Reports of Cases

OPINION OF ADVOCATE GENERAL
CRUZ VILLALÓN
delivered on 19 July 2012 [1]

Case C-367/11

Déborah Prete
v
Office national de l'emploi

(Reference for a preliminary ruling from the Cour de cassation (Belgium))

(Freedom of movement for workers — Allowances for young persons seeking their first job — Job seekers' entitlement to benefit — Grant of benefit subject to a condition of at least six years' studies in the host Member State — Indirect discrimination — Proportionality)

1. The Belgian Cour de cassation (Court of Cassation) has made this reference for a preliminary ruling with the aim of obtaining from the Court a further ruling on the Belgian system of social benefits to assist young jobseekers in gaining entry to the labour market ('tideover allowances'). After *Deak*, [2] *Kziber*, [3] *Commission* v *Belgium*, [4] *D'Hoop* [5] and *Ioannidis*, [6] Belgian law has undergone several amendments in order to adapt it on successive occasions to the requirements of the freedom of movement for persons and workers. However, the latest reform continues to raise doubts, since it requires persons applying for that allowance to have previously studied at a Belgian educational establishment and, in all cases, to have done so for at least six years. That condition is extended to nationals of other Member States who have studied in States other than Belgium, as is the case with the appellant in the main proceedings.

2. The present case will allow the Court to develop its case-law on social benefits in the context of job seekers. This field, the case-law and legislation in which has been constantly evolving since *Collins*, [7] continues to require clarification by the Court, particularly with regard to the existence of a connection between the job seeker and the host State, a delicate issue which justifies the delivery of this Opinion.

1 — Original language: Spanish.
2 — Case 94/84 [1985] ECR 1873.
3 — Case C-18/90 [1991] ECR I-199.
4 — Case C-278/94 [1996] ECR I-4307.
5 — Case C-224/98 [2002] ECR I-6191.
6 — Case C-258/04 [2005] ECR I-8275.
7 — Case C-138/02 [2004] ECR I-2703.

I – Legislative context

A – *European Union legislative context*

3. Under Article 18 EC (now Article 21 TFEU), '[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect'.

4. Article 39 EC (now Article 45 TFEU), on freedom of movement for workers, provides as follows:

'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;

…'

5. Articles 3 and 7 of Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community (recently repealed by Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 (OJ 2011 L 141, p. 1)),[8] provides as follows:

'Article 3

1. Under this Regulation, provisions laid down by law, regulation or administrative action or administrative practices of a Member State shall not apply:

— where they limit application for and offers of employment, or the right of foreign nationals to take up and pursue employment or subject these to conditions not applicable in respect of their own nationals; or

— where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other Member States away from the employment offered.

…

Article 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.

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

8 — Regulation of the Council of 15 October 1968 (OJ, English Special Edition 1968 (II), p. 475).

…’

B – *National legislative context*

6. Article 36(1) of the Royal Decree of 25 November 1991 on unemployment provides that, in order to qualify for the tideover allowance, the young worker must have:

‘(1) completed his compulsory education;

(2) (a) completed full-time higher secondary education or the third year of full-time technical, artistic or vocational training at an educational establishment run, subsidised or approved by a community;

…

(j) or obtained a document issued by a community establishing equivalence to the diploma referred to in point (b) or a certificate giving access to higher education; this point shall apply only provided that at least six years’ studies have been previously completed at an educational establishment run, approved or subsidised by a community.

…’

7. Point 2(j), cited above, was introduced by the Royal Decree of 11 February 2003, following the Court’s judgment in *D’Hoop*.

II – Facts

8. Ms Prete is a French national who was born in 1981 and has been married to a Belgian national since 2001. In the same year that she got married, Ms Prete settled in Belgium with her husband and, shortly afterwards, on 1 February 2002, she registered as a job seeker with the Belgian employment service.

9. From 3 to 8 June 2002, and on 5 September 2002, Ms Prete worked under a fixed-term employment contract.

10. On 1 June 2003, Ms Prete applied to the Belgian authorities for the tideover allowance, a benefit granted to young persons who have finished their studies and are looking for their first job. The application was rejected by decision of 11 September 2003 on the ground that Ms Prete had not completed a minimum of six years’ studies in Belgium as required by the Royal Decree of 25 November 1991.

