directed at consumers in the form of advertisements in the press, on the radio and on television, the direct mailing of unsolicited material or the placing of posters on the public highway is liable to impede access to the market by products from other Member States more than it impedes access by domestic products, with which consumers are instantly more familiar.

22. The information provided by the Consumer Ombudsman and the Swedish Government concerning the relative increase in Sweden in the consumption of wine and whisky, which are mainly imported, in comparison with other products such as vodka, which is mainly of Swedish origin, does not alter that conclusion. First, it cannot be precluded that, in the absence of the legislation at issue in the main proceedings, the change indicated would have been greater; second, that information takes into account only some alcoholic beverages and ignores, in particular, beer consumption.

23. Furthermore, although publications containing advertisements may be distributed at points of sale, Systembolaget AB, the company wholly owned by the Swedish State which has a monopoly of retail sales in Sweden, in fact only distributes its own magazine at those points of sale.

24. Last, Swedish legislation does not prohibit 'editorial advertising', that is to say, the promotion, in articles forming part of the editorial content of the publication, of products in relation to which the insertion of direct advertisements is prohibited. The Commission correctly observes that, for various, principally cultural, reasons, domestic producers have easier access to that means of advertising than their competitors established in other Member States. That circumstance is liable to increase the imbalance inherent in the absolute prohibition on direct advertising.

25. A prohibition on advertising such as that at issue in the main proceedings must therefore be regarded as affecting the marketing of products from other Member States more heavily than the marketing of domestic products and as therefore constituting an obstacle to trade between Member States caught by Article 30 of the Treaty.

[...]

Free movement of persons

N.B.: Important Community legislation in the area of free movement of persons is now containred in Council Directive 2004/38 – the Citizenship Directive which has inter alia repealed and replaced numerous earlier Directives. See also **Council Regulation 1612/68** on freedom of movement for workers within the Community (parts of which are still in force).

Workers and worker's families

➢ Case C-357/89 Raulin

Raulin v Minister van Onderwijs en Wetenschappen
Reference for a preliminary ruling: College van Beroep Studiefinanciering - Netherlands
[1992] ECR I-1027.

Judgment:

1 By order of 24 November 1989, which was received at the Court on 27 November 1989, the College van Beroep Studiefinanciering (Study Finance Tribunal) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty seven questions on the interpretation of Articles 7, 48 and 128 of that EEC Treaty and on interpretation of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).

2 Those questions were raised in the course of proceedings brought by Ms V.J.M. Raulin, the plaintiff in the main proceedings, against the Minister van Onderwijs en Wetenschappen (Minister for Education and Science), the defendant in the main proceedings, concerning a request for study finance submitted by the plaintiff pursuant to the Wet op de Studiefinanciering (Law on Study Finance of 24 April 1986, hereinafter referred to as the'WSF').

3 It is apparent from the documents before the Court that the plaintiff, who is of French nationality, came to settle in the Netherlands at the end of 1985 without registering at the Aliens' Office or applying for a residence permit. In March 1986 she concluded, for the period running from 5 March to 3 November 1986, a contract of employment known as an'oproepcontract'('on-call contract') under which she worked for 60 hours as a waitress in the period between 5 and 21 March 1986. On 1 August 1986 she began a full-time course of study in visual arts at the Gerrit Rietveld Academie in Amsterdam.

4 On 5 December 1986 the plaintiff submitted, pursuant to the WSF, an application for study finance to the Minister van Onderwijs en Wetenschappen. Her application was rejected for the period from October 1986 to December 1987 on the ground, in particular, that pursuant to the WSF she could not be treated as a Netherlands national because she did not possess a residence permit.

5 On 25 September 1987 the Minister rejected the plaintiff' s objection against that refusal, whereupon she appealed to the College van Beroep Studiefinanciering (a tribunal hearing disputes concerning the award of study finance pursuant to the WSF) against that rejection. In essence, the plaintiff contended before that court that her employment contract conferred upon her the status of worker within the meaning of Article 48 of the EEC Treaty and that consequently she was entitled to assistance granted to cover the costs of study and maintenance pursuant to Article 7(2) of Regulation (EEC) No 1612/68. In the alternative, she maintained that, at all events, she was entitled, pursuant to the general prohibition of

discrimination set out in Article 7 of the EEC Treaty to that proportion of the study finance covering the enrolment and tuition fees.

