JUDGMENT OF THE COURT (Third Chamber)

26 February 2015 (*1)

‘Reference for a preliminary ruling — Freedom of movement for persons — Articles 20 TFEU and 21 TFEU — National of a Member State — Residence in another Member State — Studies pursued in an overseas country or territory — Maintenance of the grant of funding for higher education — ‘Three-out-of-six-years’ residence rule — Restriction — Justification’

In Case C−359/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Centrale Raad van Beroep (Netherlands), made by decision of 24 June 2013, received at the Court on 27 June 2013, in the proceedings

B. Martens

v

Minister van Onderwijs, Cultuur en Wetenschap,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh (Rapporteur), C. Toader, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 2 July 2014,

after considering the observations submitted on behalf of:

— the Netherlands Government, by M. Bulterman, B. Koopman and J. Langer, acting as Agents,

— the Danish Government, by C. Thorning and M. Søndhal Wolff, acting as Agents,

— the European Commission, by J. Enegren and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 September 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 20 TFEU, 21 TFEU and 45 TFEU and Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475).

2 The request has been made in proceedings between Ms Martens and the Minister van Onderwijs, Cultuur en Wetenschap (Minister for Education, Culture and Science) ('the Minister') concerning a request by the latter for repayment of the funding for higher education ('the study finance') that had been granted to Ms Martens, on the ground that she did not satisfy the requirement laid down by the national legislation according to which she should have been resident in the Netherlands for a period of three out of the six years preceding her enrolment on a course outside the Netherlands ('the "three-out-of-six-years" rule').

Legal context

EU law

3 Article 7(1) and (2) of Regulation No 1612/68 provides:

'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.'

Netherlands law

4 Article 2.2(1) of the Law on the financing of studies of 2000 (Wet studiefinanciering 2000), as amended on 11 October 2006, ('the WSF 2000'), is worded as follows:

'Study finance may be granted to the following:

(a) students who are Netherlands nationals;

(b) students who are non-Netherlands nationals but who, in the area of funding for studies, are treated as Netherlands nationals pursuant to a treaty or a decision of an international organisation, …

…'

5 Article 2.14 of the WSF 2000, as most recently amended by the Law of 15 December 2010 (Stb. 2010, No 807), provides:

'1. This article applies exclusively to students who were enrolled after 31 August 2007 on a higher education course at an institution outside the

Netherlands …

2. Study finance may be granted to the following:

(a) students who have been enrolled on a course outside the Netherlands, provided that study finance is granted in the Netherlands for a similar category of course, that the level and quality of the course are comparable to those of corresponding courses … and that the final examination for the course is comparable to that of corresponding courses …

(b) students who have been enrolled on a course outside the Netherlands who, without prejudice to what is laid down in (a), otherwise meet the criteria laid down by ministerial order, and

(c) students who have resided in the Netherlands during at least three out of the six years preceding their enrolment on that course and who during that period were lawfully resident there. The period during which a student is enrolled on a course outside the Netherlands, as referred to in (a), does not count towards the calculation of the six years referred to in the previous sentence.

…'

6 Under Article 11.5 of the WSF 2000, the Minister may derogate from the three-out-of-six-years rule provided for in Article 2.14(2)(c) of that law, in so far as the application of that rule would lead to a grave injustice.

7 Article 12.3 of the WSF 2000, which contains a transitional provision on the basis of Article 2.14 of that law, as amended as of 1 September 2007, provides:

'By derogation from Article 3.21(2) of the WSF 2000, students who, prior to 1 September 2007, were already enrolled on a higher education course outside the Netherlands and did not apply for study finance may …, with retroactive effect to 1 September 2007 at the latest, apply for study finance for a higher education course outside the Netherlands, if they submit an application to that effect by 31 August 2008 at the latest.'

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

8 The appellant in the main proceedings, a Netherlands national who was born on 2 October 1987, moved with her parents, in June 1993, to Belgium, a Member State in which her father was employed, in which she attended Flemish primary and secondary schools and in which her family still resides.

9 On 15 August 2006, the appellant in the main proceedings enrolled at the University of the Netherlands Antilles in Willemstad (Curaçao) to study for

a full-time degree.

