

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



LUXEMBOURG

EUROPOS BENDRIJŲ TEISINGUMO TEISMAS
EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 25/05

15 March 2005

Judgment of the Court in Case C-209/03

The Queen (on the application of Dany Bidar) v London Borough of Ealing & Secretary of State for Education and Skills

**ASSISTANCE COVERING MAINTENANCE COSTS OF STUDENTS FALLS
WITHIN THE SCOPE OF APPLICATION OF THE EC TREATY FOR THE
PURPOSES OF THE PROHIBITION OF DISCRIMINATION ON GROUNDS OF
NATIONALITY**

The English legislation granting such assistance on condition that the student is 'settled' in the United Kingdom is incompatible with Community law since it is impossible for a national of another Member State, as a student, to obtain the status of a 'settled' person.

In England and Wales assistance with maintenance costs for students is provided by means of student loans from the State. They are offered at a rate linked to inflation which is lower than commercial rates and the students begin to pay back the loans only once they start earning more than GBP 10 000 (about EUR 14 500) per year. Nationals of another Member State are entitled to receive this loan if they are 'settled' in the United Kingdom and have been resident there for the three years prior to commencing their course. Under the English legislation, it is not possible to become 'settled' if one resides in the United Kingdom solely to study.

Dany Bidar, a French national, moved to the United Kingdom in August 1998, accompanying his mother who was to undergo medical treatment there. He lived there with his grandmother and completed his last three years of secondary education. In September 2001, he enrolled at University College London and applied to the London Borough of Ealing for financial assistance. While he was granted assistance with tuition fees, he was refused a maintenance loan on the basis that he was not 'settled' in the United Kingdom.

Mr Bidar challenged that decision, claiming that the requirement to be settled constituted discrimination on grounds of nationality, prohibited by the EC Treaty. The High Court asked the Court of Justice of the European Communities whether, following developments in Community law, including the introduction of EU citizenship, assistance with maintenance costs for students still remained outside the scope of the EC Treaty. If that is not the case, the

national court wishes to know what criteria should be used to determine whether the conditions governing eligibility for the assistance are based on objective considerations.

The Court recalls that, according to settled case-law, a citizen of the Union lawfully resident in another Member State can rely on the prohibition of discrimination on grounds of nationality in all situations which fall within the scope of Community law. There is nothing in the text of the Treaty to suggest that students who are citizens of the Union lose the rights which the Treaty confers on citizens, when they move to another Member State to study there. In fact, a national of a Member State who goes to another Member State and pursues secondary education there exercises the freedom to move guaranteed by Article 18 EC.

The Court makes clear that a national of a Member State who, like Mr Bidar, lives in another Member State where he pursues and completes his secondary education, without it being objected that he does not have sufficient resources or sickness insurance, enjoys a right of residence on the basis of Article 18 EC and a 1990 directive¹ on the right of residence.

The Court points out that, although in the past it held that assistance given to students for maintenance fell outside the scope of the Treaty, the Treaty on European Union introduced citizenship of the Union and added a chapter devoted inter alia to education and vocational training.

In view of that development in Community law, the Court considers that **assistance given to students** who are lawfully resident in a Member State, whether in the form of a subsidised loan or grant, **intended to cover their maintenance costs, falls within the scope of application of the Treaty.**

The requirements imposed by the English legislation are more easily met by United Kingdom nationals and risk placing at a disadvantage primarily nationals of other Member States. Such a difference in treatment can be justified only if it is based on objective considerations independent of nationality and is proportionate to the aim which is legitimately pursued.

In that regard, the Court observes that it is permissible for a Member State to ensure that the grant of assistance to cover the maintenance costs of students from other Member States does not become an unreasonable burden which could have consequences for the overall level of assistance which may be granted by that State. **It is thus legitimate for a host Member State to grant such assistance only to students who have demonstrated a certain degree of integration into the society of that State.**

The requirements of previous residence for a certain number of years and of being 'settled' in the host Member State, as imposed by the English legislation, may be used to establish the existence of a certain degree of integration.

On the other hand, **the English legislation precludes any possibility of a national of another Member State obtaining settled status as a student.**

Such treatment prevents a student who is lawfully resident and has received a substantial part of his secondary education in another Member State, and has consequently established a genuine link with the society of that State, from being able to pursue his studies under the same conditions as a national of that Member State. **It is therefore incompatible with Community law.**

¹ – Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26).

Unofficial document for media use, not binding on the Court of Justice.

Languages available: DA, DE, EN, ES, EL, FR, IT, NL, PL, PT

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731