



A measure allowing a *Land* to make the bearing of school transport costs subject to a requirement of residence in that *Land* constitutes indirect discrimination against cross-border workers and their families

In the case of school transport in the Land Rhineland-Palatinate, such a residence requirement is not justified by an overriding reason in the public interest relating to the organisation of the school system

PF, a German national, attends secondary school in the Landkreis (district) Südliche Weinstraße in the Land Rhineland-Palatinate (Germany) but resides in France with his parents, also German nationals. His mother works in Germany.

Starting with the school year 2015-2016, the district refused to bear PF's school transport costs on the ground that, under the law of Rhineland-Palatinate, the obligation to organise school transport related only to students residing in that *Land*.

The Oberverwaltungsgericht Rheinland-Pfalz (Higher administrative court of Rhineland-Palatinate, Germany), hearing that case, asks the Court of Justice whether a measure which makes the bearing of school transport costs by a *Land* subject to residence in its territory constitutes indirect discrimination against migrant workers. If so, the Higher administrative court of Rhineland-Palatinate asks whether that requirement might be justified by an overriding reason in the public interest, namely the need to ensure the effective organisation of the school system.

By today's judgment, the Court finds, first, that PF's mother, a German national who kept her employment in Germany and transferred her domicile to France, can, as a 'migrant worker', rely on the principle of equal treatment against her Member State of origin, namely Germany.¹

The Court holds, next, that a measure that makes the **reimbursement of school transport costs subject to residence in the *Land* concerned is liable, by its very nature, to disadvantage in particular cross-border workers who reside in another Member State. Therefore it constitutes indirect discrimination which, as a rule, is prohibited by EU law.**

The fact that domestic workers who reside in other *Länder* are also subject to that requirement has no bearing in that regard. The Court notes, moreover, that the requirement at issue constitutes not only indirect discrimination but also an obstacle to the free movement of workers in that it is liable to preclude or deter a national of a Member State from leaving his or her country of origin to exercise his or her right to freedom of movement.

With regard, secondly, to the possible justification of the residence requirement at issue, the Court acknowledges that the organisation of the school system in the Land Rhineland-Palatinate may constitute a legitimate objective. However, the very fact that, if a school outside the Land Rhineland-Palatinate is attended, transport costs are borne by the district or borough in whose territory the student resides, confirms that the organisation of school transport at the level of the *Land* is not inextricably linked to the organisation of the school system within that *Land*.

¹ Article 7(2) of 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 EU (OJ 2011 L 141, p. 1).

Consequently, the *Land's* provisions concerning school transport do not present a sufficiently close link with the organisation of the school system to be regarded as pursuing a legitimate objective.

In any event, the residence requirement raised against PF cannot be deemed necessary for planning and organising school transport since, as indicated by the Higher administrative court of Rhineland-Palatinate, other measures could be envisaged. In particular, in order to calculate the amount of school transport costs to be reimbursed, 'the place ... where the linear distance between the actual residence and the nearest school crosses the *Land* border' could be taken into consideration as the place of residence of the student.

The Court therefore concludes that **practical difficulties linked to the effective organisation of school transport at regional level do not constitute an overriding reason in the public interest liable to justify a national measure categorised as indirect discrimination.**

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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