



The method of calculating the minimum length of activity in the Grand Duchy of Luxembourg, required by that Member State, for the grant of financial aid to non-resident students who are children of cross-border workers is contrary to EU law

Calculating a minimum period of 5 years over a reference period of 7 years does not permit a full assessment of the existence of any connecting factor with the Luxembourg labour market

Mr Nicolas Aubriet lives with his father, Mr Bruno Aubriet, in a French town close to the Franco-Luxembourg border. Mr Bruno Aubriet, a cross-border worker, was employed in Luxembourg from October 1991 to September 2014 with, in particular, a break between January 2008 and December 2012.

Mr Nicolas Aubriet applied, as a student not resident in Luxembourg, for the grant, for the winter semester of the 2014-2015 university year, of financial aid from the State of Luxembourg to pursue his higher education studies in Strasbourg (France). At the time of the application for financial aid, Mr Bruno Aubriet had been a taxpayer in Luxembourg and had contributed to that State's social security system for more than 17 years.

By decision of 5 November 2014, the ministre de l'Enseignement supérieur et de la Recherche (Minister for Higher Education and Research, Luxembourg) rejected that application for financial aid, on the ground that the condition of a minimum period of employment in the course of a reference period laid down in the Luxembourg law on State financial aid for higher education studies. At time of when the application for financial aid for higher education studies was submitted, on 29 September 2014, Mr Bruno Aubriet had not worked in Luxembourg for five years in the course of a reference period of seven years preceding the application.

Mr Nicolas Aubriet lodged an action against that refusal before the Tribunal administratif, Luxembourg (Administrative Court, Luxembourg). The Luxembourg court asks the Court of Justice whether the condition that students must be the children of workers who have been employed or have carried out their activity in Luxembourg for a period of at least five years in the course of a reference period of seven years at the time at which the application for financial aid is made is necessary in order to attain the objective put forward by the Luxembourg legislature of bringing about an increase in the proportion of persons with a higher education degree.

In today's judgment, the Court states that the case follows on from two other actions concerning the State of Luxembourg¹ and gives rise to the question of the compatibility of the Luxembourg legislation with the principle of equal treatment laid down in Article 45 TFEU and the rules on the freedom of movement for workers and their family members within the EU.²

Next, it recalls that the principle of equal treatment 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.

¹ Cases :C-20/12 Giersch and Others, see Press Release No [74/13](#) and [C-238/15 Bragança Linares Verruga and Others](#) see Press Release No [133/16](#).

² Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

The Court points out that the Luxembourg legislation constitutes a distinction based on residence, which is liable to operate mainly to the detriment of nationals of other Member States, as non-residents are in the majority of cases foreign nationals, and that distinction constitutes indirect discrimination on grounds of nationality which can be accepted only if it is objectively justified, that is to say, it is appropriate for securing the attainment of a legitimate objective and does not go beyond what is necessary to attain that objective.

The objective pursued by the Luxembourg law, seeking significantly to increase in Luxembourg the proportion of residents with a higher education degree, constitutes a legitimate objective which can justify indirect discrimination on grounds of nationality. It is therefore necessary to examine whether the establishment of a seven-year reference period preceding the application for financial aid, for the calculation of the minimum duration of five years' employment, does not go beyond what is necessary to attain the objective pursued.

In the light of the situation of Mr Bruno Aubriet, who had, on a long-term basis, in the years preceding his son's application for financial aid, been employed in Luxembourg for a significant period of time, far greater than the minimum period of five years, the Court finds that the taking into account only of the activity carried out in Luxembourg by the cross-border worker in the course of a reference period of seven years preceding the application for financial aid is not sufficient to make full assessment of the significance of that cross-border worker's connections with the Luxembourg labour market, particularly where he has already been employed there for a significant period before the reference period.

The Court therefore considers that **a rule such as that laid down by the Luxembourg legislation, which makes the grant to non-resident students of financial aid for higher education studies subject to the requirement that a parent who has worked in Luxembourg for a minimum period of five years in the course of a reference period of seven years preceding the application for financial aid, entails a restriction which goes beyond what is necessary to achieve the legitimate objective of increasing the number of residents holding higher education degrees.**

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.

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