4. Free movement of persons — Workers — Equal treatment — Social advantages — Grant conditional upon period of occupational activity — Not permissible
(Regulation No 1612/68 of the Council, Art. 7 (2))

1. Whilst it is true that the conditions for access to vocational training, including university studies in general, fall within the scope of the Treaty for the purposes of Article 7 thereof, assistance given by a Member State to its nationals when they undertake such studies nevertheless falls outside the Treaty, at the present stage of development of Community law, except to the extent to which such assistance is intended to cover registration and other fees, in particular tuition fees, charged for access to education.

2. A grant awarded for maintenance and training with a view to the pursuit of university studies leading to a professional qualification constitutes a social advantage within the meaning of Article 7 (2) of Regulation No 1612/68.

3. A national of another Member State who undertakes university studies in the host State leading to a professional qualification, after having engaged in occupational activity in that State, must be regarded as having retained his status as a worker and is entitled as such to the benefit of Article 7 (2) of Regulation No 1612/68, provided that there is a link between the previous occupational activity and the studies in question.

4. The host Member State cannot make the right to social advantages provided for in Article 7 (2) of Regulation No 1612/68 conditional upon a minimum period of prior occupational activity within the territory of that State.

REPORT FOR THE HEARING
delivered in Case 39/86 *

I — Facts and procedure

Sylvie Lair, the plaintiff in the main proceedings (hereinafter referred to as 'the plaintiff') is of French nationality. Since 1 January 1979 she has lived in the Federal Republic of Germany, where she was employed initially as a clerk until 30 June 1981. Between 1 July 1981 and 30 September 1984 she went through alternate periods of unemployment and retraining, interspersed with brief periods of employment. Since 1 October 1984 she has been studying Romance and Germanic languages and literature at Universität Hannover, the defendant in the main proceedings (hereinafter referred to as 'the defendant').

* Language of the Case: German.

On 4 August 1984, the plaintiff applied to the defendant for an education grant. Her application was finally rejected by a decision of the defendant dated 19 October 1984, following an appeal on her part, on the ground that having regard to the purpose of the rule making training grants for foreigners conditional upon the completion of five years occupational activity, account could be taken only of the periods during which an applicant was engaged in an occupational activity in the true sense of the term and in respect of which he paid taxes and social security charges, which are ultimately what enable the Federal Government to make social investments such as the payment of grants for training and further education.

It was against that decision that the plaintiff commenced proceedings before the national court.

According to the Verwaltungsgericht, the plaintiff is not entitled to a training grant for her university studies (in respect of which grants are normally payable) since she does not fulfil the personal conditions laid down in Paragraph 8 (1) and (2) of the Bundesausbildungsförderungsgesetz (Federal Law on grants for training and further education) of 6 June 1983 (BGBl. I, p. 645) (hereinafter referred to as 'the Law on training grants').

Paragraph 8 (1) of the Law on training grants provides that grants are to be paid to German nationals, as defined by the Grundgesetz (Basic Law), and *inter alia* to [foreign] trainees or students who, as children, are entitled to freedom of movement under the German Law on the admission and residence of nationals of Member States of the EEC or who are entitled under that law, as children, to reside within German territory.

Paragraph 8 (2) of the Law on training grants provides that grants are to be made *inter alia* to other foreigners where, for a total period of five years prior to the commencement of the part of the course for which grants are available, they themselves have been resident within German territory and have been engaged in regular occupational activity.

According to the national court, the basic idea of Paragraph 8 of the Law on training grants is that foreign trainees or students are not entitled to grants until they have, by their own work, contributed to the gross national product, which in turn serves to finance the social investment represented by training grants. An additional point is that Article 8 is designed to prevent foreigners from obtaining grants improperly and therefore to reduce considerably the attractiveness of that social benefit for foreigners wishing to receive education or training whose countries of origin do not provide grants of an equivalent level.

In that connection, the national court asks whether the plaintiff may claim a grant under Paragraph 8 (2) of the Law on training grants in conjunction with Articles 48 and 49 of the EEC Treaty and Article 7 of Regulation No 1612/68 or, to the extent to which she is not entitled to do so, whether the failure to allow the plaintiff a grant constitutes a breach of the prohibition of discrimination contained in the first sentence of Article 7 of the EEC Treaty. In the opinion of the Verwaltungsgericht, the application of Article 7 of Regulation No 1612/68 is dependent upon the criteria which the relationship between the status of worker and the social advantage in question must fulfil.

