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## **Bachelor Thesis**

# Just National Students or European Citizens?

A study on Students' claims for grants

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## List of Acronyms

BAFöG	Bundesausbildungsförderungsgesetz (German Law on grants for training and further education)
EC	European Community
ECJ	European Court of Justice
EEC	European Economic Community
EP	European Parliament
EU	European Union
TEU	Treaty on European Union

# 1. Introduction

Looking back at European integration history it can be stated that since the Treaties of Rome an incredible development has taken place in only fifty years. The European Community (EC) founded on the basis of security matters and economic interests after World War II has become much more than a set of institutions in which representatives of each member state have the possibility to discuss any occurring topic of importance. It is a unique attempt to face the challenges arising from globalization issues that ask for an entirely interdependent approach by the involved countries in order to find solutions for common problems.

In this respect it is important to emphasize that the original objectives have changed and new ones have been added throughout the course of time. The mainly economic character of the early cooperation was joined by social components as more people made use of the individual freedoms given by the treaties and decided to work and settle in different member states. It became necessary to restructure the existing network and expand the area of responsibility which was realized in 1992 with the establishment of the European Union (EU) by the Maastricht Treaty. The introduced system included a 3-pillar structure with the former EC Treaty<sup>1</sup> (1) being the only supranational element and the second and third pillars “common foreign and security policy” (2) and “cooperation in justice and home affairs” (3) being of intergovernmental character.<sup>2</sup>

As those changes and competencies were far-reaching and highly influencing the situation of all citizens in the member states the Maastricht Treaty incorporated also a chapter on European Citizenship. This concept had the aim to set up a political and legal status which permits the citizens to obtain specific rights as individual persons in the European Union. Although the step to complement a citizens’ nationality with European Citizenship was revolutionary in normative terms the discussion about the actual impact of this development lasts until the present moment. On the one hand the advocates of European Citizenship emphasize it as a positive contribution to the legitimacy of the European Union and highlight the participatory rights which come with it.<sup>3</sup> On the other hand the opponents criticize that the respective articles merely summarized already existing rights and failed to create new privileges. However, the fundamental question in this continuous debate is whether European Citizenship can become an essential link to citizens’ rights which are not made conditional upon further criteria or prerequisites. This is especially relevant as the entire

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<sup>1</sup> The original Treaties of Rome included the EC Treaty, the European Atomic Energy Community (Euratom) and the European Coal and Steel Community (the Treaty expired in 2002).

<sup>2</sup> The original 3-pillar structure has changed and it can be stated that it became obsolete at the moment the “Treaty establishing a Constitution for Europe” was presented (although it did not enter into force yet). However, the structure is valid in the context of the Pre-Maastricht and early Post-Maastricht decisions.

<sup>3</sup> Shaw 1998, p. 346

debate concerning European Citizenship is a debate about the situation of the individual person in the European Union. It involves the issues of whether a European identity exists or not and moreover what European Citizenship can do for member state citizens. Essentially, European Citizenship seemed to be a first step to the creation of a European society, but the realization of this goal depends on the status of all citizens which includes also persons who are economically inactive. At the present moment, while analyzing different rights, it is important to distinguish which specific groups of people can rely on those provisions and which are excluded from certain benefits. Since the European Union originated from the idea of economic cooperation the formulation of rights for the citizens concentrated highly on their economic activities. Hence, to approach this topic and to include the very important debate about the scope of rights derived from Community law students have been chosen as the central focus of the research. Students are insofar an interesting point of study as they belong to the group of so called economically inactive persons<sup>4</sup>. More specifically, students are concerned who make use of their rights granted by the Treaties of the EC, such as freedom of movement and freedom of residence to follow a study program not in their home country, but in another member state of the Community. Their mobility as such is legally granted by the freedom of movement, however it is important to look at barriers that existed and still exist due to other – mainly national – legislation. For a long time in the process of European integration mobile students were excluded from financial support or benefits and treated differently from national students while studying abroad. However, as the economic integration process went inevitably hand in hand with social development students started to claim their rights in financial matters relying on articles of the EC Treaty and especially Article 12 which prohibits any discrimination on the basis of nationality. Consequently, the European Court of Justice granted more rights to students studying abroad through various case verdicts in the last twenty years and changed their situation significantly regarding their entitlement to study grants and social support or their right to equal treatment concerning study fees. In order to find out which rights students already enjoyed prior to the Maastricht Treaty and which new rights (if any) were established by European Citizenship, the following research question will be posed:

*To what extent did the introduction of European Citizenship in the Maastricht Treaty improve the rights of students following their higher education in a different member state of the EU regarding study fees and maintenance grants?*

Thus to elaborate on and answer this research question the thesis will follow a clear structure that will be presented in the following section.

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<sup>4</sup> Students can be economically active persons as well, but usually this takes place in a limited range only. Moreover, students use their freedom of movement not to be economically active in the first place, but rather to follow higher education in a member state of the European Community.

## 2. Methodology

Since the research centres on a specific group of people and does not give an all-embracing analysis of the rights derived from European Citizenship it is important to clarify the structure of the paper and the sub-questions necessary to answer the main research question as stated above. The scope of the paper has to be limited insofar as the situation of students provides only one example to observe the development of European Citizenship and citizen rights. Nonetheless, in this context it will be possible to give evidence on whether a pool of direct rights exists students can rely on and to what extent European Citizenship played an important role in its establishment. This might then lead to inductive assumptions on the effects of the instalment of European Citizenship in general.

***The first sub-question which will be posed deals with a possible definition of “citizenship”; more specifically: What does citizenship in general imply?***

Hence, the thesis starts with a theoretical chapter on Citizenship with the purpose to explain the term and to highlight which elements are included by this concept. After a brief introduction the focus will turn to European Citizenship and its development in the past decades and explain it in more detail. The second sub-question refers then to the specific nature of European Citizenship. After it has been explained how it differs from citizenship in nation states the section will conclude with an answer to the following question:

***Which rights did European Citizenship de jure include for economically inactive persons according to the Maastricht Treaty?***

In order to approach this issue the path and the early development of citizens' rights in the European Community will be studied against the background of the eventual formulation of European Citizenship in 1992. In this context the respective Treaty articles and relevant directives / regulations issued in this regard are central.

The question is of importance for the subsequent analysis of case verdicts made by the ECJ. In general one needs to understand whether a granted right is the consequence of a court verdict or if it is directly derived from the respective articles in the EC Treaty. This has to be clarified on the one hand theoretically and on the other hand with the help of practical examples.

Thus, after the theoretical background has been established all relevant cases decided by the ECJ concerning student rights in financial matters will be analyzed upon their argumentation and outcome. The paper is based on academic sources and case decisions made by the ECJ from 1985 to 2007. This time-period was chosen, because the case “Gravier” in 1985 was the first important ruling by the ECJ in favour of a student claiming his rights provided by Treaty law. In order to emphasize the changes which came with the Maastricht Treaty and the introduction of European Citizenship the chapter is divided into an

“Ante-Maastricht” and “Post-Maastricht” section in which just the relevant cases of each time-frame will be analyzed.

In the first part of this section the following sub-question will be posted:

***Which judgments of the European Court of Justice granted rights to students prior to the Maastricht Treaty?***

Starting with the above-mentioned Gravier case the section will cope with four other decisions (Blaizot; Lair; Brown; Raulin) regarding student rights until 1992. Once it has been determined in how far case law was an important driver for broadening the scope of the Treaty in the context of education policy the next step will be to examine the relevant cases after the establishment of European Citizenship. Hereby the two cases Grezelcyk and Bidar will serve as the most significant examples since the Maastricht Treaty. Consequently, after this analysis I expect to give an answer to the following sub-question:

***Which judgments of the European Court of Justice granted rights to students subsequent to the Maastricht Treaty and in which way did European Citizenship play a role?***

The content of all cases will be reproduced only to an extent which is necessary to follow the most important arguments by the respective plaintiffs, defendants and the ECJ.

Since certain rights are a result of parliamentary law and some of judicial decisions (with fundamental interdependencies) it has to be stressed once more that the aim of the paper and of the sub-questions is to make clear in which specific periods the developments have taken place in the area of students' rights. Only then it can be analyzed what the Maastricht Treaty and the formal introduction of European Citizenship have changed for economically inactive persons. Therefore, the above-stated division was chosen which consequently leads to the most recent cases Morgan and Bucher which have been decided in October 2007. In the last chapter the results of all subsections will be summarized, the overall research question will be answered and an outlook will be given on the further development of European Citizenship in this specific context.

### 3. Development of European Citizenship

In order to explain the scope of European Citizenship it is necessary to distinguish this theoretical concept from national citizenship as it is known in nation states in European legal culture in different varieties. Therefore, this chapter will in a first step briefly describe which social, political and civil elements are inherited by citizenship in general before turning in a second step to the special rights that were created with the introduction of European Citizenship.

#### 3.1 The Concept of Citizenship

*"Citizenship is a status bestowed on all those who are full members of a community. All those who possess the status are equal with respect to the rights and duties with which the status is endowed."*<sup>5</sup>

The most important academic work focused on citizenship in the modern nation state was T.H. Marshall's essay on "Citizenship and Social Class" in England which was published in 1950. Although he was not the first to write about the status of citizens it was his major achievement to break the term citizenship into different elements which according to his opinion have developed in the last three centuries and are now part of citizenship as a whole. The three elements are defined by Marshall as the following:<sup>6</sup>

- In the 18<sup>th</sup> century he traced a civil component which consists of rights, such as the freedom of speech, the right to own property and the right to justice.
- In the following (19<sup>th</sup> and early 20<sup>th</sup> century) he identified political rights, mainly the right to vote and to stand for political office as these possibilities spread to the majority of the adult population.
- Lastly, he stated that in the 20<sup>th</sup> century additional social rights, such as health care, education and social security emerged and declared that only a person who inherits all three rights can be called a "citizen".

While pointing to the three elements Marshall considered the institutional development over the same time-period as equally important. He linked each individual element of citizenship to certain institutions which match the different rights as stated above. Hence, civil rights are connected with the courts of justice, political rights with the parliament and councils of local government, and lastly social rights with the educational system and social services.<sup>7</sup> Although, his work is regarded as a key reference until the present moment it was also subject to critique since it left out some important issues at the time of publishing. On the one hand Marshall took political rights too much for granted considering that e.g. women in many

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<sup>5</sup> Marshall 1950, pp. 28–29

<sup>6</sup> Lawy 2006, pp. 34-35

<sup>7</sup> Turner 2001, pp. 189-90



countries had obtained the right to vote only a few years earlier.<sup>8</sup> Hence, it was questionable if one could simply include women and different minority groups in the same pool of persons with full citizenship status and neglect the political and social reality. On the other hand academics criticized Marshall's empirical claim about the evolutionary sequence of rights and especially if this sequence had a universal pattern.<sup>9</sup> In many European Countries the above-stated rights developed in a different order meaning that in some states social rights existed prior to full political rights. However, regardless the uncertainty of whether Marshall intended to develop a general theory or was merely focusing on England's society it has to be emphasized that the important debate in the context of student rights centres on the question: What does citizenship imply?

