Office National de l'Emploi (ONEM) v. Ioannidis (Case C-258/04)

Before the Court of Justice of the European Communities (First Chamber)

ECJ (1st Chamber)

Presiding, Jann P.C; Cunha Rodrigues (Rapporteur); Colneric, Ilesic and E. Levits JJ.; Dámaso Ruiz-Jarabo Colomer, Advocate General

September 15, 2005

Discrimination; EC law; Jobseekers allowance; Migrant workers; Nationality

H1 EU citizenship--migrant workers--tideover allowances--Community law and national law--granting of jobseeker allowance subject to secondary education being completed in that Member State--indirect discrimination under Art.39(2) EC--legitimate aim to ensure real link to geographic employment market but requirement at issue too general to fulfil such objective-- Regulation 1612/68--legislation at issue in breach of Art.39 EC.

H2 Reference from Belgium by Cour du Travail de Liège (Higher Labour Court, Liège) under Art.234 EC

H3 Belgian legislation provided for the grant of unemployment benefits, known as "tideover allowances", to young persons who had just completed secondary education in a Belgian educational establishment. A young person who completed his secondary education in another Member State was eligible to the tideover allowance only if at the time of the application he was the dependent child of a migrant worker for the purposes of the EC Treaty who was residing in Belgium. I was a Greek national who completed his secondary education in Greece. After obtaining a graduate diploma in physiotherapy in Liège and following a paid training course in France, he applied for a tideover allowance in Liège. The ONEM rejected the application on grounds that, according to national legislation, he had not completed his secondary education in a Belgian educational establishment. I appealed against the decision on the basis that the legislation at issue as interpreted by the ONEM was clearly contrary to Art.39 EC. On further appeal by the ONEM to the referring court, this found that the applicant did not fulfil any of the conditions set by the legislation at issue for the grant of the tideover allowance. As it was unsure as to the existence of possible indirect discrimination against I *1286 the referring court sought a preliminary ruling from the Court of Justice essentially as to whether it was contrary to Community law for a Member State to refuse a tideover allowance to a national of another Member State who was seeking his first employment on the sole ground that he had completed his secondary education in another Member State.

Held:

Formulation of question for preliminary ruling

H4 In answering the national court's question, the Court may provide the national court

with all the elements of interpretation which may be of assistance in adjudicating on the case, whether or not the national court has referred to them in its question. [20]
SARPP (C-241/89): [1990] E.C.R. I-4695; Trojani (C-456/02): [2004] E.C.R. I-7573; [2004] 3 C.M.L.R. 38, followed.

Job-seeker allowance covered by Art.39(2) EC

H5 In view of the establishment of citizenship of the Union and the interpretation of the right to equal treatment enjoyed by citizens of the Union, it was no longer possible to exclude from the scope of Art.39(2) EC a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State [22]
Collins (C-138/02): [2004] E.C.R. I-2703; [2004] 2 C.M.L.R. 28, followed.

Indirect discrimination

H6 The principle of equal treatment prohibited not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, led in fact to the same result. [26]
Sotgiu (152/73): [1974] E.C.R. 153; Bidar (C-209/03): [2005] 2 C.M.L.R. 3, followed.

National law at issue caught by Art.39(2) EC

H7 The national legislation at issue in the main proceedings introduced a difference in treatment between citizens who had completed their secondary education in Belgium and those who had completed it in another Member State. That condition could have placed nationals of other Member States at a disadvantage as it could have been met more easily by Belgian nationals. Such a difference in treatment could have been justified only if it was based on objective considerations which were independent of the nationality of the persons concerned and proportionate to the aim legitimately pursued by the national law. [27]-[29]
O'Flynn (C-237/94): [1996] E.C.R. I-2617; [1996] 3 C.M.L.R. 103, followed.

Real link to geographic employment market as justification

H8 (a) It was legitimate for the national legislature to wish to ensure that there was a real link between the applicant for that allowance and the geographic employment market concerned. However, the single condition concerning the place where the diploma of completion of secondary education was obtained was too general and *1287 exclusive in nature. It unduly favoured an element which was not necessarily representative of the real and effective degree of connection between the applicant for the tideover allowance and the geographic employment market. [30]-[31]
D'Hoop (C-224/98): [2002] E.C.R. I-6191; [2002] 3 C.M.L.R. 12, followed.