As regards the application of Article 7 of the EEC Treaty, the Verwaltungsgericht refers to Article 128 of the Treaty and takes the view that access to vocational training falls within the scope of the Treaty. However, according to German case-law, inequality of treatment as between German students and students who are nationals of other Member States may be justified by the fact that the parents of German students have made a sufficient contribution to the gross national product by their own occupational activity (taxpayer principle) to enable the Federal Republic of Germany to provide training grants.

Having regard to those considerations, the Verwaltungsgericht Hannover, at the hearing on 19 November 1985, decided pursuant to Article 177 of the Treaty to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

'(1) Does Community law entitle nationals of Member States of the European Community who take up employment in another Member State and there, after giving up their employment, commence a course of higher education leading to a professional qualification (in this case, a course in Romance and Germanic languages) to claim a training grant on the same basis of aptitude and need as that social advantage which is accorded to nationals of the host Member State?

(2) Does the fact that a Member State accords grants for higher education leading to professional qualifications to its own nationals on the basis of aptitude and need but accords the same grant to nationals of other Member States only if they have worked in the host Member State for at least five years before the start of the course concerned constitute discrimination contrary to Article 7 of the EEC Treaty?'

The order made by the Verwaltungsgericht Hannover was received at the Court Registry on 12 February 1986.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 27 May 1986 by the Commission of the European Communities, represented by its Legal Adviser Jörn Pipkorn and Julian R. Currall, a member of its Legal Department, acting as Agents, on 29 May 1986 by the plaintiff, represented by Thomas Schröder, of the Hanover Bar, on 2 June 1986 by the Government of the Federal Republic of Germany, represented by Dr Martin Seidel, Ministerialrat, Federal Ministry of the Economy, and Professor Manfred Zuleeg, professor at the University of Frankfurt, acting as Agents, on 4 June 1986 by the Government of the Kingdom of Denmark, represented by Laurids Mikaelsen, legal adviser in the Ministry of Foreign Affairs, acting as Agent, and on 12 June 1986 by the United Kingdom, represented by R. N.

Ricks, of the Treasury Solicitor's Department, acting as Agent.

Upon hearing the Report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

1. *Observations of the plaintiff in the main proceedings*

The plaintiff considers that the failure to accord her a training grant is a breach of the prohibition of discrimination contained in the first sentence of Article 7 of the Treaty and, in particular, of the principle of equal treatment with nationals of the host State laid down in Article 48 (2) of the Treaty and in Article 3 (1) of Regulation No 1408/71 and Article 7 (2) of Regulation No 1612/68.

Training grants constitute a State social benefit in the same way as, for example, social security; they are described as a social benefit, in a context in which they are closely associated with provisions on employment, in Paragraph 18 in conjunction with Paragraph 1 of the first part of the Sozialgesetzbuch (German Social Code).

In that connection it is of little importance whether, and if so to what extent, the persons concerned or their parents have increased the gross national product or public revenue by their occupational activity.

If that 'taxpayer principle' were compatible with the prohibition of discrimination, a European system of social legislation based on the principle of equal treatment would cease to have much meaning, since no social benefits can possibly be paid otherwise than from the gross national product.

In that connection, the plaintiff refers to the judgments of the Court of 11 April 1973 in Case 76/72 *Michel S.* v *Fonds national de reclassement social des handicapés* [1973] ECR 457, and of 30 September 1975 in Case 32/75 *Cristini* v *SNCF* [1975] ECR 1085, and concludes from them that the scope of Article 7 (2) of Regulation No 1612/68 is not confined to benefits attached to employment as a worker.

2. *Observations of the German Government*

(a) The first question

The German Government considers that the first question must be answered in the negative.

Social advantages for foreigners, such as the plaintiff, are always conditional upon their status as workers. However, the plaintiff is not a worker. Since Regulation No 1612/68 does not give rise to unrestricted freedom of movement for all nationals of the Member States, there is no reason for extending social advantages to all foreigners residing within the territory of a Member State.

The German Government concedes that Article 48 of the Treaty and Regulation No 1612/68 are designed to facilitate the mobility of workers within the Community. However, the restriction of such advantages to workers, contained in Article 7 (2) of Regulation No 1612/68, is perfectly compatible with that aim. Workers who undertake studies abandon their status as workers and, therefore, waive the right of free movement guaranteed to them, by virtue of that status, by Community law.