The concept of citizenship has been widely discussed by various academics. One approach is that citizenship contains a non-functional and a functional aspect. The former mentioned refers to a sense of cultural identity and community and the latter represents the legal relationship between the individual and the state.<sup>10</sup> Consequently, this framework establishes certain rights for the citizens on the one hand (e.g. as mentioned in Marshall's triad) and certain duties on the other hand (e.g. to obey the laws of the respective state).<sup>11</sup> Essential in this context is the fact that each political entity defines those rights and duties individually. More specific, it includes only the persons which are nationals of that country in its legal framework. In the EU this works different when it comes to Union Citizenship. Without explaining the concept of nationality in detail it needs to be emphasized that holding the nationality of a member state of the EU is the only condition for acquiring the Citizenship of the Union. Thus, European Citizenship and nationality are inseparably linked to each other. In short it means that the concept of nationality is determined by national and not by community law and that only the member states decide who is or who is not a European Union citizen.<sup>12</sup>

In this context it becomes obvious that the concept of European Citizenship undermines the individual member state competences. Although legally separated by nationality citizens of the member states enjoy the same Union Citizenship status and therefore the ability to invoke certain rights even outside of their country (of which they are nationals). This is important for further considerations regarding the effect of European Citizenship as it includes citizens from currently 27 countries in one supranational system. Hence, it is difficult to grasp this concept which will be described in more detail in the next section.

Moreover, from these findings one important issue can be derived for the subsequent analysis: Whether people are granted social rights from citizenship depends highly on the

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<sup>8</sup> Klausen 1995, p. 251

<sup>9</sup> Lehning 2000, p. 242

<sup>10</sup> Goudappel 2004, p. 4

<sup>11</sup> Goudappel 2004, p. 4

<sup>12</sup> Weiler 2003, p. 14

definition of citizenship and whether one includes the third element of social rights. Certainly, social rights in each nation state are linked to the political community and more specifically to the states' ability and willingness to include those in its actual agenda in the first place; however, normatively speaking it is important that a political unit realizes that social provisions are an essential part of citizenship nonetheless. What has to be kept in mind is the fact that all individual rights always depend on their protection by institutions. Hence, citizens have to be able to rely on rights laid down in constitutions, treaties or general law and be sure that certain institutional mechanisms exist which enforce them.

### **3.2 European Citizenship**

The introduction of European Citizenship was not based on a quick decision in the context of the Maastricht Treaty, but was rather linked to the decade-long integration process in Europe. At the time the Treaties of Rome (1957) entered into force nobody thought about an additional citizenship status for all persons holding the citizenship of a member state as this cooperation aimed at economic collaboration. Thus, the first provisions in the founding treaties of the European Economic Community did not centre on political or social rights for the individual citizen. The original EEC Treaty included the so-called four freedoms with the aim to facilitate and to promote a harmonious development of economic activities throughout the Community and closer relations between the member states.<sup>13</sup> More specific these freedoms focused on:

- Free movement of goods (Art. 9 EEC and the following)
- Free movement of persons (Art. 48 EEC and the following)
- Free movement of services (Art. 59 EEC and the following)
- Free movement of capital (Art. 67 EEC and the following)

Noticeably, the emphasis of the respective Treaty articles laid on economic activities and not on the creation of a common citizenship status, however, with the right to move and reside freely within the boundaries of the Community citizens of all member states were given the opportunity to lead a life outside the boundaries of their home country. Nonetheless, economic activity played the key role in the early years of the Community and the freedoms were in particular a means used by workers and intended for them at that stage.

In 1968 the Council issued one Directive and one Regulation which became significant for the further development of citizens' rights in the future. On the one hand there was Directive 68/360/EEC and on the other hand Regulation 1612/68/EEC. The first mentioned concerned the abolition of restrictions on movement and residence within the Community for workers

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<sup>13</sup> Article 1, EEC Treaty 1957

and their families<sup>14</sup> and the second regarded the freedom of movement for workers (within the Community).<sup>15</sup> Important was not only the clear formulation of a list of documents which had to be provided by a member state citizen in order to enter and work in a respective country (with the aim to reduce bureaucracy and formal barriers) but also the strengthening of social security rights for workers and their families. Moreover, with the introduction of Regulation 1612/68/EEC the European Community set an important guideline to balance the labour market and to enhance the cooperation of the member states with the Commission (i.e. in respect of measures for employment and against unemployment). Additionally, the European Court of Justice started to play an essential role in granting specific rights to the group of migrant workers. Since the new directives and regulations were explicit in their content but not in their application, the ECJ had to make its first decisions and broadly construed Community legislation e.g. conferring substantial protection on migrant workers and their dependants.<sup>16</sup>

However, it needs to be kept in mind that a link between social policy and Community law only existed insofar as there was an economically active person involved. With the sector of social policy not falling within the scope of EC legislature it was not possible to claim rights and benefits if certain conditions of employment were not fulfilled. Here one can see that the significant third component of citizenship which practically would have completed citizenship did not exist at that moment.

In this context it is essential to mention Article 7 of the original EEC Treaty. While every other provision mentioned so far aimed at people with the status of a worker Article 7 EEC was the only one which had a general objective. It stated that “within the field of application of the Treaty and without prejudice to the special provisions mentioned therein, any discrimination on the grounds of nationality shall hereby be prohibited.” Hence, it seemed that the Treaty included a general right on equal treatment on nationals of the member states and enclosed hereby a provision with broad applicability which was largely used in EC legislature throughout the following decades.<sup>17</sup>

Turning from particular rights back to the wide-ranging development of European Citizenship it was not until 1975 that for the first time a specific proposal for objectives going beyond economic interests and intentions was presented.

The so-called Tindemans Report<sup>18</sup> recommended *inter alia* measures such as the issuing of a common European passport, the abolishment of border controls, a simplification of health care regulations in the Community and - important in the perspective of this paper - a greater

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<sup>14</sup> Council Directive 68/360 EEC (for link see references).

<sup>15</sup> Regulation 1612/68/EEC (for link see references).

<sup>16</sup> Jacobs 2007, p. 593

<sup>17</sup> Jacobs 2007, p. 593

<sup>18</sup> Weiler 2003, p. 7 - Leo Tindemans, Belgian Prime Minister (1974-78), was asked to draw up a report on the European Union based on instructions given to him at the Paris European Council of 9<sup>th</sup> and 10<sup>th</sup> December 1974. Tindemans Report (for link see references).

integration in educational matters. Tindemans main goal was to add what he called a social and human dimension in order to advance beyond a pure economic partnership and strengthen the institutional background (especially the European Parliament) to evolve from the European Community to a European Union.

Although the proposals by Tindemans were not considered by the respective governments' one important development took place four years later. In 1979 the first direct elections for the European Parliament were conducted and opened a door to more democratic representation in the Community. While on the one hand this seemed like a major advancement it must be said that it was only of symbolic nature as the powers of the EP were limited and not comparable with that of a national parliament at that moment.

The next advancement was practically a new affirmation for the provisions already addressed in the Tindemans report. A committee under the lead of the Italian Pietro Adonnino<sup>19</sup> was asked by the European Council to develop instruments to facilitate a Europe without internal barriers. Its suggestions repeated the necessity of a common European passport, less border controls, intensified cooperation between the member states, but also the long-term goal to establish a Europe without borders by 1992. Moreover, an important point was made by reconsidering the freedom of movement in work life. This included suggestions for the mutual recognition of diplomas for the purpose of simplifying the right of settlement and new concepts which regarded the taxation of migrant workers. The latter were necessary since migrant workers suffered from disadvantages stemming from the fact that most states had different systems for taxing residents and non-residents.

At this time the idea of a European Citizenship was already openly discussed. With the developments moving slowly from an entirely economic union to a more social system and the reduction of former barriers between the different member states citizens were not longer seen as only belonging to one country. The individual person became a subject that could move within the Community and inherit both rights and duties while doing so.

In 1984, Altiero Spinelli an advocate of European Integration, promoted and presented the so-called Draft Treaty of European Union.<sup>20</sup> The EP passed the draft with a huge majority. However, it was blocked by the respective member states and instead the Single European Act<sup>21</sup> entered into force one year later. Many government leaders considered Spinelli's draft as too far-reaching as it included the creation of new (and also the extension of already existing) Community competencies in the areas of social-, health-, consumer- and cultural

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<sup>19</sup> Report on a People's Europe submitted by the Adonnino Committee to the European Council on the 28-29<sup>th</sup> March 1985. Report on a People's Europe (for link see references).

<sup>20</sup> Weiler 2003, p. 8 - Altiero Spinelli, an Italian politician was member of the European Parliament 1976-1986 and president of its Institutional Commission. Draft Treaty establishing a European Union 1984 (for link see references).

<sup>21</sup> Although the European Single Act was the first alteration of the original Roman Treaties it was mainly focused on further economic integration (single European market). However, in its preface it included the objective to establish a European Union.

policy as well as increased budgetary and legislative responsibilities for the EP. In the context of citizen rights Article 3 “Citizenship of the Union” in the Draft Treaty stated that:

“The citizens of the Member States shall ipso facto<sup>22</sup> be citizens of the Union. Citizenship of the Union shall be dependent upon citizenship of a Member State; may not be independently acquired or forfeited. Citizens of the Union shall take part in the political life of the Union in the forms laid down by this Treaty, enjoy the rights granted to them by the legal system of the Union and be subject to its laws.”

Although, this first attempt for establishing a European Citizenship within a Union based on political and social principles failed it was nevertheless an important step in the direction of what would later become the Maastricht Treaty.

The introduction of the “Charter of the Fundamental Social Rights of Workers” in 1989 added a small social element, but was again focussing on economically active persons in the first place. It pointed to the improvement of working and living conditions (Article 7-9), social protection (Article 10) and the equal treatment of men and women (Article 16), but failed to be legally binding. This manifested itself in the fact that the United Kingdom did not sign the declaration as it did not wish to be bound at a time when it was implementing a social policy of deregulation and hence the Charter became another example of a provision which lacked applicability.<sup>23</sup>

Looking at the development from the Roman Treaties to Maastricht one can see the explicit emphasis which was laid on the group of migrant workers. The efforts by some ambitious politicians to supplement the economic provisions with what can be called a little social character were in most cases unsuccessful or limited in their scope. Despite this apparent resistance from the side of some member states which regarded the field of social policy as a pure national competence a set of articles was installed in the Treaty on European Union in 1992.<sup>24</sup>

Under the heading “Citizenship of the Union” the heads of state recorded that they were resolved ‘to establish a citizenship common to nationals of their countries’ and inserted six Articles, numbered 17-22 in the new Treaty.<sup>25</sup>

Article 17 of the modified European Community Treaty states that:

- 1. Citizenship of the Union is hereby established.  
Every person holding the nationality of a Member State shall be a citizen of the Union.
- 2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby.

