *Jyske Finans*, C-668/15, EU:C:2017:278, paragraph 27).
- 48 Such a concept therefore applies only where the alleged discriminatory measure has the effect of placing a particular ethnic origin at a disadvantage. In addition, for the purposes of ascertaining whether or not there is unfavourable treatment, it is necessary to carry out, not a general abstract comparison, but a specific concrete comparison, in the light of the favourable treatment in question (judgment of 6 April 2017, *Jyske Finans*, C-668/15, EU:C:2017:278, paragraphs 31 and 32).
- 49 In the present case, it is not disputed that the group to whom the Foundation grants an advantage as regards the award of the scholarships at issue in the main proceedings consists of persons who satisfy the requirement of having successfully completed the First State Law Examination, whereas the disadvantaged group consists of all persons who do not satisfy that requirement.
- 50 However, it must be found that, like the circumstances prevailing in the case which gave rise to the judgment of 6 April 2017, *Jyske Finans* (C-668/15, EU:C:2017:278), there is nothing in the documents before the Court to show that persons belonging to a given ethnic group would be more affected by the requirement relating to the First State Law Examination than those belonging to other ethnic groups.
- 51 Thus, it would appear that a finding of indirect discrimination arising from such a condition can, in any event, be ruled out.
- 52 It follows that the answer to the second question is that Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that the fact that a private foundation established in a Member State restricts the award of scholarships to support research projects or legal studies abroad to candidates having successfully completed, in that Member State, a law examination, such as that at issue in the main proceedings, does not constitute indirect discrimination on grounds of racial or ethnic origin within the meaning of that provision.

Costs

- 53 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 (First Chamber) hereby rules:

- 1. 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 must be interpreted as meaning that the award by a private foundation of scholarships to support research projects or studies abroad falls within the concept of ‘education’, within the meaning of that provision, where there is a sufficiently close link between the assigned financial payments and participation in those research projects or studies which, themselves, fall within that same concept of ‘education’. That is the case, in particular, where such financial payments are linked to the participation of potential candidates in such research projects or studies, and are designed to remove all or some of the potential financial barriers to participation, and where those payments are appropriate to achieve that aim.**
- 2. Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that the fact that a private foundation established in a Member State restricts the award of scholarships to support research projects or legal studies abroad to candidates having successfully completed, in that Member State, a law examination, such as that at issue in the main proceedings, does not constitute indirect discrimination on grounds of racial or ethnic origin within the meaning of that provision.**

[Signatures]