ECLI:EU:C:2022:916

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

24 November 2022 (*)

(Reference for a preliminary ruling – Freedom of movement for persons – Article 45 TFEU – Equal treatment – Social advantages – Regulation (EU) No 492/2011– Article 7(2) – Financial aid for higher education studies in another Member State – Residence requirement – Alternative requirement of social integration for non-resident students – Situation of a student who is a national of the State granting the aid, residing since birth in the State of studies)

In Case C-638/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Överklagandenämnden för studiestöd (National Board of Appeal for Student Aid, Sweden), made by decision of 14 October 2020, received at the Court on 25 November 2020, in the proceedings

MCM

v

Centrala studiestödsnämnden,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún, F. Biltgen (Rapporteur), N. Wahl and J. Passer, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– MCM, by himself,

– the Swedish Government, by H. Eklinder, C. Meyer-Seitz, A. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson, H. Shev, J. Lundberg and O. Simonsson, acting as Agents,

– the Danish Government, by J. Nymann-Lindegren and M. Søndahl Wolff, acting as Agents,

– the Austrian Government, by A. Posch, E. Samoilova and J. Schmoll, acting as Agents,

– the European Commission, by P. Carlin and B.-R. Killmann, acting as Agents,

– the Norwegian Government, by E.S. Eikeland and T.H. Aarthun, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 April 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 45 TFEU and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

2 The request has been made in proceedings between MCM and the Centrala studiestödsnämnden (Swedish Board of Student Finance, Sweden) ('the CSN') concerning MCM's right to be granted financial support by the Swedish State in order to pursue studies in Spain.

Legal context

European Union law

3 Article 7(1) and (2) of Regulation No 492/2011 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.'

4 Article 10(1) of that regulation states:

'The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.'

Swedish law

5 Under the first subparagraph of Paragraph 23 of Chapter 3 of the Studiestödslag (1999:1395) (Law (1999:1395) on student financial aid, 'the Law on student financial aid'), a student's right to receive financial aid in order to pursue post-secondary studies outside Sweden is subject to the

requirement that the student has been resident in Sweden for a continuous period of at least two years in the five years preceding the application for assistance ('the residence requirement').

6 The Government or the authority which it designates may, however, adopt specific provisions allowing exceptions to the residence requirement and lay down additional rules governing financial aid granted to students studying abroad.

7 Accordingly, the Law on student financial aid was clarified by the Centrala studiestödsnämndens föreskrifter och allmänna råd om beviljning av studiemedel (CSNFS 2001:1) (the CSN regulations and general guidelines on the granting of financial aid for students, 'the CSN regulations and general guidelines'). Paragraph 6 of Chapter 12 of those regulations and general guidelines provides that the residence requirement laid down in Paragraph 23 of Chapter 3 of that law does not apply to a person who satisfied that requirement when he or she started to study abroad while receiving student financial aid within the meaning of that law or while receiving an educational grant for doctoral students, and who continues his or her studies without interruption while benefiting from that support. Paragraph 6a of Chapter 12 provides that the residence requirement likewise does not apply to a Swedish national who lives abroad because of illness if he or she has previously resided in Sweden. Lastly, Paragraph 6b of Chapter 12 states that if special circumstances so warrant, aid for studies may be granted to a student even if he or she does not satisfy the residence requirement.

8 In particular cases where the CSN considers that the residence requirement is incompatible with EU law, it grants a derogation from that condition while requiring, on the other hand, that the person have a connection with Swedish society. Accordingly, the Centrala studiestödsnämndens rättsliga ställningstaganden dnr 2013-113-9290 samt dnr 2014-112-8426 (CSN internal instructions, No 2013-113-9290 and No 2014-112-8426) provide that the residence requirement laid down in the first subparagraph of Paragraph 23 of Chapter 3 of the Law on student financial aid is not applied, on account of Article 7(2) of Regulation No 492/2011, to persons in Sweden whom the CSN recognises as migrant workers or as members of their family. On the other hand, those persons, with the exception of children, must have a connection with Swedish society in order for student financial aid to be granted.

