Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 9 June 2005

Office national de l'emploi v Ioannis Ioannidis

Reference for a preliminary ruling: Cour du travail de Liège - Belgium

Job-seekers - European citizenship - Principle of non-discrimination - Article 39 EC - Tideover allowances for young people seeking their first employment - Grant conditional on completion of secondary education in the Member State concerned

Case C-258/04

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I – Introduction

1. Belgium grants benefits, called 'tideover allowances', to young people under 30 years old who are either seeking their first employment or have already pursued an activity as an employed person, but have not yet worked long enough to qualify for unemployment benefit. However, Mr Ioannidis was refused a tideover allowance on the grounds that he had not completed his secondary studies in an educational establishment run, subsidised or recognised by one of the national communities of the abovementioned country, did not hold a diploma or certificate for any such studies and was not the dependent child of migrant workers, although he did have a recognised Greek qualification.

2. The compatibility of this exclusion with Community law is the subject of the reference for a preliminary ruling lodged by the Cour du travail de Liège. The Court of Justice has already dealt with the abovementioned benefits in relation to the children of migrant workers as well as in the case of Belgian nationals who studied in another Member State.

3. The matter at issue in these proceedings represents, so to speak, another piece of the jigsaw. As Sartre wrote, 'Donc recommençons. Cela n'amuse personne … Mais il faut enfoncer le clou.' (2) Having regard to the foregoing, after reviewing the relevant provisions, the facts of the dispute and the proceedings, I shall analyse the existing case-law in order to determine its applicability to the present case.

II – The legal framework

A – Community provisions

4. The first paragraph of Article 12 EC prohibits 'any discrimination on grounds of nationality' within the scope of application of the Treaty, without prejudice to some special provisions.

5. Furthermore, Article 17(1) EC states:

'1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.'

6. Article 18 EC then specifies several rights associated with citizenship of the Union, including 'the right to move and reside freely within the territory of the Member States', subject to the limitations and conditions laid down in the Treaty or in the provisions adopted to give it effect.

7. The right to equality established by Article 12 EC therefore belongs to all citizens of European Union Member States, who, furthermore, enjoy the rights set out in Article 18 EC.

8. However, some provisions aim to prevent differences based on nationality in respect of the movement of workers. For example, Article 39 EC states:

'1. Freedom of movement for workers shall be secured within the Community.

2. Such freedom of movement shall 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.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

a) to accept offers of employment actually made;

b) to move freely within the territory of Member States for this purpose;

c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

…'

9. The mobility of the workforce is an issue that concerned the Community from its beginnings, so that an approach was soon adopted which sought to abolish differences in employment, including pay levels and other working conditions, thus facilitating the free movement of workers to pursue an activity as an employed person. These concerns are reflected in Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on the free movement of workers. (3) Under Article 7:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

...'

B – The relevant Belgian provisions

10. The Royal Decree of 25 November 1991 on unemployment (4) established a number of benefits for young people under 30 years old who are either seeking their first employment or have already pursued an activity as an employed person, but have not worked long enough to qualify for unemployment benefits.

11. Article 36(1) lists several alternative conditions to qualify for unemployment benefit. (5) Applicants must have:

'...

2 (a) completed full-time higher secondary education or technical or vocational training at an educational establishment run, subsidised or approved by a community; (6)

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

...

or (h) pursued education or training in another Member State of the European Union 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 48 of the EC Treaty who are residing in Belgium. (7)

...'

III – Facts, main proceedings and question submitted by the national court

12. In 1994, Mr Ioannidis, a Greek national born on 23 April 1976, took up residence in a municipality of the Liège conurbation. On 17 October 1994, the Minister for Education, Research and Training of Belgium's French Community decided that the certificate of secondary education issued to Mr Ioannidis in Greece (i.e. the 'apolytirion') was equivalent to the approved certificate of upper secondary education giving access to short-term vocational higher education.

13. On 29 June 2000, after completing a three-year period of study, Mr Ioannidis obtained a graduate diploma in physiotherapy from the Haute École de la Province de Liège André Vésale.

