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We have not only one home...

The history of the human development is closely connected with the migration, well groups and the individuals were all the time moving within and outside the confines of their accommodation – territory. The standards of the migration have an effect on the area of the economy, society, the culture and the political life. At the beginning of the history of humanity the migration was the key to survive and to the living.

The kind of process, which groups and the individuals change their accommodation or society for lasting time in, is referred to as migration. We can distinguish two basic types of migration in the migration theory: the push and the pull factor guided migration. For the specific there are different definitions. It is possible to distinguish the inside migration, it means the accommodation changing inside the border of the country and the international migration, which means the wandering between countries and continents. We can speak from the view time about restricted or termed migration and from the viewpoint the extent about group and individual migration. From the personal reasons there is voluntary and force migration and last I have to mention the legal and illegal migration.

But I have to mention, these distinguish get on hardly in the today's migration flows. For example the migration to the USA is restricted, but in Europe there are a lot of foreign workers who at least settle down.

One of the most typical kind of the migration is the workforce – moving. It was and it is an almost invisible process in the society and on the manpower market. The migration potential can be forced not only by the work intention.

The reasons the migration are colourful and they are connected with the society and the political situation, the economy and the citizens' spirit condition and the satisfaction and discontent in the recipient and the give off country.

In the follows I would like to describe one of the basic cases in the development of the free moving of the students.

Nr. 293/83. Case *Françoise Gravier contra Liège* – *Françoise Gravier*, who is of French nationality and whose parents reside in France, went to Belgium in 1982 in order to study strip cartoon art at the Académie Royale in Liège, in a four-year course of higher art education.

For the 1982-83 academic year she sought exemption from payment of the enrolment fee of BFR 24 622 which was demanded of foreign students in higher art education. By a letter of 7 October 1983 the Académie Royale informed her that her request had been rejected on the ground that 'all foreign students must be aware that such education is not free of charge and must she also has to pay the enrolment fee'. After her request was rejected, Miss Gravier was asked to pay the fee for the academic years 1982-83 and 1983-84.

Since the sums were not paid in time, her enrolment for the 1983-84 year was refused. As a result her Belgian residence permit was not extended.

She brought proceedings before the President of the Tribunal de Première Instance, Liège, claiming exemption from payment of the fee and the issuance of all certificates, which are necessary for the extension of her stay in Belgium.

Although educational organization and policy are not as such included in the spheres which the Treaty has entrusted to the Community institutions, but the access to and the participation in courses of instruction and apprenticeship, in particular vocational training, are not unconnected with Community law.

It appears from the measures and programmes by the Council that the common vocational training policy referred to in Article 128 of the Treaty is gradually being established. It constitutes an indispensable element of the activities of the Community, whose objectives among other things the free movement of persons, the mobility of labour and the improvement of the living standards of workers. It follows that the conditions of access to vocational training fall within the use of the Treaty.

For the students who are nationals of other Member States of a charge, a registration fee or the so-called 'minerval' as a condition of access to vocational training, where the same fee is not imposed on students who are nationals of the host Member State. This situation constitutes discrimination on grounds of nationality contrary to Article 7 of the Treaty.

Any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary skills for such a profession, trade or employment is vocational training, whatever

the age and the level of training of the pupils or students. And this is the same situation, even if the training programme includes an element of general education. Following the term ‘vocational training’ includes courses in strip cartoon art provided by an institution of higher art education.

By the procedure the President of the Tribunal court Liège, referred to the European Court two questions concerning the interpretation of Article 7 of the Treaty. It must be first considered whether or not the establishment of a fee making the reference constitutes ‘discrimination on grounds of nationality’ within the meaning of Article 7 of the Treaty.

In the second question the national court wishes to know what criteria must be used in deciding whether courses in strip cartoon art constitute vocational training.

In Belgium the primary and secondary education is free of charge in the State system and in subsidized establishments, and institutions of post secondary or higher education may charge only low registration fees intended to finance their social services.

Each year since the academic year 1976-77, authorized the Minister to establish ‘an enrolment fee for foreign pupils and students whose parents are not resident in Belgium and who attend a State educational institution or an institution supported by the State at pre-school, primary, special, secondary, higher (short or long type) and technical (second and third degree) level’.