11. Ms Prete completed her secondary studies in France, where she obtained a diploma known as the ‘baccalauréat professionnel’, specialising in secretarial studies. Consequently, she did not satisfy one of the essential requirements set out in that royal decree.

12. Ms Prete brought an action against the negative decision before the tribunal du travail de Tournai (Labour Court, Tournai), which allowed the action. However, the defendant authority, the Office national de l’emploi, appealed against that judgment. On appeal, the cour du travail de Mons (Higher Labour Court, Mons) confirmed the legality of the negative administrative decision. As a result, Ms Prete lodged an appeal in cassation before the Belgian Cour de cassation, which has made this reference for a preliminary ruling.

III – The questions referred to the Court of Justice

13. On 11 July 2011, the Registry of the Court of Justice received from the Belgian Cour de cassation a reference for a preliminary ruling on the following two questions:

'(1) Do Articles 12, 17, 18 and, so far as necessary, 39 of the Treaty establishing the European Community, as consolidated at Amsterdam on 2 October 1997, preclude a provision of national law under which, in the manner of point 2(j) of Article 36(1) of the Belgian Royal Decree of 25 November 1991 on unemployment, entitlement to tideover allowance for a young European Union national, who does not have the status of a "worker" within the meaning of Article 39 of the Treaty, who has completed secondary studies in the European Union but not at an educational establishment run, subsidised or approved by one of the communities in Belgium and who has obtained either a document issued by one of those communities establishing the equivalence of those studies to the study certificate issued by the competent authority of one of those communities for studies completed in those Belgian educational establishments, or else a document giving access to higher education, is conditional upon the young person in question having previously completed six years' studies at an educational establishment run, approved or subsidised by one of the communities in Belgium, if that condition is exclusive and absolute?

(2) If so, do the circumstances of the young person described in the first question, who has not completed six years' studies at a Belgian educational establishment, resides in Belgium with her Belgian spouse and is registered as a job seeker with a Belgian employment service, constitute factors to be taken into consideration in order to appraise that young person's connection to the Belgian employment market, having regard to Articles 12, 17, 18 and, if appropriate, 39 of the Treaty? To what extent must the length of those periods of residence, marriage and registration as a job seeker be taken into consideration?'

14. Written observations have been submitted by Ms Prete's representative, the Belgian and Czech Governments and the European Commission.

IV – Consideration of the questions referred by the Cour de cassation

15. As a preliminary observation, I would point out that the two questions raised by the referring court relate, in essence, to the same issue: the possible infringement of one or more freedoms of movement. While the first question refers to the existence of a restriction, the second asks the Court whether there are any grounds of justification in the event that the Belgian legislation does indeed constitute a restriction.

16. However, the referring court is also uncertain as to which freedom is applicable in this case. In its first question, it refers to Articles 12, 17, 18 and 39 EC, and, moreover, presents them as alternatives, thus suggesting that it seeks the Court's assistance in determining the relevant provision.

17. In this case, the Court is faced with a situation involving a French job seeker who resides in Belgium, where she married a Belgian national, and who is applying for a tideover allowance intended for persons who have completed their studies and are seeking to gain entry to the Belgian labour market. Various categories of person are thus interwoven (student, job seeker, worker and, finally, spouse of a national of a Member State) and the concurrent application of different freedoms may therefore be justified.

18. Having outlined in this way the question of interpretation raised by the referring court, I shall begin by looking at the temporal and material scope of the provisions applicable to the present case. I shall then examine the possible infringement of the freedom concerned in two stages, the first looking at whether that freedom has been restricted, and the second consisting of an assessment of the justification relied on by the Kingdom of Belgium, which is based on the absence of any connection between the appellant and the host State.

V – Analysis

A – *The temporal and material scope of the provisions applicable to the present case*

19. Before anything else, we must first determine whether the situation in which Ms Prete finds herself is governed by the provisions of the current Treaty on the Functioning of the European Union, following its entry into force on 1 December 2009, or by those contained in the now repealed Treaty establishing the European Community.

