Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

12 December 2013 *

(Request for a preliminary ruling — Freedom to provide services — Grants of public money, co-financed by the European Social Fund, for students enrolled in post-graduate specialist programmes of study — Regional legislation designed to enhance the level of education locally and making the award of grants subject to conditions targeting providers of post-graduate programmes of study — Condition requiring 10 years' continuous experience)

In Case C-523/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per la Puglia (Italy), made by decision of 17 May 2012, received at the Court on 19 November 2012, in the proceedings

Dirextra Alta Formazione srl

v

Regione Puglia,

THE COURT (Seventh Chamber),

composed of G. Arestis, acting as President of the Seventh Chamber, J.-C. Bonichot (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Regione Puglia, by S.O. Di Lecce and V. Triggiani, avvocati,

— the European Commission, by E. Montaguti and H. Tserepa-Lacombe, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Italian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 56 TFEU, 101 TFEU and 107 TFEU, Articles 9 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), Article 2 of the Additional Protocol thereto and Articles 11 and 14 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Dirextra Alta Formazione srl ('Dirextra'), a provider of post-graduate education, and Regione Puglia (the Puglia Region) concerning the decisions taken by the latter making the award of university student grants co-financed by the European Social Fund ('the ESF') subject to certain conditions relating, inter alia, to the length of time for which the educational body with which applicants for such grants plan to enrol has been in existence.

Legal context

European Union ('EU') law

3 Recital 22 in the preamble to Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25) states that the activities of the Funds and the operations which they help to finance should be consistent with the other Community policies and comply with Community legislation.

4 Under Article 9(5) of Regulation No 1083/2006:

'Operations financed by the Funds shall comply with the provisions of the Treaty and of acts adopted under it.'

Puglia Region legislation

5 Measures for supporting post-graduate studies within the framework of the projections of the ESF Puglia Regional Operational Programme were outlined in Regional Law No 12 of 26 May 2009 laying down provisions relating to student grants intended to help graduates from the Puglia Region to acquire further university qualifications (legge regionale No 12 – Misure in tema di borse di studio a sostegno della qualificazione delle laureate e dei laureati pugliesi) (*Bollettino Ufficiale della Regione Puglia* (*Puglia Region Official Gazette*) No 78 of 29 May 2009, p. 9856) ('the Regional Law').

6 Article 2 of the Regional Law lists the various conditions which providers of post-graduate education must satisfy in order for those attending the corresponding courses to be eligible for the student grants offered.

7 The conditions vary depending on whether they concern (i) Italian or foreign universities, whether public or private, recognised by Italian law, (ii) higher education establishments, whether private or public, which organise approved Masters degree courses, or (iii) other higher education establishments satisfying specific conditions relating, inter alia, to the experience accrued by such establishments in providing post-graduate education.

8 Concerning the final category, Article 2(3) of the Regional Law is worded as follows:

'The Masters degree courses chosen by the individuals concerned must be provided by higher education establishments, whether private or public, which, in the 10 calendar years prior to the issuing of the public notice concerning the award of student grants, have continuously and demonstrably provided post-graduate education. Post-graduate education refers only to courses exclusively aimed at individuals who have already successfully followed a degree course, the total duration of which was not less than 800 hours. The educational activities provided must have been carried out in the capacity of implementing body rather than merely in the capacity of partner. Likewise, the Masters courses chosen by the individuals concerned must have a total duration of not less than 800 hours, including at least 500 hours of classroom training, and at least 30 per cent of the total duration of that course must be work experience.'

9 By decision of 2 December 2009, the Director of the Servizio Formazione Professionale della Regione Puglia (Occupational Training Service, Puglia Region) approved the notice launching the procedure for awarding student grants under the Regional Law.

10 That notice stated, in particular, that such grants could be awarded in respect of post-graduate Masters degree courses organised by higher education establishments – whether private or public – which, from 3 December 1999 to 3 December 2009 inclusive, had continuously and demonstrably provided post-graduate education ('the condition relating to 10 years' experience').

The dispute in the main proceedings and the question referred for a preliminary ruling

11 Direxta is a private higher education establishment which has demonstrably provided more than 8 000 hours of post-graduate education as a result of its activity during the 5 years – rather than the 10 years required by the Regional Law – prior to the issuing of the notice launching the procedure for the award of the student grants.