H9 (b) The fact that I's parents were not migrant workers residing in Belgium could not have in any event provided a reason for refusing to grant the allowance applied for. That condition could not have been justified by the wish to ensure that there is a real link between the applicant and the geographic employment market concerned. [33]

H10 (c) The tideover allowance constituted a social advantage within the meaning of Art.7(2) of Regulation 1612/68.
D'Hoop (C-224/98): [2002] E.C.R. I-6191; [2002] 3 C.M.L.R. 12, followed

Regulation 1612/68

H11 The principle of equal treatment laid down in Art.7 of Regulation 1612/68, which extended to all the advantages which, whether or not linked to a contract of employment, were generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory, was also intended to prevent discrimination to the detriment of descendants dependent on the worker. Dependent children of migrant workers who were residing in Belgium derived their right to a tideover allowance from Art.7(2) of Regulation 1612/68 regardless of whether in that situation there was a real link with the geographic employment market concerned. [35]-[36]

Cristini (32/75): [1975] E.C.R. 1085; [1976] 1 C.M.L.R. 573; Deak (94/84): [1985] E.C.R. 1873; Meeusen (C-337/97): [1999] E.C.R. I- 3289; [2000] 2 C.M.L.R. 659, followed.

Conclusion

H12 Consequently, it was contrary to Art.39 EC for a Member State to refuse to grant a tideover allowance to a national of another Member State seeking his first employment, who was not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State. [37]

H13 Cases referred to in the judgment:

1. Collins v Secretary of State for Work and Pensions (C-138/02), March 23, 2004: [2004] E.C.R. I-2703; [2004] 2 C.M.L.R. 28
2. Cristini v Société Nationale des Chemins de Fer Français (32/75), September 30, 1975: [1975] E.C.R. 1085; [1976] 1 C.M.L.R. 573
3. D'Hoop v Office National de l'Emploi (C-224/98), July 11, 2002: [2002] E.C.R. I-6191; [2002] 3 C.M.L.R. 12
4. Meeusen v Hoofddirectie van de Informatie Beheer Groep (C-337/97), June 8, 1999: [1999] E.C.R. I-3289; [2000] 2 C.M.L.R. 659
5. Office National de L'Emploi v Deak (94/84), June 20, 1985: [1985] E.C.R. 1873
6. O'Flynn v Adjudication Officer (C-237/94), May 23, 1996: [1996] E.C.R. I-2617; [1996] 3 C.M.L.R. 103 *1288
7. R. (on the application of Bidar) v Ealing LBC (C-209/03), March 15, 2005: [2005] 2 C.M.L.R. 3
8. Société d'Application et de Recherches en Pharmacologie et Phytotherapie Sarl (SARPP) (C-241/89), December 12, 1990: [1990] E.C.R. I-4695
9. Sotgiu v Deutsche Bundepost (152/73), February 12, 1974: [1974] E.C.R. 153
10. Trojani v Centre Public d'Aide Sociale de Bruxelles (CPAS) (C-456/02), September 7, 2004: [2004] E.C.R. I-7573; [2004] 3 C.M.L.R. 38

H14 Further cases referred to by the Advocate General:

11. Baumbast and R v Secretary of State for the Home Department (C-413/99), September 17, 2002: [2002] E.C.R. I-7091; [2002] 3 C.M.L.R. 23
12. Bernini v Netherlands Ministry of Education and Science (C-3/90), February 26, 1992: [1992] E.C.R. I-1071
13. Bettray v Staatssecretaris van Justitie (344/87), May 31, 1989: [1980] E.C.R. 1621; [1991] 1 C.M.L.R. 459
14. Bickel and Franz, Re (C-274/96), November 24, 1998: [1998] E.C.R. I-7637; [1999] 1 C.M.L.R. 348
15. Brown v Secretary of State for Scotland (197/86), June 21, 1988: [1988] E.C.R. 3205; [1988] 3 C.M.L.R. 404
16. Centre Public d'Aide Sociale, Courcelles v Lebon (316/85), June 18, 1987: [1987] E.C.R. 2811; [1989] 1 C.M.L.R. 337
17. Commission of the European Communities v Belgium (C-278/94), September 12, 1996: [1996] E.C.R. I-4307; [1997] 1 C.M.L.R. 1040
18. Commission of the European Communities v Italy (C-388/01), January 16, 2003: [2003] E.C.R. I-721; [2003] 1 C.M.L.R. 40
19. GarcÍa Avello v Belgium (C-148/02), October 2, 2003: [2003] E.C.R. I-11613; [2004] 1 C.M.L.R. 1
20. Gilly v Directeur des Services Fiscaux du Bas-Rhin (C-336/96), May 12, 1998: [1998] E.C.R. I-2793; [1998] 3 C.M.L.R. 607

