

SUMMARY

ECJ 25 October 2012, case C-367/11 (Déborah Prete - v - Office national de l’emploi), Other forms of free movement

Facts

Belgian legislation provides for the grant of an allowance known as a “tide-over allowance” to young people who have completed their studies and are looking for their first job. This allowance is designed to facilitate the transition from education to the labour market. In order to qualify for the tide-over allowance, the young worker must have completed at least six years’ study at a Belgian educational establishment (or at an establishment elsewhere in the EU if the worker is the dependent child of a migrant worker living in Belgium).

Ms Prete, a French national, completed her secondary studies in France. She married a Belgian national with whom she settled in Belgium. She registered as a job seeker there and applied for a tide-over allowance. Her application was rejected

National proceedings

Ms Prete sought judicial relief, was successful at first, but lost on appeal. She appealed to the Supreme Court, which referred questions to the ECJ. In essence, the question was whether Articles 12, 17, 18 and 39 EC on non-discrimination on the ground of nationality; EU citizenship; free movement of citizens and free movement of workers; respectively, preclude a provision which makes a tide-over allowance conditional upon having completed at least six years’ study in the host Member State.

ECJ’s findings

1. Ms Prete is justified in relying on Article 39 to claim that she cannot be discriminated

against on the basis of nationality as far as the grant of a tide-over allowance is concerned (§ 16-28).

2. A condition relating to the obligation to have studied in the host Member State can more easily be met by nationals of that Member State and therefore may well place nationals of other Member States at a disadvantage. Thus, it discriminates indirectly on the basis of nationality and needs to be justified. The condition can only be justified if it is based on objective considerations independent of the nationality of the persons concerned and if it is proportionate to the legitimate aim of the national provision (§ 29-32).

3. The ECJ has previously held that it is legitimate for the national legislature to wish to ensure that there is a real link between an applicant for a tide-over allowance and the geographic employment market concerned (§ 33).

4. This case concerns a national of a Member State (France) who resided for about two years in the host Member State (Belgium) following her marriage to a Belgian national and who was registered for 16 months as a job seeker in Belgium, whilst at the same time actively looking for work there. Circumstances such as these appear to be capable of establishing the existence of a real connection with the Belgian labour market. The ECJ rejects the Belgian government's argument that Ms Prete was more likely to enter the labour market in France, where she completed her studies. The knowledge acquired by a student in the course of his or her higher education does not generally assign him or her to a particular geographic labour market. Furthermore, the existence of a real link with the labour market of a Member State can be determined by establishing that the person concerned has, for a reasonable period, in fact genuinely sought work in the Member State in question. Moreover, residence within a Member State is also capable of ensuring a real connection with the labour market of the host Member State. Finally, the family circumstances of a claimant for tide-over allowance are capable of demonstrating the existence of a real link between the applicant and the host Member State. In view of the foregoing, the condition at issue of six' years study in Belgium goes beyond what is necessary to achieve the said aims (§ 40-50).

Ruling

Article 39 EC precludes a national provision such as that at issue in the main proceedings, which makes the right to a tide-over allowance for the benefit of young people looking for their first job subject to the condition that the person concerned has completed at least six years' study in an educational establishment of the host Member State, insofar as that condition prevents other representative factors liable to establish the existence of a real link

between the person claiming the allowance and the geographic labour market concerned being taken into account. Accordingly, this goes beyond what is necessary to attain the aim pursued by that provision, which is to ensure that such a link exists.

Creator: European Court of Justice (ECJ)

Verdict at: 2012-10-25

Case number: C-367/11