6 Taking the view that the case before it raised questions relating to the interpretation of Community law, the College van Beroep Studiefinanciering stayed the proceedings pending a preliminary ruling by the Court on the following questions:

'1. Does the nature of the activities of an 'oproepkracht' (' on-call worker') prevent such a person from being considered to be a worker within the meaning of Article 48 of the EEC Treaty?
2. Is the fact that a person has exercised or sought to exercise an economic activity for only a short time, for example in the framework of an 'oproepcontract' (' on-call contract'), relevant to the answer to the question whether the activities are on such a small scale as to be regarded as purely marginal and ancillary so that the provisions on freedom of movement for workers do not apply?
3. In assessing whether a person is a worker within the meaning of Article 48 of the EEC Treaty, must account be taken of all the activities which the worker has pursued within the European Communities or solely of the activities most recently pursued in the host Member State?

4. May a migrant worker who (voluntarily or involuntarily) has given up his previous occupation in order to study to obtain new skills to further his career retain his status as a worker within the meaning of Article 7(2) of Regulation (EEC) No 1612/68, in spite of the fact that there is no link between his previous activities and the chosen course of study, and may he on that basis claim the same social advantages as those available to a worker with the same status who is a national of the host State?
5. Does the requirement that a migrant student have a residence permit in order to qualify for a system of allowances for the cost of studies in a situation in which no such requirement is imposed on students of the host State constitute discrimination prohibited under Article 7 of the EEC Treaty?
6. Does a national of a Member State who is admitted to vocational training in another Member State derive from the relevant provisions of Community law a right of residence in that other Member State in order to be able to undertake vocational training there? If so, may that person exercise the right of residence whether or not a residence permit has been issued by that other Member State? Is it possible for a residence permit to be granted by the national authorities of that other Member State subject to restrictive conditions as regards the purpose and duration of the stay and having sufficient resources to cover maintenance costs?
7. Does a system of study finance (such as the Netherlands WSF), in which no distinction is made between an allowance for the cost of access to the course and an allowance for maintenance costs, fall wholly or in part within the scope of the EEC Treaty (and in particular Articles 7 and 128 thereof)?
If it falls within the scope thereof only in part, does the fact that the system of study finance does not make the aforesaid distinction mean that a national of another Member State who, for example, goes to undertake vocational training in the Netherlands should be granted the entire amount of the allowance towards the education contribution (as for example referred to in Article 12(1)(c) of the Netherlands WSF) or only (a proportionate part of) the amount to which the person concerned would otherwise have been entitled if the provisions of the

WSF concerning the amount of study finance to be granted were applied to him in their entirety?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The concept of worker (first four questions)

8 By its first question, the national court is essentially asking, whether, taking account of the conditions of employment, a worker employed under an oproepcontract can be regarded as a worker within the meaning of Article 48 of the EEC Treaty.

9 It is apparent from the reference for a preliminary ruling that under Netherlands law an oproepcontract is a means of recruiting workers in sectors, such as the hotel trade, where the volume of work is subject to seasonal variations. Under such a contract, no guarantee is given as to the hours to be worked and, often, the person involved works only a very few days per week or hours per day. The employer is liable to pay wages and grant social advantages only in so far as the worker has actually performed work. Furthermore, the Netherlands Government stated at the hearing that under such an oproepcontract the employee is not obliged to heed the employer' s call for him to work.

10 It should be recalled at the outset that the Court has consistently held that the concept of worker has a Community meaning and must not be interpreted in a restrictive manner. Nevertheless, in order to be regarded as a worker, a person must perform effective and genuine activities to the exclusion of activities on such a small scale as to be purely marginal and ancillary. The essential characteristic of an employment relationship is that for a certain period a person performs services for and under the direction of another person in return for which he receives remuneration (see in particular the judgment in Case 197/86 *Brown v Secretary of State for Scotland* [1988] ECR 3205, paragraph 21). In this context, the nature of the legal relationship between the employee and the employer is not decisive in regard to the application of Article 48 of the EEC Treaty (see the judgment in Case 344/87 *Bettray v Staatssecretaris van Justitie* [1989] ECR 1621, paragraph 16).

11 The answer to the first question must therefore be that a worker employed under an oproepcontract is not precluded by reason of his conditions of employment from being regarded as a worker within the meaning of Article 48 of the EEC Treaty.