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<sup>22</sup> Ipso facto = by the fact itself

<sup>23</sup> Moreau 2003, p.1

<sup>24</sup> The Treaty on European Union or Maastricht Treaty was signed in Maastricht on 7 February 1992.

<sup>25</sup> Jacobs 2007, p. 591

The following four Articles<sup>26</sup> provide more specific rights with regard to:

- Article 18 – Right to move and reside freely within the EU
- Article 19 – Right to vote and stand as a candidate in local government and EP elections in the country of residence
- Article 20 – Right to protection by diplomatic and consular authorities
- Article 21 – Right to petition to the EP

Looking at the opening Article 17 it becomes clear that European Citizenship is linked to and meant by no way to substitute one person's national citizenship.<sup>27</sup> It has to be understood that it is conceptually decoupled from nationality and as a matter of fact from any form of European nationalism which means that the only way of acquiring European Citizenship is by holding the nationality of one of the today 27 member states.<sup>28</sup>

After its introduction in 1992 a controversial debate emerged about the real effect and scope of this concept. Most scholars saw in these provisions a purely decorative and symbolic institution which added little new to the pre-Maastricht regime of free movement rights.<sup>29</sup> Dr. Sofra O'Leary, who worked as a Référendaire at the European Court of Justice, e.g. criticized the failure to recognize an explicit link between the fundamental rights and the scope and operation of the Union citizenship.<sup>30</sup> Hence, the main issue at stake was basically the problem on how and when to apply the Articles 17-21 EC. It seemed that the rights were not applicable to all citizens, but rather to certain groups of people. Everson clearly stated that whereas national citizenship premises citizens' claims and entitlements on the basis on historically developed, rich notion of membership in a national community, European citizenship appeared to comprise a core of economic entitlements primarily designed to facilitate market integration.<sup>31</sup> Although it is wrong to compare European citizenship and national citizenship as the one is based on the other it is nonetheless important to look at the beneficiaries of this concept. Critiques highlight in this context that the "emphasis on economic activities meant that the system was designed to give the economically active nationals of the member states the opportunity to work in other member states."<sup>32</sup> Hence, this would mean that European citizenship was or still is a legal ground for economically active persons only.

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<sup>26</sup> Article 22 does not include a specific right, but the task of the Commission to report every three years on the application of the provisions of this part of the Treaty.

<sup>27</sup> The Amsterdam Treaty added to Article 17 that "Citizenship of the Union shall complement and not replace national citizenship."

<sup>28</sup> Besson 2007, p. 576

<sup>29</sup> Kostakopoulou 2007, p. 624

<sup>30</sup> Dr. O'Leary worked for the Judges Mancini and Macken at the ECJ and for the ECJ Research Department – in: Reich 2001, p. 5

<sup>31</sup> Everson 1995

<sup>32</sup> Goudappel 2004, p. 6

However, there are also EU optimists who think that European Citizenship can be extended to some fundamental civic, political and social links as suggested e.g. by Marshall.<sup>33</sup>

These optimists underline the fact that European Citizenship established under the Maastricht Treaty for the first time granted the four freedoms which formerly were open only to economically active persons for all people. But this was only a programmatic provision.

In how far the critiques<sup>34</sup> were right to say that European Citizenship was only realized by ECJ case law in the following years will now be tested in the following case study which looks at students as economically inactive persons to sort out the crucial factor of economic activity.

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<sup>33</sup> Reich 2001, p. 5

<sup>34</sup> Weiler 2003, p. 55 – Critiques emphasize that the ECJ is the driving force for the development of weakly conceived legal institutions into strong concepts of rights; hence, they state this is also true for the empowerment of European Citizenship.

## 4. Students as European Citizens

### 4.1 Cases prior to Maastricht

#### 4.1.1 Gravier (1985)

The first major decision made by the ECJ with relevance to the topic of student rights was the verdict in the Gravier case in 1985. Gravier, a French citizen, studying at that moment in Belgium at the Academie Royale des Beaux-Arts (Liège) was charged as every other foreign national with an additional fee for her study program “Comic Strips”, the so-called “Minerval”.<sup>35</sup> As Belgian students were not required to pay this fee Gravier claimed that this financial prerequisite was a discrimination based on nationality and thereby prohibited by Article 7 EEC (now Art. 12 EC). Moreover, Gravier stated that a person, who is national of a member state of the EC, must be allowed to go to Belgium to study under the circumstances laid down in Article 59 EEC. In her opinion this article included her study program as a service provided by a Community member state (in this case Belgium) which should be supplied freely and without restriction to other member state nationals.

Since it was the first time that a student and therefore an economically inactive person relied on rights derived from European legislation the ECJ had to deal with the task to establish a possible connection between educational organization (the study program “Comic Strips” as vocational training) and the EC Treaty; only in this case any demands by the student Gravier referring to the above-mentioned articles could sustain.

Looking at the argumentation of the Belgian state one can see that the introduction of the Minerval was based on economic reasons. Although, in its explanation the Belgium government stated that the overall mobility of students within Europe was low at that time, it points to the fact that in comparison with other EC member states Belgium had to cope with the highest number of foreign students. Consequently, the additional fee was introduced which is payable by any foreign student who wishes to use the education facilities and follow higher education programs in Belgium in order to receive contributions from people who do not pay taxes.<sup>36</sup> Building upon that reasoning the Danish and the British government added in their respective statements that Article 7 EEC while forbidding “discrimination based on nationality” does not prohibit to privilege and support its own citizens. In their opinion it is the duty of a state to provide every person who is a National of this state with the best services possible. Additionally, they emphasized the special character of financial aid such as study grants, scholarships and loans. These benefits were in the first place meant to be received

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<sup>35</sup> The Minerval (an additional enrolment fee) was introduced in 1976 and was payable by every foreign national whose parents (or one parent) did not reside in Belgium and who wanted to attend primary, secondary or higher education facilities at public state education institutions.

<sup>36</sup> Bernard 2005, p. 1485



by students who would become tax-payers in their country of origin in the future. Since foreign nationals would most likely return to their home country after the completion of their higher education they were not entitled to equal treatment in this respect.

Contrary to this it was argued by the Commission that the EC Treaty does prohibit unequal treatment even with regard to higher education. Following Gravier's statement concerning Article 7 and Article 59 (to request an additional fee from foreign nationals while national students do not have to pay) it supplements the Articles 48, 52, 128 EEC<sup>37</sup> which cover vocational training as part of common European policy.

The question with which the ECJ had to deal first concerned neither the organization of education nor its financing, but rather the establishment of a financial barrier for foreign students only.<sup>38</sup> Such an obstacle would be defined as discrimination based on Article 7 EEC if the policy field education could be clearly linked to the EC Treaty. In this respect the ECJ created an essential connection founded on the following four arguments which will be explained below:

1. Regulation No 1612/68/EEC
2. Decision No 63/266/EEC
3. Article 128 EEC
4. General guidelines for drawing up a community programme on vocational training

In 1968 the Council issued a Regulation (1612/68/EEC) with the intention to facilitate the free movement of workers and to abolish certain barriers which have existed until that moment, but were not longer compatible with Community law. In Article 7 of the Regulation it is stated that a worker who is national of a member state and who is employed in another member state is to have access to training in vocational schools and retraining centres in that country by virtue of the same right and under the same conditions as national workers.

Additionally, the children of such workers are subject to equal treatment as well and consequently to be admitted to that state's general educational apprenticeship and vocational training courses (Article 12 / Regulation 1612/68/EEC). Although, the Regulation does not explicitly define the case of a student in a situation such as the French Gravier, it does show the early efforts of the Community to synchronize the conditions for labour mobility and its consequences (i.e. children who need to attend education facilities in a place other than their country of origin due to the working place of their parents).

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<sup>37</sup> Article 48 EEC states that the movement of workers shall be ensured within the Community; Article 52 EEC points to the abolishment of any restrictions on the freedom of establishment in member states; Article 128 contains the general assignment for the Council to set up general principles for the implementation of a common policy of occupational training.

<sup>38</sup> Gravier Paragraph [15]

Pointing more specifically to vocational training the court referred to Article 128 EEC in which the Council was assigned with the task to establish general principles for the implementation of a common policy of occupational training. In the following the Council laid down ten principles summarized in Decision No 63/266/EEC. It formulated in the very first principle that every person must be enabled to receive adequate training, with due regard for freedom of choice of occupation, place of training and place of work. For this reason it can be said that already as early as in 1963 the member states conjointly began to develop educational measures. This was continued with the introduction of the “General Guidelines for drawing up a Community programme on vocational training”, adopted by the Council in 1971 and carried on with two Resolutions issued in the years 1976 and 1981 respectively. In short, the first efforts were aimed at practical requirements, such as the mutual recognition of diplomas and the abolishment of restrictions which may prevent the freedom of movement and the right of establishment.<sup>39</sup> Hence, the court decided that the implementation of a common policy of vocational training as stated in Article 128 EEC was in fact in the process of being established and that the access to education (as means of vocational training) was one of the catalysts to promote free movement in the Community.<sup>40</sup>

Coming back to Article 7 EEC it was concluded that a right to equal treatment existed as regards the access to vocational training under Article 7 EEC (thus vocational training fell within the scope of the Treaty) which prohibits any discrimination against foreign students in the context of registration / tuition fees.<sup>41</sup>

In a second step the ECJ had to cope with the question whether the study course “Comic Strips” fell under the category vocational training. In this context the court referred again to Decision No 63/266/EC and the General Guidelines on vocational training (1971) as stated above. The first mentioned includes “all vocational training of young persons and adults who might be or already are employed in posts up to supervisory level “and emphasizes in the second of its ten principles “that every person shall be enabled to acquire the technical knowledge and skill necessary to pursue a given occupation and to reach the highest possible level of training.”<sup>42</sup> The second does take the constantly changing needs of the economy into consideration and consequently accounts for the demand to offer to everyone the opportunity of basic and advanced training [.....] to enable the individual to develop his personality and to take a career.<sup>43</sup> According to these arguments it becomes clear that the court decided to broaden the term “vocational training” to every measure (form of education) which prepares for a profession even regardless of the age and the level of the pupils or students and equally important even if the training programme includes an element of

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<sup>39</sup> General Guidelines 1971, Paragraph 24 und 27 (for link see references).

<sup>40</sup> Lenaerts 2005, p. 7

<sup>41</sup> Dougan 2005, p. 946

<sup>42</sup> Decision No 63/266/EEC (for link see references).