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

9 MCM is a Swedish national who has lived in Spain since birth.

10 In March 2020 MCM applied to the CSN for financial aid to pursue university studies in Spain. MCM stated that his father, also a Swedish national, who has lived and worked in Sweden since November 2011, had been active in Spain as a migrant worker for approximately 20 years.

11 The CSN rejected the application on the ground that MCM did not satisfy the requirement of residence in Sweden laid down in the first subparagraph of Paragraph 23 of Chapter 3 of the Law on student financial aid and did not fulfil any of the criteria set out in the exceptions under Paragraphs 6, 6a and 6b of Chapter 12 of the CSN regulations and general guidelines that might have provided a basis for granting such aid to him. Moreover, it found that MCM could not claim that aid by relying on his being a member of the family of a migrant worker since his father now pursued a professional activity in Sweden, his Member State of origin, and did not satisfy the alternative requirement of integration into Swedish society which allows for the residence requirement to be waived.

12 MCM appealed against that decision to the Överklagandenämnden för studiestöd (the National Board of Appeal for Student Aid, Sweden), the referring court. The CSN, in its observations, maintained its findings. It also stated that denial of student financial aid to MCM could have deterred his father from emigrating to Spain and thus constitute an obstacle to his father's freedom of movement. However, the CSN was uncertain, in that regard, whether the situation at issue continues to fall within the scope of EU law since MCM's father stopped exercising his freedom of movement as a migrant worker in 2011. It also had doubts as to whether a migrant worker who has returned to his or her country of origin may rely indefinitely, with respect to that country, on the guarantees that both he or she and the members of his or her family enjoy under Regulation No 492/2011.

13 The referring court explains that student financial aid may be granted to Swedish nationals and to nationals of other Member States in order to pursue post-secondary studies abroad.

14 It notes that, in accordance with Chapter 3, Paragraph 23, first subparagraph of the Law on student financial aid, the entitlement to such assistance, which depends neither on the income of the applicant's parents nor on any other social situation, is subject to the requirement that the student applicant has resided in Sweden for a continuous period of at least two years during the preceding five years. If the residence requirement cannot be satisfied, aid may nevertheless be granted where special circumstances exist, within the meaning of Paragraph 6b of Chapter 12 of the CSN regulations and general guidelines.

15 The referring court adds that, in accordance with Article 7(2) of Regulation No 492/2011, the residence requirement is not imposed on migrant workers or members of their families. However, and except where the applicant is a child of a migrant worker, the CSN, pursuant to its internal instructions, requires that there be a connection with Swedish society in order to receive student financial aid.

16 Furthermore, that court notes that the residence requirement is also waived for persons, including Swedish nationals, who do not reside in Sweden and who apply for financial aid in order to study in another EU Member State. In that case, the CSN makes the grant of such aid subject to the requirement of a connection with Swedish society by relying on the judgment of the Court of 18 July 2013, *Prinz and Seeberger* (C-523/11 and C-585/11, EU:C:2013:524, paragraph 38).

17 The referring court is uncertain whether a requirement relating to the existence of a connection with the Member State of origin may be imposed on a migrant worker's child residing in the European Union, where the migrant worker has left the host Member State in which he or she pursued a professional activity in order to live in his or her Member State of origin. According to that court, such a requirement may be contrary to Article 7(2) of Regulation No 492/2011 and deter some parents or future parents from exercising their freedom of movement as workers, within the meaning of Article 45 TFEU.

18 It considers that it should be possible to justify restrictions on the freedom of movement for workers on grounds related to the financial interests of the Member State of origin. It is uncertain, however, whether the case-law which allows for restrictions on the free movement of citizens within the meaning of Articles 20 and 21 TFEU should be applied, by analogy, in the present case.