12 By its second question, the national court wishes to know whether the fact that a person has exercised an economic activity for only a short period means that such activity is purely marginal and ancillary, with the result that the person exercising that activity cannot be regarded as a worker.

13 It should be recalled that whilst part-time work is not excluded from the field of application of the rules on freedom of movement for workers, those cover only the pursuit of effective and genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary (judgment in Case 53/81 *Levin v Staatssecretaris van Justitie* [1982] ECR 1035, paragraph 17). It is up to the national courts to make the necessary findings

of fact in order to establish whether the person concerned can be considered to be a worker within the meaning of that case-law.

14 The national court may, however, when assessing the effective and genuine nature of the activity in question, take account of the irregular nature and limited duration of the services actually performed under a contract for occasional employment. The fact that the person concerned worked only a very limited number of hours in a labour relationship may be an indication that the activities exercised are purely marginal and ancillary. The national court may also take account, of appropriate, of the fact that the person must remain available to work if called upon to do so by the employer.

15 The answer to the second question must therefore be that the duration of the activities pursued by the person concerned is a factor which may be taken into account by the national court when assessing whether those activities are effective and genuine or whether, on the contrary, they are on such a small scale as to be regarded as purely marginal and ancillary.

16 By its third question the national court wishes to know whether it must take account, when assessing whether the person concerned is a worker, of activities other than those most recently pursued in the host Member State.

17 With regard to the activities pursued in Member States other than the host State, it should be noted that the aim of Regulation (EEC) No 1612/68 is to facilitate freedom of movement for workers and, to this end, to ensure integration of workers in the host country. The status of migrant worker and, consequently, the right to equality of treatment with national workers, is acquired only through the occupational activities exercised in the host country.

18 As for the occupational activities performed in the host Member State, it should be pointed out that in the field of assistance granted for university education, the Court has already held that, except in the case of involuntary unemployment, retention of the status of worker is conditional on there being a relationship between the previous occupational activity and the studies pursued (judgment in Case 39/86 *Lair v Universitaet Hannover* [1988] ECR 3161, paragraph 37). It is for the national court to assess whether all the occupational activities previously exercised in the host Member State, regardless of whether or not they were interrupted by periods of training or retraining, bear a relationship to the studies in question.

19 The answer to the third question must therefore be that in assessing whether a person is a worker, account should be taken of all the occupational activities which the person concerned has pursued within the territory of the host Member State but not the activities which he has pursued elsewhere in the Community.

20 By its fourth question the national court wishes to know whether a migrant worker can retain his status as a worker, and thus claim the advantages guaranteed by Article 7(2) of Regulation (EEC) No 1612/68, if he leaves his employment in order to pursue full-time studies in spite of the fact that there is no link between his previous activities and the chosen course of study.

21 As the Court has already held, a national of another Member State who has undertaken university studies in the host State leading to a professional qualification, after having engaged

in occupational activity in that State, must be regarded as having retained his status as a worker provided that there is a link between the previous occupational activity and the studies in question (see, in particular, the aforementioned judgment in *Lair*, paragraph 39). However, as was stated in paragraph 18 above, this condition cannot be imposed on a migrant worker who has involuntarily become unemployed and is obliged by conditions on the labour market to undertake vocational retraining in another field of activity.

22 The answer to the fourth question must therefore be that a migrant worker who leaves his job and begins a course of full-time study which has no link with his previous occupational activities does not retain his status as a migrant worker for the purposes of Article 48 of the EEC Treaty, except in the case of a migrant worker who becomes involuntarily unemployed.

The scope of Articles 7 and 128 of the EEC Treaty (the last three questions)

23 The national court has submitted the second group of questions in the event that the plaintiff in the main proceedings has not acquired or has not retained the status of worker. It is apparent from the documents before the Court that, in such an event, the plaintiff seeks to claim, in the alternative, that part of the financial assistance which is granted to cover enrolment and tuition fees. The questions need to be examined in the reverse order to that in which they have been submitted.

24 By its seventh question, the national court wishes to know whether the first paragraph of Article 7 of the EEC Treaty applies to a study finance system which makes no distinction between an allowance for the cost of access to the course and an allowance for maintenance costs.