<sup>43</sup> General Guidelines 1971, Introduction General I

general education.<sup>44</sup> Since the student Gravier was enrolled in the study course “Comic Strips”, offered by a higher education institution which has the major purpose to qualify its students for an occupation, it was decided that the study program belonged to vocational training.

Summarizing the argumentation by the court it has to be mentioned that although students were not mentioned particularly in the respective Articles which finally led to the decision it was nevertheless unquestionable that vocational training was connected to occupation / profession and had to be regarded as part of a persons working life. The ECJ considered an enrolment fee and the related access to education to fall within the scope of Community law merely because of its link to the labour market<sup>45</sup> and concluded in favour of the plaintiff.

#### **4.1.2 Blaizot (1988)**

One year after the ruling in the Gravier case discussed previously the ECJ was asked again to resolve a problem concerning the financial conditions for access to higher education facilities. Blaizot, a French citizen and 16 other French students<sup>46</sup> following university courses in the field of veterinary medicine at four different universities in Belgium, claimed relying on the Gravier decision made by the court in 1985 that they were entitled to a restitution of their study fees paid in the years prior to the Gravier verdict. The Belgian court dealing with this issue referred to an amendment of Belgian legislature in which it was decided shortly after the Gravier verdict that no additional enrolment fees which have been charged from 1976 (date of introduction of the additional fee) until the end of the year 1984 will be repaid.

The questions which had to be elaborated by the ECJ regarded therefore two different issues:

- a) Do university studies in veterinary medicine constitute vocational training and are consequently covered by Article 7 EEC, which prohibits in this case any additional fees which have to be paid by foreign students only?
- b) Is this prohibition valid only after the decision in the Gravier case or does it apply to the past (time period 1976-1984) as well?

Since the first issue concerned a topic similar to the Gravier case with the only difference being that instead of a study program at an Art Academy it involved university studies in the subject veterinary medicine the argumentation by the court took a similar path. However, an additional component needed further considerations. The mentioned study course veterinary medicine comprised a first degree (the candidature) awarded after three years of study and a second and final degree (the doctorate) after another period of three years. The Belgian side

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<sup>44</sup> Apap 2001, p. 34

<sup>45</sup> Jacobs 2007, p. 602

<sup>46</sup> In the following Blaizot will be mentioned as the only plaintiff.

saw in this division an essential reason to argue that the whole study program must not be considered as vocational training, because the qualification “candidature” is not sufficient to enable the graduates to work as health professionals with the specialization veterinary medicine.

Turning first to the controversial issue if academic studies in general (at universities) fall within the scope of vocational training the Commission stated that “there are not two separate categories, academic education and vocational training, but rather vocational training which may be acquired through university studies”.<sup>47</sup> Contrary to this the defendant stated that the designation “vocational training” is only applicable to technical training and apprenticeship. The ECJ recapitulated in a first step the original terms of its Gravier statement concerning vocational training in which any form of education which prepares for an qualification for a particular profession, trade or employment or which provides the necessary skills for such a profession, trade or employment, has to be regarded as such (vocational training).<sup>48</sup> Not only its previous decision, but also the fact that university studies were in no point mentioned as excluded from vocational training in European legislature (especially not in the very important Article 128 EEC) strengthened the position of the plaintiffs. Above all, the European Social Charter signed by the members of the Council of Europe in 1961, explicitly included the right to vocational training in its Article 10. It stated that the contracting parties are to provide or promote as necessary, the technical and vocational training of all persons [...] and to grant facilities for access to higher technical and university education, based solely on individual aptitude.<sup>49</sup> However, the essential matter of fact the ECJ laid its focus on was the present status of policy development at that time. Since the establishment of a common education policy was only in the process of being developed the European Community was dealing with many fundamental differences in the national systems. By looking at vocational training in the EC member states it was observable that for the same professions some countries required university education while in others technical training at specific education facilities (not universities) was sufficient. In order to ensure the equal interpretation of the EC Treaty and its further applicability it was decided by the court that university studies cannot be excluded from vocational training. Especially not as long as the member states ask migrant workers to provide a degree or diploma which cannot be acquired in the requested form due to the differences in the national education systems. Moreover, the scope of the term vocational training was broadened insofar as the ECJ extended the notion of “vocational training” to all kinds of university education which provides specific training and skills for a profession and not only programs which directly qualify for a

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<sup>47</sup> Blaizot Paragraph [14]

<sup>48</sup> Blaizot Paragraph [15]

<sup>49</sup> Art. 10 European Social Charter; Belgium and France are both founding members of the Council of Europe (for link see references).

particular profession or occupation.<sup>50</sup> Hereby, the only exceptions were defined in study courses whose contents were of such general nature that they did not qualify for vocational training, but rather corresponded to the category of general knowledge studies.

With regard to the aspect of division of the study program into a first and second stage it was strictly stated that the whole course veterinary medicine had to be seen as one unit since only the completion of the first part enabled students to continue studying and work towards the final degree “doctorate”. A division into a first and second stage of vocational training was not intended and applicable in the case of one continuous program.

Summarizing the reported with reference to Article 7 EEC it was ruled that veterinary medicine clearly constituted vocational training and that students studying under the same circumstances as Blaizot were covered by EC legislature and could not be charged with additional enrolment fees.

Hence, the sub-decision led to the complex question whether the students had a right to reclaim the enrolment fees paid prior to the Gravier verdict. Blaizot and the Commission referred to the general principle of retroactive effect of preliminary rulings and argued that a state cannot limit the temporal effect of a judgment if this was not intended by the responsible court<sup>51</sup> and that consequently the enrolment fees had to be restituted. Contrary to this, the Belgian state claimed that due to the new developments in European law regarding vocational training it had to be kept in mind which negative financial impact a decision could have on the sector of education. Although, financial reasons do not constitute a legal ground to restrict the effect of a previous ruling the ECJ went as far as to acknowledge that indeed it was dealing with new developments in European legislature. Since Gravier was the first case addressing financial conditions as a means to access university education the origin of a financial barrier such as the additional enrolment fee for foreign students needed to be recapitulated. In this special case the correspondence between the Belgian state and the Commission was of highest importance and decisive for the final outcome. From letters which were sent in 1984 by the Commission to Belgium it could be clearly proofed that at that time “the Commission did not consider the imposition of the supplementary enrolment fee to be contrary to Community law.”<sup>52</sup> Moreover, as late as four months after the Gravier verdict the Commission did not definitely decide how to deal with the new developments regarding financial obstacles and university education. Hence, it had to be recognized that at the mentioned moment the Belgian side was acting in assurance of being within the legal framework of European Legislature. Consequently, due the lack of a clear statement on behalf of the Commission and the financial burden that might

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<sup>50</sup> Lenaerts 2005, p. 7

<sup>51</sup> Hereby referring to the Amendment in Belgian legislature mentioned earlier - adopted after the Gravier verdict.

<sup>52</sup> Blaizot Paragraph [32]

result as a possible consequence of massive restitution claims<sup>53</sup> the verdict delivered did not include the retroactive effect desired by Blaizot. The ECJ concluded in reference to pressing considerations of legal certainty that students could only rely on the direct effect of Article 7 EEC (and therefore file restitution claims) if they have brought legal proceedings or submitted an equivalent claim prior to the date of the Gravier verdict.<sup>54</sup>

### **4.1.3 Lair (1988) and Brown (1988)**

While the cases Gravier and Blaizot concerned rather non-beneficiary rights, hereby especially equal treatment regarding enrolment fees and the applicability of Article 7 EEC in the sector of education, it was only shortly after the delivery of these verdicts that students claimed direct financial benefits of their respective host countries.

With the establishment of the link between university studies and vocational training by the ECJ it became necessary to further elaborate on social rights which could be derived from the EC Treaty. The issues discussed during the legal proceedings centred on Regulation 1612/68/EEC which was earlier used by the ECJ during the Gravier case to define the scope of Community law in the context of education policy. However, in this matter the students Lair and Brown referred to Article 7 of the mentioned Regulation, which included the equal right to social advantages for migrant workers within the Community. Hence, it had to be determined by the court whether students could rely on rights reserved for economically active persons (workers) in the first place.

Sylvie Lair, a French citizen, studying “Roman and Germanic languages and literature” at the University of Hanover (Germany) applied for a maintenance and training grant based on the German “Bundesausbildungsförderungsgesetz (BAFöG)”.<sup>55</sup> Under this law foreign students were entitled to a training grant if they fulfilled the condition of having resided and worked in Germany for five years prior to the commencement of their studies. At the point of enrolment Sylvie Lair had been living in Germany for almost six years and had been employed with interruptions in various occupations. Since the university considered only periods in which the foreigner has been registered as a tax-payer and social security contributor as “time of employment” which did not add up to the total of five years in the case of Lair it refused the application on that legal basis.<sup>56</sup> Given that German students did not have to fulfil any conditions regarding occupational activity the ECJ was asked by the national court to decide, whether 1) a foreign student in the situation of Lair who has given up employment to start a study program leading to a professional qualification can claim social advantages on the

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<sup>53</sup> Blaizot Paragraph [34] + [35]

<sup>54</sup> Apap 2001, p. 35

<sup>55</sup> In the case hereinafter referred to as “the Law on training grants” as published on the 6<sup>th</sup> June 1983.

<sup>56</sup> Lair Paragraph [6]

same rights as a national (Regulation 1612/68/EEC) and 2) if special pre-conditions for foreigners such as a minimum period of employment prior to the studies do constitute discrimination contrary to Article 7 EEC?

In order to resolve the different issues evolving from the two above-stated questions the ECJ had to start with a general interpretation of Article 7 EEC with reference to training and maintenance grants. Keeping Gravier and Blaizot in mind it was not further elaborated on the subject of university studies and vocational training. However, it was pointed out that these previously discussed cases did not touch the topic of financial assistance and that the judgment in Gravier concerned the (financial) access to education, i.e. especially the kind of costs which cover registration or tuition fees. The court believed that assistance for maintenance fell outside the scope of the EEC Treaty for the purpose of the potential reach of Article 7.<sup>57</sup> Moreover, assistance as requested by Lair was a joint matter of social and educational policy of which the first mentioned was a competence held exclusively by the member states and therefore it did not fall within the scope of the Treaty. Hence, Article 7 EEC applied in the context of training and maintenance grants for the intention of university education only insofar as such grants covered registration and tuition fees (fees for access to education).<sup>58</sup>

For the purpose of the interpretation of the first question and hence the relevant content of Regulation 1612/68/EEC the ECJ restated that the objective of the Regulation was to facilitate the free movement of workers within the Community. Article 7 (1) determined that “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” and Article 7 (2) emphasized that “he shall enjoy the same social and tax advantages as national workers.”<sup>59</sup> Accordingly, the first issue at stake was to link Article 7 (2) of the Regulation (social advantages) to training and maintenance grants. Looking at the situation of Lair it was undoubted that she had used the possibility to move to another member state and had entered into a regular employment.<sup>60</sup> Hence, she had gained the status of a worker and could rely on the rights derived from Regulation 1612/68/EEC. Nonetheless there was a lack of interpretation whether a person who has gained the status of a worker is detracted from the rights inherited by this status at the moment of unemployment. This was insofar of importance as Regulation 1612/68/EEC granted special rights to workers and could be only used to claim social advantages in case a person was still holding this special status.

