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# EUROPEAN COMMUNITY LAW IN EDUCATION

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It appears surprising that the EC which is primarily an organisation aiming at economic objectives claims educational responsibilities at all. And, indeed, the only provision in the EEC Treaty which refers directly to education is Article 128. It permits the Council of Ministers by simple majority rule to "lay down general principles for implementing a common vocational training policy capable of contributing to the harmonious development both of the national economies and of the common market". A Council Decision of the year 1963 has set out these general principles, but in very vague terms only. The first general principle demands that every person has to receive adequate training, with due regard for freedom of choice of occupation, place of training and place of work.

This is, at least on first glance, not a strong legal basis for Community action in education. And even the Single European Act of 1986, while it incorporated new responsibilities of the EC into the Treaty, e.g. for research and technological development as well as environment, did not increase the Community's competence in the educational sphere.

Nevertheless it would be erroneous to assume that the possiblities of EC educational activities were exhaustively dealt with by Article 128. There are some

other - though indirect or hidden - educational competences implied in the EEC Treaty. Furthermore, the limited scope of Community powers in education can be and has been enlarged by extensive interpretation of the existing provisions.

Let me start with the "hidden competences". I mean in particular the right of freedom of movement for workers which - in the wording of Article 48 Paragraph 2 - 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. This freedom would be almost useless if migrant workers and their dependents, especially their children, were to have no access to the national educational institutions in the host country. Since the Treaty itself does not provide for such a right expressively, the Council of Ministers in 1968 passed a Regulation, based on Article 49, the Regulation No. 1612 on freedom of movement for workers within the Community. According to Article 7 (3) of this Regulation a migrant worker shall, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres; according to Article 12 of the Regulation his children shall be admitted to general educational, apprenticeship and vocational training courses under the same conditions as the nationals of the State.

All these provisions deal with access to given educational institutions; they do not affect the structure and the content of education itself. The beneficiaries of the right of equal access are the workers and their children only. By virtue of a series of notable judgements the European Court of Justice has expanded the range of beneficiaries step by step so that in the end all migrant

workers, past and present, and their families are guaranteed full equality of treatment with nationals of the host State.

Special attention deserves the Gravier judgement of 1985. The applicant in this case was a young French woman who had gone to Liège in Belgium to study strip cartoon art at the Académie des Beaux Arts. This was her only connection with Belgium; her parents lived in France. Thus she was neither a migrant worker nor a dependent of such a person. As a foreign student, she was charged a registration fee which was not imposed on Belgian citizens. She refused to pay and brought an action before the Belgian courts, arguing that the fee was discriminatory and therefore contrary to EEC law. The European Court, referred to by the Tribunal de première instance Liège, decided in favour of the applicant. It came to the conclusion that the charging of such a fee constituted discrimination prohibited by Article 7 of the EEC Treaty. This provision forbids, within the scope of the Treaty, any discrimination on grounds of nationality. One has to consider: The prohibition of discrimination is only effective "within the scope of the Treaty". The Court itself concedes that "educational organisation and policy are not as such included in the spheres which the Treaty has entrusted to the Community institutions". However, it continues by saying that "access to and participation in courses of instruction and apprenticeship, in particular vocational training, are not unconnected with Community law". The Court, in quoting Article 128 and referring to the general principles established in the 1963 Council Decision and to the provisions of Regulation No. 1612/68, concludes that hereby a common vocational training policy has been gradually established. It determines that this policy constitutes "an indispensable element in the activities of the Community, whose objectives include

inter alia the free movement of persons, the mobility of labour and the improvement of living standards of workers" and that "access to vocational training is in particular likely to promote free movement of persons throughout the Community ...". Therefore, the conditions of access to vocational training would fall within the scope of the Treaty.

Three aspects of the Gravier judgement are especially worthy of note.

First, the extensively broad definition of vocational training: "... any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary training and skills for such a profession, skill or employment is vocational training, whatever the age and the level of the training of the pupils or students, and even if the training programme includes an element of general education". This means that practically all university education is to be perceived as vocational training - a view which the Court later reaffirmed in its ERASMUS judgement. Moreover, it might well be that in due time also the secondary school education will be subsumed under this term. In any event, a distinction between vocational training and general education appears to be more and more impracticable.

Secondly, there is the fact that the Court draws upon the fragile "general principles for implementing a common vocational training" in Article 128 as a sufficient legal basis for Community responsibilities.