21. Gottardo v Istituto Nazionale della Previdenza Sociale (INPS) (C-55/00), January 15, 2002: [2002] E.C.R. I-413; [2004] 1 C.M.L.R. 23
22. Grzelczyk v Centre Public d'Aide Sociale d'Ottignies Louvain la Neuve (C-184/99), September 20, 2001: [2001] E.C.R. I-6193; [2002] 1 C.M.L.R. 19
23. Kenny v Insurance Officer (1/78), June 28, 1978: [1978] E.C.R. 1489; [1978] 3 C.M.L.R. 651
24. Kurz v Land Baden-Wurttemberg (C-188/00), November 19, 2002: [2002] E.C.R. I-10691
25. Kuyken v Rijksdienst voor Arbeidsvoorziening (66/77), December 1, 1977: [1977] E.C.R. 2311; [1978] 2 C.M.L.R. 304
26. Lawrie Blum v Land Baden-Wurttemberg (66/85), July 3, 1986: [1986] E.C.R. 2121; [1987] 3 C.M.L.R. 389
27. MartÍnez Sala v Freistaat Bayern (C-85/96), May 12, 1998: [1998] E.C.R. I-2691
28. Ministre de l'Interieur v Oteiza Olazábal (C-100/01), November 26, 2002: [2002] E.C.R. I-10981; [2005] 1 C.M.L.R. 49
29. Ninni Orasche v Bundesminister fur Wissenschaft, Verkehr und Kunst (C-413/01), November 6, 2003: [2003] E.C.R. I-13187; [2004] 1 C.M.L.R. 19 *1289
30. Office National de l'Emploi v Kziber (C-18/90), January 31, 1991: [1991] E.C.R. I-199
31. Raulin v Minister van Onderwijs en Wetenschappen (C-357/89), February 26, 1992: [1992] E.C.R. I-1027; [1994] 1 C.M.L.R. 227
32. Romero v Landesversicherungsanstalt Rheinprovinz (C-131/96), June 25, 1997: [1997] E.C.R. I-3659; [1997] 3 C.M.L.R. 1141
33. Schöning Kougebetopoulou v Freie und Hansestadt Hamburg (C-15/96), January 15, 1998: [1998] E.C.R. I-47; [1998] 1 C.M.L.R. 931
34. Skanavi and Chryssanthakopoulos, Re (C-193/94), February 29, 1996: [1996] E.C.R. I-929; [1996] 2 C.M.L.R. 372

H15 Representation

Y Denoiseux and G Lewalle, avocats, for the Office national de l'emploi.
Y Denoiseux and G Lewalle, avocats, for the Belgian Government.
S Bodina, Z Chatzipavlou and M Apessos, acting as Agents, for the Greek Government.
M Condou and D Martin, acting as Agents, for the Commission of the European Communities.

OPINION

I -- Introduction

AG1 [FN1]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.

FN1 Opinion of AG Ruiz-Jarabo Colomer, delivered on June 9, 2005.

AG2 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.
AG3 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." [FN2] 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.

FN2 Quoted by Luby, M., *Journal du droit international*, 1997, No 2, p.542, commenting on the Commission v Belgium *1290 judgment to which I shall refer below.

II -- The legal framework

A -- Community provisions

AG4 The first paragraph of Art.12 EC prohibits "any discrimination on grounds of nationality" within the scope of application of the Treaty, without prejudice to some special provisions.
AG5 Furthermore, Art.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."
AG6 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.
AG7 The right to equality established by Art.12 EC therefore belongs to all citizens of European Union Member States, who, furthermore, enjoy the rights set out in Art.18 EC.
AG8 However, some provisions aim to prevent differences based on nationality in respect of the movement of workers. For example, Art.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.
..."

AG9 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 *1291 person. These concerns are reflected in Regulation 1612/68 of the Council of October 15, 1968 on the free movement of workers. [FN3] Under Art.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.

FN3 [1968] O.J. Spec. Ed. (II) 475.

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

B -- The relevant Belgian provisions

AG10 Royal Decree of November 25, 1991 on unemployment [FN4] 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.

FN4 *Moniteur belge* of December 31, 1991, p.29888.

AG11 Article 36(1) lists several alternative conditions to qualify for unemployment benefit. [FN5] Applicants must have:
"...

FN5 Only those conditions relevant to the present case are mentioned here.

a) completed full-time higher secondary education or technical or vocational training at an educational establishment run, subsidised or approved by a community; [FN6]

FN6 The provisions of this heading were amended by the Royal Decree of February 11, 2003 (*Moniteur belge* of February 19, 2003, p.8026) as regards the reference to technical and vocational training.

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. *1292 [FN7]

FN7 The wording of heading *h* is that laid down in the Royal Decree of December 13, 1996 (*Moniteur belge* of December 31, 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 February 11, 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.

..."