The exception provided for in Article 7 (3) of Regulation No 1612/68 shows that previous occupational activity may be regarded as a sufficient connection where there is a sufficient link between the past activity as a worker and the social advantage applied for. That is true of the training provided by vocational schools and retraining centres, which involves only a brief interruption of occupational activity. The extension, by way of exception, of that principle of continuity to include all the social advantages referred to in Article 7 (2) of Regulation No 1612/68 cannot be reconciled with the unequivocal wording of Article 7 (3) of Regulation No 1612/68. Moreover, the exhaustive list contained in that provision does not mention educational establishments such as a university, where occupational activity is merely the final result.

The German Government considers that Regulation No 1251/70 of 29 June 1970 (Official Journal, English Special Edition 1970 (II), p. 402), which deals exhaustively with the right of workers to remain within the territory of a Member State after having been employed there, supports its view. Abandonment of occupational activity in order to take up studies is not referred to in Regulation No 1251/70. Consequently, no rule requiring equality of treatment in such circumstances exists either.

As regards Article 128 of the Treaty, the German Government states that that article does no more than empower the Council to lay down general principles for the implementation of a common vocational training policy. The exercise of that organizational power, which is of a political nature, does not fall within the categories of measures contemplated in Article 189 of the Treaty.

Added to that is the fact that the general principles based on Article 128 of the Treaty are not as a general rule mandatory in their effect and they do no more than impose obligations upon the Member States, which remain free to determine how the prescribed result is to be achieved.

The general principles laid down in Council Decision 63/266/EEC of 2 April 1963 (Official Journal, English Special Edition 1963-64, p. 245) relate only to training in preparation for employment in posts up to supervisory level. Moreover, the first principle of Decision 63/266/EEC is not capable of creating individual rights because both the 'adequate training' and in particular the means to be employed in that connection presuppose organizational measures adopted by the Member States, which retain legislative powers concerning education. Furthermore, the principle laid down therein merely establishes a programme for other principles. Finally,

entitlement on the part of individuals to social advantages in the area of education and training, based on Article 128, would result in an extension of that right to an indeterminable category of persons and thus an extension of the concomitant right of residence. Such a right of residence is not in fact granted by Community law as it stands at present. The special conditions concerning social rights within the sphere of Articles 48 and 52 would be devoid of purpose if Article 128 of the EEC Treaty were to be interpreted broadly.

(b) The second question

The German Government considers that this question should also be answered in the negative.

The prohibition of discrimination on grounds of nationality can only be implemented to the extent to which the situation in question falls within the scope of Community law.

Training grants form part of educational policy, which is a matter reserved exclusively to the Member States. The powers of the Community in that area are limited mainly to the matters covered by Article 48 of the Treaty, Articles 7 and 12 of Regulation No 1612/68 and Article 128 of the EEC Treaty; training grants are not included among those matters.

This view is in conformity with the decisions of the Court, in particular the judgment of 13 February 1985 in Case 293/85 *Gravier* v *City of Liège* [1985] ECR 593, as is apparent from paragraph 19 of that judgment.

Only access to and participation in vocational training constitute an exception to that general allocation of powers, in so far as the free movement of workers is dependent upon it. Access to vocational training falls within the sphere of Community law; consequently, Article 7 of the EEC Treaty is applicable.

However, this case does not concern the removal of an obstacle to access for nationals of other Member States. As is shown by the plaintiff's case, access to higher education is open to her in the same way as to German citizens. What is involved, instead, is the financing of training, that is to say a scheme which forms part of educational organization and thus does not fall within the scope of Community law. Training grants do not constitute an obstacle to access but rather a positive benefit in the sphere of educational policy.

Furthermore, grants are provided only on a subsidiary basis, in accordance with the rules of national legislation concerning maintenance obligations. Equality of treatment as between German students or trainees and nationals of other Member States could not therefore be achieved without standardization of the legislation concerning maintenance obligations, which is a matter reserved to the Member States.

Although the Federal Republic of Germany nevertheless does, in certain circumstances, provide training grants for nationals of other Member States, it does so by virtue of

an independent decision of the German legislature.