20. According to the documents before the Court, Ms Prete applied for the tideover allowance on 1 June 2003. On 11 September 2003, her application was rejected by the Belgian authorities. Consequently, the law applicable to Ms Prete's application was that in force in 2003, that is to say, therefore, the Treaty establishing the European Community. Accordingly, it is the provisions of that treaty which must be interpreted in these preliminary ruling proceedings.

21. That said, the question that immediately arises is which articles of the Treaty establishing the European Community are applicable to the present case. On the one hand, Ms Prete applied for a benefit intended to assist young persons in gaining entry to the labour market, which means that her situation could be classified as that of a job seeker. On the other hand, according to the documents before the Court, Ms Prete worked before applying for the tideover allowance, albeit on an extremely short-term and ad hoc basis. Added to all of which is the fact that Ms Prete is married to a Belgian national and was applying for the tideover allowance after fulfilling the condition of having completed her studies at an educational establishment, which could justify the application of Article 18 EC.

22. It is not the first time that the Court has had the opportunity to give a ruling on the conditions governing the Belgian tideover allowance in the light of the fundamental freedoms. It analysed that allowance, which it classified as a 'social advantage' within the meaning of Article 7(2) of Regulation No 1612/68,[9] back in the 1980s. In *D'Hoop*, it confirmed that that allowance was subject not only to Regulation No 1612/68 but also to the principle of non-discrimination on grounds of nationality provided for in Article 12 EC.[10] Later, in *Collins*, the Court held that refusing to grant an allowance for entry to the labour market to a job seeker who is a national of another Member State was capable of being assessed in the light of Article 39 EC on freedom of movement for workers.[11] Thus, in the specific case of the Belgian tideover allowance, the Court held in *Ioannidis* that 'it is no longer possible to exclude from the scope of Article 39(2) EC a benefit of a financial nature intended to facilitate access to employment in the labour market of a Member State'.[12] Consequently, in so far as Ms Prete applied for a benefit in her capacity as a job seeker, the provision which appears prima facie to be relevant is Article 39(2) EC.

9 — See *Deak*, paragraph 24.

10 — See *D'Hoop*, paragraph 27 et seq.

11 — *Collins*, paragraph 63.

12 — *Ioannidis*, paragraph 22.

23. Neither the fact that the allowance is subject to the condition of having been a student nor the fact that Ms Prete is the spouse of a Belgian national warrants an assessment of this case in the light of the freedom of movement for persons. According to the settled case-law of the Court, in so far as there is a circumstance which entitles the claimant to an economic freedom, such as the freedom of movement for workers, the latter takes precedence over the freedom of movement for persons provided for in Article 18 EC.

24. There is nevertheless a further point which requires clarification, inasmuch as Ms Prete held several jobs before applying for the tideover allowance, albeit of a very limited overall duration: one week and one day. It is appropriate to ask, therefore, whether that circumstance makes Ms Prete a 'worker' rather than a 'job seeker', which fact would justify a different interpretation of the rules applicable to this case.

25. In this regard, the Court, which has on numerous occasions emphasised the independent nature of the concept of 'worker', excludes from that concept activities of a 'marginal and ancillary' [13] nature. In *Raulin*, the Court held that it was necessary to take account of the irregular nature and limited duration of the services actually performed under a contract for occasional employment. [14] Although it is ultimately for the referring court to assess, in the light of the facts of the case, whether the activity in question is merely occasional, the evidence adduced in these preliminary ruling proceedings provides a sufficient basis on which to give an answer to the referring court and to conclude that Ms Prete is not a 'worker' within the strict sense of the EC Treaty.

26. In those circumstances, and in the light of the occasional, and therefore marginal and ancillary, nature of the activity carried out by Ms Prete in 2002, I consider that she must be treated specifically as a job seeker, with the consequences which that classification entails.

B – *The existence of a restriction on the freedom of movement for workers in the case of a job seeker*

27. It is appropriate now to examine whether a national provision which makes the grant of a tideover allowance subject to the requirement of having studied in Belgium for at least six years during the period of primary or secondary education constitutes a restriction on the freedom of movement for workers, as applied, in this case, to a job seeker.