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

AG12 In 1994, Mr Ioannidis, a Greek national born on April 23, 1976, took up residence in a municipality of the Liège conurbation. On October 17, 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.
AG13 On June 29, 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*.
AG14 On July 7, 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).
AG15 From October 10, 2000 to June 29, 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.
AG16 On August 7, 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 October 5, 2001.
AG17 The Tribunal du travail de Liège (Labour Court, Liège), in its judgment of October 7, 2002, upheld the action brought by Mr Ioannidis against the decision to reject his application.
AG18 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, [FN8] 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, 17 and 18 of the EC Treaty) 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 *1293 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 abovementioned Royal Decree by Article 36(1)1(2)(a)), 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?"

FN8 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 *a* of Art.36(1)1(2) of the Royal Decree of November 25, 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)).

IV -- Procedure before the Court of Justice

AG19 Written observations were submitted in these proceedings, within the period prescribed by Art.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.
AG20 Once the written stage of the proceedings had been completed, at the general meeting of April 26, 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 April 28, 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

AG21 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

AG22 As stated above, there are several judgments concerning the Belgian tideover allowances. The Deak, Commission v Belgium and D'Hoop judgments are particularly significant. [FN9] 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.

FN9 Prior to this, the judgment in Kuyken (66/77): [1977] E.C.R. 2311; [1978] 2 C.M.L.R. 304 *1294 , addressed the regulation of those benefits under Art.124 of the Royal Decree of December 20, 1963, *i.e.* the forerunner of Art.36 of the Royal Decree of November 25, 1991 (as regards the repercussions and effects of the Deak judgment on legal theory, see points 46-59 of my Opinion in the Commission v Belgium case(C-278/94): [1996] E.C.R. I-4307; [1997] 1 C.M.L.R. 1040), whereas the judgment in Kziber (C-18/90): [1991] E.C.R. 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.

1. The Deak judgment of June 20, 1985

AG23 [FN10]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.

FN10 Case 94/84: [1985] E.C.R. 1873.

AG24 The Court of Justice explained a number of points: first, the refusal did not contravene Regulation 1408/71 [FN11] -- regarding which clarification was sought -- given that the benefit in question was a social advantage provided for by Art.7(2) of Regulation 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.

FN11 Council Regulation 1408/71 of June 14, 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: [1971] O.J. Spec. Ed. (II) 416.

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

AG25 [FN12]On this occasion, the Commission took action against Belgium on the ground that it had contravened Art.39 EC and Arts 3 and 7 of Regulation 1612/68 by maintaining in force Art.36 of the Royal Decree of November 25, 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.

FN12 Cited above.

AG26 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 Art.7(2) of Regulation 1612/68 [FN13]; 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, [FN14] 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 33-43); 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 *1295 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". [FN15] I therefore proposed that it should be held that Community law had been infringed.

FN13 Points 22-30.

FN14 Point 31.

FN15 Point 44.

AG27 The Court of Justice followed this opinion and held that the tideover allowance constituted a social advantage within the meaning of Regulation 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". [FN16] 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", [FN17] 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 [FN18]-- 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.

FN16 At [25] & [26].

FN17 At [27] & [28].

FN18 At [29] & [30].

AG28 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, [FN19] 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. [FN20]

FN19 At [39].

FN20 At [40].

AG29 To bring its national provisions in line with the judgment of the Court of Justice, Belgium enacted the Royal Decree of December 13, 1996, which amended the Royal Decree of November 25, 1991 by adding the above-quoted heading *h* to Art.36 so as to make tideover allowances available to the children of migrant workers.

3. The D'Hoop judgment of July 11, 2002

AG30 [FN21]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 *1296 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 Art.36 of the Royal Decree of November 25, 1991.

FN21 Case C-224/98: E.C.R. I-6191; [2002] 3 C.M.L.R. 12. 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*.

AG31 The Tribunal du travail de Liège requested a preliminary ruling on the applicability of Art.39 EC and Art.7 of Regulation 1612/68 to the case under consideration.
AG32 In its judgment, the Court of Justice followed the Opinion of its Advocate General [FN22] on the basis of two aspects of the legislation: first, the abovementioned provisions and, secondly, the concept of citizenship of the Union.

FN22 Delivered by AG Geelhoed on February 21, 2002.

AG33 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. [FN23] 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. [FN24] Furthermore, while Ms D'Hoop pursued her secondary education in France, her parents continued to reside in Belgium. [FN25]

FN23 At [20].

FN24 At [18].

FN25 At [19].

AG34 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. [FN26] The Court stated, furthermore that this consideration "is particularly important in the field of education". [FN27] 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, [FN28] the Court of Justice ruled that such inequality of treatment was "contrary to the principles which underpin the status of citizen of the Union". [FN29] 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. [FN30] 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 *1297 geographic employment market concerned". [FN31] 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. [FN32]

FN26 At [30].

FN27 At [32].

FN28 At [33].

FN29 At [35].