3. *Observations of the Danish Government*

(a) The first question

As regards the concept of worker, the Danish Government interprets it as a concept specific to Community law which applies to those who are engaged in activity as employed persons which effectively and genuinely yields an income with which they are satisfied (see judgment of 23 March 1982 in Case 53/81 *Levin* v *Staatssecretaris van Justitie* [1982] ECR 1035). For so long as a person fulfils the definition of a worker, Regulation No 1612/68 entitles him to social benefits without discrimination. That right extends to all advantages generally accorded to workers who are nationals of the host State (see judgment of 31 May 1979 in Case 207/78 *Ministère public* v *Even* [1979] ECR 2019). A worker is thus entitled to take part in continuing education or other training programmes. However, such training must be in some way linked with the work previously carried out. In the absence of such a link, the status of worker has ceased to exist and has been replaced by that of student.

In this case, the Danish Government considers that there is no link between the plaintiff's previous activities as a worker and her university studies. Therefore, the plaintiff's training cannot be regarded as covered by Article 7 of Regulation No 1612/68. In those circumstances, the judgment of the Court of 3 July 1974 in Case 9/74 *Casagrande* v *Landeshauptstadt München* [1974] ECR 773 is not relevant.

(b) The second question

As regards the second question, the Danish Government states in the first place that the judgment of 13 February 1985, cited above, does not make any finding concerning the right of residence, access to studies or grants. In that connection, the Danish Government is concerned that it might find itself under an obligation to make a certain number of training places available to nationals of other Member States free of charge, as it does for its own nationals, by reason of the fact that the latter finance such places by their taxes.

In the opinion of the Danish Government, it cannot be maintained that foreigners should be entitled to come to Denmark and enjoy the same facilities paid for out of public funds as soon as they arrive and are admitted to training establishments. It must be possible to require the person concerned to have a closer prior link with the country (under Danish legislation, two years continuous residence in Denmark).

Such a difference of treatment between Danish nationals and foreign nationals is not contrary to Article 7 of the Treaty. Someone wishing to study in Denmark who cannot provide for his needs from his own resources can, in principle, receive a grant from his Member State of origin, as is possible under Danish law.

Moreover, such a system would be easier to manage from the administrative point of view, particularly where grants are determined on the basis of need, taking into account for example the income of parents.

4. *Observations of the United Kingdom*

The United Kingdom first draws a distinction between worker rights and rights deriving from Articles 7 and 128 of the Treaty.

As regards worker rights, the United Kingdom concludes from the judgment of 3 July 1974 in Case 9/74 *Casagrande*, *supra*, and the judgment of 29 January 1975 in Case 68/74 *Alaimo* v *Préfet du Rhône* [1975] ECR 109, that a person enjoying rights under Article 7 (3) of Regulation No 1612/68 will have the right to grants both for fees and for maintenance under the same conditions as workers who are nationals of the host State.

As regards the rights deriving, pursuant to the judgment of the Court in *Gravier*, *supra*, from Articles 7 and 128 of the Treaty, the United Kingdom, like the Danish Government, states that they do not cover financial grants provided by the State.

Whilst the free movement of workers is one of the foundations of the Community and requires that extensive rights which are equal to those of workers who are nationals of the host State should be accorded to those with established worker status, similar considerations do not apply to the wider class of Community nationals who are not accorded worker status but who may wish to undertake a course in vocational training in another Member State.

Whereas it is right that such persons should not be subject to discrimination with regard to entry fees, there is no fundamental freedom under the Treaty which requires that an individual who may be in the host State for the primary purpose of pursuing a course of vocational training should be maintained at the expense of the public purse in the host State.

If maintenance payments of the nature accorded to workers were extended to students undergoing vocational training there would be a serious risk of profound distortion. In such a situation, the burden of vocational training in certain fields and financial support for the students would be distributed unevenly and arbitrarily between the Member States. It is difficult to believe that a common vocational training policy such as is envisaged by Article 128, even if it had been implemented, could have contemplated or sought to achieve such a result. It would be wrong and perverse for such a result to be achieved by the operation of Article 7 in combination with an unimplemented Article 128.

Having concluded that the rights deriving from Articles 7 and 128 of the Treaty are not applicable, the United Kingdom goes on to make certain observations concerning the rights deriving from Regulation No 1612/68.