19 In those circumstances the Överklagandenämnden för studiestöd (the National Board of Appeal for Student Aid) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘May a Member State (the country of origin), in respect of a returning migrant worker’s child, notwithstanding Article 45 TFEU and Article 7(2) of Regulation No 492/2011, and taking into consideration the budgetary interests of the country of origin, lay down a requirement for the child to have a connection with the country of origin in order to grant that child student financial aid to study abroad in the other EU Member State where the child’s parent previously worked (the host country), where

(1) after returning from the host country, the child’s parent has lived and worked in the country of origin for at least eight years;

(2) the child did not accompany his or her parent to the country of origin, but has remained since birth in the host country, and

(3) the country of origin lays down the same requirement of a connection for other nationals in the country of origin who do not satisfy the residence requirement and who apply for student financial aid for studies abroad in another country in the EU?’

Consideration of the question referred

20 By its question, the referring court asks, in essence, whether Article 7 of Regulation No 492/2011 and Article 45 TFEU must be interpreted as precluding legislation of a Member State by which the grant of financial aid for the pursuit of studies in the host Member State, to the child of a person who has left the host Member State in which that person worked in order to return to live in the first Member State, of which he or she is a national, is made subject to the requirement that the child have a connection with the Member State of origin, in a situation where, first, the child has lived since birth in the host Member State and, second, the Member State of origin makes other nationals not satisfying the residence requirement and who apply for such financial aid to study in another Member State subject to the requirement of the existence of a connection.

21 It should be borne in mind that Article 45 TFEU prohibits any discrimination based on nationality between workers of the Member States as regards employment, remuneration or other conditions of work and employment. In addition, since Article 7(1) of Regulation No 492/2011 constitutes merely the specific expression of the principle of non-discrimination within the specific field of conditions of employment and work, it must be interpreted in the same way as Article 45 TFEU (judgments of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken*, C-514/12, EU:C:2013:799, paragraph 23 and the case-law cited, and of 12 May 2021, *CAF*, C-27/20, EU:C:2021:383, paragraph 24).

22 Similarly, Article 7(2) of Regulation No 492/2011, which provides that a worker who is a national of a Member State is to enjoy, in the territory of another Member State, the same social and tax advantages as national workers, reproduces, in the specific area of the grant of social advantages, the principle of equal treatment enshrined in Article 45 TFEU (see, to that effect, judgments of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 35, and of 2 April 2020, *PF and Others*, C-830/18, EU:C:2020:275, paragraph 29).

23 The concept of ‘social advantage’, within the meaning of Article 7(2) of Regulation No 492/2011, includes all the advantages which, whether or not they are linked to a contract of employment, are granted to national workers generally, primarily because of their objective status as workers or by virtue of the mere fact of their residence in the national territory (judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 41).

24 In accordance with settled case-law, assistance granted for maintenance and education in order to pursue university studies evidenced by a professional qualification constitutes a social advantage, within the meaning of that provision (see, to that effect, judgment of 10 July 2019, *Aubriet*, C-410/18, EU:C:2019:582, paragraph 25 and the case-law cited).

25 In the present case, it is not disputed that the benefit at issue constitutes a social advantage within the meaning of Article 7(2) of Regulation No 492/2011.

26 However, it is clear from the wording of both Article 7 of Regulation No 492/2011, under which a migrant worker may not be treated differently in the territory of 'another Member State', and Article 10 of that regulation, according to which the children of a migrant worker are to be treated in the territory 'of another Member State' under the same conditions as the nationals of that State, that those articles are intended to provide protection against discrimination that the migrant worker and members of his or her family may face in the host Member State.

27 As the Advocate General also observed, in essence, in points 56 and 57 of her Opinion, whereas the migrant worker and the members of his or her family may rely on the right to equal treatment with respect to the authorities of the host Member State, that is not the case, however, when the potentially discriminatory situation concerns the worker's Member State of origin.

28 Since, in the case in the main proceedings, the right to equal treatment is relied on with respect to the authorities of the Member State of origin, Article 7 of Regulation No 492/2011 is not applicable.

29 However, notwithstanding the fact that the situation at issue in the main proceedings does not fall within the scope of Article 7 of Regulation No 492/2011, it is necessary to examine that situation in the light of Article 45 TFEU, which not only prohibits any discrimination based on nationality between workers of the Member States, but also any other measure liable to constitute an obstacle to freedom of movement for workers.

