Court of Justice of the European Union
PRESS RELEASE No 79/12
Luxembourg, 14 June 2012

Press and Information

Judgment in Case C-542/09
Commission v Netherlands

The Netherlands legislation making funding for studies abroad subject to a residence requirement gives rise to inequality of treatment between Netherlands workers and migrant workers

The Netherlands has not proved that the '3 out of 6 years' residence requirement does not go beyond what is necessary to attain the objective of promoting student mobility

The Netherlands Law on the Financing of Studies defines who can receive funding to study in the Netherlands and abroad. For higher education in the Netherlands, funding for studies is available to students who are between 18 and 29 years old and have Netherlands nationality or the nationality of any other Member State of the European Union. To receive funding for higher education pursued outside the Netherlands, students must be eligible for funding for higher education in the Netherlands and must additionally have resided lawfully in the Netherlands for at least three out of the six years preceding enrolment at an educational establishment abroad. This condition, known as the '*3 out of 6 years*' requirement, applies irrespective of the student's nationality.

The Commission brought an action before the Court of Justice against the Netherlands for failure to comply with obligations under the Treaty, claiming that the '*3 out of 6 years*' requirement constitutes indirect discrimination against migrant workers and members of their families, prohibited by the Treaty on the Functioning of the European Union (TFEU) and contrary to the European legislation on freedom of movement for workers[1].

The Court notes that, under the TFEU, freedom of movement for workers is to entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. Moreover, it is apparent from Regulation No 1612/68 that a worker who is a national of a Member State is to enjoy, in the territory of another Member State, the same social and tax advantages as national workers. That applies equally to migrant workers residing in a host Member State and frontier workers employed in that Member State while residing in another.

The Court points out that assistance granted for maintenance and education in order to pursue university studies evidenced by a professional qualification constitutes a social advantage for the purposes of Regulation No 1612/68. For the migrant worker, study finance granted by a Member State to the children of workers constitutes a social advantage for the purposes of that regulation, where the worker continues to support the child.

In that respect, the Court notes that the principle of equal treatment prohibits not only direct discrimination on grounds of nationality but also all indirect forms of discrimination which, through the application of other criteria of differentiation, lead in fact to the same result. That is the position, in particular, in the case of a measure which requires a specified period of residence, in that it primarily operates to the detriment of migrant workers and frontier workers who are nationals of other Member States, in so far as non-residents are usually non-nationals.

[1] Article 45 TFEU and Article 7(2) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1).

The Court therefore finds that the '*3 out of 6 years*' residence requirement creates inequality in treatment as between Netherlands workers and migrant workers residing in the Netherlands or employed there as frontier workers. **Such an inequality constitutes unlawful indirect discrimination, unless it is objectively justified**.

In that regard, the Court rejects the argument of the Netherlands that the residence requirement is necessary in order to avoid an unreasonable financial burden which could have consequences for the very existence of the assistance scheme. The Court points out that the objective of avoiding an unreasonable financial burden cannot be regarded as an overriding reason relating to the public interest, capable of justifying the unequal treatment between Netherlands workers and workers from other Member States.

The Netherlands also claim that, given that the national legislation at issue is intended to encourage students to pursue studies outside the Netherlands, the requirement ensures that the portable funding is available solely to those students who, without it, would pursue their education in the Netherlands. By contrast, the first instinct of students who do not reside in the Netherlands would be to study in the Member State in which they are resident and, accordingly, mobility would not be encouraged.

The Court notes that the objective of encouraging student mobility is in the public interest and constitutes an overriding reason relating to the public interest, capable of justifying a restriction of the principle of non-discrimination on grounds of nationality. The Court points out, however, that legislation which is liable to restrict a fundamental freedom guaranteed by the Treaty, such as freedom of movement for workers, can be justified only if it is appropriate for attaining the legitimate objective pursued and does not go beyond what is necessary in order to attain that objective.

In that context, the Netherlands claim that the legislation at issue has the merit of encouraging student mobility and point to the enrichment which studies outside the Netherlands bring, not only to the students, but also to Netherlands society and its employment market. Accordingly, the Netherlands expects that students who receive funding under that scheme will return to the Netherlands after completing their studies in order to reside and work there.

The Court acknowledges that those aspects tend to reflect the situation of most students and that the residence requirement is therefore appropriate for attaining the objective of promoting student mobility. Nevertheless, the Netherlands should at least have shown why they opted for the '*3 out of 6 years*' rule, prioritising length of residence to the exclusion of all other representative elements. By requiring specific periods of residence in the territory of the Member State concerned, the '*3 out of 6 years*' rule accords most importance to an element which is not necessarily the sole element representative of the actual degree of attachment between the concerned party and that Member State. **In consequence, the Court holds that the Netherlands has failed to establish that the residence requirement does not go beyond what is necessary to attain the objective sought by that legislation.**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355