25To begin with, it must be recalled that the first paragraph of Article 7 of the EEC Treaty applies to assistance granted by a Member State to its nationals for the purposes of university studies only in so far as such assistance is intended to cover enrolment and other fees, in particular tuition fees, charged for access to education (see the abovementioned judgments in *Lair*, paragraph 16, and *Brown*).

26 The Netherlands Government contends that the basic grant accorded pursuant to the WSF is in no way connected with the enrolment fee and the tuition fee payable in a given case. Any attempt to break down the basic grant according to the various cost elements would be artificial and alien to the philosophy of the WSF, which is to make a contribution towards the student's maintenance costs and therefore constitutes an instrument of social policy, which falls within the competence of the Member States.

27 This argument cannot be upheld. As the Netherlands Government admits, the basic grant at issue is made up of various elements, including the cost of access to the course. The fact that the aim of that grant is to allow students to enjoy a large degree of financial independence does not prevent the part intended to cover enrolment and tuition fees from being considered as falling within the scope of the EEC Treaty.

28 Students from another Member State have a right to the same treatment as is accorded to students who are nationals of the host Member State, in so far as the assistance granted is intended to cover enrolment fees and other costs of access to the course, regardless of how

such assistance is calculated or the underlying philosophy. It is for the national courts to determine what proportion of the financial assistance granted is intended to cover the costs of access to vocational training.

29 The answer to the seventh question must therefore be that the first paragraph of Article 7 of the EEC Treaty applies to financial assistance granted by a Member State to its own nationals in order to allow them to follow a course of vocational training in so far as that assistance is intended to cover the costs of access to the course.

30 By its sixth question the national court wishes to know whether a national of a Member State who is admitted to a course of vocational training in another Member State derives from Community law a right of entry and residence in that other Member State in order to pursue that vocational training.

31 This question has been submitted against the background of the case-law of the Court to the effect that the conditions of access to vocational training fall within the scope of the EEC Treaty and, consequently, the imposition on students who are nationals of other Member States of a pecuniary charge as a condition of access to vocational training, where the same fee is not imposed on national students, constitutes discrimination on grounds of nationality contrary to Article 7 of the EEC Treaty (see in particular the judgment in Case 293/83 *Gravier v City of Liège* [1985] ECR 593).

32 In this respect, the Netherlands Government, supported by the United Kingdom and the German Government, contended in essence that the judgment in Gravier referred only to enrolment and tuition fees and formed no basis for deducing from Articles 7 and 128 of the EEC Treaty that the formal admission of a national of a Member State to a vocational training course in another Member State automatically conferred on that person the right of residence in the latter Member State. The United Kingdom also maintained that where the EEC Treaty expressly conferred a right of residence, it made that right subject to certain conditions. Since an implicit right of residence conferred by Article 7 would not be subject to any express qualifications, it could, according to the United Kingdom, be deduced therefrom that that article confers no right of entry or residence.

33 The Commission, on the other hand, maintained that the right to be admitted to a course of vocational training on the same conditions as nationals would be illusory if the student enjoying that right was not also authorized to reside on the territory of the Member State where the vocational training is given. It deduced from this that the right of residence is a corollary to that right of admission.

34 The Commission' s argument must be accepted. The right to equality of treatment regarding the conditions of access to vocational training applies not only to the requirements laid down by the educational establishment in question, such as enrolment fees, but also any measure that may prevent the exercise of that right. It is clear that a student admitted to a course of vocational training might be unable to attend the course if he did not have a right of residence in the Member State where the course takes place. It follows that the principle of non-discrimination with regard to conditions of access to vocational training deriving from Articles 7 and 128 of the EEC Treaty implies that a national of a Member State who has been

admitted to a vocational training course in another Member State enjoys, in this respect, a right of residence for the duration of the course.

35 By the second part of its sixth question the national court wishes to know whether that right of residence can be exercised whether or not a residence permit has been issued.

36 In this respect the Court has consistently held that a residence permit is a document serving to prove the individual position of a national of another Member State with regard to provisions of Community law. However, the issue of such a permit does not create the rights guaranteed by Community law and the lack of a permit cannot affect the exercise of those rights (see in particular the judgments in Case 48/75 *Royer* [1976] ECR 497, paragraph 33, and in Joined Cases 389/87 and 390/87 *Echternach and Moritz v Minister van Onderwijs en Wetenschappen* [1989] ECR 723, paragraph 25).