14. On 7 July 2000, he registered as a job-seeker looking for full-time employment at the Office communautaire et régional de la formation professionnelle et de l'emploi (Community and Regional Office for Vocational Training and Employment).

15. From 10 October 2000 to 29 June 2001, he followed, in France, a paid training programme in vestibular rehabilitation under an employment contract signed with a société civile professionnelle of doctors specialising in oto-rhino-laryngology.

16. On 7 August 2001, having returned to Belgium, Mr Ioannidis submitted an application for a tideover allowance to the Office national de l'emploi (ONEM), which rejected his application by its Decision of 5 October 2001.

17. The Tribunal du travail de Liège (Labour Court, Liège), in its judgment of 7 October 2002, upheld the action brought by Mr Ioannidis against the decision to reject his application.

18. On appeal by the administrative body in question (ONEM) against that judgment, the Cour du travail de Liège (9th Chamber) stayed proceedings, on the ground that, under national provisions, Mr Ioannidis does not fulfil the conditions laid down to qualify for a benefit, (8) which he could only obtain under Community provisions, and referred the following question to the Court of Justice:

'Is it contrary to Community law (in particular Articles 12 EC, 17 EC and 18 EC) for rules of a Member State (such as, in Belgium, the Royal Decree of 25 November 1991 on unemployment) which provide for a tideover allowance to be given to job-seekers who are (in principle) less than 30 years old on the basis of the secondary education they have completed, to apply to job-seekers who are nationals of another Member State the condition, applicable equally to its own nationals, that the allowance is granted only if the required education has been completed in an educational establishment run, subsidised or recognised by one of the three national Communities (as laid down in the Royal Decree by heading 2(a) of the first subparagraph Article 36(1)) with the result that the tideover allowance is refused in the case of a young job-seeker who is not a member of the family of a migrant worker, but who is a national of another Member State in which, before moving within the Union, he had pursued and completed secondary education, recognised as equivalent to the education required by the authorities of the State in which the application for the tideover allowance has been made?'

IV – Procedure before the Court of Justice

19. Written observations were submitted in these proceedings, within the period prescribed by Article 20 of the EC Statute of the Court of Justice, by the Office national de l'emploi, the Italian Government, the Greek Government and the Commission.

20. Once the written stage of the proceedings had been completed, at the general meeting of 26 April 2005 it was agreed not to hold an oral procedure unless one of the parties in the main proceedings should request such a procedure within the prescribed period, which expired on 28 April 2005. No interest having been expressed in holding an oral debate, the case became ready for further consideration in the present opinion.

V – Analysis of the question referred for a preliminary ruling

21. To find an answer to the question, we should examine the case-law of the Court of Justice, which throws enough light on the matter to dispel the doubts raised by the national court.

A – Applicable case-law

22. As stated above, there are several judgments concerning the Belgian tideover allowances. The *Deak*, *Commission* v *Belgium* and *D'Hoop* judgments are particularly significant. (9) More recently, in the *Collins*judgment, concerning a social security allowance granted to job-seekers in the United Kingdom, the Court of Justice put forward arguments that are highly relevant to the present case. It is therefore necessary to examine these judgments in some detail, given that they contain the key elements of the answer to the questions submitted by the national court. Furthermore, the observations of the parties set out the debate on the scope of the grounds of these judgments.

1. The Deak judgment of 20 June 1985 (10)

23. This judgment settled a question referred for preliminary ruling, also by the Cour du travail de Liège, in a dispute between Mr Deak, a young Hungarian whose mother, an Italian national, was a migrant worker resident in Belgium, and the Office national de l'emploi, which refused to grant him a benefit on the ground that he was not a Community national.

24. The Court of Justice explained a number of points: first, the refusal did not contravene Regulation No 1408/71 (11) – regarding which clarification was sought – given that the benefit in question was a social advantage provided for by Article 7(2) of Regulation No 1612/68, which includes all advantages, whether or not linked to an employment contract, that are generally granted to national workers because of their objective status as workers or by virtue of the mere fact of their residence on the national territory; secondly, the principle of equality of treatment in the enjoyment of those advantages prohibits any form of discrimination against the dependents of an employed person; and, finally, a Member State cannot refuse to grant a benefit to first-time job-seekers who are the children of a migrant worker from another Member State on the grounds of the children's nationality.

