JUDGMENT OF THE COURT (Fourth Chamber)

25 October 2012 (*)

(Freedom of movement for persons – Article 39 EC – National of a Member State seeking employment in another Member State – Equal treatment – Tideover allowance for young persons seeking their first job – Grant subject to completion of at least six years' studies in the host State)

In Case C-367/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Belgium), made by decision of 27 June 2011, received at the Court on 11 July 2011, in the proceedings

Déborah Prete

v

Office national de l'emploi,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, acting as President of the Fourth Chamber, J.-C. Bonichot, C. Toader, A. Prechal (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ms Prete, by J. Oosterbosch, avocate,

– the Belgian Government, by L. Van den Broeck and M. Jacobs, acting as Agents, assisted by P.A. Foriers, avocat,

– the Czech Government, by M. Smolek and D. Hadroušek, acting as Agents,

– the European Commission, by V. Kreuschitz and G. Rozet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 July 2012,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 12 EC, 17 EC, 18 EC and 39 EC.

2 The reference has been made in proceedings between Ms Prete and the Office national de l'emploi (Belgian National Employment Office, 'ONEM') concerning the latter's refusal to grant Ms Prete the tideover allowance provided for by Belgian legislation.

The Belgian legislation

3 Belgian legislation provides for the grant of an allowance known as a 'tideover allowance' to young people who have completed their studies and are looking for their first job. This allowance is designed to facilitate the transition from education to the labour market.

4 Article 36(1), first subparagraph, of the Royal Decree of 25 November 1991 on unemployment (*Moniteur belge* of 31 December 1991, p. 29888), as amended by the Royal Decree of 11 February 2003 (*Moniteur belge* of 19 February 2003, p. 8026, 'the Royal Decree'), provides:

'In order to qualify for the tideover allowance, the young worker must have:

...

2 (a) either completed full-time higher secondary education or the third year of full-time technical, artistic or vocational training at an educational establishment run, subsidised or approved by a community;

(b) or obtained from the competent authority of a community the diploma or educational certificate corresponding to the studies mentioned in (a) above;

...

(h) or pursued education or training in another State within the European Economic Area provided that both the following conditions are fulfilled:

– the young person provides documentation which shows that the education or training is of the same level as, and equivalent to, that mentioned under the previous headings of this point;

– at the time of the application for the allowance the young person is the dependent child of migrant workers for the purposes of Article [39 EC], who are residing in Belgium;

...

(j) or obtained a document issued by a community establishing equivalence to the diploma referred to in point (b) or a certificate giving access to higher education; this point shall apply only provided that at least six years' studies have been previously completed at an educational establishment run, approved or subsidised by a community.

...'

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

5 Ms Prete, a French national, completed her secondary studies in France, where she obtained a diploma known as the 'baccalauréat professionnel', specialising in secretarial studies. In June 2001, she married a Belgian national with whom she settled in Tournai (Belgium).

6 On 1 February 2002, she registered as a job seeker with the ONEM. On 1 June 2003, she applied to the ONEM for the tideover allowance.

7 By decision of 11 September 2003, the ONEM rejected the application on the ground that Ms Prete had not completed a minimum of six years' studies in an educational establishment located in Belgium before obtaining her certificate in secondary education as required by point 2(j) of the first subparagraph of Article 36(1) of the Royal Decree.

8 The action brought by Ms Prete against this decision was allowed by the Tribunal du travail de Tournai (Labour Court, Tournai), which, by its judgment of 19 December 2008, upheld her claim to be entitled to tideover allowance.

9 On appeal by the ONEM, the Cour du travail de Mons (Higher Labour Court, Mons) reversed that judgment on 25 February 2010. The said court found that Ms Prete was not entitled to the tideover allowance, and in particular made clear in that respect that she was not able to derive such a right either from Article 39 EC or from Article 18 EC.

10 In support of the appeal which she brought against that decision before the Cour de cassation (Court of Cassation), Ms Prete has argued inter alia that the judgment infringes the rights which Articles 12 EC, 17 EC and 18 EC and, so far as necessary, Article 39 EC, confer on citizens of the European Union.