37 It follows that the right of entry and of residence which a student who is a national of a Member State derives from Community law cannot be made conditional on the granting of a residence permit.

38 By the third part of its sixth question the national court wishes to know whether, and to what extent, the host Member State may make the right of residence subject to restrictive conditions.

39 In this regard it must be noted that since the right of residence of a student who is a national of a Member State is merely a corollary to the right to non-discriminatory access to vocational training and that right of residence is therefore confined to what is necessary to allow the person concerned to pursue vocational training. Consequently, the right of residence can be limited in time to the duration of the studies pursued and granted only for the purpose of such studies. Furthermore, the right of residence can be made subject to conditions deriving from the legitimate interests of the Member State, such as the covering of maintenance costs and health insurance, to which the principle of non-discriminatory access to vocational training does not apply.

40 The answer to the sixth question must therefore be that a national of a Member State who has been admitted to a course of vocational training in another Member State derives from Community law a right to reside in that other Member State for the purpose of following that course and for the duration thereof. That right may be exercised whether or not the host Member State has issued a residence permit. The right of residence in question may nevertheless be made subject to certain conditions to which the principle of non-discriminatory access to vocational training does not apply.

41 By its fifth question the national court wishes to know whether the fact that a Member State requires a student, who is a national of another Member State, to have a residence permit in order to qualify for study finance, where no such requirement is imposed on national students, constitutes discrimination prohibited under Article 7 of the EEC Treaty.

42 In this respect it follows from the abovementioned judgments in *Royer* and *Echternach* and Moritz that, in so far as the person involved derives a right of residence from Community law, the residence permit does not create that right. Accordingly, Article 7 of the EEC Treaty

precludes a claim for a financial contribution towards enrolment fees and other costs of access to vocational training which fall within the scope of the EEC Treaty from being made subject to possession of a residence permit.

43 The answer to the fifth question must therefore be that Article 7 of the EEC Treaty precludes a Member State from requiring a student who is a national of another Member State and enjoys, under Community law, a right to reside in the host Member State to possess a residence permit in order to qualify for study finance.

Costs
[Not reproduced]

On those grounds,

The Court

in answer to the questions referred to it by the College van Beroep Studiefinanciering, by order of 27 November 1989, hereby rules:

1. A worker employed under an oproepcontract is not precluded by reason of his conditions of employment from being regarded as a worker within the meaning of Article 48 of the EEC Treaty;
2. The duration of the activities pursued by the person concerned is a factor which may be taken into account by the national courts when assessing whether those activities are effective and genuine or whether, on the contrary, they are on such a small scale as to be purely marginal and ancillary;

3. In assessing whether a person is a worker, account should be taken of all the occupational activities which the person concerned has pursued within the territory of the host Member State but not the activities which he has pursued elsewhere in the Community;

4. A migrant worker who leaves his job and begins a course of full-time study which has no link with his previous occupational activities does not retain his status as a migrant worker for the purposes of Article 48 of the EEC Treaty, except in the case of a migrant worker who becomes involuntarily unemployed;

5. The first paragraph of Article 7 of the EEC Treaty applies to financial assistance granted by a Member State to its own nationals in order to allow them to follow a course of vocational training in so far as that assistance is intended to cover the costs of access to the course;

6. A national of a Member State who has been admitted to a course of vocational training in another Member State derives from Community law a right to reside in that other Member State for the purpose of following that course and for the duration thereof. That right may be exercised whether or not the host Member State has issued a residence permit. The right of residence in question may nevertheless be made subject to certain conditions to which the principle of non-discriminatory access to vocational training does not apply;

7. Article 7 of the EEC Treaty precludes a Member State from requiring a student who is a national of another Member State and who enjoys, under Community law, a right to reside in the host Member State to possess a residence permit in order to qualify for study finance.

➢ **Case 32/75 Cristini**
Cristini v Société Nationale des Chemins de Fer Français
Reference for a preliminary ruling:Cour d'appel de Paris – France
[1975] ECR 1085.

Extracts from the judgment:

[...]

2. It emerges from the judgment making the reference that the main action is concerned with the refusal by the SNCF of the request for such a reduction card, submitted by an Italian national, residing in France, whose husband, also of Italian nationality, worked in France where he died as the result of an industrial accident, leaving his widow and four infant children.