2. The judgment of 12 September 1996, *Commission* v *Belgium* (12)

25. On this occasion, the Commission took action against Belgium on the ground that it had contravened Article 39 EC and Articles 3 and 7 of Regulation No 1612/68 by maintaining in force Article 36 of the Royal Decree of 25 November 1991, which made the grant of tideover allowances to young people seeking their first employment subject to the requirement of having completed their secondary education in an establishment run, subsidised or approved by the Belgian State or one of its communities, as well as on the ground that, at the same time, the Belgian State was encouraging employers to recruit tideover allowance beneficiaries and assuming responsibility for the payment of their remuneration and social security contributions within the framework of special programmes for the reduction of unemployment.

26. In my Opinion in the abovementioned case, I addressed both issues, though only the first is relevant to the case of Mr Ioannidis. At the time, I observed that the judgment in *Deak* had held that the tideover allowance fell within Article 7(2) of Regulation No 1612/68 (points 22 to 30); I pointed out that it did not appear that there was any discrimination on grounds of nationality, given that the beneficiaries were identified by reference to a factor unconnected with nationality (point 31), although migrant workers and their children found themselves indirectly at a disadvantage in relation to national workers (point 32), since the requirement of having completed their secondary education in Belgium implied a previous requirement of residence which favoured young Belgians in that they could more easily fulfil the prescribed conditions (points 33 to 43); I argued that 'that dissuasive effect on the children clearly logically rebounds on to the parents …, who will find themselves deprived of one of the social advantages usually available to the children of Belgian families. Such workers, whose children have completed their secondary education in their country of origin and are seeking employment, will find it more difficult to go to a Member State which withholds from their descendants something which it grants to the children of national workers: a tideover allowance, which also carries with it preference as regards access to certain jobs' (point 44). I therefore proposed that it should be held that Community law had been infringed.

27. The Court of Justice followed this opinion and held that the tideover allowance constituted a social advantage within the meaning of Regulation No 1612/68 also where 'the dependent children of migrant workers living in Belgium … have finished their studies not in Belgium but in their country of origin or indeed in another Member State' (paragraphs 25 and 26). After recalling settled case-law which prohibits discrimination and pointing out, in particular, that 'among others, conditions applied without distinction which may be more easily fulfilled by national workers than migrant workers are prohibited' (paragraphs 27 and 28), the Court held that the requirement at issue, which it held akin to 'a condition of prior residence', favoured Belgians, in spite of the fact that that requirement applied also to young Belgians who completed their secondary education outside Belgium (paragraphs 29 and 30) – this being an issue that would subsequently be addressed by the judgment in *D'Hoop*. Thus, as regards this aspect, the complaint lodged by the Commission was upheld.

28. However, the Court dismissed the complaint concerning access to special employment and re-employment programmes, given that, in view of these programmes' special features, they were linked to unemployment, and thus fell outside the field of access to employment (paragraph 39), whereas Community law on freedom of movement for workers concerns persons who have already participated in the employment market by exercising an effective and genuine occupational activity which has conferred on them the status of workers, but this is not the case where young people are seeking their first employment (paragraph 40).

29. To bring its national provisions in line with the judgment of the Court of Justice, Belgium enacted the Royal Decree of 13 December 1996, which amended the Royal Decree of 25 November 1991 by adding the above-quoted heading (h) to Article 36 so as to make tideover allowances available to the children of migrant workers.

3. The *D'Hoop* judgment of 11 July 2002 (13)

30. Unlike in the previous case, Ms D'Hoop, a Belgian citizen, completed her secondary education in France, where she obtained a diploma which Belgium recognised as equivalent to the Belgian upper secondary education certificate which gave students access to higher education. After studying at university in Belgium, she made an application for a tideover allowance. She was however refused that allowance on the ground that she did not comply with the requirements laid down in Article 36 of the Royal Decree of 25 November 1991.