11 The Cour de cassation observes that the judgment under appeal before it states that the condition stipulated at point 2(j) of the first subparagraph of Article 36(1) of the Royal Decree was introduced so as to ensure the existence of a real connection between the applicant for tideover allowance and the relevant geographic labour market. It further notes that the legitimacy of such an objective has been recognised by the Court, in particular in its judgment of 11 July 2002 in Case C-224/98 *D'Hoop* [2002] ECR I-6191.

12 In her appeal, Ms Prete submits, however, that, given its excessively general and exclusive character, the condition goes so far beyond what is necessary in relation to the stated objective that, in the circumstances of the present case, it should have been set aside by the Cour du travail de Mons. That court, upon which it was incumbent to check whether Ms Prete's registration with the employment service as a job seeker as well as her settlement in Belgium following her marriage to a Belgian national were such as to constitute the necessary connection with the Belgian labour market, is alleged to have incorrectly decided that this was not the case and refused the grant of the tideover allowance to Ms Prete. The latter maintains that her exclusion from the benefit of the allowance is unrelated to the concern to avoid movements the sole purpose of which is to benefit from such allowances and that it infringes both her right to respect for her family life and the principle of Community law requiring each Member State to ensure optimal conditions for the integration of a Community worker's family.

13 In those circumstances, the Cour de cassation has decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Do Articles 12 [EC], 17 [EC], 18 [EC] and, so far as necessary, 39 [EC] preclude a provision of national law under which, in the manner of point 2(j) of the first subparagraph of Article 36(1) of the [Royal Decree], entitlement to tideover allowance

for a young European Union national, who does not have the status of a "worker" within the meaning of Article 39 [EC], who has completed secondary studies in the European Union but not at an educational establishment run, subsidised or approved by one of the communities in [the Kingdom of] Belgium, and who has obtained either a document issued by one of those communities establishing the equivalence of those studies to the study certificate issued by the competent authority of one of those communities for studies completed in those Belgian educational establishments, or else a document giving access to higher education, is conditional upon the young person in question having previously completed six years' studies at an educational establishment run, approved or subsidised by one of the communities in [the Kingdom of] Belgium, if that condition is exclusive and absolute?

(2) If so, do the circumstances of the young person described in the first question, who has not completed six years' studies at a Belgian educational establishment, resides in Belgium with her Belgian spouse and is registered as a job seeker with a Belgian employment service, constitute factors to be taken into consideration in order to appraise that young person's connection with the Belgian employment market, having regard to Articles 12 [EC], 17 [EC], 18 [EC] and, if appropriate, 39 [EC]? To what extent must the length of those periods of residence, marriage and registration as a job seeker be taken into consideration?'

Consideration of the questions referred

14 By its two questions, which it is appropriate to consider together, the referring court asks, in essence, whether Articles 12 EC, 17 EC, 18 EC, and, where necessary, 39 EC must be interpreted as precluding a provision such as that at issue in the main proceedings, which makes the right to the tideover allowance for the benefit of young people looking for their first job conditional upon the person concerned having completed at least six years' studies in an educational establishment of the host Member State, having regard to the fact that such a condition is too exclusive, in particular inasmuch as it precludes all possibility of that allowance being granted to a young woman, who is a national of another Member State and who, although she has not completed any studies in such an establishment, has married a national of the host Member State, resides with him in that State and is registered as a job seeker with an employment service of the host State. In this regard, the referring court wishes in particular to know whether the circumstances thus characterising the situation must in fact be taken into account for the purpose of determining whether there is a real link between the claimant and the labour market of the host Member State.

Preliminary observations

15 A preliminary point to note is that the main proceedings relate to a decision dated 11 September 2003 rejecting an application by Ms Prete for tideover allowance from 1 June 2003 onwards.

16 It follows that the provisions of the Treaties to which it is appropriate to refer in this case are those of the EC Treaty, in the version thereof following the Treaty of Nice.

17 It is also to be noted that the court making the reference directs its questions to Articles 12 EC, 17 EC and 18 EC and, so far as necessary, Article 39 EC.

18 In that regard, it should be observed at the outset that it is settled case-law that Article 12 EC, which lays down a general prohibition of all discrimination on grounds of nationality, applies independently only to situations governed by EU law for which the Treaty lays down no specific rules of non-discrimination (see, inter alia, Case

305/87 *Commission* v *Greece* [1989] ECR 1461, paragraph 13; Case C-336/96 *Gilly*[1998] ECR I-2793, paragraph 37; Case C-100/01 *Oteiza Olazabal* [2002] ECR I-10981, paragraph 25; and Case C-240/10 *Schulz-Delzers and Schulz* [2011] ECR I-0000, paragraph 29).