3. The refusal of the request, on the ground of the appellant's nationality, was based on provisions of French law which state that the reduction card for large families is in principle reserved solely for French nationals and that it is only issued to foreigners whose country of origin has entered into a reciprocal Treaty with France on this particular subject, which is not the case so far as Italy is concerned.

4. The French law of 29 October 1921, as amended by the law of 24 December 1940 and the decree of 3 November 1961, provides that in families of three or more children under the age of eighteen years the father, the mother and each child shall, at the request of the head of the family, receive an identity card entitling them to certain reductions in the fares of the SNCF.

5. Article 20 of the code francais de la famille et de l'aide sociale (French family and social security code) (decree of 24 January 1956) provides that for the purpose of assisting families in bringing up their children, they shall be granted certain allowances and benefits, which are listed, albeit not exhaustively, and include, apart from family benefits provided for by the social security legislation and tax reductions or exemptions, reductions in the railway fares prescribed by the law concerned in the present case.

6. Although the court, when giving a ruling under Article 177, has no jurisdiction to apply the Community rule to a specific case, or, consequently, to pronounce upon a provision of national law, it may however provide the national court with the factors of interpretation depending on Community law which might be useful to it in evaluating the effects of such provision.

7. Article 7 (1) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 provides that a worker who is a national of a Member State may not, in the territory of the other

Member States, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work.

8. Under paragraph (2) of that Article he is to enjoy 'the same social and tax advantages as national workers '.

9. Under paragraph (3) of that Article he must also, 'by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retaining centres '.

10. The respondent in the main action has argued that the advantages thus prescribed are exclusively those attaching to the status of worker since they are connected with the contract of employment itself.

11. Although it is true that certain provisions in this Article refer to relationships deriving from the contract of employment, there are others, such as those concerning reinstatement and re-employment should a worker become unemployed, which have nothing to do with such relationships and even imply the termination of a previous employment.

12. In these circumstances the reference to 'social advantages' in Article 7 (2) cannot be interpreted restrictively.

13. It therefore follows that, in view of the equality of treatment which the provision seeks to achieve, the substantive area of application must be delineated so as to include all social and tax advantages, whether or not attached to the contract of employment, such as reductions in fares for large families.

[...]

➢ **Case C-379/87 Groener**

Anita Groener v Minister for Education and the City of Dublin Vocational Educational Committee

Reference for a preliminary ruling: High Court - Ireland.

[1989] ECR 3967.

Judgment:

1 By order of 3 December 1987, which was received at the Court on 21 December 1987, the High Court, Dublin, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Article 48(3) of the Treaty and Article 3 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) with a view to appraising the compatibility with those provisions of national rules making appointment to a permanent full-time post as a lecturer in public vocational education institutions conditional upon proof of an adequate knowledge of the Irish language.

2 The questions were raised in proceedings instituted by Anita Groener, a Netherlands national, against the Irish Minister for Education (hereinafter referred to as'the Minister') and the City of Dublin Vocational Educational Committee (hereinafter referred to as'the Education Committee'). The origin of the dispute was the Minister's refusal to appoint Mrs Groener to a permanent full-time post as an art teacher (Lecturer 1 (Painting)) employed by the Education Committee after she had failed a test intended to assess her knowledge of the Irish language.

3 It is apparent from the documents before the Court that, according to Section 23(1) and (2) of the Vocational Education Act 1930, the Minister's approval is required concerning the numbers, qualifications, remuneration and appointment of all employees of each vocational education committee. Exercising his powers under that Act, the Minister adopted, inter alia, two administrative measures.

4 First, pursuant to Memorandum V7, which entered into force on 1 September 1974, the competent committee may not appoint a person to a permanent full-time post in certain areas of teaching, including in particular art, unless that person holds the Ceard-Teastas Gaeilge (certificate of proficiency in the Irish language) or has an equivalent qualification recognized by the Minister.

In that memorandum, the Minister also reserved the right to exempt candidates from countries other than Ireland from the obligation to know Irish, provided that there were no other fully qualified candidates for the post.