10 During the period of October 2006 to October 2008, the father of the appellant in the main proceedings worked on a part-time basis in the Netherlands as a cross-border worker. As of November 2008 he began working full-time in Belgium again.

11 On 24 June 2008, the appellant in the main proceedings applied to the Minister for study finance. On the form which had to be filled out for that purpose, she confirmed, inter alia, that she had resided lawfully in the Netherlands for at least three of the six years preceding the beginning of her studies in Curaçao.

12 By decision of 22 August 2008, in accordance with the rule which applies to students who no longer live with their parents, the Minister granted the appellant in the main proceedings study finance as from September 2007, the deadline for the grant of retroactive funding laid down in Article 12.3 of the WSF 2000, in the form of a basic grant and a public transport allowance. That grant was periodically extended by the Minister. On 1 February 2009, the appellant in the main proceedings applied for and was granted an additional student loan.

13 By decisions of 28 May 2010, following a check relating to study finance, the Minister found that the appellant in the main proceedings had not resided in the Netherlands for at least three years in the period from August 2000 to July 2006 and that she did not, therefore, satisfy the three-out-of-six-years rule. Consequently, the Minister revoked the study finance previously granted to the appellant in the main proceedings, refused any further extensions of that funding and requested repayment of the funding which had been paid to her, that is to say the sum of EUR 19 481.64.

14 By decision of 27 August 2010, the Minister declared groundless the claims made in the administrative appeal which the appellant in the main proceedings had lodged against the decisions of 28 May 2010, by which Ms Martens maintained that the lack of a connection with the Netherlands could not sufficiently justify the fact that the study finance was not granted to her on account of non-compliance with the three-out-of-six-years rule. According to Ms Martens, students who satisfy that rule and who can therefore claim Dutch funding for education or training outside the Netherlands may have a significantly weaker link with that Member State than that which she had and still has.

15 The Rechtbank ’s-Gravenhage (District Court, The Hague) declared Ms Martens’ appeal against the decision of 27 August 2010 to be unfounded.

16 In the course of the appeal proceedings, which the appellant in the main proceedings brought before the referring court against the judgment of the Rechtbank ’s-Gravenhage, the Minister stated that he would not apply the three-out-of-six-years rule with regard to Ms Martens in respect of the

period from September 2007 to October 2008 on the ground that her father had worked part-time in the Netherlands during that period and that the requirements for entitlement to study finance were therefore satisfied. By contrast, he declared that the three-out-of-six-years rule remained applicable in respect of the period from November 2008 to June 2011 because her father was no longer, during that period, regarded as a cross-border worker in the Netherlands inasmuch as he had, as from November 2008, been working exclusively in Belgium.

17 It is apparent from the case-file submitted to the Court that, apart from the application for study finance, the parents of the appellant in the main proceedings bore the largest part of her maintenance and tuition costs during her course at the University of the Netherlands Antilles, a course which came to an end on 1 July 2011.

18 In those circumstances, the Centrale Raad van Beroep (Higher Social Security Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘(1) (a) Must EU law, in particular Article 45 TFEU and Article 7(2) of Regulation No 1612/68, be interpreted as precluding the Member State of the European Union (namely, the Kingdom of the Netherlands) from terminating the right to receive study finance for education or training outside the European Union of an adult dependent child of a frontier worker with Netherlands nationality who lives in Belgium and works partly in the Netherlands and partly in Belgium, at the point in time at which the frontier work ceases and work is then performed exclusively in Belgium, on the ground that the child does not meet the requirement that she must have lived in the Netherlands for at least three of the six years preceding her enrolment at the educational institution concerned?

(b) If Question (1)(a) must be answered in the affirmative: does EU law preclude the granting of study finance for a period shorter than the duration of the education or training for which study finance was granted, it being assumed that the other requirements governing eligibility for study finance have been satisfied?

If, in answering Questions (1)(a) and (b), the Court of Justice should conclude that the legislation governing the right of freedom of movement for workers does not preclude a decision not to grant Ms Martens any study finance during the period from November 2008 to June 2011 or for part of that period:

(2) Must Articles 20 TFEU and 21 TFEU be interpreted as precluding the Member State of the European Union (namely, the Kingdom of the Netherlands) from not extending the study finance for education or training at an educational institution which is established in the Overseas Countries and Territories (OCTs) (in the present case, in

Curaçao), to which there was an entitlement because the father of the person concerned worked in the Netherlands as a frontier worker, on the ground that the person concerned does not meet the requirement, applicable to all European Union citizens, including its own nationals, that she must have lived in the Netherlands for at least three of the six years preceding her enrolment for that education or training?'