FN30 At [36].

FN31 At [38].

FN32 At [39].

AG35 The State directly concerned by the judgment introduced a new amendment in Art.36 of the Royal Decree of November 25, 1991, adding -- by means of the Royal Decree of February 11, 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. [FN33]

FN33 See fn 7 to this Opinion.

4. The Collins judgment of March 23, 2004

AG36 [FN34]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 1612/68 and Council Directive 68/360 of October 15, 1968. [FN35]

FN34 Case C-138/02: [2004] E.C.R. I-2703; [2004] 2 C.M.L.R. 28.

FN35 On the abolition of restrictions on movement and residence within the Community for workers of Member States and their families: [1968] O.J. Spec. Ed. (II) 475.

AG37 Leaving aside the arguments concerning the Directive, the interest of this judgment lies in two ideas: the concept of "worker", within the meaning of Arts 7 et seq. of Regulation 1612/68, and the relevance of the concept of "citizenship of the Union" to the case.
AG38 I examined both aspects in the Opinion delivered on July 10, 2003.
AG39 In addressing the first aspect, I highlighted the difference between Title I (Arts 1 to 6) of the Regulation, whose provisions apply to any national of a Member State, and Title II (Arts 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. [FN36] According to the Lebon judgment, [FN37] therefore, equal treatment with regard to social advantages, pursuant to Art.7(2) of the Regulation, would not apply to persons who move in search of employment. [FN38]

FN36 The same concept of employment relationship is found in the judgments in Lawrie Blum (66/85): [1986] E.C.R. 2121; [1987] 3 C.M.L.R. 389 at [16] & [17]; in MartÍnez Sala (C-85/96): [1998] E.C.R. I-2691 at [32]; and in Ninni Orasche (C-413/01): [2003] E.C.R. I-13187; [2004] 1 C.M.L.R. 19 at [34].

FN37 Case 316/85: [1987] E.C.R. 2811; [1989] 1 C.M.L.R. 337.

FN38 At points 22-35.

AG40 In addressing the second aspect, I observed that, according to settled case law, the principle of non-discrimination on grounds of nationality, enshrined in Art.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, Art.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 *1298 Art.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 Art.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. [FN39]

FN39 At points 55-76.

AG41 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, [FN40] whereas the latter "may, on the basis of Art.7(2) of Regulation 1612/68, claim the same social and tax advantages as national workers". [FN41]

FN40 Article 5 of Regulation 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.

FN41 At [30] & [31].

AG42 After examining the implications of Art.39 EC for national provisions, [FN42] 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 Art.12 EC. [FN43]

FN42 At [55]-[59].

FN43 At [60].

AG43 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. [FN44] 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. [FN45]

FN44 At [65].

FN45 At [67]-[72]. With regard to the last point, see the judgments in Schöning Kougebetopoulou (C-15/96): [1998] E.C.R. I-47; [1998] 1 C.M.L.R. 931 at [21]; and in Bickel and Franz (C-274/96): [1998] E.C.R. I-7637; [1999] 1 C.M.L.R. 348 at [27]. The judgment in Baumbast and R (C-413/99): [2002] E.C.R. I-7091; [2002] 3 C.M.L.R. 23), states that the exercise of the right of residence of citizens of the Union, as laid down in Art.18 EC, "can be subordinated to the legitimate interests of the Member States" At [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". At [91].

B -- Analysis

AG44 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 *1299

background, ascertain whether there is inequality of treatment and establish whether it is justified.

1. The relevant Community provisions

a) Background

AG45 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.
AG46 With the aim of creating a European *status civitatis*, Art.17 EC establishes a "citizenship of the Union" for all nationals of Member States, [FN46] 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. [FN47]

FN46 Para.1.

FN47 Para.2.

AG47 Given that Art.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. [FN48]

FN48 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, pp.1 *et seq*. As stated in MartÍnez Sala, cited above, at [63]; as well as in the judgments in Grzelczyk (C-184/99): [2001] E.C.R. I-6193; [2002] 1 C.M.L.R. 19 at [32]; and in Bidar (C-209/03): [2005] 2 C.M.L.R. 3 at [32], a citizen of the European Union, lawfully resident in the territory of a host Member State, can rely on Art.12 EC "in all situations which fall within the scope *ratione materiae* of Community law".

AG48 However, as I explained in my Opinion in Collins, according to settled case law, the equality principle enshrined in Art.12(1) EC applies within the scope of the Treaty, without prejudice to specific regulatory provisions. [FN49] 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. [FN50]

FN49 Gottardo (C-55/00): [2002] E.C.R. I-413; [2004] 1 C.M.L.R. 23 at [21].