19 In relation to the freedom of movement for workers, the principle of non-discrimination was implemented by Article 39 EC as well as by secondary legislation, inter alia Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475) (see, inter alia, *Commission* v *Greece*, paragraph 12; *Gilly*, paragraph 38; Case C-138/02*Collins* [2004] ECR I-2703, paragraph 55; and *Schulz-Delzers and Schulz*, paragraph 29 and case-law cited).

20 In relation to Article 18 EC, which sets out generally the right of every citizen of the Union to move and reside freely within the territory of the Member States, it is also settled case-law that this provision finds specific expression in Article 39 EC in relation to freedom of movement for workers (see, inter alia, *Oteiza Olazabal*, paragraph 26; Case C-287/05 *Hendrix* [2007] ECR I-6909, paragraph 61; and *Schulz-Delzers and Schulz*, paragraph 30).

On the applicability of Article 39 EC

21 Article 39(2) EC states 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.

22 Article 39(3) EC confers on the nationals of Member States inter alia the right to move freely within the territory of other Member States and the right to stay for the purpose of seeking employment. Thus, nationals of a Member State seeking employment in another Member State fall within the scope of Article 39 EC and therefore enjoy the right to equal treatment laid down in paragraph 2 of that provision (see inter alia*Collins*, paragraphs 56 and 57).

23 In this connection, the Court has held that, in order to determine the scope of the right to equal treatment for persons seeking employment, this principle should be interpreted in the light of other provisions of EU law, in particular Article 12 EC (see *Collins*, paragraph 60).

24 Thus, citizens of the Union lawfully resident in the territory of a host Member State can rely on Article 12 EC in all situations which fall within the scope *ratione materiae* of EU law. Citizenship of the Union is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for (see, in particular, *Collins*, paragraphs 61 and case-law cited).

25 The Court has stated in this respect that in view of the establishment of citizenship of the Union and the interpretation in the case-law of the right to equal treatment enjoyed by citizens of the Union, it was no longer possible to exclude from the scope of Article 39(2) EC – which expresses the fundamental principle of equal treatment, guaranteed by Article 12 EC – a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State (see *Collins*, paragraph 63, and Case C-258/04 *Ioannidis* [2005] ECR I-8275, paragraph 22).

26 It is undisputed that the tideover allowance provided for by the national legislation at issue in the main proceedings is a social benefit, the aim of which is to facilitate, for young people, the transition from education to the labour market (see, inter alia, *D'Hoop*, paragraph 38, and *Ioannidis*, paragraph 23).

27 Nor is it disputed that, on the date of lodging her application for the allowance, Ms Prete was a national of a Member State who, having completed her education, was seeking employment in another Member State.

28 In those circumstances Ms Prete is justified in relying on Article 39 EC to claim that she cannot be discriminated against on the basis of nationality as far as the grant of a tideover allowance is concerned (see, to this effect, *Ioannidis*, paragraph 25).

On the existence of a difference in treatment

29 According to settled case-law, the equal treatment rule laid down in Article 39 EC prohibits not only overt discrimination on grounds of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result (see, in particular, *Ioannidis*, paragraph 26 and case-law cited).

30 The legislation at issue in the main proceedings introduces a difference in treatment depending on whether or not young people looking for their first job can demonstrate that they have completed six years of secondary education in a Belgian educational establishment.

31 A condition relating to the obligation to have studied in an educational establishment of the host Member State can by its very nature more easily be met by nationals of that Member State and therefore may well place nationals of other Member States, above all, at a disadvantage (see, by analogy, *Ioannidis*, paragraph 28).

On the justification of a difference in treatment

32 It follows from the case-law that a difference in treatment such as that identified previously can be justified only if it is based on objective considerations independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provision (see, inter alia, *D'Hoop*, paragraph 36; *Collins*, paragraph 66; and *Ioannidis*, paragraph 29).