The third point I would like to emphasize is the "doctrine" underlying the Gravier judgement: If one would generalize this concept, it would mean that any EC activity which is likely to promote free movement of persons in the Community falls within the scope of the Treaty. The consequences would be immense. This doctrine,

taken seriously, would enable the Community institutions to deal with all matters which could promote the freedom of movement: e.g. harmonizing the educational systems, adjusting curricula and certificates, adapting teaching materials etc. But this vision, for better or for worse, seems to be at least for the time being a rather unlikely perspective.

There is no doubt that the legal guarantee of equal treatment of EC citizens in access to educational institutions of another Member State is of great importance for the mobility of Europeans and for the development of a "Citizens' Europe".
However, the Community has not left it at merely eliminating obstacles to this mobility. It attempts to support mobility actively by a multitude of programmes and legal instruments.
You have certainly heard of YES (Youth Exchange Scheme), COMETT (Community Programme in Education and Training for Technology), and ERASMUS (European Action Scheme for the Mobility of University Students). In addition, there are far more EC programmes which aim at promoting mobility and the exchange of individuals within the educational system, all of which I could not possibly mention. However, I would like to say a few words about ERASMUS. One of the elements of this programme - apart from the European university network, the ERASMUS student grants scheme and some complementary measures - is the so-called European Community course credit transfer system (ECTS). It enables on an experimental and voluntary basis the academic recognition of diplomas, and periods of study acquired in another Member State. ERASMUS has and will have a considerable impact on educational policies in Member States at least insofar as they are bound to eliminate all obstacles to its implementation that may exist in the national law.

By the way, the Court of Justice has found that Article 128 EEC Treaty which, as you may remember, authorizes the Council to lay down general principles for implementing a common vocational training policy is a sufficient legal basis for programmes like ERASMUS - as long as they do not include research activities - with the consequence that they can be adopted by simple majority rule.

A significant further step to increase the mobility of academics is a Directive of December 1989, called the Directive on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years duration. There had been national recognition of professional diplomas already before this time, but only in specific sectors, e.g. doctors, nurses, dentists, and pharmacists. For each of these professions, a special Directive was adopted with a number of requirements for the harmonisation of the study and training courses. This was a very complicated and troublesome procedure. The new Directive, which comes into force at the beginning of next year, follows a quite different, a horizontal instead of the former sectoral approach. It is based on the spirit of mutual trust among the Member States. A person who has qualified for a profession shall be entitled to practise this profession in any other country of the European Community. The conditions for recognition are: The diploma must have been awarded by a competent authority of a Member State (a university, a professional body or a state examination authority); the applicant must certify that he or she has studied at least three years at an university or an equivalent institution and that he or she is qualified for a specific profession, either under contract or independently. The Directive - and this is important for educationalists - is also applicable to teachers.

Since one cannot ignore the fact that the study courses in the respective Member States vary in quantity (eYspecially regarding the duration of the university study) or quality (e.g. as far as the specialisation for a certain number of subjects is concerned), the Directive provides for instruments to compensate for major differences. If the duration of the applicant's teacher training is at least one year less than that required by the host State, it can require him or her to give evidence of professional experience which may in no case exceed four years. If the quality of the applicant's training differs substantially from the one organised, for the corresponding diploma, by the host State, the latter may require him or her to undertake a period of supervised practice not exceeding three years or to undergo a test of qualification; the applicant, as a rule, is given the choice between these alternatives.

There remains one problem. In most Member States permanently employed teachers at State schools belong to the public service, to which only nationals are admitted. Article 48 (4) contains an exception to the principle of free movement: this shall not apply to employment in the public service. But - and that is a big "but" - the exception is to be interpreted narrowly. According to the Court of Justice the provision covers only such posts in the civil service which involve exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities.

In this context I would like to mention the Lawrie-Blum judgement of the European Court in 1986. Mrs. Lawrie-Blum, a British citizen, had passed the first state exam for teaching at a Gymnasium in Baden-Württemberg, a Land of Germany. She was refused access to the second phase as a

trainee teacher (Studienreferendar). A trainee teacher in the German Länder usually has the status of a temporary civil servant and as such must be a German national. The passing through of this training phase is a condition for attending the second state exam which in turn is required for getting the status of a permanent teacher. Mrs. Lawrie-Blum brought an action before the administrative courts. The European Court, referred to by the German Federal Administrative Court (Bundesverwaltungsgericht), ruled in favour of the applicant. It came to the conclusion that the strict criteria of the public service exception in Article 48 (4) were not fulfilled in the case of a trainee teacher, even if he or she awarded marks to pupils and participated in the decision, whether pupils could move to a higher class or not. It is an open question whether the Lawrie-Blum judgment applies to permanently employed teachers. In any case, I am sure that the Court, if it has to decide such a question, will stick to the free movement principle and exclude the application of the public service exception. Otherwise the recognition Directive would be almost useless. Recognising the foreign applicant's teaching diploma but simultaneously denying him or her access to the teacher profession would be tantamount to giving him or her a stone for bread. By the way, you should know that the European Commission in 1988 has initiated an Action to set aside limitations based on the nationality requirement. The Commission is determined to open most areas of the public service to citizens of other Member States. According to this Action, the instruction in state educational institutions does not fall within the exception clause of Article 48 (4).