31. The Tribunal du travail de Liège requested a preliminary ruling on the applicability of Article 39 EC and Article 7 of Regulation No 1612/68 to the case under consideration.

32. In its judgment, the Court of Justice followed the Opinion of its Advocate General (14) on the basis of two aspects of the legislation: first, the abovementioned provisions and, secondly, the concept of citizenship of the Union.

33. As regards the first aspect, the Court ruled that Ms D'Hoop could not rely on either the rights conferred by the Treaty upon migrant workers or the derived rights conferred upon members of the families of such workers (paragraph 20). The Court in fact held that the application of Community law on freedom of movement for workers in relation to national rules concerning unemployment insurance requires that a person invoking that freedom 'must have already participated in the employment market', but this is not the case where young people are seeking their first employment (paragraph 18). Furthermore, while Ms D'Hoop pursued her secondary education in France, her parents continued to reside in Belgium (paragraph 19).

34. As regards the second aspect, the Court of Justice held that, since a citizen of the Union is entitled to enjoy in all Member States the same treatment in law as that accorded to the nationals of those Member States who find themselves in the same situation, it would be incompatible with the right of freedom of movement were a citizen, in the Member State of which he is a national, to receive treatment less favourable than he would enjoy if he had not availed himself of the opportunities offered by the Treaty in relation to freedom of movement (paragraph 30). The Court stated, furthermore that this consideration 'is particularly important in the field of education' (paragraph 32). After noting that Belgian legislation introduced a difference in treatment between Belgian nationals who had had all their secondary education in Belgium and those who, having availed themselves of their freedom to move, had obtained their diploma of completion of secondary education in another Member State (paragraph 33), the Court of Justice ruled that such inequality of treatment was 'contrary to the principles which underpin the status of citizen of the Union' (paragraph 35). However, it accepted that the condition at issue could be justified, provided that it were based on objective considerations independent of the nationality of the persons concerned and were proportionate to the legitimate aim of the national provisions (paragraph 36). Thus, after recognising that the tideover allowance was aimed at facilitating for young people the transition from education to the employment market, it accepted 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' (paragraph 38). Nevertheless, the Court of Justice ruled that a single condition concerning the place where the diploma had been obtained was too general and exclusive in nature, unduly favoured an element which was not necessarily representative of the real and effective degree of connection between the applicant and the employment market, and went beyond what was necessary to attain the objective pursued (paragraph 39).

35. The State directly concerned by the judgment introduced a new amendment in Article 36 of the Royal Decree of 25 November 1991, adding – by means of the Royal Decree of 11 February 2003 – a further possibility of obtaining a tideover allowance (heading (j)), which is however irrelevant to the present debate since it was not applicable at the material time. (15)

4. The *Collins* judgment of 23 March 2004 (16)

36. In the proceedings between Mr Collins and the Secretary of State for Work and Pensions, concerning the latter's refusal to grant Mr Collins a job-seeker's allowance provided for by legislation of the United Kingdom, the Social Security Commissioner referred to the Court for a preliminary ruling several questions on the interpretation of Regulation No 1612/68l and Council Directive 68/360/EEC of 15 October 1968. (17)

37. Leaving aside the arguments concerning the Directive, the interest of this judgment lies in two ideas: the concept of 'worker', within the meaning of Article 7 et seq. of Regulation No 1612/68, and the relevance of the concept of 'citizenship of the Union' to the case.

38. I examined both aspects in the Opinion delivered on 10 July 2003.

39. In addressing the first aspect, I highlighted the difference between Title I (Articles 1 to 6) of the Regulation, whose provisions apply to any national of a Member State, and Title II (Articles 7 to 9), which only refers to 'workers', i.e. persons who, for a certain period of time perform services for and under the direction of another person in return for which they receive remuneration.(18) According to the *Lebon* judgment, (19) therefore, equal treatment with regard to social advantages, pursuant to Article 7(2) of the Regulation, would not apply to persons who move in search of employment (points 22 to 35).

