

Handout № 13

Fall¹

The German citizen P, a student of kartvelian language, continues her studies at the university Sorbonne in Paris. In order to support herself she assists parallel to her studies on two afternoons a week in a German bookstore; she receives a payment of 1.000 € .

In her leisure time she works for the French party FN – which is considered as right-wing extremist by the authorities – and also in an associated union. At public rallies she calls for a preferential treatment of French and European workers for employment and a more restrictive immigration policy. These appearances of P raise increasingly the disapproval of the French authorities. The competent immigration authority finally orders her expulsion for life time.

P thinks that the expulsion order is contrary to Community law. She claims it violates Dir 64/221 and 93/96; the order would infringe her basic rights and freedoms under Community law, especially her right to free speech and assembling. The Union citizenship itself would entitle her to express her political views. Furthermore she would be discriminated against in comparison to the French party members who are not the target of any state measures. In any event the order would be unproportionate.

The immigration authority retorts that P could not rely on Community law since she did not fulfil the requirements of a regular employment. According to French labour and social law a minimum of three days per week would be required. As a student she would not have a status recognised by Community law since her activity had no economic aspect. Even if she could claim for herself the basic freedoms, the MS would not have to observe the fundamental rights of Community law; these were only binding for the organs of the Community. The reason why French party activists were not targeted was their constitutional right to freedom of speech. Art. 16 EHRC would confirm that a different treatment of foreigners was permissible. P replies that this antiquated provision which hinders a political integration in the host state could not be applied in the area of Community law.

Is the order of the immigration authority in compliance with Community law?

It is to assume that the references to French law are correct.

¹S. on this LECHER, HELMUT/GUNDEL, JÖRG, Übungen im Europarecht. Berlin, 1999, B II 14, S.185 (in German).