



Press and Information

Court of Justice of the European Union

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Judgment in Case C-73/08

Nicolas Bressol and Others, Céline Chaverot and Others v Gouvernement de la Communauté française

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## **European Union law precludes, in principle, a limitation on enrolment by non-resident students in certain university courses in the public health field**

*However, such a limitation is compatible with European Union law if proved justified with regard to the protection of public health*

For some years, the French Community of Belgium has noted a significant increase in the number of students from other Member States, in particular France, enrolling in its institutions of higher education, in particular in nine medical or paramedical courses<sup>1</sup>.

Considering that the number of those students attending those courses had become too large, the French Community adopted the decree of 16 June 2006, according to which universities and schools of higher education are obliged to limit the number of students not considered as resident in Belgium who may register for the first time in one of those nine courses.

The total number of non-resident students is in principle limited, for each university institution and for each course, to 30 % of all enrolments in the preceding academic year. Once that percentage has been reached, the non-resident students are selected, with a view to their registration, by drawing lots.

In that context, the Constitutional Court (Belgium), before which an action was brought seeking annulment of the decree, refers questions to the Court of Justice for a preliminary ruling.

First, the Court of Justice holds that the legislation in question creates a **difference in treatment between resident and non-resident students**. Such a difference in treatment constitutes indirect discrimination on the ground of nationality which is prohibited, unless it is objectively justified.

According to the Court, in the light of the method of financing of the system of higher education of the French Community of Belgium, the fear of an excessive burden on the financing of higher education cannot justify that unequal treatment.

In addition, it follows from the case-law that a difference in treatment based indirectly on nationality may be justified by the objective of maintaining a balanced high quality medical service open to all, in so far as it contributes to achieving a high level of protection of health.

Thus, it must be determined whether the legislation at issue is appropriate for securing the attainment of that legitimate objective and whether it goes beyond what is necessary to attain it. **In that regard, it is ultimately for the national court, which has sole jurisdiction to assess the facts of the case and interpret the national legislation, to determine whether and to what extent such legislation satisfies those conditions.**

**In the first place**, it is for the referring court to establish that there are genuine risks to the protection of public health.

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<sup>1</sup> The courses concerned lead to the following degrees: Bachelor in physiotherapy and rehabilitation, Bachelor in veterinary medicine, Bachelor of midwifery, Bachelor of occupational therapy, Bachelor of speech therapy, Bachelor of podiatry-chiropractic, Bachelor of physiotherapy, Bachelor of audiology and Educator specialised in psycho-educational counselling.

In that regard, it cannot be ruled out *a priori* that a reduction in the quality of training of future health professionals may ultimately impair the quality of care provided in the territory concerned.

It also cannot be ruled out that a limitation of the total number of students in the courses concerned may reduce, proportionately, the number of graduates prepared in the future to ensure the availability of the service in the territory concerned, which could then have an effect on the level of public health protection.

In assessing those risks, the referring court must take into consideration, first, the fact that the link between the training of future health professionals and the objective of maintaining a balanced high-quality medical service open to all is only indirect and the causal relationship less well-established than in the case of the link between the objective of protecting public health and the activity of health professionals who are already present on the market.

In that context, it is for the competent national authorities to show that such risks actually exist. Such an objective, detailed analysis, supported by figures, must be capable of demonstrating, with solid and consistent data, that there are genuine risks to public health.

**In the second place**, if the referring court considers that there are genuine risks to the protection of public health that court must assess, in the light of the evidence provided by the national authorities, whether the legislation at issue in the main proceedings can be regarded as appropriate for attaining the objective of protecting public health.

In that context, it must in particular assess whether a limitation of the number of non-resident students can really bring about an increase in the number of graduates ready to ensure the future availability of public health services within the French Community.

**In the third place**, it is for the referring court to ascertain, in particular, whether the objective in the public interest relied upon could not be attained by less restrictive measures which aim to encourage students who undertake their studies in the French Community to establish themselves there at the end of their studies or which aim to encourage professionals educated outside the French Community to establish themselves within it.

Equally, it is for the referring court to examine whether the competent authorities have reconciled, in an appropriate way, the attainment of that objective with the requirements of European Union law and, in particular, with the opportunity for students coming from other Member States to gain access to higher education, an opportunity which constitutes the very essence of the principle of freedom of movement for students. The restrictions on access to such education, introduced by a Member State, must therefore be limited to what is necessary in order to obtain the objectives pursued and must allow sufficiently wide access by those students to higher education.

In that regard, it is for the referring court to ascertain whether the selection process for non-resident students is limited to the drawing of lots and, if that is the case, whether that means of selection based not on the aptitude of the candidates concerned, but on chance, is necessary to attain the objectives pursued.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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

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