40. In addressing the second aspect, I observed that, according to settled case-law, the principle of non-discrimination on grounds of nationality, enshrined in Article 12 EC, is intended to apply independently only in situations governed by Community law in respect of which the Treaty lays down no specific rules. Similarly, 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, finds specific expression in Article 39 EC in relation to the freedom of movement for workers, so that, where a case falls within the scope of the latter provision, it is not necessary to rule on the interpretation of Article 18 EC. I recognised that a condition as to residence, which is intended to ascertain the degree of connection with the State and the links which the claimant has with the domestic employment market, may be justified in order to avoid what has come to be known as 'benefit tourism', where persons move from State to State with the purpose of taking advantage of non-contributory benefits, and in order to prevent abuses (points 55 to 76).

41. In those proceedings, too, the Court of Justice followed the Opinion of its Advocate General. In the first place, it underlined the distinction between Member State nationals who have not yet entered into an employment relationship in the host Member State where they are looking for work and those who are already working in that State or who, having worked there but no longer being in an employment relationship, are nevertheless considered to be workers; the former benefit from the principle of equal treatment only as regards access to employment, (20) whereas the latter 'may, on the basis of Article 7(2) of Regulation No 1612/68, claim the same social and tax advantages as national workers' (paragraphs 30 and 31).
42. After examining the implications of Article 39 EC for national provisions (paragraphs 55 to 59), the Court concluded 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 Community law, in particular Article 12 EC (paragraph 60).
43. Against that background, the Court held that the legislation of the United Kingdom, by introducing a difference in treatment according to whether the person concerned was habitually resident in the country, favoured the State's own nationals, since that requirement was 'capable of being met more easily' by them (paragraph 65). In the next paragraphs, in considering whether any objective grounds existed for justifying such a difference in treatment, the Court referred to the *D'Hoop* judgment and confirmed that a residence requirement is appropriate for the purpose of ensuring a genuine link between a job-seeker and the State's employment market, provided that it does not go beyond what is necessary in order to attain that objective (paragraphs 67 to 72). (21)

B – Analysis

44. In order to answer the questions submitted by the Cour du travail de Liège, we must proceed in three stages, that is to say, we must investigate the legislative background, ascertain whether there is inequality of treatment and establish whether it is justified.

1. The relevant Community provisions

a) Background

45. First, we should identify from the outset the basic provisions applicable to the case, both those concerning citizenship of the Union and those governing employment.
46. With the aim of creating a European *status civitatis*, Article 17 EC establishes a 'citizenship of the Union' for all nationals of Member States (paragraph 1), who, as citizens of the Union, are to enjoy the rights conferred by the Treaty and are to be subject to the duties imposed thereby (paragraph 2).
47. Given that Article 12 EC prohibits any discrimination on grounds of nationality, we should recognise that this expression of the principle of equality is among the rights enjoyed by Europeans. It has, furthermore, experienced a considerable increase in scope, since its only limitation is the requirement that a Community link exist between the status of the individual and the situation under consideration. (22)
48. However, as I explained in my Opinion in *Collins*, according to settled case-law, the equality principle enshrined in Article 12(1) EC applies within the scope of the Treaty, without prejudice to specific regulatory provisions. (23) It can be conclusively established, therefore, that the principle is intended to apply independently only in situations in respect of which Community law lays down no specific rules. (24)
49. The principle of free movement of workers, and the attendant elimination of any differences based on nationality, has been given expression mainly in Regulations Nos 1612/68 and 1408/71, (25) and we should therefore consider whether the provisions of these regulations apply to the case of Mr Ioannidis.