FN50 Skanavi and Chryssanthakopoulos (C-193/94): [1996] E.C.R. I-929; [1996] 2 C.M.L.R. 372 at [20]; in Romero (C-131/96): [1997] E.C.R. I-3659; [1997] 3 C.M.L.R. 1141 at [10]; and in Oteiza Olazábal (C-100/01): [2002] E.C.R. I-10981; [2005] 1 C.M.L.R. 49 at [25].

AG49 The principle of free movement of workers, and the attendant elimination of any differences based on nationality, has been given expression mainly in Regulations 1612/68 and 1408/71, [FN51] and we should therefore consider whether the provisions of these regulations apply to the case of Mr Ioannidis.

FN51 Kenny (1/78): [1978] E.C.R. 1489; [1978] 3 C.M.L.R. 651 at [9]; Gilly (C-336/96): [1998] E.C.R. I-2793; [1998] 3 C.M.L.R. 607 at [38].

b) The inapplicability of employment equality

AG50 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 *1300 market. As held in Collins, on the basis of several precedents, the concept of "worker", within the meaning of Art.39 EC and of Regulation 1612/68, has a specific Community meaning and must not be interpreted narrowly.

AG51 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". [FN52] 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, [FN53] as in the case of the contract entered into by Mr Ioannidis in France, [FN54] where he therefore enjoys the status of a worker.

FN52 Brown (197/86): [1988] E.C.R. 3205; [1988] 3 C.M.L.R. 404 at [21]; Bettray (344/87): [1980] E.C.R. 1621; [1991] 1 C.M.L.R. 459 at [15] & [16]; Raulin (C-357/89): [1992] E.C.R. I-1027; [1994] 1 C.M.L.R. 227 at [10]; Bernini (C-3/90): [1992] E.C.R. I-1071 at [14]-[17]; and Kurz (C-188/00): [2002] E.C.R. I-10691 at [32].

FN53 Lawrie Blum at [19]-[21]; Bernini at [15] & [16]; and Kurz at [33] & [34], all cited above.

FN54 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 1408/71.

AG52 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 Art.7(2) of Regulation 1612/68 to claim the same benefits -- including, since the Deak judgment, the tideover allowance -- as are granted to national workers, [FN55] even though he has previously pursued an activity as an employed person in another country. [FN56]

FN55 Lebon at [26]; Commission v Belgium at [39] & [40]; and Collins at [31] & [58], all cited above.

FN56 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.

AG53 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 Art.12 EC in conjunction with Art.17 EC acquires full legal force and effect.

2. The existence of discrimination on grounds of nationality

AG54 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. [FN57]

FN57 GarcÍa Avello (C-148/02): [2003] E.C.R. I-11613; [2004] 1 C.M.L.R. 1 at [22] & [23]; Grzelczyk; D'Hoop at [28]; Collins at [61]; and Bidar at [31], all cited above.

AG55 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.
AG56 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 *a* of Art.36(1)2 of the Royal Decree of *1301 November 25, 1991) or must have obtained a diploma or educational certificate corresponding to the above-mentioned 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. [FN58]

FN58 See, *inter alia*, the judgments in O'Flynn (C-237/94): [1996] E.C.R. I-2617; [1996] 3 C.M.L.R. 103 at [18]; Commission v Italy (C-388/01): [2003] E.C.R. I-721; [2003] 1 C.M.L.R. 40 at [13] & [14]; and Collins, cited above, at [65].

AG57 The possibility provided for in heading *h* of the abovementioned Art.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.
AG58 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.
AG59 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.
AG60 Having ascertained a difference in treatment, we must now consider whether it can be justified.

3. The justification of inequality

AG61 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 *a* and *b* of Art.36(1)2 of the Royal Decree of November 25, 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.
AG62 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 *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 *1302 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.
AG63 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

AG64 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."

JUDGMENT

1 The reference for a preliminary ruling concerns the interpretation of Arts 12 EC, 17 EC and 18 EC.
2 This reference has been made in the course of proceedings between Mr Ioannidis and the Office national de l'emploi (National Employment Office, hereinafter "ONEM") regarding the latter's decision to refuse to grant the respondent the tideover allowance provided for under Belgian law.

Law

Community law

3 The first paragraph of Art.12 EC provides:
"Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited."
4 Article 17 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 ...
2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be

subject to the duties imposed thereby."
5 *1303 Article 18(1) EC provides that every citizen of the Union has 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 and by the measures adopted to give it effect.
6 Under Art.39(2) EC freedom of movement for workers entails 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.
7 Under Art.39(3) freedom of movement for workers "... 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;
..."
8 According to Art.7(2) of Regulation 1612/68 of the Council of October 15, 1968 on freedom of movement for workers within the Community, [FN59] as amended by Council Regulation 2434/92 of July 27, 1992, [FN60] a worker who is a national of a Member State shall enjoy, in the territory of another Member State, the same social and tax advantages as national workers.