33 In this respect, and in relation to allowances such as those at issue in the main proceedings, the purpose of which is to facilitate the transition from education to the labour market for young people, the Court has held that it was legitimate for the national legislature to wish to ensure that there is a real link between the applicant for that allowance and the geographic employment market concerned (see, inter alia, *D'Hoop*, paragraph 38; *Collins,* paragraphs 67 and 69; and *Ioannidis*, paragraph 30).

34 As to the requirement of proportionality, it should be noted that the Court has already held that a single condition concerning the place where the diploma of completion of secondary education was obtained, such as that at point 2(a) of the first subparagraph of Article 36(1) of the Royal Decree, is too general and exclusive in nature in that it unduly favours an element which is not necessarily representative of the real and effective degree of connection between the applicant for the tideover allowance and the geographic employment market, to the exclusion of all other representative elements. It therefore concluded that the said condition went beyond what is necessary to attain the aim pursued (see *D'Hoop*, paragraph 39, and *Ioannidis*, paragraph 31).

35 It emerges from the order for reference that it was in order to remedy this situation that the condition at issue, which is alternative to that relating to the place from which the diploma was obtained and which relates to the requirement that at least six years' studies have been completed in an educational establishment run, subsidised or approved by one of the Belgian

communities, was introduced at point 2(j) of the first subparagraph of Article 36(1) of the Royal Decree.

36 In its observations before the Court, the Belgian Government confirmed that the condition at issue serves to ensure that there is a real link between the person claiming the allowance and the Belgian labour market and maintains that such a condition satisfies the requirement of proportionality, asserting inter alia that the number of years of study required does not go beyond what is necessary in order to attain that objective.

37 In the present case, it does not appear necessary, however, for the Court to rule on whether the said condition breaches the principle of proportionality by virtue of the number of years of study required.

38 As is clear from the facts of the main proceedings, Ms Prete has not completed any studies in Belgium with the result that she would still have been denied the benefit of the tideover allowance had the condition at issue required the claimant to establish completion of a period of less than six years' studies in a Belgian educational establishment, no matter how short that period.

39 Therefore, the Court need only consider whether the national legislation at issue in the main proceedings may be found to be incompatible with Article 39 EC by virtue of the fact that, by providing for a condition relating to the obligation to have completed studies in a Belgian establishment, that legislation has the consequence of preventing account being taken of circumstances which, although unrelated to the place where the studies have been carried out, would nonetheless be equally representative of the fact that there exists a real link between the person concerned and the geographic labour market concerned.

40 Concerning, in that regard, the specific circumstances of the case before the referring court, it should be observed that the case concerns a national of a Member State who has resided for about two years in the host Member State, following her marriage to a national of that Member State, and who has been registered for 16 months as a job seeker with an employment service of that same Member State, whilst at the same time, as is apparent from the documents before the Court, actively looking for work there.

41 The Belgian Government submits that the marriage contracted with a national of the host Member State and the subsequent move to reside within that Member State are private life events unrelated to the latter's labour market. It maintains that registration as a job seeker is a simple administrative formality which can easily be fulfilled. Such circumstances do not have the consequence – in relation in particular to a person who, like Ms Prete, settles in a region bordering the Member State where she carried out her studies and whose labour market she is naturally more prepared to enter – that the claimant may turn only to the labour market of the host State.

42 Under the division of jurisdiction provided for in Article 267 TFEU, it is in principle the task of the national court to ensure that the principle of proportionality is duly observed (see, inter alia, Case C-476/99 *Lommers*[2002] ECR I-2891, paragraph 40). In that context it is thus for the national courts to establish whether the specific circumstances of a case show that there is a real link with the relevant labour market (see, to this effect, Joined Cases C-22/08 and C-23/08 *Vatsouras and Koupatantze* [2009] ECR I-4585, paragraph 41).

43 None the less, according to the Court's case-law, the Court may provide the national court with an interpretation of EU law on all such points as may enable that court to assess the compatibility of a national measure with EU law for the purposes of the decision in the case

before it. In the present case, the national court has also raised a number of specific queries which should be answered (see, to this effect, inter alia, *Lommers*, paragraph 40).

44 In this context, it must be stated that, subject to definitive factual assessments which – as the Court has just observed – are a matter for the national courts, circumstances such as those described at paragraph 40 of this judgment, as the Advocate General has noted at points 48 and 49 of his Opinion, appear to be capable in fact of establishing the existence of a real connection with the labour market of the host Member State, even though the claimant has not completed any studies in an educational establishment in that State.