As regards the university studies at issue in this case, the United Kingdom considers that the Court should decide whether the course amounts to vocational training

within the meaning of Article 7 (3) of Regulation No 1612/68. On the principle *lex specialis derogat legi generali*, if the course fails to amount to vocational training the plaintiff cannot claim to be entitled to a 'social advantage' under Article 7 (2) because otherwise the specific reference to vocational training would have no purpose.

As regards the question whether a Member State may lawfully impose an additional condition upon students applying for a grant who are nationals of other Member States, the United Kingdom states that its own legislation imposes such a condition, namely that such students should have been employed in the United Kingdom for an aggregate period of not less than nine months during the year preceding the training course.

As regards the concept of 'worker', the United Kingdom, like the Danish Government, refers to the judgment in Case 53/81 *Levin*, *supra*, and considers that emphasis must be placed on 'effective and genuine' activities, by contrast with those which are marginal and ancillary.

In deciding whether activities are effective and genuine, the motive of the person concerned may be of decisive importance. Moreover, the effectiveness and genuineness have to be considered in the context of the Community interest which it is desired to protect. A person's occupational activity should never appear to be essentially ancillary to his studies.

The United Kingdom also considers that a Member State is entitled to allow a period to elapse before determining whether an individual has the status of a worker with the benefit of the rights conferred by Article 7 (3) of Regulation No 1612/68 or whether his status is that of a student undergoing vocational training where any work which he undertakes is ancillary to his studies.

As regards the duration of the period of work, the United Kingdom considers that it must be a fixed one in the interests of legal certainty and fairness. It should be long enough to be able to determine the student or worker status of the person concerned. It should not, however, be so long that it places a serious restraint on the fundamental right of free movement of workers in the context of the pursuit of vocational training.

5. *Observations of the Commission*

(a) The legal background to the case

The Commission first describes the legal background to the questions submitted and refers, in addition to Paragraphs 1 and 8 of the Law on training grants, to Paragraphs 7, 17 and 18 of that Law, according to which, first of all, training grants are provided both

for 'general on-going' training and for training 'with a view to obtaining a professional qualification' until its conclusion by the award of a vocational diploma (Paragraph 7 of the Law on training grants) and, secondly, where studies are pursued at university the grant is in the form of an interest-free loan which must be repaid by instalments beginning five years after the end of a period corresponding to the maximum duration of the training for which the grant was provided (Paragraphs 17 and 18 of the Law on training grants).

(b) The first question

The Commission refers first of all to Articles 48 and 49 of the Treaty and to Article 7 of Regulation No 1612/68 and the third recital in its preamble, and considers whether Article 7 of Regulation No 1612/68 confers upon the plaintiff entitlement to a training grant on the same basis as German workers. For that purpose, it is necessary to determine whether the plaintiff can be regarded as a 'worker' and whether Article 7 confers a right to equal treatment regarding training grants.

As regards the concept of worker, the Commission states that the plaintiff initially availed herself of the right of free movement. It is therefore necessary to determine whether the rights provided for in Article 7 of Regulation No 1612/68 are conferred only upon the nationals of Member States who are engaged in an occupational activity, thus excluding nationals who abandon their employment in order to take up full-time study. It is also necessary to determine whether the Member State may make equality of treatment conditional upon completion of a period of employment or of residence within its territory.

Contrary to the decisions of the Oberverwaltungsgericht Münster (FamRZ 1978, p. 626) and of the Chancery Division of the High Court in *MacMahon* v *Department of Education* [1982] WLR 1129, the Commission considers that the status of worker is not lost merely because the person concerned has stopped working or, for the time being, seeking work in order to undertake full-time studies.

The Commission concludes from the decisions of the Court that the grant of social advantages does not necessarily require the existence of an employment relationship. On the other hand, it is important to determine whether such social advantages are granted to national workers 'primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory' and whether their 'extension to workers who are nationals of other Member States therefore seems likely to facilitate [their] mobility within the Community' (see judgments of 27 March 1985 in Case 249/83 *Hoeckx* v *Openbaar Centrum voor Maatschappelijk Welzijn, Kalmthout* [1985] ECR 973 and Case 122/84 *Scrivner* v *Centre public d'aide sociale de Chastre* [1985] ECR 1027).