Consideration of the questions referred

19 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether EU law must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which makes the continued grant of funding for higher education outside that State subject to the rule that the student applying for such funding has resided in that Member State for a period of at least three out of the six years preceding his enrolment.

20 It must, first of all, be borne in mind that, as a Netherlands national, Ms Martens enjoys the status of citizen of the Union under Article 20(1) TFEU and may therefore rely on the rights conferred on those having that status, including against their Member State of origin (see judgments in *Morgan and Bucher*, C−11/06 and C−12/06, EU:C:2007:626, paragraph 22, and *Prinz and Seeberger*, C−523/11 and C−585/11, EU:C:2013:524, paragraph 23 and the case-law cited).

21 As the Court has held on numerous occasions, the status of citizen of the Union is destined to be the fundamental status of nationals of the Member States, enabling those among such nationals who find themselves in the same situation to enjoy, within the scope *ratione materiae* of the FEU Treaty, the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for in that regard (judgments in *D'Hoop*, C−224/98, EU:C:2002:432, paragraph 28, and *Prinz and Seeberger*, EU:C:2013:524, paragraph 24 and the case-law cited).

22 The situations falling within the scope of EU law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 21 TFEU (judgments in *Morgan and Bucher*, EU:C:2007:626, paragraph 23, and *Prinz and Seeberger*, EU:C:2013:524, paragraph 25 and the case-law cited).

23 In that respect, it must be stated that, although the Member States are competent, under Article 165(1) TFEU, as regards the content of teaching and the organisation of their respective education systems, they must exercise that competence in compliance with EU law and, in particular, in compliance with the Treaty provisions on the freedom to move and reside

within the territory of the Member States, as conferred by Article 21(1) TFEU on every citizen of the Union (judgments in *Morgan and Bucher*, EU:C:2007:626, paragraph 24, and *Prinz and Seeberger*, EU:C:2013:524, paragraph 26 and the case-law cited).

24 Moreover, EU law does not impose any obligation on Member States to provide a system of funding for higher education pursued in a Member State or abroad. However, where a Member State provides for such a system which enables students to receive such grants, it must ensure that the detailed rules for the award of that funding do not create an unjustified restriction of the right to move and reside within the territory of the Member States (see, to that effect, judgments in *Morgan and Bucher*, EU:C:2007:626, paragraph 28; *Prinz and Seeberger*, EU:C:2013:524, paragraph 30; and *Thiele Meneses*, C−220/12, EU:C:2013:683, paragraph 25).

25 In that regard, it is apparent from settled case-law that national legislation which places certain nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State constitutes a restriction on the freedoms conferred by Article 21(1) TFEU on every citizen of the Union (judgments in *Morgan and Bucher*, EU:C:2007:626, paragraph 25, and *Prinz and Seeberger*, EU:C:2013:524, paragraph 27).

26 Indeed, the opportunities offered by the Treaty in relation to freedom of movement for citizens of the Union cannot be fully effective if a national of a Member State could be dissuaded from using them by obstacles resulting from his stay in another Member State because of legislation of his State of origin penalising the mere fact that he has used those opportunities (see, to that effect, judgments in *Morgan and Bucher*, EU:C:2007:626, paragraph 26, and *Prinz and Seeberger*, EU:C:2013:524, paragraph 28).

27 That consideration is particularly important in the field of education in view of the aims pursued by Article 6(e) TFEU and the second indent of Article 165(2) TFEU, namely, inter alia, encouraging mobility of students and teachers (see judgments in *D'Hoop*, EU:C:2002:432, paragraph 32; *Morgan and Bucher*, EU:C:2007:626, paragraph 27; and *Prinz and Seeberger*, EU:C:2013:524, paragraph 29).