Essentially, Lair had interrupted her occupational activity in order to follow a study program at a university and it had to be elaborated if Community law included certain provisions which

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<sup>57</sup> Dougan 2005, p. 946

<sup>58</sup> Jacobs 2007, p. 603

<sup>59</sup> Regulation 1612/68/EEC Article 7 (1) and 7 (2)

<sup>60</sup> Lair was continuously employed from January 1979 – June 1981 as a bank clerk and then employed with interruptions in various occupations until she started studying in 1984.

were applicable to such a situation. The ECJ referred in an initial step to Article 48 (3) (d) EEC which states that persons who remain in the territory of a member state after having been employed are regarded as workers;<sup>61</sup> furthermore, Article 7 (1) of the Council Directive 68/360/EEC<sup>62</sup> indicated that a valid residence permit may not be withdrawn from a worker solely on the grounds that he is no longer in employment; additionally Regulation 1612/68/EEC itself prohibited different treatment of migrant workers from national workers in the case of unemployment especially in the context of reinstatement or re-employment.<sup>63</sup>

Summarizing the above-stated it was pointed out that Community law did provide certain rights for persons who have migrated to a member state of the EU for the purpose of employment even if they have become unemployed over the course of time. In addition the ECJ clarified the principle of social advantages as mentioned in Regulation 1612/68/EEC. It stated that one of the fundamental aims of the Regulation is to enable a worker to improve his living conditions and to promote his social advancement while exercising his right to move and work within the Community.<sup>64</sup> Since it was undoubted that the university degree Lair was aiming for would constitute an improvement in her professional career and personal situation (as she didn't hold a university degree so far) financial aid such as BAFöG would be an adequate medium to help her to achieve that goal. A training and maintenance grant for the purpose of university studies as applied for by the plaintiff Lair was therefore considered a social advantage within the meaning of Article 7 of Regulation 1612/68/EEC.

In conclusion, the ECJ held that sufficient evidence was provided to link the provisions of Regulation 1612/68/EEC to workers who had lost their occupation (or decided to follow another professional path) in a host country. However, this was insofar limited as it was decided that the status of a worker can only be maintained in case the university studies for which social advantages are to be granted are connected to the previous occupational activity. Furthermore, it needed to be emphasized once more that the financial benefits in question, although named maintenance and training grants, were only to be awarded to such an extent as to cover the cost for the access education, i.e. registration and tuition fees. Financial benefits going beyond that would not apply in that context to university students and studies. Concerning the question whether workers had to produce a history of their previous employment over a period of at least five years it was determined that a member state cannot make the right to the same social advantages conditional upon a certain time frame. In order to prevent the abuse of social security benefits the court laid down that all provisions mentioned above are not covered by Community law in case it is evident that a

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<sup>61</sup> Lair Paragraph [34]

<sup>62</sup> Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (for link see references).

<sup>63</sup> Regulation 1612/68/EEC Article 7 (1)

<sup>64</sup> Preamble Regulation 1612/68/EEC



person entered the territory of a member state for the sole purpose of enjoying the benefits of a student assistance system or other assistance systems of that respective host country.<sup>65</sup>

While the ECJ was considering over the matter of Sylvie Lair it had simultaneously to cope with similar legal claims brought forward by Steven Brown. Since his situation was to a large extent comparable to that of Lair and the judgment of Brown partly based on that very same case the argumentation by the court won't be reproduced once more in detail. The sub-decision by the ECJ concerning universities as vocational schools in the meaning of Regulation 1612/68/EEC is, however, mentionable. During the assessment of both cases it had to be clarified in how far Article 7 (3) of that Regulation was applicable to higher education institutions such as universities. This was an interesting question as it was already legally confirmed that university studies represent vocational training, but it was still unclear which status had to be assigned to the institutions offering courses and programs of higher education.

The paragraph in question stated that he (the worker) shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.<sup>66</sup> Although this paragraph might have led to the conclusion that universities had to be considered as vocational schools as they offered vocational training it had to be interpreted in a more differentiated manner.

At the time of implementation of the Regulation not only the student mobility within Europe was low, but the focus was also not laid on students. Regulation 1612/68/EEC was a measure explicitly established for workers in order to facilitate the free movement within the Community and enable them to continue their career in a state other than their home country. The stepwise development of a common education policy as described in the previous cases initiated the process to derive student rights from regulations, guidelines and Treaty articles which were meant initially for workers. However, this did not imply at that time that every link that had been established by the ECJ immediately granted all-embracing rights in reference to all paragraphs of one Regulation. With regard to Lair and Brown and the status of universities in the meaning of Regulation 1612/68/EEC it was argued that the paragraph in question referred rather to a matter of employment and not to a period of training. The terms vocational schools and retraining centres emphasized the character of the provision in a direction which was intended for persons who were in need of these facilities, because a previous employment contract has terminated. This meant that the paragraph was pointing to the periods between one occupational activity and another, but not to periods between a higher education degree and the possible employment afterwards. More specifically, the ECJ held that it was not sufficient that a training facility provided some

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<sup>65</sup> Lair Paragraph [43] + [44]

<sup>66</sup> Regulation 1612/68/EEC Article 7 (3)

kind of vocational training. The important measure was that Article 7 (3) had a narrower meaning and included vocational schools and retraining centres only insofar as these provided instruction between employments or particularly during apprenticeship which was not true for universities.<sup>67</sup> Consequently, the court excluded the paragraph from the legal claims of Lair and Brown.

#### **4.1.4 Raulin (1992)**

Shortly before the introduction of the Maastricht Treaty and thus the establishment of European Citizenship the ECJ concluded its legal procedures concerning V.J.M. Raulin, a French national studying in the Netherlands. This case was special insofar as Raulin moved to the Netherlands at the end of 1985 without registering at the aliens' office or applying for a residence permit.<sup>68</sup> However, this did not become a problem until she enrolled for a study course in visual arts at the Gerrit Rietveld Academie in Amsterdam in 1986 and claimed for study finance at the responsible Dutch authority. Her application was denied on the one hand on the basis that she could not be regarded as a migrant worker and claim benefits on the ground of Regulation 1612/68/EEC and on the other hand that she did not hold a valid residence permit. Since the question whether she was a worker or not (she had worked 60h in a time-period of nine months prior to the commencement of the studies) was not answered by the ECJ the sole focus was laid on the issue if a student without residence permit was entitled to study finance.

Problematic in this context was the fact that Raulin claimed a grant who was intended to cover not only tuition/registration fees (fees for the access to education), but also maintenance costs. By repeating the Lair/Brown verdict the ECJ ruled that where a grant was intended to cover both the access to education and maintenance it was necessary to distinguish which part was devoted for either one as maintenance grants were not subject to the principle of non-discrimination.<sup>69</sup>

Next, it had to be elaborated if a national of a member state who was admitted to a course of vocational study derives from Community law the right to enter and reside in the host member state of question in order to follow that vocational training. Hereby, the ECJ argued that the non-discrimination-principle as far as the conditions of access to education are concerned also prohibits any measure which is contrary to the exercise of that right. Following from this, as a consequence of the right of equal access to vocational training, a

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<sup>67</sup> Apap 2001, p. 34

<sup>68</sup> Raulin Paragraph [3]

<sup>69</sup> Apap 2005, p. 35

student who has been admitted into an education program in a member state enjoys the right of residence for the duration of the education program.<sup>70</sup>

Lastly, the court referred to the issue of a residence permit as a requirement to reside in a host member state and to apply for study finance for the financial part which covers the access to education. Confirming the legal provision of Article 7 EEC the right of equal treatment could not be denied to Raulin and it was stated that for the purpose of vocational training a student was allowed to reside in a member state of the Community and to apply for study finance under the same conditions as national students. However, it was also emphasized that the right of residence could in turn be subject to certain conditions (such as sufficient resources for maintenance and sickness insurance) in which scope the non-discriminatory principle did not apply.<sup>71</sup>

#### **4.1.5 Sub-Conclusion**

Following from the above-stated it can be concluded that the ECJ opened a new path with its interpretation of Community law regarding student rights in the years prior to the Maastricht Treaty.

With the establishment of a connection between European legislature and education policy it ruled that the access to higher education did in fact fall within the scope of the EEC Treaty even if it was not explicitly mentioned therein. Hence, it was possible for students to rely on the non-discrimination principle of Article 7 EEC as far as any additional enrolment / administration fees for foreigners were concerned. Moreover, it decided that any form of education which prepared for a qualification for a particular profession constituted vocational training making university studies part of that provision. In a next step the ECJ further broadened the applicability of the term vocational training. From that point on it was no longer necessary that university studies provided the strict qualification for a particular profession in order to be categorized as vocational training, but rather that the studies in question included specific training for any legally accepted profession.

While the ECJ was only dealing with non-beneficiary rights until 1988 it stated in that year that students were even entitled to maintenance grants as long as those concerned the coverage of fees for the access to education (administration/enrolment/tuition fees).

Additionally, it was decided in this context that the non-discrimination principle does prohibit an institution which is awarding a maintenance grant to a student from making this financial benefit conditional upon criteria such as a previous record of employment (minimum time period spent as a worker in the respective host country). Moreover, prior to the Maastricht

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<sup>70</sup> Strumia 2006, p. 740

<sup>71</sup> Dougan 2005, p. 960

Treaty the ECJ broadened the scope of Article 7 EEC insofar as to make its application possible in the context of study finance even in case the respective student did not possess a residence permit; meaning that with the admission to a course of vocational training in a host member state the student was also granted the right to reside in that country for the duration of the course and to apply for financial benefit which covers the access to education.

Although, the ECJ conferred certain rights it also precluded others from gaining legal status. This included on the one hand the negative decision concerning the restitution of enrolment fees paid prior to the Gravier verdict and on the other hand the coverage of living expenses as maintenance grants did not fall within the scope of education policy at that moment (Table 1 summarizes the outcome of all mentioned cases).

If this has changed with the Maastricht Treaty and in how far the instalment of European Citizenship became a legal ground for the further extension of student rights will be analyzed in the next two chapters.

