Case C-73/08

Nicolas Bressol and Others and Céline Chaverot and Others

v

Gouvernement de la Communauté française

(Reference for a preliminary
ruling from the Cour constitutionnelle (Belgium))

(Citizenship of the Union — Articles 18 and 21 TFEU — Directive 2004/38/EC — Article 24(1) — Freedom to reside — Principle of non-discrimination — Access to higher education — Nationals of a Member State moving to another Member State in order to pursue studies there — Restriction on enrolment by non-resident students for university courses in the public health field — Justification — Proportionality — Risk to the quality of education in medical and paramedical matters — Risk of shortage of graduates in the public health sectors)

Summary of the Judgment

1. *Citizenship of the European Union — Right to move and reside freely within the territory of the Member States — Directive 2004/38*

   (European Parliament and Council Directive 2004/38, Art. 24(1))

2. *Community law — Principles — Equal treatment — Citizenship of the European Union — Discrimination on grounds of nationality*

(Arts 18 TFEU and 21 TFEU)

3. *Community law — Principles — Equal treatment — Citizenship of the European Union — Discrimination on grounds of nationality*

(Arts 18 TFEU and 21 TFEU; International Covenant on Economic, Social and Cultural Rights, Art. 13(2)(c))

1. The situation of students who are Union citizens but not regarded as residents by the legislation of the host Member State and who may not, for that reason, enrol in that State's higher education courses, may be covered by Article 24(1) of Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which applies to every Union citizen who resides in the territory of the host Member State in accordance with that directive.

The fact that those students do not exercise, if that be the case, any economic activity in the host Member State is irrelevant, for Directive 2004/38 applies to all citizens of the Union irrespective of whether they exercise an economic activity as an employee or as a self-employed person in the territory of another Member State or whether they do not exercise any economic activity there.

(see paras 34-36)

2. Articles 18 and 21 TFEU preclude national legislation of a Member State that limits the number of students, not regarded as residents of that State, who may enrol for the first time in medical and paramedical courses at higher education establishments, unless the national court, having assessed all the relevant evidence submitted by the competent authorities, finds that that legislation is justified in the light of the objective of protection of public health.

Such inequality in treatment between resident and non-resident students constitutes discrimination based indirectly on nationality unless it can 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. In that regard, it must be determined whether the legislation is appropriate for securing the attainment of that legitimate objective and whether it goes beyond what is necessary to attain it, which it is for the national court to determine.

To that end, it is for the national court to establish in the first place that there are genuine risks to the protection of public health. In assessing those risks, the national 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 public health and the activity of health professionals who are already present on the market. The assessment of such a link will depend, inter alia, on a prospective analysis that will have to extrapolate on the basis of a number of contingent, uncertain factors and take into account the future development of the health sector concerned, but also depend on an analysis of the situation at the outset. It must also take into account the fact that, when there is uncertainty as to the existence or extent of the risks to the protection of public health in its territory, the Member State may take protective measures without having to wait for the shortage of health professionals to materialise. The same applies with regard to the risks to the quality of education in that field. None the less, it is for the competent national authorities to show that such risks actually exist on the basis of objective, detailed analysis, supported by figures, and capable of demonstrating, with solid and consistent data, that there are genuine risks to public health.

In the second place, if the national 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 community concerned.

Finally, it is for the national court to assess, in the third place, whether the legislation goes beyond what is necessary to attain the stated objective and, in particular, whether the objective in the public interest relied upon could not be attained by less restrictive measures aimed at encouraging students who undertake their studies in the community concerned to establish themselves there at the end of their studies or at encouraging professionals educated outside that community to establish themselves within it. Equally, it is for the national 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.

(see paras 62-64, 66, 69-71, 75-79, 82, operative part 1)

3. The competent authorities of a Member State may not rely on Article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights if a national court holds that legislation of that Member State regulating the number of students in certain programmes in the first two years of undergraduate studies in higher education is incompatible with Articles 18 and 21 TFEU.

As is apparent from the wording of Article 13(2)(c) of the Covenant, the latter in essence pursues the same objective as Articles 18 and 21 TFEU, that is, to ensure that the principle of non-discrimination is observed in relation to access to higher education. That is confirmed by Article 2(2) of the Covenant, according to which the States Parties to the Covenant undertake to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to, inter alia, national origin. By contrast, Article 13(2)(c) of the Covenant does not require a State Party, nor indeed authorise it, to ensure wide access to quality higher education only for its own nationals.

(see paras 86-88, operative part 2)