28 In the present case, it is common ground that the appellant in the main proceedings moved to Belgium where her father was working and that she subsequently attended Flemish primary and secondary schools. In August 2006, at the age of 18, she began her studies at the University of the Netherlands Antilles in Willemstad, a course which she completed on 1 July 2011. As was confirmed by the Netherlands Government at the hearing, Ms Martens was entitled to funding to study in Curaçao by reason of the option provided for by the WSF 2000 which enabled any student who satisfied the three-out-of-six-years rule to obtain such funding in order

to study abroad. Ms Martens herself informed the Netherlands authorities, when she submitted her application for funding in May 2008, that she satisfied that rule. Ms Martens has been working in the Netherlands since finishing her studies.

29 According to the Netherlands Government, there is no restriction on the rights of free movement of the appellant in the main proceedings because she did not, by moving from Belgium to Curaçao, exercise the right granted to her by Article 20(2)(a) TFEU to move and reside freely within the territory of the Member States.

30 That argument cannot succeed as it fails to take account of the fact that the appellant in the main proceedings exercised her rights to move freely by moving from the Netherlands to Belgium with her family in 1993 and continued to exercise those rights throughout the period during which she lived in Belgium.

31 By making the continued grant of funding for studies abroad subject to the three-out-of-six-years rule, the legislation at issue in the main proceedings is liable to penalise an applicant merely because he has exercised his right to freedom of movement and residence in another Member State, given the effect that exercising that freedom is likely to have on the possibility of receiving funding for higher education (see, to that effect, judgments in *D'Hoop*, EU:C:2002:432, paragraph 30; *Prinz and Seeberger*, EU:C:2013:524, paragraph 32; and *Thiele Meneses*, EU:C:2013:683, paragraph 28).

32 As the Advocate General stated at point 106 of her Opinion, it is, in that regard, irrelevant that considerable time has elapsed since the appellant in the main proceedings exercised her free movement rights (see, by analogy, judgment in *Nerkowska*, C−499/06, EU:C:2008:300, paragraph 47).

33 It must therefore be held that the three-out-of-six-years rule, as laid down in Article 2.14(2) of the WSF 2000, even though it applies without distinction to Netherlands nationals and other European Union citizens, constitutes a restriction on the right to freedom of movement and residence enjoyed by all citizens of the Union pursuant to Article 21 TFEU (see, to that effect, judgment in *Prinz and Seeberger*, EU:C:2013:524, paragraph 31).

34 The restriction resulting from the legislation at issue in the main proceedings can be justified in the light of EU law only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and if it is proportionate to a legitimate objective pursued by the provisions of national law. It follows from the case-law of the Court that a measure is proportionate if, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in order to attain that objective (judgments in *De Cuyper*, C−406/04, EU:C:2006:491, paragraphs 40 and 42; *Morgan and Bucher*,

EU:C:2007:626, paragraph 33; and *Prinz and Seeberger*, EU:C:2013:524, paragraph 33).

35 The Netherlands Government maintains that, to the extent that a restriction on the freedom of movement and residence exists, the provisions of the WSF 2000 are justified by objective considerations of public interest, namely the objective seeking to ensure a minimum level of integration of an applicant for the funding in the awarding State. It submits that it is therefore justified to reserve funding for full courses of study abroad to students who show that they are sufficiently integrated in the Netherlands. In its view, a student who has lived in the Netherlands for a period of at least three out of the six years preceding his education or training abroad shows that level of integration. In its submission, that requirement does not, moreover, go beyond what is necessary to attain the objectives pursued for two reasons. First, under Article 11.5 of the WSF 2000, the competent Minister may refrain from applying the three-out-of-six-years rule if the application of that rule would lead to a situation of grave injustice, which precludes that rule from being regarded as being too general. Secondly, that residence rule does not require a student to have resided in the Netherlands for three consecutive years before beginning his studies and is not therefore too exclusive.

36 In that regard, it must be noted that both the integration of students and the desire to verify the existence of a connecting link between the society of the Member State providing a benefit and the recipient of a benefit such as that at issue in the main proceedings can constitute objective considerations of public interest which are capable of justifying the fact that the conditions for the grant of the benefit may affect the freedom of movement of citizens of the Union (see, to that effect, judgment in *Thiele Meneses*, EU:C:2013:683, paragraph 34 and the case-law cited).