28. Now that it has been established that Ms Prete is a job seeker and not a worker, it is advisable to carry out a specific analysis in the light of the provisions and case-law applicable to that type of person.

29. It is also important to ask whether Regulation No 1612/68, in particular Articles 3 and 7 thereof, has any impact on the present proceedings, which question must be answered in the negative. Indeed, those provisions guarantee the principle of non-discrimination against workers and against their family members as regards access to 'social advantages'. [15] However, the basis for that guarantee, in the case of job seekers, is to be found not in that regulation but in the Treaty itself. Prior to *Collins*, the Court had excluded that category of persons from access to social benefits. Moreover, although, in that judgment, it modified its position in the light of the Treaty provisions on citizenship, it did not rule specifically on the impact of those provisions on Regulation No 1612/68. [16] Consequently, the right claimed by Ms Prete is based directly on Article 39 EC, interpreted in the light of the provisions on citizenship of the European Union.

13 — See, inter alia, Case 53/81 *Levin* [1982] ECR 1035, paragraph 17; Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraph 21; and Case C-109/04 *Kranemann* [2005] ECR I-2421, paragraph 12. In this regard, see the Opinion of Advocate General Ruiz-Jarabo Colomer in Joined Cases C-22/08 and C-23/08 *Vatsouras and Koupatantze* [2009] ECR I-4585, points 23 to 29.

14 — Case C-357/89 [1992] ECR I-1027, paragraph 14.

15 — See *Deak*, paragraph 24.

16 — *Collins*, paragraphs 60 and 61. Paragraph 3 of the operative part of that judgment also sheds light on its scope, since it expressly limits the basis for the right [to equal treatment] to Article 39 EC alone.

30. Accordingly, it being established that the matter at issue is to be assessed against the exclusive parameter of the Treaty, it should be recalled that Article 39(2) EC provides for 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. Of course, that prohibition also covers job seekers and applies to both direct and indirect discrimination based on nationality. [17] Since *Collins*, in which the Court departed from its previous case-law, that provision has also prohibited any form of discrimination as regards access to benefits to facilitate entry to the labour market.

31. In this case, point 2 of Article 36(1) of the Royal Decree of 25 November 1991, in particular point (j) thereof, provides that eligibility for the tideover allowance is subject to the prior completion of at least six years' studies at an educational establishment run, approved or subsidised by a community. That condition applies even to job seekers who have completed their studies in another Member State but whose qualifications have been recognised in Belgium, as is the case with Ms Prete.

32. As long ago as *D'Hoop*, the Court, in reference to a Belgian national who had completed her studies in France, held that the condition stipulating study at a Belgian educational establishment 'thus places at a disadvantage certain of its nationals simply because they have exercised their freedom to move in order to pursue education in another Member State'. [18] Shortly afterwards, in *Ioannidis*, this time in reference to a national of another Member State who had applied for a tideover allowance in order to gain entry to the Belgian labour market, the Court held that the condition stipulating study at a Belgian establishment 'could place, above all, nationals of other Member States at a disadvantage'. [19] Continuing that line of reasoning, it reached the conclusion that 'that condition [stipulating study at a Belgian establishment] can be met more easily by Belgian nationals'. [20]

33. The Kingdom of Belgium amended its national legislation as a result of *D'Hoop* and *Ioannidis* but introduced the condition requiring six years' studies at a Belgian establishment, which continues to place Belgian nationals at an advantage over nationals of other Member States. Both the condition in itself and its extensive duration represent a disincentive to nationals of other Member States seeking to exercise freedom of movement.

34. Consequently, in the light of the arguments set out above, I consider that point 2 of Article 36(1) of the Royal Decree of 25 November 1991, in particular point (j) thereof, when applied to a job seeker applying for a tideover allowance, constitutes a restriction on the freedom of movement for workers set out in Article 39 EC.

35. It now remains to be clarified whether the restriction contained in the Belgian legislation is justified in the light of the EC Treaty, the issue with which the second question referred by the Cour de cassation is concerned.

