



6.5.2019

NOTICE TO MEMBERS

Subject: Petition No 1222/2017 by G.J. (French) on access to the profession of lecturer in law at a university in Germany

1. Summary of petition

The petitioner raises the issue of obstacles faced by holders of European qualifications from outside Germany in gaining access to the profession of lecturer in law at a university in Germany. He considers that Community law is being infringed and the free movement of persons obstructed.

2. Admissibility

Declared admissible on 4 April 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 July 2018

The petitioner alleges that Article 15 of the Charter of Fundamental Rights of the European Union and Article 45 of the Treaty on the Functioning of the European Union are being infringed.

A preliminary point to be noted is that the Charter is applied only if another more specific provision of European law has not been invoked. In the case at issue, as the petitioner invokes both Article 15 of the Charter of Fundamental Rights and Article 45 TFEU and as the latter is a more specific provision, the petition will be considered only in the light of Article 45 TFEU.

One question that may be relevant is whether or not access to the profession of university lecturer constitutes access to a regulated profession, as referred to in Directive 2005/36/EC. Under Article 59 of Directive 2005/36/EC, as amended by Directive 2013/55/EU, Member States are required to communicate the list of their regulated professions so that it can be entered in the database of regulated professions. Germany has not so far submitted a

notification that the occupation of university lecturer is a regulated profession. It is therefore indeed the Treaty on the Functioning of the European Union (TFEU or Treaty) that seems *a priori* to apply to this petition. At all events, whether the Directive or the Treaty applies, it is necessary to check that the regulations are not discriminatory or disproportionate, so that they do not constitute an excessive obstacle to the free movement of workers.

The provisions governing access to the post of lecturer in Germany are laid down by the *Länder*, and may therefore differ from one *Land* to another. However, an examination of certain laws adopted by *Länder*¹ seems to indicate that the conditions for access to such posts meet similar requirements. For example, Article 25 of Lower Saxony's Law on Higher Education regarding the conditions for recruitment of lecturers² show that candidates are required to possess:

- ‘1. a university degree,
2. aptitude for teaching confirmed by practical experience,
3. a more than average ability to carry out independent academic work, which is generally demonstrated by a doctorate (*Promotion*), or special aptitude for artistic work, and
4. [...] [other evidence of outstanding attainments such as publications and/or research in the field concerned, whether produced in Germany or abroad]’

The higher education laws of other *Länder* seem in many cases to be structured similarly.

These requirements do not mention the ‘*juristisches Staatsexamen*’ as such and do not *a priori* seem particularly disproportionate or discriminatory.

The petitioner claims that most notices of vacancy for law lectureships require applicants to have passed the *juristisches Staatsexamen*, which is indeed a German qualification. If that were a systematic practice, described in legislative/regulatory/administrative provisions, it would no doubt indeed present a problem.

However, a number of notices of vacancy that have been consulted make it clear that this is not a systematic practice. The Commission has found a number of notices of vacancy for lectureships which did not include this requirement or which stated the requirement but indicated that another similar qualification could be substituted for it.

If a university were to specifically require candidates to have passed the *juristisches Staatsexamen*, without allowing any alternative, and if a person had had his application rejected without consideration and without even any assessment of the equivalence of his qualifications, then the person could bring an action against the university in accordance with

¹ See Bavaria's Law on Higher Education concerning the conditions for the employment of lecturers and Article 7 thereof (*Gesetz über die Rechtsverhältnisse der Hochschullehrer und Hochschullehrerinnen sowie des weiteren wissenschaftlichen und künstlerischen Personals an den Hochschulen (Bayerisches Hochschulpersonalgesetz – BayHSchPG)* of 23 May 2006 (GVBl. S. 230) BayRS 2030-1-2-WK); or the Law on Higher Education of the *Land* of Baden-Württemberg [*Gesetz über die Hochschulen in Baden-Württemberg (Landeshochschulgesetz - LHG)* of 1 January 2005] and Article 47 thereof; or the Law of the *Land* of North Rhine-Westphalia, Article 36, [*HG Gesetz über die Hochschulen des Landes Nordrhein-Westfalen (Hochschulgesetz - HG) Landesrecht Nordrhein-Westfalen*]; or the Law on Higher Education of the *Land* of Rhineland-Palatinate, §49 *Hochschulgesetz (HochSchG)* in the version of 19 November 2010.

² <http://www.schure.de/22210/nhg.htm#p25>

the rules in force. However, this initial analysis has not revealed a general, systematic practice indicative of any culpability on the part of the German authorities in general.

As the provisions of Article 45 TFEU are by their nature directly applicable in the internal legal orders of the Member States, private individuals may invoke those provisions before national authorities and courts in order to secure enforcement of the principle of equal treatment of mobile workers and national workers. The petitioner may therefore invoke these provisions before any national authority if he considers this practice to be injurious to him.

It should also be noted that, in order to facilitate the practical exercise of the rights directly vested by the Treaty and secondary legislation in EU nationals who exercise or have exercised their right to freedom of movement, in 2014 the EU legislature adopted Directive 2014/54/EU, which, inter alia, provides for the establishment of bodies responsible for promoting equal treatment and supporting EU workers and members of their families.

The designated body in Germany is:

EU-Arbeitnehmer Gleichbehandlungsstelle
Die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration
D-11012 Berlin
Germany
Tel.: 0049 (0)30 18400 1605
Fax: 0049 (0)30 18400 1814
E-Mail: AS5@bk.bund.de and michael.maschke@bk.bund.de
Internet: www.eu-gleichbehandlungsstelle.de

The designated body in France is:

Le Défenseur des droits
7 rue Saint- Florentin
F-75409 Paris Cedex 08
Tel.: 00 33 9 69 39 00 00
www.defenseurdesdroits.fr
communication@defenseurdesdroits.fr

Conclusion

In the light of the texts analysed and the information gathered, it does not seem that Germany or the *Länder* are applying any disproportionate discriminatory rules concerning the recruitment of law professors at university which would infringe Article 45 of the Treaty.

4. Commission reply (REV), received on 6 May 2019

It is unclear from the vacancy notice provided by the petitioner whether holding the legal state examination certificate (*Juristisches Staatsprüfungszeugnis*) is mandatory or not in order to be eligible for the post. If this is interpreted as an obligation, it would represent at most an individual case of poor application of European law. Looking at the law on higher education of the Land Rhineland Palatinate, where the University of Trier is located, Article 49, on the requirements that have to be satisfied in order to become a university professor, does not mention possession of the legal state examination certificate as a requirement for university

law professors¹. In actual fact, other vacancy notices were published in Germany which did not require such a title.

As regards the mail extract provided by the petitioner, it does not appear from this document that the author of the email in question had given his consent for dissemination of his mail, neither did the petitioner provide proof that the person consented to the disclosure of this mail. The views expressed in the email seem to be rather of a personal nature and the statements to which the petitioner refers are not supported by any facts or references to generally accessible sources. Considering the above, the email cannot be considered a valid legal argument or proof that there is a generalised practice in Germany of discrimination against graduates from other European countries wishing to become university professors. In fact, several vacancy notices found by the Commission contain specific statements encouraging graduates from abroad to apply for posts.

Conclusion

Following an assessment of the new documents provided by the petitioner, the Commission maintains its previous assessment.

¹ [Paragraph 49 of the Law on Higher Education of Rhineland Palatinate](#) (version published on 19 November 2010 (GVBl. p. 463, 464), as last amended by Article 21 of the Law of 19 December 2018 (GVBl. p. 448).