5 Secondly, on 26 June 1979, the Minister issued Circular Letter 28/79. According to paragraphs 2 and 3 of that circular, for posts of Assistant Lecturer and Lecturer, Scale I, preference must be given to suitably qualified candidates who hold the Ceard-Teastas Gaeilge. Appointees who do not hold that certificate may be required to undergo a special examination in Irish consisting of an oral test (hereinafter referred to as'the examination'). The candidates concerned may not be appointed to a temporary or permanent full-time post until they have passed the examination. Paragraph 5 of the circular confirms that the provision in Memorandum V7, under which exemption from the linguistic qualification requirement may be granted in a case where there is no fully qualified candidate, is to continue to apply.

6 In September 1982, Mrs Groener was engaged on a temporary basis as a part-time art teacher in the College of Marketing and Design, Dublin, which is under the authority of the Education Committee. In July 1984, she applied for a permanent full-time post as a lecturer in art at that college. Since she did not have the Ceard-Teastas Gaeilge, Mrs Groener asked for an exemption, but that request was refused. The reason for the refusal was that there were other fully qualified candidates for the post. The Minister however gave his consent to her being appointed provided that she first passed the examination.

7 Mrs Groener followed a four-week beginners' course under the auspices of the Gael Linn Institute and took the examination during the last week of that course; however, she did not pass.

8 Steps subsequently taken both by Mrs Groener and by the College, her employer, to secure her engagement for the academic year 1985/86 as a full-time lecturer under a temporary

the Community (version consolidated by Council Regulation (EEC) No 2001/83 of 2 June 1983, Official Journal 1983 No L 230, p. 6), the Member States may limit to three months the period during which nationals from other Member States may stay in their territory in order to seek employment. According to the provision in question, an unemployed person who has acquired entitlement to benefits in a Member State and goes to another Member State to seek employment there retains entitlement to those benefits for a maximum period of three months.

20 That argument cannot be upheld. As the Advocate General has rightly observed, there is no necessary link between the right to employment benefit in the Member State of origin and the right to stay in the host State.

21 In the absence of a Community provision prescribing the period during which Community nationals seeking employment in a Member State may stay there, a period of six months, such as that as laid down in the national legislation at issue in the main proceedings, does not appear in principle to be insufficient to enable the persons concerned to apprise themselves, in the host Member State, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged and, therefore, does not jeopardize the effectiveness of the principle of free movement. However, if after the expiry of that period the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged, he cannot be required to leave the territory of the host Member State.

22 It must therefore be stated in reply to the questions submitted by the national court that it is not contrary to the provisions of Community law governing the free movement of workers for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged.

Costs
[Not reproduced]

On those grounds,

The Court,

in answer to the questions submitted to it by the High Court of Justice, Queen' s Bench Division, by order of 14 June 1989, hereby rules:

It is not contrary to the provisions of Community law governing the free movement of workers for the legislation of a Member State to provide that a national of another Member State who entered the first State in order to seek employment may be required to leave the territory of that State (subject to appeal) if he has not found employment there after six months, unless the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged.

Public policy and public service exemptions

Case 149/79 Commission v Belgium.
[1980] ECR 3881.

Facts:
A number of Belgium public undertakings and local authorities posted vacancies for posts as trainee locomotive drivers, loaders, plate-layers, shunters and signallers with the national railways, for unskilled workers with the local railways, as well as for hospital nurses, children's nurses, night watchmen, plumbers carpenters, electricians, garden hands, architects and supervisors with the City of Brussels and the Commune of Auderghem. Among the conditions required for recruitment the advertisements stipulated the possession of Belgium nationality.

Extracts from the judgment:

[...]

9. Article 48 (4) of the Treaty provides that 'the provisions of this Article shall not apply to employment in the public service'.

10. That provision removes from the ambit of Article 48 (1) to (3) a series of posts which involve direct of indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the state or of other public authorities. Such posts in fact presume on the part of those occupying them the existence of a special relationship of allegiance to the state and reciprocity of rights and duties which form the foundation of the bond of nationality.

[...]

- **Case 41/74 Van Duyn**

Van Duyn v Home Office
Reference for a preliminary ruling: High Court of Justice, Chancery Division, United Kingdom.
[1974] ECR 1337.

Facts:
The facts of the case are described on page 45. Having answered the first two questions of the national court, the European Court of Justice moved on to examine whether and to what extent the various requirements that Italian law imposed on lawyers can also be lawfully applied to Mr. Gebhard.

Extracts from the judgment:

Third question