37 However, according to settled case-law, the proof required to demonstrate the genuine link must not be too exclusive in nature or unduly favour one element which is not necessarily representative of the real and effective degree of connection between the claimant and the Member State, to the exclusion of all other representative elements (see judgments in *D'Hoop*, EU:C:2002:432, paragraph 39; *Prinz and Seeberger*, EU:C:2013:524, paragraph 37; and *Thiele Meneses*, EU:C:2013:683, paragraph 36).

38 As regards the extent of the connection between the recipient of a benefit and the Member State concerned, the Court has held that, with regard to benefits that are not governed by EU law, such as that at issue in the main proceedings, Member States enjoy a broad discretion in deciding which criteria are to be used when assessing the extent of that connection (see, to that effect, judgments in *Gottwald*, C−103/08, EU:C:2009:597, paragraph 34, and *Thiele Meneses*, EU:C:2013:683, paragraph 37).

39 A requirement based solely on residence, such as that at issue in the case in

the main proceedings, risks excluding from the funding for higher education in question students who, despite not having resided in the Netherlands for the required period of three out of the six years prior to beginning their studies abroad, nevertheless have genuine links with that Member State.

40 In that regard, it must be pointed out that the Court has already held, as regards the legislation at issue in the main proceedings, that the application of the three-out-of-six-years rule established an unjustified inequality of treatment as between Netherlands workers and migrant workers residing in the Netherlands because, by requiring specific periods of residence in the territory of the Member State concerned, the rule prioritised an element which is not necessarily the sole element representative of the actual degree of attachment between the party concerned and that Member State and was therefore too exclusive (see judgment in *Commission* v *Netherlands*, C−542/09, EU:C:2012:346, paragraphs 86 and 88).

41 The legislation at issue in the main proceedings, inasmuch as it constitutes a restriction on the freedom of movement and residence of a citizen of the Union, such as the appellant in the main proceedings, is also too exclusive because it does not make it possible to take account of other factors which may connect such a student to the Member State providing the benefit, such as the nationality of the student, his schooling, family, employment, language skills or the existence of other social and economic factors (see, to that effect, judgment in *Prinz and Seeberger*, EU:C:2013:524, paragraph 38). Likewise, as the Advocate General stated at point 103 of her Opinion, the employment of the family members on whom the student depends in the Member State providing the benefit may also be one of the factors to be taken into account in assessing those links.

42 Furthermore, the potential application of Article 11.5 of the WSF 2000 by the competent Minister, which allows that minister to derogate from the three-out-of-six-years rule if the application of that rule would lead to a situation of grave injustice, does not change the overly exclusive nature of the rule in the circumstances of the case at issue in the main proceedings. In effect, it appears that that provision does not guarantee that the other factors which may link the appellant in the main proceedings with the Member State providing the benefit are taken into account, and it does not therefore make it possible to achieve the objective of integration which is, according to the Netherlands Government, the objective of the legislation at issue in the main proceedings.

43 Accordingly, the three-out-of-six-years rule at issue in the main proceedings remains both too exclusive and too arbitrary in that it unduly favours an element which is not necessarily representative of the degree of integration of the applicant in the Member State concerned. Consequently, the national legislation at issue in the main proceedings cannot be considered to be proportionate to the objective of integration.

44 It is therefore for the referring court, which has sole jurisdiction to rule on the facts, to consider the possible factors connecting the appellant in the main proceedings and the Kingdom of the Netherlands, inasmuch as Ms Martens, a Netherlands national born in the Netherlands, stated in her application for funding that she had resided in that Member State for a period of three out of the six years preceding her enrolment on a course abroad, whereas, in actual fact, she has resided in Belgium since the age of six, her father worked in the Netherlands from 2006 to 2008 and she is currently working in the Netherlands.

45 Accordingly, the answer to the questions referred is that Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which makes the continued grant of funding for higher education outside that State subject to the rule that the student applying for such funding has resided in that Member State for a period of at least three out of the six years preceding his enrolment.

Costs

46 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 (Third Chamber) hereby rules:

Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which makes the continued grant of funding for higher education outside that State subject to the rule that the student applying for such funding has resided in that Member State for a period of at least three out of the six years preceding his enrolment.

[Signatures]

(*1) Language of the case: Dutch.