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Press and Information

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Judgment of the Court of Justice in Case C-258/04

Ioannis Ioannidis

BELGIAN LEGISLATION REFUSING THE GRANT OF A TIDEOVER ALLOWANCE TO A NATIONAL OF ANOTHER MEMBER STATE WHO HAS COMPLETED HIS SECONDARY EDUCATION IN THAT OTHER STATE IS CONTRARY TO COMMUNITY LAW

A condition concerning the place where a diploma of completion of secondary education was obtained is too general and exclusive in nature to ensure a real and effective degree of connection between the applicant for a tideover allowance and the geographic employment market

A Belgian law provides for the grant of unemployment benefits, also known as ‘tideover allowances’, to young people who have just completed their studies and are seeking their first employment. In order to obtain them the young person who pursued education or training in another Member State of the European Union must prove that the education or training is of the same level as, and equivalent to, that provided by an educational establishment run, subsidised or approved by a Belgian community; he must also – at the time of the application – be the dependent child of migrant workers who are residing in Belgium.

After completing his secondary education in Greece, Mr Ioannidis, who is of Greek nationality, arrived in Belgium in 1994. The certificate of education issued to him in Greece was recognised as being equivalent to the approved certificate of higher secondary education giving access to vocational higher education in Belgium. After a three-year period of study, he obtained a graduate diploma in physiotherapy in Belgium. He also followed a paid training course in vestibular rehabilitation in France. In 2001, after having returned to Belgium, Mr Ioannidis applied to the Office national de l’emploi (National Employment Office) (ONEM) for a tideover allowance. ONEM rejected that application on the ground that he had not completed his secondary education at an educational establishment run, subsidised or approved by one of the three communities in Belgium, as required by Belgian legislation.

The Cour du travail (Higher Labour Court), Liège, before which the appeal proceedings were brought, asked the Court of Justice of the European Communities whether it is contrary to Community law for a Member State to refuse a tideover allowance to a national of another

Member State who is seeking his first employment on the sole ground that he completed his secondary education in another Member State.

First of all, the Court makes clear that nationals of a Member State seeking employment in another Member State fall within the scope of the EC Treaty and therefore enjoy the right to equal treatment. Secondly, the Court points out that the principle of equal treatment prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, lead in fact to the same result.

Belgian legislation introduces a difference in treatment between citizens who have completed their secondary education in Belgium or in another Member State: only the former have the right to a tideover allowance. That condition can be met more easily by Belgian nationals and could place, above all, nationals of other Member States at a disadvantage.

Such a difference in treatment can be justified only if it is based on objective considerations which are independent of the nationality of persons concerned and proportionate to the aim legitimately pursued by the national law. It is legitimate for the national legislature to wish to ensure that there is a real link between the applicant for the allowance and the geographic employment market concerned. However, a single condition concerning the place where the diploma of completion of secondary education was obtained is too general and exclusive in nature. It unduly favours an element which is not necessarily representative of the real and effective degree of connection between the applicant for the tideover allowance and the geographic employment market, to the exclusion of all other representative elements. It therefore goes beyond what is necessary to attain the objective pursued.

In any event the fact that Mr Ioannidis' parents are not migrant workers residing in Belgium cannot provide a reason for refusing to grant the allowance. That condition cannot be justified by the wish to ensure that there is a real link between the applicant and the geographic employment market, as it is not inconceivable that a person, who, after completing secondary education in a Member State, pursues higher education in another Member State and obtains a diploma there, may establish a real link with the employment market of that State, without, however, being the dependant child of migrant workers residing in that State.

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Languages available: DE, EN, FR, GR, IT, PL, CS, SK

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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