



Reports of Cases

Case C-238/15

Maria do Céu Bragança Linares Verruga and Others
v
Ministre de l'Enseignement supérieur et de la Recherche

(Request for a preliminary ruling from the
tribunal administratif (Luxembourg))

(Reference for a preliminary ruling — Freedom of movement of persons — Equal treatment — Social advantages — Regulation (EU) No 492/2011 — Article 7(2) — Financial aid for higher education studies — Students not residing in the territory of the Member State concerned subject to the condition that they be the children of workers who have been employed or who have pursued their professional activity in that Member State for a continuous period of at least five years — Indirect discrimination — Justification — Objective of increasing the proportion of residents with a higher education degree — Whether appropriate — Proportionality)

Summary — Judgment of the Court (Second Chamber), 14 December 2016

1. *Freedom of movement of persons — Workers — Equal treatment — Social advantages — Concept — Assistance granted for maintenance and education with a view to the pursuit of university studies leading to a professional qualification — Included — Beneficiaries of the principle of equal treatment — Children of the migrant worker*

(Council Regulation No 1612/68, Art. 7(2))

2. *Freedom of movement of persons — Workers — Equal treatment — Social advantages — National legislation making the grant of financial aid for higher education studies to non-resident students conditional on their being the children of workers who have pursued their professional activity in that Member State for a continuous period of at least five years — Not permissible — Justification — None — Breach of the principle of proportionality*

(European Parliament and Council Regulation No 492/2011, Art. 7(2))

1. See the text of the decision.

(see para. 40)

2. Article 7(2) of Regulation No 492/2011 on freedom of movement for workers within the Union must be interpreted as precluding legislation of a Member State which, with the aim of encouraging an increase in the proportion of residents with a higher education degree, makes the grant of financial aid for higher education studies to a non-resident student conditional on at least one of that student's parents having worked in that Member State for a minimum and continuous period of five years at the time the application for financial aid is made, but which does not lay down such a condition in respect of a student residing in the territory of that Member State.

Such a distinction based on residence 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 therefore constitutes indirect discrimination on the ground of nationality which is permissible only if it is objectively justified. In this connection, the social objective of significantly increasing the proportion of residents with a higher education degree is an objective in the public interest acknowledged at the level of the European Union. In addition, the condition of a minimum and continuous period of work on the part of the frontier worker parent is appropriate and necessary in order to attain that objective. It seems legitimate that the State providing the aid would seek to ensure that the frontier worker does in fact have a link of integration with the society of that Member State, by requiring a sufficient attachment in order to combat the risk of 'study grant forum shopping'. That condition is of such a kind as to establish such a connection on the part of those workers and a reasonable probability that the student will return to the Member State in question after completing his studies. However, that condition goes beyond what is necessary to attain the legitimate objective in so far as it does not permit the competent authorities to grant the aid where the parents, notwithstanding a few short breaks, have worked in the Member State in question for a significant period of time in the period preceding that application, even though such breaks are not liable to sever the connection between the applicant for financial aid and the Member State in question.

(see paras 43-47, 57, 58, 69, 70, operative part)