FN59 [1968] O.J. Spec. Ed. (II) 475.

FN60 [1992] O.J. L245/1, hereinafter "Regulation 1612/68".

National law

9 Belgian legislation provides for the grant of unemployment benefits, known as "tideover allowances", to young people who have just completed their studies and are seeking their first employment
10 Article 36(1), first subparagraph, of the Royal Decree of November 25, 1991 on unemployment, [FN61] as amended by the Royal Decree of December 13, 1996, [FN62] provides:
"To qualify for a tideover allowance, the young worker must have:

FN61 *Moniteur belge* of December 31, 1991, p.29888.

FN62 *Moniteur belge* of December 31, 1996, p.32265, hereinafter "the Royal Decree".

(1) completed his compulsory education;
(2)
(a) completed full-time higher secondary education or technical or vocational training at an educational establishment run, subsidised or approved by a [Belgian] community;
...
(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. *1304 ..."

The main proceedings and the question submitted for a preliminary ruling

11 After completing his secondary education in Greece, Mr Ioannidis, who is of Greek nationality, arrived in Belgium in 1994. The certificate of education issued to him in Greece was recognised as being equivalent to the approved certificate of higher secondary education giving access to vocational higher education in Belgium.
12 After 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 on June 29, 2000 and then 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).
13 From October 10, 2000 to June 29, 2001 Mr Ioannidis followed, in France, a paid training course in vestibular rehabilitation under an employment contract as a technician with a professional partnership of doctors specialising in oto-rhino-laryngology.
14 On August 7, 2001, after having returned to Belgium, Mr Ioannidis submitted an application for a tideover allowance to ONEM.
15 By decision of October 5, 2001, ONEM rejected that application on the ground that Mr Ioannidis had not completed his secondary education at an educational establishment run, subsidised or approved by one of the three communities in Belgium, as required by heading 2(a) of the first subparagraph of Art.36(1) of the Royal Decree.
16 Mr Ioannidis contested that decision before the Tribunal du travail (Labour Court), Liège. In its decision of October 7, 2002, that court annulled the decision, declaring that "at the time of his application for the allowance, the applicant (was) himself a migrant worker, having worked in France" and that "Article 36 of the Royal Decree ... as interpreted by the administration, is clearly contrary to Article [39 EC]".
17 Hearing the appeal brought by ONEM against that decision, the Cour du travail (Higher Labour Court), Liège, found that Mr Ioannidis did not fulfil any of the alternative conditions laid down by the national rules. In particular, he did not satisfy either the requirements of heading 2(a) of the first subparagraph of Art.36(1) of the Royal Decree, as he had not completed his secondary education in Belgium, or the requirements of heading (h) of that provision. The referring court observes that the respondent completed his upper secondary education in another Member State, which the documents produced show to be equivalent to and of the same level as that mentioned in heading (a) of the same provision in the Royal Decree. On the other hand, according to that court, no document or item in the file establishes that, on the date of lodging the application for a tideover allowance, Mr Ioannidis' parents were migrant workers residing in Belgium.
18 As it was unsure as to the existence of possible indirect discrimination against Mr Ioannidis due to the fact that he was refused a tideover allowance on the sole ground that he had not completed his higher secondary education at an educational *1305 establishment run, subsidised or approved by the Belgian State although he had successfully completed equivalent education in his country of origin, the Cour du travail de Liège decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:
"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 of Art.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?"

The question referred for a preliminary ruling

19 By its question the national court is asking essentially whether it is contrary to Community law for a Member State to refuse a tideover allowance to a national of another Member State who is seeking his first employment on the sole ground that he completed his secondary education in another Member State.
20 It should be noted at the outset that the fact that the national court has formulated the question referred for a preliminary ruling with reference to certain provisions of Community law does not preclude the Court from providing to the national court all the elements of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. [FN63]

FN63 See, in particular, SARPP (C-241/89): [1990] E.C.R. I-4695 at [8], and Trojani (C-456/02): [2004] E.C.R. I-7573; [2004] 3 C.M.L.R. 38 at [38].

21 In this case, it must be borne in mind that nationals of a Member State seeking employment in another Member State fall within the scope of Art.39 EC and therefore enjoy the right to equal treatment laid down in para.2 of that provision.
22 The Court has already held that, in view of the establishment of citizenship of the Union and the interpretation of the right to equal treatment enjoyed by citizens of the Union, it is no longer possible to exclude from the scope of Art.39(2) EC a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State. [FN64]

FN64 Collins (C-138/02): [2004] E.C.R. I-2703; [2004] 2 C.M.L.R. 28 at [63].