According to the Commission, Regulation No 1612/68 also covers unemployed people (see judgment of 20 June 1985 in Case 94/84 *ONEM* v *Deak* [1985] ECR 1873). It is not therefore justifiable to withdraw the protection of Regulation No 1612/68 from an unemployed person who is improving his vocational skills in order to increase his chances of re-employment.

Similarly, in view of the objective laid down in Article 117 of the Treaty and in the third and eighth recitals in the preamble to Regulation No 1612/68, the free movement of

workers, employment and vocational training are closely linked. Accordingly, the status of worker required for entitlement to the advantages provided for in Regulation No 1612/68 is retained by a national of a Member State who, having availed himself of his right of free movement, undertakes full-time studies in order to complete his vocational training.

The sole criterion is that the foreign person seeking to undertake training should have availed himself of his fundamental right of free movement provided for in the Treaty; he is then entitled, in the same way as workers who are nationals of the host State, to all the advantages which facilitate vocational training and social advancement.

Any other approach would result in objectively unjustifiable inequalities between a person such as the plaintiff and a student who continued to work part-time and thereby enjoy the status of worker.

As regards the question whether it is permissible to make the grant of social advantages conditional upon employment for a specified period, the Commission emphasizes that the term 'worker' has a specific meaning under Community law, the determination of which is not left to the national legislature (see judgment of 19 March 1964 in Case 75/63 *Hoekstra (née Unger)* v *Bedrijfsvereniging Detailhandel* [1964] ECR 177).

Consequently, the Member States are not entitled unilaterally to make the grant of the social advantages provided for in Article 7 of Regulation No 1612/68 conditional upon the existence of an employment relationship for a specified period (see judgment of 6 June 1985 in Case 157/84 *Frascogna* v *Caisse de dépots et consignations* [1985] ECR 1739).

Thus a person retains the status of worker which is required for the grant of the social advantages provided for in Article 7 of Regulation No 1612/68 even where he has ceased working or looking for work in order to undertake full-time education.

As regards the question whether the training grant applied for in this case is covered by Article 7 (3) of Regulation No 1612/68, the Commission concedes that it is doubtful whether university studies fulfil the criteria laid down therein. However, the terms 'occupation' and 'vocational training' have 'multiple and variable' meanings in German law (see judgment of the Bundessozialgericht BSGE 23, p. 231).

Thus, Article 2 of the Hochschulrahmengesetz (Framework Law on higher education) of 26 January 1976 (BGBl. I, p. 185) is based on a broad interpretation of that concept. According to that provision, higher education establishments prepare students 'for occupational activities which require the use of scientific knowledge and methods or creative skills in the field of the arts'. The Law on training grants is also based on that broad concept of vocational training.

Be that as it may, in the Commission's view the same reasons for which the definition of the concept of worker for the purposes of Regulation No 1612/689 cannot be left to

national legislatures also militate in favour of a Community definition of the terms vocational school and retraining centre as used in Article 7 (3). To determine what the terms vocational school and retraining centre mean under Community law, account must be taken of the link between freedom of movement, employment and vocational training on the one hand and improvement of vocational skills and social advancement on the other.

The need for legislative consistency militates in favour of a parallel interpretation of the concepts of vocational training provided for in Regulation No 1612/68 on the one hand and in Article 128 of the EEC Treaty on the other. By virtue of such an interpretation, Article 12 of Regulation No 1612/68 would allow the children of foreign workers to participate in 'vocational training courses' under the same conditions as nationals of the host State (see judgment of 11 April 1973, *Michel S., supra*).

Consequently, according to the Commission, the terms used in Article 7 (3) of Regulation No 1612/68 must be interpreted as covering not merely vocational training establishments which impart manual, commercial or technical knowledge, but all vocational training institutions.

In order to determine the types of training which may be described as vocational training within the meaning of Article 128 of the Treaty, the Commission refers to the judgment of 13 February 1985 in Case 293/83 *Gravier, supra.* Having regard to that judgment, it considers that university education is, in general, vocational training for the purposes of the Community provisions. Moreover, in its decision of 16 July 1985 based on Article 128 of the EEC Treaty on the comparability of vocational training qualifications between the Member States of the European Community (Official Journal 1985, L 199, p. 56), the Council refers to vocational training qualifications at all levels of advanced training.

Finally, the European Social Charter, which has been ratified by most of the Member States, including Germany, includes access to universities within the right to vocational training conferred by Article 10 thereof.