On the basis of such a provision – in this case Article 15 of the 1983 budget law – the Minister for Education issued one circular – No 83.24 G of 30 June 1983 –, which laid down ‘for the year 1983-84, as for previous years, an enrolment fee ... for students who are not of Belgian nationality and who attend an institution of full-time artistic education organized or subsidized by the State’.

The circular make free from the obligation to pay the fee inter alia students having one parent of Belgian nationality, students of Luxembourg nationality, and students whose father or mother resides in Belgium and carries on a principal occupation or receives social security income or pension and pays income tax there.

With regard more particularly to vocational training, Article 128 of the Treaty provides that the Council is to lay down general principles for implementing common vocational training policy capable of contributing to the harmonious development both of the national economies and of the common market. The first principle established in Council Decision – No 63/266/EEC of 2 April 1963 – laying down those general principles states that ‘the general principles must enable every person to receive adequate training, with due regard for freedom of choice of occupation, place of training and place of work’. Its objectives include inter alia the free movement of persons, the mobility of labour and the improvement of the living standards of workers.

It follows from all the foregoing that the conditions of access to vocational training fall within the scope of the Treaty.

The answer to the first question must be that the imposition on students who are nationals of other Member States, of a charge, a registration fee as a condition of access to vocational training, where the same fee is not imposed on students who are nationals of the host Member State, constitutes discrimination on grounds of nationality contrary to Article 7 of the Treaty.

In its second question the national court wishes to know what criteria must be used in deciding whether courses in strip cartoon art constitute vocational training.

It follows from those statements that any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary training and skills for such a profession, trade or employment is vocational training, whatever the age and the level of training of the pupils or students, and even if the training programme includes an element of general education.

The answer to the second question must consequently be that the term ‘vocational training’ includes courses in strip cartoon art provided by an institution of higher art education where that institution prepares students for a qualification for a particular profession, trade or employment or provides them with the skills necessary for such a profession, trade or employment.

The background shows that Belgium is the only Member State which requires foreign students to pay an enrolment fee, although Greece requires an identical payment, for reasons of reciprocity. The Commission considers, moreover, that the imposition of the fee establishes a difference in treatment between students of Belgian nationality, whether or not their parents or they themselves pay taxes in Belgium, and nationals of other Member States, a difference which is based on the nationality of the students. It is clear from the content of the Belgian legislation and from the practice followed in relation to the fee, as summarized above, that the cost of higher art education is not borne by students of Belgian nationality, the foreign students must have part of that cost. Except the Luxembourg students because they have a special situation and the students whose parents pay taxes in that country.

Such unequal treatment based on nationality must be regarded as discrimination prohibited by Article 7 of the Treaty if it falls within the scope of the Treaty.

In view of this difference of opinion it is first necessary to define precisely the nature of the problem. In the first place, the questions referred concern neither the organization of education nor even its financing, but rather the establishment of a financial barrier to access to education for foreign students only. Secondly, they concern a particular type of education, referred to as 'vocational training' in the first question and as 'a course in strip cartoon art' in the second question.

The first remark which must be made in that regard is that although educational organization and policy are not as such included in the spheres which the Treaty has entrusted to the Community institutions, access to and participation in courses of instruction and apprenticeship, in particular vocational training, are not unconnected with Community law.

Article 7 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community provides that a worker who is a national of a Member State and who is employed in another Member State is to have access to training in vocational schools and have the same rights and under the same conditions as national workers. Article 12 of the regulation provides that the children of such workers are to be admitted to that State's general educational apprenticeship and vocational training courses under the same conditions as the nationals of that State.

The history of the human development is closely connected with the migration. The reasons the migration are colourful and they are connected with the society and the political situation the economy and the citizens spirit condition and the satisfaction and discontent in the recipient and the give off country. Students and workers are moving all the time in the European Union. They don't have only one home.¹

¹ Literature: Migráció az ezredfordulón, Cseresnyés Ferenc – Dialóg Campus, 2005.; Migráció és Európai Unió, Dr. Lukács Éva, 2001.; Nr. 293/83. Case Françoise Gravier contra Liège; A migráció szociológiája, Sík Endre, 2001.;