SELECTED LEGISLATION AND JURISPRUDENCE

European Court of Justice

ECJ 2010/5 — Nicolas Bressol and Others and Céline Chaverot and Others v Gouvernement de la Communauté française, 13 April 2010 (Case C-73/08)

General context
The regulation of the French-speaking Community aiming at limiting the intake of French students into medical trainings in Wallonia is contrary to the prohibition of discrimination on the basis of Member State of residency. Under very specific conditions it could be justified from a public health point of view.

Facts
For some years, there has been an increase of the number of students from other Member States in nine medical or paramedical courses offered by the French Community; such as France where there is a restricted access to these studies. Because of the too large number of students attending those courses the French Community adopted the decree of 16 June 2006. Several students who were not given access to the training brought an action before the Constitutional Court seeking annulment of the Decree.

This court has expressed doubts as to the legality of the decree of 16 June 2006, considering that the provisions of the Belgian constitution — the alleged infringement of which it has jurisdiction to review — must be read in conjunction with Article 12 (1) EC, Article 18(1) EC, Article 149(1) EC and the second indent of Article 149(2) EC, and the third indent of Article 150(2) EC. In those circumstances, the Constitutional Court decided to refer several questions to the Court for a preliminary ruling.

By its first two questions, the referring court asks whether EU law precludes legislation of a Member State, which restricts the number of non-resident students who may enrol for the first time in medical and paramedical courses at higher education establishments, where that Member State faces an influx of students from a neighbouring Member State prompted by the latter Member State’s pursuit of a restrictive policy and where the result of that situation is that too few students resident in the first Member State graduate from those courses.
Pursuant to Articles 165(1) and 166(1) TFEU the power to organise education systems and vocational training lies with the Member States, however thereby they must comply with EU law, in particular the freedom to move and reside within the territory of the Member States\(^1\) and the principle of non-discrimination.

Article 21(1) TFEU provides that every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

Following the Court's case-law every citizen of the Union may rely on Article 18 TFEU, which prohibits any discrimination on grounds of nationality. This also includes the exercise of the freedom of Article 21 TFEU to move and reside within the territory of the Member States.\(^2\) Moreover, it covers also situations concerning the conditions of access to vocational training, and that both higher education and university education constitute vocational training.\(^3\)

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The existence of unequal treatment

The principle of non-discrimination prohibits not only direct discrimination on grounds of nationality but also all indirect forms of discrimination, which, by the application of other criteria of differentiation, lead in fact to the same result.\(^4\) Unless objectively justified and proportionate to the aim pursued, a provision of national law must be regarded as indirectly discriminatory if it is intrinsically liable to affect nationals of other Member States more than nationals of the host State and there is a consequent risk that it will place the former at a particular disadvantage.\(^5\)

The decree of 16 June 2006 provides unrestricted access to the medical and paramedical courses to resident students only. For the non-resident students the access is restricted to 30% of all enrolments in the preceding academic year. Once that percentage has been reached, the non-resident students are selected by drawing lots. Thus, this decree creates a difference in treatment between resident and non-resident students. The residence requirement of this decree is more easily satisfied by Belgian nationals, who are more likely to reside in Belgium

\(^1\) See, to that effect, Case C-76/05 Schwarz and Gootjes-Schwarz [2007] ECR I-6849, paragraph 70, and Joined Cases C-11/06 and C-12/06 Morgan and Bucher [2007] ECR I-9161, paragraph 24.


\(^3\) See Case C-147/03 Commission v Austria [2005] ECR I-5969, paragraphs 32 and 33 and case-law cited.

\(^4\) See, to that effect, Case C-212/05 Hartmann [2007] ECR I-6303, paragraph 29.

\(^5\) See, to that effect, Case C-195/98 Österreichischer Gewerkschaftsbund [2000] ECR I-10497, paragraph 40, and Hartmann, paragraph 30.