b) The inapplicability of employment equality

50. Following the judgment in *Commission* v *Belgium*, an applicant for an unemployment benefit established under national legislation can only rely on the rules on free movement if he has previously entered the relevant employment market. As held in *Collins*, on the basis of several precedents, the concept of 'worker', within the meaning of Article 39 EC and of Regulation No 1612/68, has a specific Community meaning and must not be interpreted narrowly.
51. It should be added that the Court of Justice has repeatedly held that such factors as the *sui generis* legal nature of the employment relationship, the level of productivity of the person concerned, the origin of the funds from which the remuneration is paid or the latter's limited nature cannot 'have any consequence in regard to whether or not the person is to be regarded as a worker'. (26) Indeed, a person is also considered a worker when he is engaged in occupational training carried out under the conditions of genuine and effective activity as an employed person in return for which he receives remuneration, (27) as in the case of the contract entered into by Mr Ioannidis in France, (28) where he therefore enjoys the status of a worker.
52. On the other hand, Mr Ioannidis does not enjoy that status in Belgium, where he has not entered the employment market and therefore cannot rely on Article 7(2) of Regulation No 1612/68 to claim the same benefits – including, since the *Deak* judgment, the tideover allowance – as are granted to national workers, (29) even though he has previously pursued an activity as an employed person in another country. (30)
53. One of the doubts expressed by the referring court is thus resolved, in the sense that, since the specific provisions on employment equality do not apply as regards those seeking employment, the prohibition of discrimination pursuant to Article 12 EC in conjunction with Article 17 EC acquires full legal force and effect.

2. The existence of discrimination on grounds of nationality

54. The status of citizen of the Union is set to become the fundamental legal status of Member State nationals, entitling them – irrespective of their nationality and without prejudice to certain special provisions – to enjoy the same treatment in law as that accorded to the nationals of those Member States who find themselves in the same situation. (31)

55. In the present case, the requirements for entitlement to a tideover allowance are seemingly laid down in an objective manner, by reference to factors which, in abstract terms, are extraneous to the applicant's link with a particular country.

56. However, the requirement that applicants must have completed their secondary education in an establishment run, subsidised or approved by one of the communities of Belgium (heading 2(a) of the first subparagraph Article 36(1) of the Royal Decree of 25 November 1991) or must have obtained a diploma or educational certificate corresponding to the abovementioned studies (heading b) implies a previous requirement of residence which can more easily be fulfilled by the nationals of said State than by those of other Member States. (32)

57. The possibility provided for in heading h of the abovementioned Article 36(1)2, pursuant to the judgment in *Commission* v *Belgium*, deserves separate mention. Although it admits applicants who have pursued their education in another Member State, it requires them to have completed education recognised as equivalent in Belgium and requires them, furthermore, to be the dependent children of migrant workers.

58. None of the alternative possibilities provided for in the abovementioned legislation allows for the case of an applicant who is not an employed person and whose parents are not working in the country, but who nevertheless, after pursuing his studies in another Member State, has obtained an educational certificate recognised as equivalent to the Belgian qualifications which entitle applicants to claim the allowance.

59. We therefore observe an inequality to the detriment of applicants who, like Mr Ioannidis, find themselves in the abovementioned situation, given that they are denied benefits – which would facilitate their integration into the labour market – on the ground that they have completed their secondary education in another Community country.

60. Having ascertained a difference in treatment, we must now consider whether it can be justified.

3. The justification of inequality

61. As I have stressed before, the Belgian tideover allowance is aimed at easing the transition from education to employment for young people. While the wish to ensure a link with the national employment market is legitimate, this is something difficult to achieve by means of a single requirement concerning the country where the relevant studies have been completed or the relevant certificate or diploma has been issued, such as the requirement established in headings 2(a) and (b) of the first subparagraph of Article 36(1) of the Royal Decree of 25 November 1991. In addition to being too general and exclusive in nature, said requirement does not reflect the real and effective degree of the relationship, as held by the *D'Hoop* judgment, whose grounds fully apply to the present case, even though it does not concern a Belgian national, since the applicant's nationality is irrelevant as to hold otherwise would entail direct discrimination.

62. Neither does the possibility contemplated in heading h of the abovementioned provision afford justification for the inequality. Although the recognition of the validity of the education pursued in another Member State precludes the criticism directed at the contents of headings 2(a) and (b), the additional condition that the applicant must be the dependent child of migrant workers who reside in Belgium involves a very restrictive requirement of personal status and residence, given that it does not allow for non-dependent citizens of the European Union who are seeking employment. This obstacle goes beyond what is necessary to ensure the link between the applicant for an allowance and the employment market which he wishes to access.