45 In this respect, it is appropriate first of all to reject the line of argument of the Belgian Government according to which a person such as Ms Prete, in particular if she resides close to the border with the Member State in which she has completed her studies, is more likely to enter the labour market of that State, with which she has a connection. Firstly, it must be stated that the knowledge acquired by a student in the course of his higher education does not in general assign him to a particular geographical employment market (see, to this effect, Case C-209/03 *Bidar* [2005] ECR I-2119, paragraph 58). Secondly, it must be noted that the circumstances thus put forward by the Belgian Government to justify the possible existence of a link between the claimant and the French labour market are not, in any event, such as to prevent such a link with the Belgian labour market being formed in the circumstances at issue in the main proceedings.

46 Furthermore, in relation to the latter point, the Court has held that the existence of a real link with the labour market of a Member State can be determined, in particular, by establishing that the person concerned has, for a reasonable period, in fact genuinely sought work in the Member State in question (see *Collins*, paragraph 70, and *Vatsouras and Koupatantze*, paragraph 39).

47 The Court has also acknowledged that residence within a Member State was also capable of ensuring a real connection with the labour market of the host Member State, whilst additionally making clear that if compliance with the requirement of a connection demands a period of residence, the period must not exceed what is necessary in order for the national authorities to be able to satisfy themselves that the person concerned is genuinely seeking work in the employment market of the host Member State (*Collins*, paragraph 72).

48 Lastly, the fact that the claimant in the main proceedings, in making use of the freedom of movement guaranteed to Union citizens by Article 18 EC, moved to the host Member State in order to establish her marital residence there following her marriage to a national of that State, cannot be disregarded either when assessing whether Ms Prete has a real link with the labour market of the said Member State.

49 In this context, it is appropriate to note on the one hand – as has already been pointed out at paragraph 25 of this judgment – that it is in view of the establishment of citizenship of the Union and the interpretation in the case-law of the right to equal treatment enjoyed by citizens of the Union, that the Court considered that it was no longer possible to exclude from the scope of Article 39(2) EC a benefit of a financial nature, the purpose of which is to facilitate access to employment in the labour market of a Member State.

50 In addition, matters which can be inferred from the family circumstances of a claimant for tideover allowance are capable of demonstrating the existence of a real link between the applicant and the host Member State (see, to this effect, Case C-503/09 *Stewart* [2011] ECR I-0000, paragraph 100). The existence of close ties, in particular of a personal nature, with the host Member State where the claimant has, following her marriage with a national of that Member state, settled and now habitually resides are such as to contribute to the

appearance of a lasting connection between the claimant and the Member State in which she has newly established herself, including with the labour market of the latter (see, to this effect, Case 236/87 *Bergemann* [1988] ECR 5125, paragraphs 20 to 22).

51 It follows that the circumstances of the case before the referring court are a specific illustration of the fact that, inasmuch as it prevents other factors which are potentially representative of the real degree of connection of the claimant with the relevant geographic labour market being taken into account, a condition such as that at point 2(j) of the first subparagraph of Article 36(1) of the Royal Decree goes beyond what is necessary to achieve its aim.

52 Having regard to all the foregoing considerations, the answer to the questions referred is that Article 39 EC precludes a national provision such as that at issue in the main proceedings, which makes the right to a tideover allowance for the benefit of young people looking for their first job subject to the condition that the person concerned has completed at least six years' studies in an educational establishment of the host Member State, insofar as that condition prevents other representative factors liable to establish the existence of a real link between the person claiming the allowance and the geographic labour market concerned being taken into account and accordingly goes beyond what is necessary to attain the aim pursued by that provision which is to ensure that such a link exists.

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 (Fourth Chamber) hereby rules:

Article 39 EC precludes a national provision such as that at issue in the main proceedings, which makes the right to a tideover allowance for the benefit of young people looking for their first job subject to the condition that the person concerned has completed at least six years' studies in an educational establishment of the host Member State, insofar as that condition prevents other representative factors liable to establish the existence of a real link between the person claiming the allowance and the geographic labour market concerned being taken into account and accordingly goes beyond what is necessary to attain the aim pursued by that provision which is to ensure that such a link exists.

[Signatures]

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* Language of the case: French.