Case / Year	Outcome	Articles / Directives / Regulations concerned
<p><b>Gravier</b> <b>1985</b></p>	<p><b>1)</b> Access to education falls within the scope of the EC Treaty</p> <p><b>2)</b> University studies constitute vocational training</p> <p><b>3)</b> Additional enrolment fees for the access to university education are prohibited by Community law</p>	<p><b>1)</b> Link between Education policy &lt;-&gt; EEC Treaty based on Art. 48, 52, 128 EEC + Regulation 1612/68/EEC + Dec 63/266/EEC</p> <p><b>2)</b> Dec 63/266/EEC + General Guidelines on Vocational Training (1971, 1976, 1981)</p> <p><b>3)</b> Article 7 EEC (Prohibition of discrimination based on nationality)</p>
<p><b>Blaizot</b> <b>1988</b></p>	<p><b>1)</b> All studies which qualify for a professional career, not only those which explicitly lead to an occupation, constitute vocational training</p> <p><b>2)</b> The only exception to vocational training are knowledge studies which are too general to constitute vocational training</p> <p><b>3)</b> No retroactive effect of Gravier verdict -&gt; only for students who have claimed prior to Gravier case</p>	<p><b>1)</b> Dec 63/266/EEC + General Guidelines on Vocational Training (1971, 1976, 1981) + Article 10 European Social Charter</p> <p><b>2)</b> Limitation by the ECJ</p> <p><b>3)</b> Misleading communication by the Commission + New development in European legislature</p>
<p><b>Lair</b> <b>1988</b> and <b>Brown</b> <b>1988</b></p>	<p><b>1)</b> Universities are not vocational schools in the meaning of Regulation 1612/68/EEC</p> <p><b>2)</b> Social advantages are only to be awarded as far as they concern the access to education (tuition fees and administration costs)</p> <p><b>3)</b> No maintenance grants -&gt; this falls within the scope of social policy -&gt; not Community law</p> <p><b>4)</b> No previous (minimum) working period necessary for students prior to application for social advantages</p>	<p><b>1)</b> Art. 7 (3) Regulation 1612/68/EEC only linked to employment / occupation</p> <p><b>2)</b> Art. 48, 52, 128 EEC + Regulation 1612/68 + Dec 63/266/EEC linked to education, but not social policy</p> <p><b>3)</b> see # 2</p> <p><b>4)</b> Article 7 EEC (Prohibition of discrimination based on nationality)</p>
<p><b>Raulin</b> <b>1992</b></p>	<p><b>1)</b> A national of a member state who has been admitted to a course of vocational training has the right to reside in the host member state for the duration of that course -&gt; even without residence permit</p> <p><b>2)</b> Non-discrimination principle precludes a member state from requiring a residence permit from a student in order to qualify for study finance (as far as the fees for the access to education are concerned)</p>	<p>Based on new interpretation of Article 7 EEC by the ECJ and Article 128 EEC</p>

**Table 1 - Summary of Pre-Maastricht Decisions (own figure)**

## 4.2 Post-Maastricht

The following part will discuss three cases which have been dealt with by the ECJ in the years after the introduction of European Citizenship. Although one might expect that with the implementation of the Maastricht Treaty the ECJ was confronted with an increasing number of cases regarding student rights it was not until 1999 when the case *Grzelczyk* came before court and was decided two years later. However, in the meantime other important developments involving the EC Treaty and European Citizenship took place which were not directly connected to student rights, but became an essential legal ground in subsequent decisions concerning higher education. Hence, before turning to *Grzelczyk* one significant case (*Maria Martinez Sala vs. Freistaat Bayern*) will be briefly summarized.

Maria Martinez Sala, a Spanish national legally residing in Germany for more than 25 years filed an application for child-raising allowances in 1993. Since her residence papers had expired in 1984 and thereafter she was only holding documents stating that she had applied for an extension of a residence permit the social benefit in question was denied. The Bayrische Landessozialgericht (Bavarian State Social Court) confirmed that in the whole time period while living in Germany (in the time period in which the respective authorities were deciding about the extension of her residence permit) she was protected under the European Convention on Social and Medical Assistance of 1953 and therefore not to be deported.<sup>72</sup> Moreover, she received social assistance after her last employment terminated in 1989 and regained her residence permit in 1994. Despite the fact that the German authorities had already once granted a social benefit to Mrs. Sala this was not the case with respect to the child-raising allowances she applied for.

Consequently, the central question which had to be decided by the ECJ was if Community law did permit to make child-raising allowances conditional upon a residence permit even in case the applicant was holding the citizenship of an EC member state and was legally residing in the respective host country.<sup>73</sup>

Faced with this question the ECJ took an unconventional approach and demonstrated that the requirement that a situation must clearly come within the scope of application of the EC Treaty provided almost no guidance and that almost anything could become enmeshed in the logic of freedom of movement.<sup>74</sup> More precisely it was challenged by the court whether a residence permit was necessary at all. This was especially true since the *Sala* case for the first time took a special relevance of the Maastricht Treaty into account. In particular the court hinted that the introduced European Citizenship may in fact bring new rights and

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<sup>72</sup> *Sala* Paragraph [14]

<sup>73</sup> *Sala* Paragraph [19]

<sup>74</sup> Tomuschat 2000, p. 451

grant social benefits to a person who does not fulfil the conditions to be regarded as a worker, but merely as a citizen of the European Union.<sup>75</sup> Hence, it was decided that Article 17 (2) EC guaranteeing the freedom to move and reside in a member state of the EU in combination with Article 12 EC (non-discrimination principle) were sufficient to grant the child-raising allowances at stake.<sup>76</sup> However, in the aftermath it was largely debated if the ECJ grounded its decision upon the special facts of the case, i.e. Martinez Sala's long-standing lawful residence in Germany.<sup>77</sup> Turning to the Grzelczyk case it will become clear that it was not a one-time exception, but rather the first step of a new legal development in the European law.

#### **4.2.1 Grzelczyk (2001)**

Rudy Grzelczyk, a French national studying physical education in Belgium applied at the beginning of his fourth and last year of study for a maintenance grant, the so-called Minimex at the responsible Public Social Assistance Centre Ottignies-Louvain-la-Neuve (CPAS). Although he had sustained himself with various occupational activities and had not received any financial support by the Belgian authorities until that moment his application was denied. The difficulty was based on the fact that he tried to claim a benefit to which he was not entitled by Belgian law as he was neither a Belgian citizen nor a worker who could rely on the provision laid down in the Directive 1612/68/EEC.<sup>78</sup> However, as it was decided earlier by the court in the case of Martinez Sala that the combined law of European Citizenship and Article 12 EC provided a basis for the grant of a maintenance benefit it had to be elaborated if this was also true in the situation of the student Grzelczyk.<sup>79</sup>

In order to understand the argumentation by the court it must be noted that Mr. Grzelczyk was denied the status of a worker in the scope of Directive 1612/68/EEC even though he had worked in minor occupational activities over a time-period of three years. Keeping in mind that the ECJ took a different view in some earlier cases (e.g. Lair) in which even minor occupations were regarded as significant one might question this procedure. Essentially, this was due to the fact that the national court in Belgium which had to cope with the case initially established the view that he was not to be considered as such and therefore did not put the question to the ECJ.<sup>80</sup> Hence, the court adopted that view and proceeded with the question whether Grzelczyk was entitled to a maintenance benefit as a European Citizen.

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<sup>75</sup> White 2005 p.896

<sup>76</sup> Jacobs 2007, p. 600

<sup>77</sup> White 2005 p.896

<sup>78</sup> Iliopoulou 2002, p. 609

<sup>79</sup> Grzelczyk Paragraph [13]

<sup>80</sup> Martin 2002, p. 137

Looking at the legal grounds Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students needs to be mentioned. This directive states in its Article 1 that a member state shall recognize the right of residence as long as the respective student does have sufficient resources and in its Article 4 that the right of residence shall remain for as long as the beneficiaries (of this Directive) fulfil the conditions laid down in Article 1.<sup>81</sup> However, by applying for a benefit such as the Minimex, Grzelczyk indicated that he did not in fact have sufficient resources as stipulated by the Directive leading to the question whether his residence permit could be withdrawn.<sup>82</sup> Hereby, the ECJ concluded that a member state cannot be prevented from taking the view that the student no longer fulfils the conditions for the right of residence. However the withdrawal of the permit cannot automatically be the consequence of a national of another member state having recourse to the host member state's social assistance system.<sup>83</sup> More important to the court in this regard was an indirect condition referring to the extent of assistance possibly needed by a student stated in the preamble of the above-mentioned directive. More specifically, it pointed to the fact that it was essential in the first place that the beneficiaries of the right of residence must not become an unreasonable burden<sup>84</sup> on the public finances of the host country. Thus, the question was practically turned around and it had to be coped with the issue of how to define unreasonable as the ECJ took the view that it was actually possible to rely on a member states social assistance system to a certain extent. This view was linked to another indistinct provision defined in Article 1 of the same directive. This provision merely demands from any student to assure the relevant national authority, by means of a declaration (or by alternative means as the student may choose) that are at least equivalent that he/she does have sufficient resources to avoid becoming a burden on the social assistance system.<sup>85</sup> In summary, it means that the student only has to declare, but not to proof that his/her financial situation is secured. This was used by the ECJ to justify the assertion that the truthfulness of the students' declaration had to be assessed at the time when it was made leading to the possible situation that even when a student was truthful initially his or her circumstances may change over the course of time.<sup>86</sup> Putting the fact that Grzelczyk's situation had changed as he had supported himself for the first three years next to the interpretation by the court that a certain degree of financial solidarity between nationals of a host member state and nationals of other member states was within the limits of the Directive 93/96/EEC it was stated that a temporary burden caused

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<sup>81</sup> Council Directive 93/96/EEC (for link see references).