63. The fact that the Belgian national provisions do not allow for situations such as that of Mr Ioannidis therefore results in unequal treatment that infringes Community law.

VI – Conclusion

64. In the light of the foregoing, I propose that the Court of Justice give the following answer to the question submitted by the Cour du travail de Liège (Belgium):

Community law and, more specifically, Article 12(1) EC, precludes national provisions enabling a Member State to refuse a tideover allowance to a national of another Member State who is seeking his first employment, on the grounds that he has completed his education in the country of which he is a national and is not the dependent child of a migrant worker.

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1 – Original language: Spanish.

2 – Quoted by Luby, M., *Journal du droit international,* 1997, No 2, p. 542, commenting on the *Commission* v *Belgium* judgment to which I shall refer below.

3 – OJ, English Special Edition, 1968 (II), p. 475.

4 – *Moniteur belge* of 31 December 1991, p. 29888.

5 – Only those conditions relevant to the present case are mentioned here.

6 – The provisions of this heading were amended by the Royal Decree of 11 February 2003 (*Moniteur belge* of 19 February 2003, p. 8026) as regards the reference to technical and vocational training.

7 – The wording of heading *h* is that laid down in the Royal Decree of 13 December 1996 (*Moniteur belge* of 31 December 1996, p. 32265), pursuant to the *Commission* v *Belgium* judgment, which is explained in some detail later on in this Opinion. In accordance with the Royal Decree of 11 February 2003, mentioned in the previous footnote, the words 'Member State of the European Union' were replaced by 'Member State of the European Economic Area' and the following two headings were added: '(i) or obtained an upper secondary education

diploma or certificate or upper secondary technical, artistic or vocational training diploma or certificate at an educational establishment run, subsidised or approved by a community'; '(j) or be the holder of a qualification issued by a community and which is recognised as being equivalent to the diploma or educational certificate mentioned in (b) above or a qualification giving access to higher education; this heading shall only apply provided that the applicant has previously completed a period of studies of at least six years' duration at an educational establishment run, subsidised or approved by a community.' These latter amendments do not affect the present debate, given that the application was made before the new wording came into force.

8 – According to the referring court, he did not complete his full-time upper secondary education at an educational establishment run, subsidised or recognised by a Belgian Community (heading 2(a) of the first subparagraph of Article 36(1) of the Royal Decree of 25 November 1991); neither did he obtain from the competent authority a diploma or educational certificate corresponding to these studies (heading b); and, lastly, although the education completed by him in Greece has been recognised as equivalent (heading h(1)), he has not established that his parents were migrant workers (heading h(2)).

9 – Prior to this, the judgment in Case 66/77 *Kuyken* [1977] ECR 2311 addressed the regulation of those benefits under Article 124 of the Royal Decree of 20 December 1963, i.e. the forerunner of Article 36 of the Royal Decree of 25 November 1991 (as regards the repercussions and effects of the *Deak* judgment on legal theory, see points 46 to 59 of my Opinion in the *Commission* v *Belgium* case), whereas the judgment in Case C-18/90 *Kziber* [1991] ECR I-199 analysed the refusal to grant benefits to a Moroccan woman who lived with her father, who was also a Moroccan national and lived in Belgium as a retired person after having been employed in that country.

10 – Case 94/84 [1985] ECR 1873.

11 – Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416).

12 – Case C-278/94 [1996] ECR I-4307.

13 – Case C-224/98 [2002] ECR I-6191. Iliopoulo, A., and Toner, H., 'A new approach to discrimination against free movers? D'Hoop v Office National de l'Emploi', *European Law Review,* 2003, pp. 389 et seq.

14 – Delivered by Advocate General Geelhoed on 21 February 2002.

15 – See footnote 7 to this Opinion.

16 – Case C-138/02 [2004] ECR I-2703.

17 – On the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ, English Special Edition 1968 (II), p. 475).