30 In this respect, it should be borne in mind that all the provisions of the FEU Treaty relating to freedom of movement for persons are intended, as are those of Regulation No 492/2011, to facilitate the pursuit by nationals of the Member States of occupational activities of all kinds throughout the European Union, and preclude measures which might place nationals of Member States at a disadvantage if they wish to pursue a paid activity in the territory of another Member State (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 40 and the case-law cited).

31 In that context, nationals of the Member States have in particular the right, which they derive directly from the Treaty, to leave their Member State of origin to enter the territory of another Member State and reside there in order to pursue an activity there. As a result, Article 45 TFEU precludes any national measure which is capable of hindering or rendering less attractive the exercise by EU nationals of the fundamental freedom guaranteed by that article (judgment of 10 October 2019, *Krah,* C-703/17, EU:C:2019:850, paragraph 41 and the case-law cited).

32 As the Advocate General observed in point 47 of her Opinion, the nationals of a Member State may rely on Article 45 TFEU as against that State in so far as concerns measures liable to prevent or deter those nationals from leaving their country of origin.

33 In the case in the main proceedings, the worker in question, having left his Member State of origin to work in another Member State and reside there with his family, returned to live and work

in his Member State of origin. His child, on the other hand, has never resided in that Member State, having lived since birth in the host Member State. Pursuant to the legislation of the Member State of origin, the child of such a worker may be granted financial aid by that Member State of origin in order to pursue studies in the host Member State only if he or she has a connection with the Member State of origin.

34 As regards the question whether such legislation is liable to hinder or make less attractive the exercise by the worker concerned of his or her freedom of movement, which is a fundamental freedom guaranteed by Article 45 TFEU, it must be observed, as the Advocate General stated, in essence, in points 49 and 50 of her Opinion, that in the event that that worker wished to exercise that freedom, the grant of financial aid for post-secondary studies abroad would not depend solely on that individual's choices but would also rest on the choices of a possible future child and on a succession of hypothetical and uncertain future factors; these include, in particular, whether the worker actually goes on to have a child in the future, whether his or her child chooses to stay in the host Member State, even if his or her parent decides to return to his or her Member State of origin, whether his or her child is not integrated into the society of that latter Member State, and whether his or her child decides, when the times comes, to begin post-secondary studies.

35 Consequently, such a situation, which is based on a set of circumstances which are too uncertain and indirect, is not capable of influencing the choice of the worker to exercise his or her freedom of movement and cannot be regarded as liable to hinder the free movement of workers (see, to that effect, judgment of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 40 and the case-law cited).

36 It follows from the foregoing that the legislation at issue in the main proceedings cannot be classified as an obstacle to the free movement of workers, prohibited under Article 45 TFEU.

37 Having regard to all the foregoing considerations, the answer to the question referred is that Article 45 TFEU and Article 7(2) of Regulation No 492/2011 must be interpreted as meaning that those provisions do not preclude legislation of a Member State by which the grant of financial aid for the pursuit of studies in the host Member State, to the child of a person who has left the host Member State in which that person worked in order to return to live in the first Member State, of which he or she is a national, is made subject to the requirement that the child have a connection with the Member State of origin, in a situation where, first, the child has lived since birth in the host Member State and, second, the Member State of origin makes other nationals not satisfying the residence requirement and who apply for such financial aid to study in another Member State subject to the requirement of the existence of a connection.

Costs

38 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

Article 45 TFEU and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union

must be interpreted as meaning that those provisions do not preclude legislation of a Member State by which the grant of financial aid for the pursuit of studies in the host Member State,

to the child of a person who has left the host Member State in which that person worked in order to return to live in the first Member State, of which he or she is a national, is made subject to the requirement that the child have a connection with the Member State of origin, in a situation where, first, the child has lived since birth in the host Member State and, second, the Member State of origin makes other nationals not satisfying the residence requirement and who apply for such financial aid to study in another Member State subject to the requirement of the existence of a connection.

[Signatures]

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* Language of the case: Swedish.