At the end of this part of my paper, I should not forget to mention that the Commission, in the meantime, has proposed another important Directive, namely on general

recognition of professional qualifications not requiring three years higher-education study.

Up to now, we have talked about European Community law of education as far as it removes obstacles to mobility and as it promotes actively the mobility of students and academics, in particular teachers. There is, however, another important element in this law: its impact on educational policies of the Member States.

Let me take ERASMUS as one example. It certainly influences educational matters: Joint curriculum development between universities in different countries is envisaged, though on a voluntary basis; in any case, the Member States are bound to remove legal obstacles to the implementation of the programme.

The recognition Directive also has considerable impact on the national educational policy and planning. It reduces the powers of the Member States to control educational standards and to regulate professions. A notable indirect repercussion of this Directive can be reported from Germany. As you know, the responsibility for education, including teacher training and teacher employment, lies with the parliaments and educational ministries of the Länder. Over years there was no guarantee at all for a mutual recognition of teacher state exams among the Länder. A fully qualified Gymnasium teacher of Bavaria usually had no chance to get employment as a secondary school teacher in North-Rhine Westfalia, and vice versa. This could have led in the future to the strange and almost ridiculous result that, for instance, a French applicant trained for the profession of an agrégé had to be employed as a teacher, while an applicant from a German Land would have been refused. I am convinced that the Standing Conference of the Ministers of Education felt

forced by this perspective to pave the way, just some weeks ago, for a general mutual recognition of teacher state examinations.

There is more Community dimension to national education than one might expect. Though the educational competence of the EC, in spite of the extensive interpretation of the existing provisions, remains a restricted one, there are other ways to influence national policies. This is in particular the so-called mixed formula through which "the Council and the Ministers for Education meeting within the Council" adopt programmes and actions. A lot of initiatives have been endorsed by this body: measures to improve the preparation of young people for work and facilitate their transition from education to working life, measures relating to the introduction of new information technology in education, action programmes on equal opportunities for girls and boys in education a.s.o. All these programmes don't have a strict binding force. The usual formula is that Member States, in developing their national policies, "will take account of the suggested measures" or that "Member States should encourage ..." or "will give particular attention to ...". This formula has the quality not of compulsory but of soft law. It, nevertheless, exerts considerable pressure on the Member States to abide by these programmes.

The hitherto most far-reaching intervention of the Community in internal educational policies of Member States is the 1977 Council Directive on the education of migrant workers' children. It ensures free tuition of these children to facilitate their initial reception. They have to receive bilingual education. Their teachers are to be trained and retrained for this tuition.

In the meantime the Commission has proposed a Council Decision on preventing environmental damage by the implememtation of education and training measures. This again will have a direct impact on what is taught in the schools of the Member States.

I shall stop at this point and only add a few words concerning the regions. How far are they affected by the European Community law of education?

The guarantee and promotion of increased mobility of students, academics and pupils, based on Community law, gives the regions, as far as they have a certain autonomy, the possibility to launch and support exchange schemes on a transnational basis and perhaps to integrate them into an overall framework of cooperation as e.g. in the case of the network that Catalonia, Baden-Württemberg, Rhône-Alpes and Lombardy have established.
On the other hand one has to be aware of the fact that the same law can reduce the autonomy of the regions. This is a problem we meet in particular in the Federal Republic of Germany. The Länder possess a statehood of their own which goes far beyond regional autonomy, and their cultural sovereignty (the "Kulturhoheit") which includes educational matters as the central core of this statehood. The more the Community interferes in education, the more their cultural sovereignty is endangered. The Community law is blind, indifferent to the internal organisation of the Member States. It does not matter to it whether a Member State is a federal or a centralized unitarian one. The Länder don't participate in the decision-making process of the EC; in the Council of Ministers Germany is represented only by the Federal Government.

However it does not help to complain and to lament. The Länder and the regions as a whole should take the

initiative: cooperate and voice their experiences, expectations and interests there, where the decisions for a European dimension of education are taken: in Brussels.