12 In the action brought before the Tribunale amministrativo regionale per la Puglia (Regional Administrative Court, Puglia; 'the referring court') for the annulment of both the notice launching that procedure and the decision of 2 December 2009 approving that notice, Direxta contested the legality of the condition relating to 10 years' experience.

13 Direxta submitted that such a requirement was incompatible with EU law, in particular with the principles of free competition, proportionality and non-discrimination, and that it infringed Article 56 et seq. TFEU, Article 101 et seq. TFEU and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1), Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) and Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

14 While finding that those directives are not applicable in the present case, the referring court is of the view, in essence, that the restrictions on the freedom to provide services arising from the condition relating to 10 years' experience indicate unequal treatment which is not compatible with the purpose of the ESF's activities, namely, to enhance the quality of the educational system as a whole. According to the referring court, making the selection of providers subject to that condition is disproportionate and inappropriate in relation to the actual duration of the courses eligible for funding (at least 800 hours per year), and is even excessive in relation to the purpose of the European Union's activities.

15 The referring court suggests that eligible providers could be selected on the basis of conditions which are less restrictive of competition and more proportionate to the duration of the Masters degree courses to be organised by bodies which can claim a high level of professionalism, without distorting competition or affecting the quality of the teaching provided while at the same time guaranteeing freedom to teach and pluralism of ideas, as protected by Articles 9 and 10 ECHR and Articles 11 and 14 of the Charter.

16 In those circumstances, the Tribunale amministrativo regionale per la Puglia decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is a provision of law – such as Article 2(3) of [the Regional Law] – which regulates in a restrictive manner access to the market for the provision of certain specific services designed to enhance the level of education locally (post-graduate Masters degree courses), making such access conditional upon meeting a single requirement which, in relation to the purpose of the Community measure (enhancement of the quality of education and, accordingly, selection of individuals with suitable qualifications) is arbitrarily chosen and expressed (a number of hours spread over an unnecessarily long period) and not differentiated according to the actual duration of the specific service, compatible with Article 56 [TFEU] et seq. and Article 101 [TFEU] et seq. … and Article 107 [TFEU] et seq. … and with the principles of competition, proportionality, non-discrimination and equal treatment which may be inferred from those rules, and with Articles 9 and 10 [ECHR], Article 2 of the Additional Protocol thereto and Articles 11 and 14 of [the Charter]?'

Consideration of the question referred

Preliminary observations

17 It should be borne in mind that the Court of Justice does not have jurisdiction to rule, in preliminary ruling proceedings, on the compatibility of provisions of national law with rules of EU law. However, it does have jurisdiction to provide the referring court with all the guidance as to the interpretation of EU law necessary to enable that court to make its own ruling on whether or not such provisions are compatible with EU law for the purposes of resolving the dispute before it (see, to that effect, Case C-42/07 *Liga Portuguesa de Futebol Profissional and Bwin International* [2009] ECR I-7633, paragraph 37).

18 By asking whether a condition which results in certain higher education establishments being unable to offer their services to applicants for a regional student grant co-financed by the ESF is excessive in the light of EU law, the referring court is asking the Court of Justice, in essence, whether the requirements of the freedom to provide services enshrined in Article 56 TFEU preclude a condition of that kind. As a result, its arguments relating to the principles of proportionality and non-discrimination must be regarded as merging with those relating to those requirements and there is, accordingly, no need to address them separately.

19 In addition, the reasons given in the order for reference for the references made in the question to Article 101 TFEU et seq. (relating to competition), Article 107 TFEU et seq. (relating to State aid), and Articles 11 and 14 of the Charter are not sufficient to enable the Court to assess the relevance of those provisions or, consequently, to give a ruling on the question referred in so far as it concerns those provisions.

20 Lastly, it should be borne in mind that EU law does not govern the relations between the ECHR and the legal systems of the Member States; nor does it determine the conclusions to be drawn by a national court in the event of conflict between the rights guaranteed by that convention and a rule of national law (see, to that effect, Case C-571/10 *Kamberaj* [2012] ECR, paragraph 62, and Case

C-617/10 *Åkerberg Fransson* [2013] ECR, paragraph 44). Accordingly, there is no need for the Court to give a ruling on the question referred by the Tribunale amministrativo regionale per la Puglia in so far as that question concerns the ECHR and the Additional Protocol thereto.