C – *Justification for the restriction*

36. As its second and final question, the referring court asks whether facts such as the duration of Ms Prete's periods of residence in Belgium, her marriage to a Belgian national and her registration as a job seeker with the Belgian authorities constitute evidence sufficient to demonstrate that the restriction on the freedom of movement for workers is not justified. In short, it asks the Court of Justice to what precise extent a person must be integrated into the host State in order to secure entitlement to the tideover allowance.

17 — See, inter alia, Case 152/73 *Sotgiu* [1974] ECR 153, paragraph 11; Case C-209/03 *Bidar* [2005] ECR I-2119, paragraph 51; and *Ioannidis*, paragraph 26.

18 — Paragraph 34.

19 — Paragraph 28.

20 — Ibid.

37. As the Commission correctly pointed out, the Court has repeatedly referred to the requirement that a person who exercises freedom of movement in the European Union must be integrated in order to secure entitlement to social benefits, but it is important to differentiate between the various specific areas in which the Court has given its rulings. Thus, its case-law relating to students, set out in judgments such as *Bidar*,[21] *Förster*,[22] *Morgan and Bucher* [23] and *Commission* v *Netherlands*,[24] refers to the integration required of persons who exercise freedom of movement with a view to studying in another Member State. Logically, the criterion developed by the Court in those circumstances is not automatically extendable to job seekers, whose intentions are strictly economic and connected with the objectives of a freedom of movement that is distinct from that applicable to students. Consequently, it is important to define the scope of the Court's case-law and to identify the integration criteria specifically applicable to job seekers applying for the tideover allowance.

38. The judgment that serves as a point of reference in this regard is, as I have already said, that delivered in *Collins*.[25] In that case, the Court modified its previous case-law and, as a result of the entry into force of the provisions governing European Union citizenship, came to the conclusion that an allowance to facilitate access to the labour market forms part of the national measures that are subject to the freedom of movement for workers as applied to job seekers. In *Collins*, the Court held that making access to that allowance subject to a nationality requirement constituted an obstacle to the freedom of movement for workers, but went on to say that such a measure is justified 'if it is based on objective considerations that are independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions'.[26]

39. Among the objectives legitimately pursued by States, the Court emphasised in that judgment the existence of 'a connection between persons who claim entitlement to such an allowance and its employment market [that of the host Member State]'.[27] Consequently, the case-law allows a host State to require job seekers from other Member States to demonstrate a degree of integration. This may be the integration that exists between the job seeker and the labour market, but it may also be the connection between the job seeker and the host society, whether through the existence of family or emotional ties with nationals of the host State or through a prolonged period of residence.

40. If those criteria are applied to the present case, it becomes apparent, first, that the disputed measure, a condition stipulating at least six years' studies at a Belgian educational establishment, is 'objective' and 'independent of the nationality of the persons concerned'. It is a regulated condition which, moreover, does not in itself make any distinction between Belgian nationals and non-Belgian nationals, so that it satisfies the first of the requirements set out in the aforementioned case-law.

41. However, the more questionable issue is that relating to the proportionality of the disputed measure, which must now be analysed in the light of the Court's extensive case-law.

21 — Cited above.

22 — Case C-158/07 [2008] ECR I-8507.

23 — Joined Cases C-11/06 and C-12/06 [2007] ECR I-9161.

24 — Case C-542/09 [2012] ECR.

25 — Cited above.

26 — Paragraph 66.

27 — Paragraph 71.

42. It is true that a condition stipulating a minimum of six years' studies at a Belgian educational establishment operates as an objective requirement the purpose of which is to ensure that a person applying for a tideover allowance has a sufficient connection with the Belgian State. However, in order for the measure to be proportionate to the objectives pursued, it must be appropriate, necessary and proportionate in the strict sense. Although I have just stated that the measure serves objectively to ensure integration (and therefore passes the appropriateness test), its necessity and strict proportionality are more doubtful.

43. As early as *D'Hoop*, the Court, in the context of the same allowance as that in this case, rejected a condition of access based on the place in which the diploma of completion of secondary education was obtained. The Court considered that such a measure was 'too general and exclusive' in nature, in so far as '[i]t 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'.