<sup>82</sup> Currie 207, p. 24

<sup>83</sup> Grzelczyk Paragraphs [43] + [44]

<sup>84</sup> Preamble Council Directive 93/96/EEC

<sup>85</sup> Article 1 - Council Directive 93/96/EEC

<sup>86</sup> Iliopoulou 2002, p. 613



by the student Grzelczyk had to be categorized as not being unreasonable.<sup>87</sup> Since Grzelczyk's request was only a temporary and reasonable burden it came down to the question whether the denial of the Minimex constituted a discrimination based on nationality. On the ground of the Martinez Sala case the court noted that Article 12 EC must be read in conjunction with the provisions of the EC Treaty on "Citizenship of the Union" providing that Union citizenship is destined to be the fundamental status of nationals of the member states.<sup>88</sup> Moreover, it confirmed that a citizen of the European Union can rely on Article 12 of the Treaty in all situations which fall within the material scope of Community law and that those situations include the exercise of the right to move and reside freely in another member state as conferred by Article 18 EC.<sup>89</sup> Since, it was on the one hand not questionable that a Belgian national Grzelczyk was entitled to the Minimex and on the other hand that Grzelczyk had the right to equal treatment the ECJ further broadened the path opened by its Sala verdict. Therefore, it was concluded that the Minimex could not, for a lawfully resident EU citizen-student, be made conditional on having the status of a worker within the meaning of Regulation 1612/68/EEC.<sup>90</sup>

#### **4.2.2 Bidar (2005)**

Danny Bidar, a French national and his sick mother moved to the United Kingdom in 1998 to live with his grandmother. After the death of his mother he continued staying with his grandmother, completed his secondary education and was accepted at the University College London for the study program economics in 2001. Although he received assistance with his tuition fees under the same conditions as British students his application for a student loan was refused on the ground that he did not satisfy certain criteria laid down in the British Student Support Regulation.<sup>91</sup> Essentially, a requirement for the training grant had been that he had to be settled in the United Kingdom and had to be resident there for three years.<sup>92</sup> Problematic in this context was the fact that under United Kingdom law a national of another member state cannot, in his capacity as a student, obtain the status of being settled (Grzelczyk Paragraph [18]). Hence, the issues which had to be elaborated by the ECJ included the questions if

- a) assistance to students intended to cover their maintenance cost in the form of a subsidised loan or a grant still fell outside the scope of the Treaty and

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<sup>87</sup> Martin 2002, p. 138

<sup>88</sup> White 2005 p.897

<sup>89</sup> Grzelczyk Paragraphs [33] + [34]

<sup>90</sup> Iliopoulou 2002, p. 612

<sup>91</sup> Bernard 2005, p. 1466

<sup>92</sup> White 2005, p. 899 → However, under the national regulations, residence as a student in secondary education did not count as residence for this purpose.

- b) if not which conditions of granting assistance to cover the maintenance costs of students were based on objective considerations independent of nationality<sup>93</sup>

In short, the ECJ had to reconsider whether the decisions made in *Lair/Brown* which strictly divided the entitlement of tuition fees (which fell within the scope of the treaty) and maintenance benefits (which were not covered by Treaty law for the purpose of Article 12 EC) were still valid at that state of development in the European Union.

Turning first back to the *Grzelczyk* verdict it has to be understood that in that case the grant of the *Minimex* was not equivalent with a decision providing every migrant student with the right to maintenance benefits. Strictly seen it was insofar limited as the condition applied that the student must not become an unreasonable burden on public finances, because in that case the right of residence could be terminated.<sup>94</sup> Hence, starting from there the court restated its earlier decisions (especially *Sala* and *Grzelczyk*) and emphasized that Article 12 EC must be read in conjunction with Union citizenship as this is the fundamental status of nationals of the members states – then they pointed out that a citizen of the EU, lawfully resident in the territory of a host member state can rely on Article 12 in all situations which fall in the material scope of Community law which also includes the exercise of the right to move and reside within the EU.<sup>95</sup> In a next step the ECJ took the new European Union developments into account and referred on the one hand to the legal changes since *Lair/Brown* and on the other hand to the newly established Directive 2004/38/EC. Concerning the changes since the 1988 verdicts the introduction of Union citizenship and the new Title XI Chapter 3 on education and vocational training in the Maastricht Treaty were considered as new legal ground in the European integration process within the field of education.<sup>96</sup> Hence, the ECJ stated that for these reasons assistance for students, whether in the form of a subsidised loan or grant intended to cover maintenance cost falls within the material scope of the ECJ Treaty and added that this is further confirmed by Article 24 of Directive 2004/38/EC.<sup>97</sup> This Article provides that all Union citizens residing on the basis of this Directive in the territory of a host member shall enjoy equal treatment with the nationals of that member state within the scope of the Treaty.<sup>98</sup> One important remark must be included in this argumentation. Although, a student who moves to a member state of the EU enjoys equal treatment under Directive 2004/38/EC this does not mean that he/she is automatically entitled to a training grant. Especially, because Article 3 of Directive 93/96/EEC explicitly states that a student does not derive any right for the payment of maintenance benefits from that legal basis.

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<sup>93</sup> *Bidar* Paragraphs [28] + [49]

<sup>94</sup> Bernard 2005, p. 1479

<sup>95</sup> *Bidar* Paragraphs [31] + [32] + [33]

<sup>96</sup> Dougan 2005, p. 961

<sup>97</sup> White 2005, p. 899

<sup>98</sup> Article 24 (1) of Directive 2004/38/EC (for link see references).

However, in this special case, Bidar was not a student who moved to another member state for the purpose of pursuing higher education, but was already residing in the UK for three years which made his residence more generally and thus Article 3 of Directive 93/96/EEC did not apply.<sup>99</sup> Consequently, the court emphasized that as to the lawful residence of Mr. Bidar, who has been living in the UK without it ever being objected that he did not have sufficient resources to maintain himself he enjoyed a residence right based on Article 18 EC and could invoke the right of the non-discrimination principle of Article 12 EC.<sup>100</sup>

As to the second question the ECJ had to elaborate whether national law can demand certain conditions to be fulfilled by the respective beneficiary in order to claim a training grant. Here it was ruled that Article 12 EC precluded the use of a condition of being settled in the UK under national immigration rules as a prerequisite of entitlement to a student loan where nationals of other member states who have received a substantial part of their secondary education in the host member state could not acquire settled status.<sup>101</sup> Moreover, as stated in Grzelczyk, member states must show a certain degree of financial solidarity with nationals of other member states, but only for as long as the maintenance grants for the respective students do not become an unreasonable burden for the social system. In this regard the ECJ accepted that it is perfectly legitimate for a member state to wish to reserve maintenance assistance to those who can demonstrate a certain degree of integration into the host society and for these purposes the UK was entitled to expect three years prior residency in the national territory before considering applications for student loans.<sup>102</sup> Summarized, this meant on the one hand that a student who resided under the circumstances of Bidar in the UK could claim his/her right for a training grant under the protection of Article 12 EC which on the other hand was not true for students who were not able to demonstrate a similar connection (in the form of at least three years residency) to the host countries society.

#### **4.2.3 Morgan and Bucher (2007)<sup>103</sup>**

The most recent case dealt with by the ECJ concerned Rhiannon Morgan and Iris Bucher, two German nationals who claimed training grants for their study programs in member states of the EU (United Kingdom and the Netherlands respectively) which under German law were only to be awarded if the studies abroad constituted a continuation of previously started

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<sup>99</sup> Dougan 2006, p. 121

<sup>100</sup> Lenaerts 2005, p. 12

<sup>101</sup> White 2005, p. 900

<sup>102</sup> Dougan 2006, p. 121

<sup>103</sup> The cases were concluded with judgement by the ECJ on the 23rd of October 2007 – as there is no academic reference available at the present moment the content and discussion derives mainly from the respective cases C-11/06 & C-12/06 (for link see references).

higher education in Germany. Since this was not the case the grants were denied on the basis that the two students did not fulfil the condition of having studied in Germany at least for a time period of one year.

The question which had to be answered by the ECJ concerned the interpretation of Article 17 EC and Article 18 EC on the freedom of movement and whether these provisions prohibited to make a training grant conditional upon a minimum time period of study in the country of origin as stated above. Keeping the previous case law in mind it has to be emphasized that the claims of the students Morgan and Bucher constituted a new problem in European law. Essentially the issue at stake was the extent in which a national law could restrict the right to exercise one of the fundamental freedoms of the EU for their own nationals.

The respective German authority justified the so-called first-stage condition by the following intentions:

- a) Education and training grants are only to be awarded to students who have the capacity to succeed in their studies and who show their willingness to study without delay.
- b) It has to be determined whether the students have made the right choice in respect of their studies.
- c) The finance of studies followed entirely in another member state could become an unreasonable burden leading to a general reduction in study allowances in the member state of origin.

Starting with the financial aspect laid down in c) the court confirmed that member states may install measures in their national regulation to assure that the coverage of maintenance costs does not become an unreasonable burden on the public sector.<sup>104</sup> Moreover, as stated in *Bidar* (2005), a student applying for a training grant in a country must show a certain degree of integration into the society of that state. Although this rule was established for migrant students claiming benefits from their host member state in the first place it can also be adopted vice versa for students desiring to study in another member state while claiming benefits from their country of origin (as long as the risk of an unreasonable burden exist). By considering that the plaintiffs have been raised in Germany and completed their secondary education there it becomes however clear that the link had been established. The requirement of a connection to the respective society seeks ultimately to safeguard the moral and financial integrity of any domestic welfare system, where the sources of income through taxation are territorially limited but the pool of potential beneficiaries might well be much larger<sup>105</sup> – in the case of Morgan and Bucher however (although not mentioned by the court) it has to be pointed out that their parents are probably registered as tax-payers in Germany, thus contributing to social welfare.

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<sup>104</sup> First decided in *Grzelczyk* (2001) and confirmed in *Bidar* (2005)

<sup>105</sup> *Dougan* 2005, p. 959:

Continuing with a) it was reasoned that studies which are completed in regular time secure the financial equilibrium of the education system of the respective member state.<sup>106</sup> Nonetheless, not the objective is important in this regard, but rather the constitution of the measures to achieve it. Hereby, the court held that the first-stage condition is not appropriate to follow that objective as on the one hand it does not ensure in any way that the student completes his / her studies in time and on the other hand it inherits a significant risk that the overall duration of studies might even be increased. More specifically, a study course started in the country of origin is unlikely to continue from the exactly same level and content in a host country as European educational harmonization does not go that far at the present moment.

Before turning to the Articles concerning European citizenship the objective b) of “right choice of study” will shortly be considered. In this context it needs to be added that the first-stage condition does not only demand a study period of at least one year before moving to another member state, but also that the studies abroad have to be a continuation of the previously initiated educational program. Hence, a student is not eligible to a training grant if the course of study is voluntarily or involuntarily changed. Furthermore, in the special case of Morgan and Bucher the study courses in question are programs of which there are no equivalents in Germany. Following from this the ECJ stated that the condition of continuity is opposed to the objective of right choice. First, it prevents a student to change (in the host member state) the subject of study chosen in Germany and second, it discourages students to rethink their choice of study in case they feel that it is no longer right. Thus, a student who wishes to study abroad and to receive a training grant has to make a practically irreversible decision in the beginning which cannot be coherent with the objective to facilitate free movement within the European Union. In respect to Morgan and Bucher it goes even as far as to demand from a student to choose between the renouncement of the study course desired or the complete renouncement of the entitlement to a training grant.<sup>107</sup>

Looking at Articles 17 EC and 18 EC and the foregoing case-law it is undisputable that the situation clearly falls within the scope of the EC Treaty as it concerns the exercise of the fundamental freedoms. Since Articles 3 (1) q EC and 149 (2) EC pursue the aim to encourage the mobility of students and teachers within the community no unjustified burden may be imposed on any citizen of the EU seeking to exercise the right to freedom of movement or residence.<sup>108</sup> Consequently, a limitation as stated in Article 18 (1) can only exist insofar as it does not hinder a student to follow higher education outside of his/her country of origin. The ECJ categorized the first-stage condition as a clear restriction to the freedom of movement as it is liable on the account of personal inconvenience, additional costs and time

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<sup>106</sup> Morgan and Bucher Paragraph [36]

<sup>107</sup> Morgan and Bucher Paragraph [39]

<sup>108</sup> Jacobs 2007, p. 597

delays to discourage students of the Federal Republic of Germany to pursue studies in another member state of the EU.<sup>109</sup> As for the right to impose restrictions upon the accordance of a training grant for the purpose of higher education studies in a member state of the EU it was concluded that in no way does the first-stage condition constitute an appropriate measure to the objectives described in a), b) and c).