Freedom to provide services

21 It is settled case-law that the freedom to provide services under Article 56 TFEU requires not only the elimination of all discrimination on grounds of nationality against providers of services established in other Member States, but also the abolition of any restriction – even if it applies without distinction to national providers of services and to those from other Member States – which is liable to prohibit, impede or render less attractive the activities of a provider of services established in another Member State where he lawfully provides similar services (see, to that effect, Case C-265/12 *Citroën Belux* [2013] ECR, paragraph 35 and the case-law cited).

22 In the present case, it is conceivable that educational bodies established in Member States other than the Italian Republic may be deprived – solely on the ground that they do not satisfy the condition relating to 10 years' experience imposed by the Regional Law – of the opportunity to supply their services to students who are eligible for the regional study grant.

23 Furthermore, by making the award of that grant conditional upon the educational body with which the student plans to enrol demonstrating 10 years' continuous experience, a provision such as that at issue in the main proceedings may deter that student from enrolling in bodies which do not satisfy that condition and may thus render less attractive the activities of such bodies.

24 Such a restriction on the freedom to provide services is warranted only if it pursues a legitimate objective compatible with the Treaty and is justified by overriding reasons in the public interest; if that is the case, it must be suitable for securing the attainment of the objective which it pursues and must not go beyond what is necessary in order to achieve it (see, inter alia, *Citroën Belux*, paragraph 37 and the case-law cited).

25 In the present case, the documents placed before the Court indicate that the objective pursued by the regional legislation at issue is that of ensuring that the post-graduate education to which access for young, unemployed graduates is made easier through the award of a study grant is of a high standard, in order to facilitate the access of such students to the labour market. It is indisputable that making the financing of post-graduate education subject to a condition which is intended to guarantee the quality of that education is based on an overriding reason in the public interest. The aim of ensuring high standards of university education appears to be a legitimate objective capable of justifying restrictions on fundamental freedoms (see, to that effect, Case C-153/02 *Neri* [2003] ECR I-13555, paragraph 46).

26 A measure requiring educational bodies to have a minimum level of experience is, in itself, appropriate for achieving the objective pursued, as described above.

27 Moreover, it is not apparent from the information available to the Court that, in requiring 10 years' continuous experience from the educational bodies with which the students in question may enrol, the condition goes beyond what is necessary in order to achieve that objective.

28 Indeed, it is clear that Article 2 of the regional legislation at issue allows students to enrol, not only with Italian or foreign universities, whether public or private, which are recognised by Italian law, but also in higher education establishments, whether private or public, which organise approved Masters degree courses, or even with other bodies organising non-approved Masters degree courses. It does not seem excessive to require those bodies, which are the only bodies subject to the condition relating to 10 years' experience, to demonstrate experience of sufficient duration to support the presumption – in the absence of any monitoring by the public authority and in the absence of any official approval of

the Masters degree courses concerned – that the education provided by such bodies is of the same quality as the education provided by university establishments recognised by Italian law and by bodies organising approved Masters degree courses.

29 From that perspective, it does not seem that the required 10 years' experience is excessive in view of the length of time required for universities to gain recognition under Italian law or for Masters degree courses organised by other providers of post-graduate education to be approved.

30 In the light of the foregoing, the answer to the question referred is that Article 56 TFEU must be interpreted as not precluding a provision of national law, such as the provision at issue in the main proceedings, which requires higher education establishments with which students applying for a regional study grant co-financed by the ESF plan to enrol to demonstrate 10 years' experience where such establishments are neither universities recognised by that national law nor establishments organising approved Masters degree courses.

Costs

31 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Article 56 TFEU must be interpreted as not precluding a provision of national law, such as the provision at issue in the main proceedings, which requires higher education establishments with which students applying for a regional study grant co-financed by the European Social Fund plan to enrol to demonstrate 10 years' experience where such establishments are neither universities recognised by that national law nor establishments organising approved Masters degree courses.

[Signatures]