44. Viewed from that perspective, a condition stipulating the length of study in Belgium amounts de facto to a residence requirement, since it is obvious that a minor will complete his studies in the Member State in which he resides. On the other hand, that condition is also similar to the conditions which the Court has already had occasion to consider (and censure) in *D'Hoop* and *Ioannidis*, since a six-year period of study is sufficiently long to benefit, in the vast majority of cases, students who complete their studies in Belgian educational establishments. It is, therefore, an even more onerous measure than that criticised by the Court in the past, since it not only requires a de facto connection with a Belgian educational establishment but also extends the length of that connection over a period which is clearly excessive.

45. After all, a prior connection of six years for job seekers is a very long period of time, longer, in fact, than that required of economically inactive persons, which is of course five years.[28] The Court has endorsed that temporal connection in the case of students, but has also emphasised that it is a condition which is applicable only to persons who do not carry out an economic activity.[29]

46. The case of job seekers is different. While it is true that they are not economically active individuals in the strict sense, it is indisputable that the Treaties confer on them, simply by virtue of the fact that they seek employment, a status similar to that of persons moving on the basis of economic criteria. As I have already mentioned in point 30 of this Opinion, since *Collins*, the Court has extended the protection enjoyed by jobseekers to the area of benefits as well, thus ensuring that such persons are not discriminated against when applying for benefits intended to facilitate their entry to the labour market.

47. What we have here, therefore, is an excessively general condition which can readily be replaced with less onerous alternative requirements, which fact leads me to conclude that the measure in question is disproportionate. That assessment is confirmed by the circumstances of this particular case.

48. According to the information in the order for reference, Ms Prete has resided in Belgium since 2001, when she married a Belgian national. Two years later, and after registering at the relevant employment office, she applied for the tideover allowance. In spite of the fact that she had the required qualifications, had resided lawfully in Belgium for two years, had a connection by marriage with a Belgian national and was registered with the Belgian employment service, can it be said that the

28 — See Article 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158. p. 77), as well as *Förster*.

29 — *Commission* v *Netherlands*, paragraphs 60 and 61.

applicant does not have a sufficiently close connection with the labour market and with the society of the host State? If, in circumstances such as those at issue here, the Belgian legislation considers such a person not to be sufficiently integrated, it seems reasonable to conclude, from the point of view of its justification, that the legislation is contrary to the principle of proportionality.

49. Moreover, the fact that Ms Prete is married to a Belgian national introduces an additional element, which the Commission was right to emphasise. A national measure which denies access to the tideover allowance to persons residing lawfully in Belgium who have married a national of that country constitutes a measure which fails to take into consideration the family situation of the job seeker. Such circumstances are evidence of the connections that may have been established in the host State and, although, in some cases, they are confined, for example, to the existence of a mere personal connection, in others, they may, if due account is not taken of them, constitute a fact entailing an infringement of the fundamental right to a private life, which right the Court has recognised specifically in the context of the freedom of movement for persons.[30] It is clear that the condition at issue in these proceedings allows neither the Belgian authorities nor the Belgian courts to take that circumstance into consideration. Consequently, in so far as it makes it impossible to take into account personal circumstances such as those referred to above, I take the view that the measure provided for in point 2(j) of Article 36(1) of the Royal Decree of 25 November 1991 is contrary to the principle of proportionality and, therefore, does not justify a restriction on the freedom of movement for workers.

50. In the light of all the foregoing, I consider that a condition stipulating a minimum of six years' studies at a Belgian educational establishment is a disproportionate restriction, the general nature of which makes it impossible to take into consideration the specific circumstances of each case and, at the same time, excludes other less restrictive alternatives which would allow the objective pursued by the Belgian authorities to be attained just as effectively.

VI – Conclusion

51. In the light of the arguments set out above, I propose that the Court should answer the questions referred for a preliminary ruling by the Cour de cassation as follows:

Article 39 EC must be interpreted as meaning that it precludes a measure, such as that provided for in point 2(j) of Article 36(1) of the Royal Decree of 25 November 1991 on employment, which makes the grant of the tideover allowance to a job seeker who is a national of another Member State subject to an absolute requirement that that person has completed at least six years' studies at an educational establishment run, approved or subsidised by a Belgian community.

30 — See, inter alia, Case C-60/00 *Carpenter* [2002] ECR I-6279, paragraphs 41 and 42.