

COURT OF JUSTICE

Action brought on 6 February 1987 by the Commission of the European Communities against the Kingdom of Belgium

(Case 42/87)

(87/C 73/04)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 6 February 1987 by the Commission of the European Communities, represented by its Legal Adviser, J. Griesmar, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

— Declare that, by failing to exempt students who are nationals of Member States other than Belgium and the Grand Duchy of Luxembourg from the category of students 'ineligible for financing' by the State, namely the students referred to in the second subparagraph, under (k), of Article 2 (1) of the Royal Decree of 21 July 1982, as amended, who apply for registration for and admission to courses provided by a higher education establishment not of university level which has already filled the '2 % quota' set in respect of vocational training by imposing conditions involving discrimination on grounds of nationality, the Kingdom of Belgium has failed to fulfil its obligations under Article 7 of the EEC Treaty and, specifically as regards the children of migrant workers who are either no longer living in Belgium or are deceased, under Article 12 of Regulation (EEC) No 1612/68⁽¹⁾;

— Order the Kingdom of Belgium to pay the costs.

Contentions and main arguments adduced in support:

Training provided by Belgian higher education establishments not of university level constitutes vocational training, access to which is governed by the EEC Treaty. The Belgian rules at issue:

(a) (in so far as they apply to students who are nationals of a Member State other than Belgium who went to that country independently solely in order to undergo or complete their vocational training at a higher education establishment not of university level) have a discriminatory effect to the detriment of some of those students (namely those 'ineligible for financing' by the State who are denied the right to register at an establishment which has filled the 2 % quota) and are therefore contrary to Article 7 of the EEC Treaty;

(b) (in so far as they apply to students who are children of migrant workers formerly employed in Belgium but no longer resident there) are also contrary to Article 12 of Regulation (EEC) No 1612/68.

Action brought on 17 February 1987 by Engelina Lucas against Commission of the European Communities

(Case 47/87)

(87/C 73/05)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 17 February 1987 by Engelina Lucas, residing at Tervuren (Belgium), represented by V. Biel, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18a Rue des Glacis.

The applicant claims that the Court should:

1. Declare the application to be admissible;
2. Require the Commission to produce the applicant's personal file;
3. Declare that the rejection by implication of the applicant's complaint is void;
4. Declare that the applicant is to be regarded as having been recruited;
5. Declare therefore, that Article 46 of the Staff Regulations is inapplicable;
6. Remit the latter to the appointing authority to carry out the judgment;
7. Order the Commission to pay the whole of the costs.

Contentions and main arguments adduced in support:

The classification of the applicant in Grade L/A 7, Step 1, involves a misapplication of the Staff Regulations and, in particular, of Articles 45 and 46 and Articles 29 to 32 thereof.

Article 45 (2) provides strictly that officials may be transferred from one category to another only on the basis of a competition. Since that provision therefore formally and absolutely precludes transfer from one category to another by promotion, it was also intended to rule out the automatic application of the rules of Article 46 on seniority and steps.

In this case, the applicant was transferred from B 3 to L/A 7, which, by definition, cannot constitute 'promotion'. Accordingly, the applicant must have been recruited, in which case Article 32 must apply. Under that Article the applicant might be eligible for additional

⁽¹⁾ OJ, English Special Edition 1968 (II), p. 475.