Should the Court not uphold the Commission's view, account should be taken of the fact that the studies actually undertaken by the plaintiff lead, according to the terms of the order for reference, to a 'professional qualification'. Accordingly, they must in any case fall within the scope of Article 7 (3) of Regulation No 1612/68.

As regards the question whether Article 7 (3) also covers measures designed to facilitate training, the Commission considers that the principles expounded by the Court in its judgment of 3 July 1984 in *Casagrande, supra*, for the interpretation of Article 12 of Regulation No 1612/68 must also be valid for the interpretation of Article 7 (3) of that regulation.

It is apparent from the combined provisions of paragraph (3) and paragraph (2) of Article 7 of Regulation No 1612/68 that

Article 7 is intended to encourage special efforts to ensure that in each Member State workers from other Member States will be entitled, on entirely equal terms, to take up opportunities for vocational training and education which, in harmony with the third recital in the preamble to Regulation No 1612/68, must be one of the means of promoting social advancement and integration in the host country. The wording of Article 7 (3) also militates in favour of a broad interpretation. The judgments of the Court of 27 March 1985 in *Hoeckx* and *Scrivner, supra*, of 11 July 1985 in Case 137/84 *Ministère public* v *Mutsch* [1985] ECR 2681, and of 14 January 1982 in Case 65/81 *Reina* v *Landeskreditbank Baden-Württemberg* [1982] ECR 33, confirm the Commission's view.

In the alternative, the Commission maintains that the training grant in question must be regarded as a social advantage within the meaning of Article 7 (2) of Regulation No 1612/68. In that connection, the Commission rejects the view that Article 7 (3) lays down special restrictive rules governing access to educational and vocational training establishments. Even on a narrow interpretation of Article 7 (3), it is perfectly reasonable to consider that that paragraph is intended to make express provision for access to the vocational training and re-training referred to therein, without thereby excluding access to other vocational training and continuing education establishments.

The link between freedom of movement, employment, vocational training and improvement in living and working conditions justifies bringing training grants awarded for university studies leading to a professional qualification within the scope of the protection provided by Article 7 (2) of Regulation No 1612/68.

(c) The second question

The Commission emphasizes first of all that the second question is submitted only in the alternative, in the event that Article 7 of Regulation No 1612/68 does not confer entitlement to the grant in question.

The Commission goes on to point out that consideration in isolation of the conditions laid down in Article 8 of the Law on training grants in the light of the general prohibition of discrimination laid down in the first paragraph of Article 7 of the Treaty can be envisaged only with respect to nationals of other Member States who have not yet availed themselves of the right guaranteed to them by the Treaty to engage freely in occupational activities and have not yet transferred the focal point of their life and their social activities to the Federal Republic of Germany. In the present case it is not necessary to consider those provisions on that basis.

As regards the hypothetical case of a national of another Member State who is not entitled to freedom of movement, the Commission relies upon the judgment of 13 February 1985 in *Gravier, supra*. It considers that students from other Member States must be treated in the same way as students who are nationals of the host State not only as regards registration and other fees but also as regards the grant of specific

advantages directly related to access to vocational training.

In that connection it is necessary, in the case of a period of residence for the sole purpose of studying, to bear in mind that the purpose of the training grant awarded under the Law on training grants is extremely wide. The grant is designed to provide students with sufficient income to maintain them and finance their training.

In those circumstances and by virtue of Community law as it now stands, however, no obligation incumbent upon a Member State to accord absolutely equal treatment to the nationals of other Member States and its own nationals can be inferred from the general prohibition of discrimination laid down in Article 7 of the EEC Treaty in a hypothetical case where those particular aspects of the prohibition of discrimination are not applicable because the foreign student has not yet been engaged in regular employment in the host country.

The Commission therefore proposes that the reply to the questions submitted should be as follows:

'If a national of a Member State residing in the territory of another Member State leaves his employment there in order to pursue a higher education course in that Member State leading to a professional qualification, Article 7 (3) of Regulation No 1612/68 entitles him to the same treatment as that accorded to the nationals of the latter Member State as regards State grants intended to provide for his maintenance and to finance his training on the basis of aptitude and needs.'

III — Answers to the questions put by the Court

By letter of 14 January 1987 the Court put a number of questions to the parties.