18 – The same concept of employment relationship is found in the judgments in Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraphs 16 and 17; in Case C-85/96 *Martínez Sala* [1998] ECR I-2691, paragraph 32; and in Case C-413/01*Ninni-Orasche* [2003] ECR I-13187, paragraph 34.

19 – Case 316/85 [1987] ECR 2811.

20 – Article 5 of Regulation No 1612/68 gives concrete expression to this principle by recognising the right to receive the same assistance as that afforded by employment offices to their own nationals.

21 – With regard to the last point, see the judgments in Case C-15/96 *Schöning-Kougebetopoulou* [1998] ECR I-47, paragraph 21; and in Case C-274/96 *Bickel and Franz* [1998] ECR I-7637, paragraph 27. The judgment in Case C-413/99*Baumbast and R.* [2002] ECR I-7091, states that the exercise of the right of residence of citizens of the Union, as laid down in Article 18 EC, 'can be subordinated to the legitimate interests of the Member States' (paragraph 90), but adds that 'however, those limitations and conditions must be applied in compliance with the limits imposed by Community law and in accordance with the general principles of that law, in particular the principle of proportionality. That means that national measures adopted on that subject must be necessary and appropriate to attain the objective pursued' (paragraph 91).

22 – Requejo Isidro, M., 'Estrategias para la "comunitarización": descubriendo el potencial de la ciudadanía europea' (Communitarisation strategies: discovering the potential of European citizenship), *La Ley,* 2003, No 5903, p. 1 et seq. As stated in *Martínez Sala*, paragraph 63; as well as in the judgments in Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 32; and in Case C-209/03 *Bidar* [2005] ECR I-0000, paragraph 32, a citizen of the European 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 Community law'.

23 – Case C-55/00 *Gottardo* [2002] ECR I-413, paragraph 21.

24 – Case C-193/94 *Skanavi and Chryssanthakopoulos* [1996] ECR I-929, paragraph 20; Case C-131/96 *Mora Romero* [1997] ECR I-3659, paragraph 10; and Case C-100/01 *Oteiza Olazábal* [2002] ECR I-10981, paragraph 25.

25 – Case 1/78 *Kenny* [1978] ECR 1489, paragraph 9; Case C-336/96 *Gilly* [1998] ECR I-2793, paragraph 38.

26 – Case 197/86 *Brown* [1988] ECR 3205, paragraph 21; Case 344/87 *Bettray* [1989] ECR 1621, paragraphs 15 and 16; Case C-357/89 *Raulin* [1992] ECR I-1027, paragraph 10; Case C-3/90 *Bernini* [1992] ECR I-1071, paragraphs 14 to 17; and Case C-188/00 *Kuz* [2002] ECR I-10691, paragraph 32.

27 – *Lawrie-Blum*, paragraphs 19 to 21; *Bernini*, paragraphs 15 and 16; and *Kurz*, paragraphs 33 and 34.

28 – As the Commission has pointed out in its written observations, the scant information provided on this aspect prevents us from extending the analysis of the question submitted by the national court to include issues such as, for example, the applicability of Regulation No 1408/71.

29 – *Lebon*, paragraph 26; *Commission* v *Belgium*, paragraphs 39 and 40; and *Collins*, paragraphs 31 and 58.

30 – It should be recalled that, as highlighted by the referring court (in other words, the Cour du travail, the tideover allowance is provided for young people who are either seeking their first employment or who, having completed their studies, have already pursued an activity as an employed person, but have not yet accumulated a sufficient number of working days to qualify for unemployment benefits.

31 – Case C-148/02 *García Avello* [2003] ECR I-11613, paragraphs 22 and 23; as well as *Grzelczyk*; *D'Hoop*, paragraph 28; *Collins*, paragraph 61; and *Bidar*, paragraph 31.

32 – See, inter alia, Case C-237/94 *O'Flynn* [1996] ECR I-2617, paragraph 18; Case C-388/01 *Commission* v *Italy* [2003] ECR I-721, paragraphs 13 and 14; and *Collins*, paragraph 65.