Consequently, the ECJ summarized that the Articles on Citizenship of the Union (Article 17 and 18 EC) preclude that a training grant is made conditional upon a measure as stated in the foregoing.

However, in the verdict the court laid down that this applies “in circumstances such as those in the cases before the referring court”. Therefore, the question remains unanswered whether German students can only rely on that decision in case the study program desired is not available in Germany or if it is now established as a general rule for all studies followed in a member state of the EU.

#### **4.2.4 Sub-Conclusion**

Summarizing the developments since the introduction of the Maastricht Treaty and European Citizenship it is easily observable that the ECJ reversed its position established in *Lair/Brown* and demonstrated that even maintenance grants were not entirely off-limits to economically non-active persons.

Starting with the decision made in the context of the case *Grzelczyk* the court held that a non-contributory benefit could be granted to a person who is exercising its right to move and reside freely within the EU. Important in this regard was the interpretation of the Directive 93/96/EEC. Hereby, the court focused on the condition that the person protected by Treaty law must not become an unreasonable burden for the host countries' social security system and neglected Article 3 of the Directive which explicitly stated that students do not derive any right to be entitled to the payment of maintenance grants. Hence, the ECJ referred for the first time to a certain extent of financial solidarity between the member states of the EU. This was further confirmed in 2005 (*Bidar*) when it was stated that maintenance grants in the form of subsidized loans or grants had to be awarded to migrant students under the same conditions as for national students. The emphasis was laid on the view that migrant students were entitled to such social benefits if they could proof that they had established a genuine link to the host countries society (which was the case if they had legally resided there for a certain time period). Moreover, the most recent case (*Morgan and Bucher* 2007) concluded by the ECJ pointed once again to the premise of free movement within the European Union and the abolishment of barriers which still exist in national legislature and are no longer

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<sup>109</sup> Morgan and Bucher Paragraph [30]

compatible with community law. Therefore, it prohibited an educational grant accorded to a migrant student for his/her further studies in an EU member state to be made conditional upon a previous study period in the country of origin, i.e. that a student does not have to begin his/her studies in the home country in order to receive national social benefits for a study course abroad.

Since these developments were the result of the complex development of European law in the past twenty years the last chapter will discuss the relationship between the case law of the ECJ and the introduction of European Citizenship in order to give an answer to the overall research question.

Case / Year	Outcome	Articles / Directives / Regulations concerned
<p><b>Grzelczyk</b> <b>2001</b></p>	<p><b>1)</b> Migrant student are entitled to a non-contributory social benefit, such as the Minimex, if they are legally resident in a host member state of the EU</p> <p><b>2)</b> A non-contributory social benefit cannot be made conditional upon the pre-requisite that a migrant student inherits the status of a worker</p> <p><b>3)</b> A Non-contributory social benefit is only to be granted to such an extent as it does not become an unreasonable burden for the host member state</p>	<p><b>1)</b> Article 18 EC (European Citizenship)</p> <p><b>2)</b> Article 12 EC (non-discrimination principle) + Article 18 EC (European Citizenship) vs. Regulation 1612/68</p> <p><b>3)</b> Directive 93/96/EEC</p>
<p><b>Bidar</b> <b>2005</b></p>	<p><b>1)</b> Financial assistance in the form of subsidised loans or grants for migrant students legally residing in a host member state is to be granted under the same conditions as for national students</p> <p><b>2)</b> National legislation cannot make the entitlement of financial assistance in the form of subsidised loans or grants conditional upon the status of settlement, but only upon legal residence and the establishment of a genuine link between the migrant student and the host member states' society</p>	<p><b>1)</b> Article 12 EC (non-discrimination principle)</p> <p><b>2)</b> Article 12 EC + Article 18 EC + Article 24 of Directive 2004/38/EC</p>
<p><b>Morgan</b> <b>2007</b> and <b>Bucher</b> <b>2007</b></p>	<p>Migrant students who apply for a training or education grant in their native country in order to follow higher education studies in a member state of the EU cannot be denied such a benefit on the basis that they have not been enrolled at a higher education institute for a minimum period of one year in their country of origin</p>	<p>Article 17 EC + Article 18 EC</p>

**Table 2 - Summary of Post-Maastricht Decisions (own figure)**



## 5. Conclusion: European Citizenship and Case Law

Looking at the situation of migrant students in the European Union it is unquestionable that a broad scope of rights has been derived from the treaties and associated regulations, directives and council decisions in the past. The times in which a student who wished to enrol for a study course in a different country (member state) had to cope with major disadvantages are over insofar as students are now able to rely on certain provisions which prohibit unequal actions by the public education sector.

Starting with the recapitulation of the proceedings prior to the Maastricht Treaty one needs to look once again at Article 12 EC (previously Article 7 EEC). Concerning education this Article was used for the first time by the student Gravier and later by Blaizot who considered an additional enrolment fee for foreign students an act of discrimination based solely on nationality. In these two cases the ECJ established the rule that a student could rely on the non-discrimination principle if the actual circumstances fell within the scope of Community law. Since the access to vocational training was concerned it was held by the court that this field was linked to the labour market and that students had to be enabled to obtain the vocational training programs which they desired even if it included the completion of that program in a member state of the European Community.<sup>110</sup> Hence, the rights of movement and of residence as introduced by the Roman Treaties in 1957 were at the very centre of these considerations. It meant that a student who was using his right to move to a member state and was legally residing therein could not be denied the access to a study programs by other means than the ones which were also put on national students. Although this decision was ground-breaking in 1985 it did not concern the financial sector insofar as it did not give the right to claims for any benefits. With the cases Lair/Brown and Raulin the rule of equal access received judicial strengthening and delimitation as the ECJ clarified that social advantages had be awarded for the part of covering registration/tuition fees (fees for the access to education).<sup>111</sup> Hereby the court seemed to distinguish between two different components regarding a) the status of a student and b) the policy fields concerned. The first related on the one hand to the student as an education consumer who deserves equal protection and on the other hand to the economically inactive person who has to rely on his own forces for facing living costs.<sup>112</sup> Likewise this was true for the policy field education falling within the scope of the treaty and for the sector social policy which was entirely a member state competence at that time. In this context the ECJ was also coping with the previously mentioned Regulation 1612/68/EEC in conjunction with Article 12 EC. While a migrant person with the status of a worker was able to invoke the rights from these

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<sup>110</sup> Jacobs 2007, p. 602

<sup>111</sup> Strumia 2006, p. 739

<sup>112</sup> Strumia 2006, p. 739

provisions in any case it was rather unclear if this was also true for students who have e.g. worked for a certain time-period in their respective host country. Thus, if a student inherited the status of a worker was mostly decided on a case to case basis by the courts. The question which remained after the ruling in *Lair/Brown* was whether it was only maintenance grants that were excluded from the scope of the EC Treaty or whether all assistance given to students was excluded (including income support or housing benefit, etc.).<sup>113</sup>

Following the Maastricht Treaty this problem was approached through new developments in case law and the ECJ established its important premise that “Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality”.<sup>114</sup> The cases *Grzelczyk* and *Bidar* demonstrated this effect of European Citizenship and maintenance benefits were included in the scope of Article 12 EC. However, simultaneously the ECJ granted that specific conditions could apply for any respective applicant for the coverage of maintenance costs. More specifically, it was stated that member states can limit the circle of beneficiaries because of objective reasons by virtue of the general interest of financial balance for the systems of social security.<sup>115</sup> Nonetheless, in the most recent cases *Morgan* and *Bucher* the ECJ held that it was not an unreasonable burden for the German social system to entitle national students who want to follow their studies entirely in a member state of the EU with a training grant.

Hence, following from the foregoing chapters the above-posted research-question on the effect of the establishment of European Citizenship on student rights regarding study fees and maintenance grants must be answered in the following way:

With respect to study fees and thus fees connected with the access to education it has to be stated that no change has taken place with the introduction of European Citizenship. This is due to the fact that the European Court of Justice already ruled prior to the Maastricht Treaty that migrant students were entitled to training grants and equal treatment as far as the access to education was concerned.

In reference to maintenance grants it has to be pointed out that European Citizenship had a great influence on the judgements of the ECJ. On the basis of Article 17 and 18 EC the ECJ broadened the rights of migrant students and guaranteed under certain conditions the access to social benefits (covering maintenance costs).

Therefore, as can be seen from the analysis of the cases the question whether social rights are included in citizenship and European Citizenship especially is immanent in claims for maintenance by students in the EU.

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<sup>113</sup> Bernard 2005, p. 1467

<sup>114</sup> *Grzelczyk* Paragraph [31]

<sup>115</sup> *Epiney* 2007, p. 622

However, some important remarks need to be made in order to clarify the scope of European Citizenship in connection with student rights.

First, the major problem of incompleteness of European Citizenship still exists. Although economically inactive persons have been increasingly included in certain areas of rights (such as social benefits) the focus is nonetheless laid on economically active persons.

Second, European Citizenship highly depends on the interpretation by the ECJ. Economically inactive persons cannot derive new rights directly from European Citizenship as their status always depends on conditions which have to be proven first. Simply said, the key difference between economically active and non-economically active citizens is the fact that those who are economically active enjoy full equal treatment from the first day of their arrival in the host state.<sup>116</sup>

Third, students' rights have changed since Maastricht, but this is not only due to the formal introduction of European Citizenship. Nonetheless, the introduction of this concept has created a new argument in court and opened a previously closed path. It has basically started a process of rethinking individual rights and given the ECJ the possibility to interpret students' rights in a broader manner. Consequently, the year 1992 cannot be regarded as a threshold to a new era but the formulation of students' rights for fees and grants has to be seen as a gradual process that started much earlier and continues until today.

In the future students who study in a different EU member state have equal access to all study courses and can even apply for maintenance support but there is no guarantee for the latter as it still depends on conditions such as the avoidance of inappropriate burdens for the host state and the integration into the society. Thus, there will be further claims as the past has shown that one has to fight for one's own rights and the ECJ will further elaborate European Citizenship with regard to economically inactive persons such as students.

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<sup>116</sup> Bernard 2006, p. 1488

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