23 It is common ground that the tideover allowances provided for by the national legislation at issue in the main proceedings are social benefits, the aim of which is *1306 to facilitate, for young people, the transition from education to the employment market. [FN65]

FN65 D'Hoop (C-224/98): [2002] E.C.R. I-6191; [2002] 3 C.M.L.R. 12 at [38].

24 It is also common ground that, on the date of lodging the application for the allowance, Mr Ioannidis was a national of a Member State who, having completed his education, was seeking employment in another Member State.
25 In those circumstances the defendant is justified in relying on Art.39 EC to claim that he cannot be discriminated against on the basis of nationality as far as the grant of a tideover allowance is concerned.
26 According to settled case law, the principle of equal treatment prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, lead in fact to the same result. [FN66]

FN66 See, *inter alia*, Sotgiu (152/73): [1974] E.C.R. 153 at [11], and Bidar (C-209/03): [2005] 2 C.M.L.R. 3 at [51].

27 The national legislation at issue in the main proceedings introduces a difference in treatment between citizens who have completed their secondary education in Belgium and those who have completed it in another Member State with only the former having a right to a tideover allowance.
28 That condition could place, above all, nationals of other Member States at a disadvantage. Inasmuch as it links the grant of that allowance to the requirement that the applicant has obtained the required diploma in Belgium, that condition can be met more easily by Belgian nationals.
29 Such a difference in treatment can be justified only if it is based on objective considerations which are independent of the nationality of the persons concerned and proportionate to the aim legitimately pursued by the national law. [FN67]

FN67 O'Flynn (C-237/94): [1996] E.C.R. I-2617; [1996] 3 C.M.L.R. 103 at [19], and Collins, cited above, at [66].

30 As the Court has already held, it is 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. [FN68]

FN68 D'Hoop, cited above, at [38].

31 However, a single condition concerning the place where the diploma of completion of secondary education was obtained is too general and exclusive in nature. 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 goes beyond what is necessary to attain the objective pursued. [FN69]

FN69 D'Hoop at [39].

32 Moreover, it is apparent from heading 2(h) of the first subparagraph of Art.36(1) of the Royal Decree that a job-seeker who has not completed his secondary education in Belgium nevertheless has a right to a tideover allowance if he has pursued education or training of the same level and equivalent thereto in another Member State and if he is the dependent child of migrant workers for the purposes of Art.39 EC who are residing in Belgium.
33 The fact that Mr Ioannidis' parents are not migrant workers residing in Belgium cannot in any event provide a reason for refusing to grant the allowance applied for. That condition cannot be justified by the wish to ensure that there is a real link between the applicant and the geographic employment market concerned. Admittedly it is based on an element which can be considered as representative of a real and effective degree of connection. *1307 However, it is not inconceivable that a person, like Mr Ioannidis, who, after completing secondary education in a Member State, pursues higher education in another Member State and obtains a diploma there, may be in a position to establish a real link with the employment market of that State, even if he is not the dependent child of migrant workers residing in that State. Therefore, such a condition also goes beyond what is necessary to attain the objective pursued.
34 It must be added that the tideover allowance constitutes a social advantage within the meaning of Art.7(2) of Regulation 1612/68. [FN70]

FN70 *ibid.*, at [17].

35 According to settled case law, the principle of equal treatment laid down in Art.7 of Regulation 1612/68, which extends to all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory, is also intended to prevent discrimination to the detriment of descendants dependent on the worker. [FN71]

FN71 See, in particular, Cristini (32/75): [1975] E.C.R. 1085; [1976] 1 C.M.L.R. 573 at [19], Deak (94/84): [1985] E.C.R. 1873 at [22], and Meeusen (C-337/97): [1999] E.C.R. I-3289; [2000] 2 C.M.L.R. 659 at [22].

36 It follows that dependent children of migrant workers who are residing in Belgium derive their right to a tideover allowance from Art.7(2) of Regulation 1612/68 regardless of whether in that situation there is a real link with the geographic employment market concerned.
37 Having regard to the aforementioned considerations, it is not necessary to rule on the interpretation of Arts 12 EC, 17 EC and 18 EC.
38 Therefore, the answer to the question referred to the Court must be that it is contrary to Art.39 EC for a Member State to refuse to grant a tideover allowance to a national of another Member State seeking his first employment who is not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State.

Costs

39 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. The costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

R1 Order

On those grounds, the Court (FIRST CHAMBER)
HEREBY RULES:It is contrary to Art.39 EC for a Member State to refuse to grant a tideover allowance to a national of another Member State seeking his first employment, who is not the dependent child of a migrant worker residing in the Member State granting the allowance, on the sole ground that he completed his secondary education in another Member State.