



Universiteit Maastricht

25 November 2010

Free Movement of Persons and Education: Reflections on *Bressol*
and Pending Dutch Cases

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Four Cases

Bressol	Free Movement of Students	Can MS protect themselves against a large influx of students from abroad?
Commission v. The Netherlands	Free Movement of Workers	Export of study grants – 3-out-6 rule – Frontier workers and their children
Cleuren	Free Movement of Workers	Export of study grants – children of frontier workers – Meeusen – but what if parent loses job?
Cuijpers	Free Movement of Students	Numerus fixus

Bressol

Austria: Issue: Can Member States protect themselves against large influx of foreign students?

Problem:

EU students do not equally contribute to financing of public education – “Free-Riders”

Open admission policies versus numerus fixes policies

Neighboring countries with similar language

Germany-Austria, Belgium-France, Belgium-Netherlands

In 2005: 78-86% of study places at (para)medical schools occupied by foreign-mainly French- students

How to Solve the problem?

Minerval (Belgium – *Gravier*)

Only admission in host State if students were admissible in home country (*Commission v. Belgium, Commission v. Austria*)

Bressol

French Community of Belgium

For (para)medical studies a 70% quota for students with residency in Belgium

Infringement
Procedures

Postponed for five years during Lisbon negotiations

Bressol, Chaverot et al: Quota rule is at odds with Art.12 EC (18 TFEU).

Court

Indirect Discrimination

Justification 1	Protect Public Finances	ECJ rejects: “closed envelope”
Justification 2	Protect Quality of Education	Not addressed, because 2 and 3 coincide
Justification 3	Protect Public Health (System)	ECJ – next slide

Bressol – Protection of Public Health

ECJ accepts that

Quality of medical training determines quality of care

Shortage of students → shortage of doctors →
Quality of care systems affected

But MS must

Submit detailed analysis, data, figures etc that show impact on quality of care

Take into consideration number of students needed, migration flows

Demonstrate that there are no less restrictive means

Allow “sufficiently wide access for non-resident students

Assessing *Bressol*

- | | |
|--------|-----------------------------------------------------------------------------------|
| 1. | ECJ accepts that MS may protect themselves against large net-inflow of students |
| But, 2 | ECJ limits itself to medical schools and situation at stake – avoids big question |
| But 3 | Is Strict, Proportionality fully applied, Burden of Proof on MS Very High |

Assessing *Bressol*

Student Mobility versus Protection of National Educational Systems and Policies

Is the ECJ not too Strict?

Maastricht University

EU rule that gives each Member States the option to reserve 60% or 70% of its study places to residents

Leaves room for student mobility

Has regard for the national constitutional duty of Member States to offer proper education to own population

Promotes legal certainty

C-542/09 Commission v The Netherlands

Dutch Law of Student Financial	Export of Study Grants (World-Wide) for those students who 3 out of 6 years prior to the study have lived in NLs
Commission	At odds with Art.7(2) Reg. 1612/68
	Indirect Discrimination
	Cannot be Justified
Netherlands	Export only Possible if we can restrict number of beneficiaries
	Real Link (à la <i>Bidar</i>)
	Abuse of Rights
	We need objective criterion for determining who Bears the costs of Portable Grants

Cleuren

Facts	Cleuren (1) lives in Belgium, (2) holds Belgian nationality, (3) studies in Belgium, (4) mother works in NIs and (5) receives Dutch study grant
	Meeusen-like situation
	But then: mother loses job
	Dutch law: Study grants for (1) Dutch nationals and (2) EU-workers and their family members
	Dutch IB-group: Cleuren is not Dutch and no longer family member of EU-worker → Stops Entitlement to Grant
	Cleuren goes to court
Local court	Meeusen is Starting-point
	However, loss of worker status has implications
	Status may still have effect, but only in relation to social advantages linked to employment cq worker status (<i>Fahmi, Leclere, Sehrer</i>)
Issues	Direct Discrimination – Art.18 TFEU? Probably not
	Right to Complete Education? (<i>Echternach, Baumbast, Teixeira</i>)

Cuijpers

Facts

Cuijpers is (1) Dutch), (2) lives in NLs, (3) completed high school in Belgium, (4) with 88%, (5) wishes to study medicine in Maastricht

Dutch law

Numerus Fixus

Grade of 8 or higher: admission

5 categories - lottery

Cuijpers – Category C (7.0-7.5)

Cuijpers

Indirect Discrimination

Local Court

Indirect Discrimination

No Justification in casu - there are mechanisms to compare educational courses properly.