The questions addressed to the Commission are concerned in particular with the extent to which study grants in the Member States are also available to students from other Member States, the extent to which Member States give grants to their nationals for studies in another Member State, and whether or not the provision of a grant to a migrant worker may, in the Commission's view, be made conditional upon the completion of a specified period of employment in the host Member State.

The Commission's answer to the first two questions relates only to the general system of grants for students' living expenses. The Commission has set out its answers to those questions in the following table:

Availability of grants for higher education to students from other Member States

Conditions for the availability of grants	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK
Nationality as a fundamental condition:	×	×	×	×	×	×	—	×	×	×	×	—
— status of refugee, stateless person or person to whom asylum has been granted		x	×			×				×	×	
— 'equivalent' status for other reasons		×									×	
Residence as a fundamental condition:												
— three years' residence at least												×
— habitual residence of family							×					
Residence as an alternative condition:												
(1) *The children of Community migrant workers* must												
— reside in the Member State concerned and be established there together with their parents and live with them	×			×				-	×	×		
— in addition, have a parent who has or has had the status of worker in that Member State		×	×			×		×				
(2) *Other nationals of the Member States* are entitled to grants where:												
— they have resided in the Member State for a given period (in years) or	2	2	5			2				3		
— their parents have resided there for a given period *and*										3		
— they were engaged in an occupational activity during that period		×	×				×					
(3) *Foreign nationals* are entitled to grants where one of the parents has the nationality of the Member State concerned			×									
The grant is conditional upon the absence of other financial aid:												
— formal condition for the grant		×	×		×			×				
— *de facto* condition in the light of the general financial conditions for the grant	×			×		×	×		×	×	×	×

Availability to national students of grants for advanced training abroad

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK
As a rule, no grants for training abroad				×	×					×		
Exceptionally, grants for certain categories of studies:												
— linguistic minorities	×							×				
— Irish students in Northern Ireland							×					
— studies in an adjoining country by persons living in frontier zones			×									
— students living with their family abroad	×	×										
Exceptions for studies not available in their own country:												
— because no comparable studies exist	×	×	×									
— because there is a 'numerus clausus' requirement			×									
— because no higher education establishment provides the type of studies in question										×		
Exceptions for integrated foreign studies, on limited conditions:		×	×			×	×			×		×
— studies subject to maximum time-limit		×	×				×			×		×
— full-time study		×										
— studies were commenced in students' own country		×	×									
Exception for other studies with certain restrictions												
— studies of recognized utility				×								
— limited duration of studies (one year maximum)				×								×
— studies were commenced in students' own country				×								×
— studies recognized by national university				×								×
Grants for studies abroad, without restriction									×			
Member States which have ratified the European Agreement of 12 December 1969 on continued payment of scholarships to students studying abroad			×		×	×			×	×		×

In reply to the third question, the Commission confirms that in its opinion a Member State is not entitled to require a minimum period of employment within its territory as the sole and thus decisive criterion in determining whether an applicant for a benefit is to be regarded as a worker within the meaning of Article 48 of the EEC Treaty and Regulation No 1612/68 of the Council. The period of employment should be only one of several criteria in determining whether someone is to be regarded as a worker under Community law. The decision as to that status is a matter for the national courts.

The Governments of the Federal Republic of Germany, Denmark and the United Kingdom were asked by the Court to state what period of residence and work in the host state seemed reasonable to them as a condition for the award of a study grant to a migrant worker wishing to undertake a course of higher education.

The Government of the Federal Republic of Germany states in reply that the period of five years residence and employment laid down in Article 8 (2) of the Law on training grants is reasonable. Fulfilment of that requirement gives rise to entitlement to a grant for about the same period, which corresponds to the usual maximum period for which a grant is available for academic studies in the Federal Republic of Germany.

The Government of the Kingdom of Denmark refers to Paragraph 2 of Ministerial Order No 363 of 28 July 1983, by virtue of which foreign nationals wishing to undertake training in Denmark are entitled to a training grant on the same basis as Danish nationals provided that they have resided in Denmark for a period of at least two years before submitting an application and have been engaged in full-time employment; completion of certain other periods of residence and employment are deemed to fulfil that requirement.

The United Kingdom states that it considers a period of employment and residence of nine months in the host State to be reasonable; a period of up to one year could also be regarded as reasonable.

K. Bahlmann
Judge-Rapporteur