

<b>Subject-matter concerned</b>	<input type="checkbox"/> x 1) non-discrimination on grounds of nationality <input type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
<b>Decision date</b>	3 September 2010
<b>Deciding body (in original language)</b>	Rechtbank Roermond
<b>Deciding body (in English)</b>	District Court Roermond
<b>Case number (also European Case Law Identifier (<a href="#">ECLI</a>) where applicable)</b>	ECLI:NL:RBROE:2010:BN6013
<b>Parties</b>	Applicant v the Minister of Education, Culture and Science ( <i>verzoekster v Minister van Onderwijs, Cultuur en Wetenschap</i> )
<b>Web link to the decision (if available)</b>	<a href="https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROE:2010:BN6013&amp;showbutton=true&amp;keyword=ECLI%3aNL%3aRBROE%3a2010%3aBN6013">https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROE:2010:BN6013&amp;showbutton=true&amp;keyword=ECLI%3aNL%3aRBROE%3a2010%3aBN6013</a>
<b>Legal basis in national law of the rights under dispute</b>	Article 18, paragraph 1 of the EC Treaty and Article 7.57b of the Act on Higher Education and Scientific Research  The Netherlands, Act on Higher Education and Scientific Research ( <i>Wet op het hoger onderwijs en wetenschappelijk onderzoek</i> ), 8 October 1992
<b>Key facts of the case</b> (max. 500 chars)	The applicant is a woman who lives in the Netherlands but finished her secondary education in Belgium. When she wanted to study medicine in the Netherlands, she had to be put into one of a number of categories of potential students, as only a limited number of students could be admitted. Depending on the category, one had better or worse chances of being admitted. One category, of students

	<p>who had at least grade 8 on average when finishing their secondary education, was admitted to the study without any barriers. Another category, of students who had grades 7-7.5 when finishing their secondary education, had to draw lots to be admitted. The applicant was put into this category, as her grades in Belgium could not be assessed individually, and this was the category which students with a foreign diploma were assigned to. She was not admitted to the study. She claimed that her Belgian secondary school results had to be seen as equal to at least an 8 on average (with immediate admission to the study of medicine) and that the Minister's way of giving different weight to her results because they were of foreign origin amounted to hidden/ indirect discrimination on the basis of nationality. The Court agreed and found that her results had to be assessed individually as they amounted to 88% of the total results that could be obtained in Belgium, and that if she was right she had to be admitted as soon as possible.</p>
<b>Main reasoning / argumentation</b> (max. 500 chars)	<p>On 4 August 1998 the Council of State had already decided that in practice especially prospective students of a non-Dutch origin will have a foreign diploma, while Dutch students are more likely to hold a Dutch diploma. Dutch students will be placed into a category with better chances to be admitted to their study. This could lead to indirect discrimination on the basis of nationality. The Council of State decided that this is objectively justified, because individual assessments of foreign results are impossible in practice. The differences between educational systems in different states are too significant. In the present case, the Court holds that there is a new system now, in which a new category has been added of 8 or more, and students who have obtained this grade are immediately admitted to the study. There need to be very good reasons to justify why students with a foreign diploma do not, in practice, get the chance to be put into this category, because their results are not assessed individually. The Minister, again, argued that individual assessments were not possible, partly on the basis of the reasons given above. The Court thinks a short term assessment may be difficult, but an external expert with experience in assessing foreign diplomas could do the job. The Court holds that there may be some time involved, which may lead to admission at a later stage. This should be the case here, in order to avoid a conflict with EU law.</p>
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	<p>The average grade of a diploma obtained in another Member States should be assessed individually by an expert to decide to which category a prospective student belongs where the category one is placed into is relevant for being admitted to a study with limited number of available places. Article 18 TFEU requires that high school diplomas obtained abroad should be assessed individually in order to avoid indirect discrimination on the basis of nationality as to access to higher education.</p>
<b>Results (e.g. sanctions) and key consequences or implications of the case</b> (max. 500 chars)	<p>The applicant's results in Belgium had to be assessed individually in order to compare them properly to Dutch results.</p>

**Key quotations in original language and translated into English with reference details**  
(max. 500 chars)

2.6 . . . De rechter acht het -ook zonder dat hij over statistisch materiaal daarover beschikt- aannemelijk dat onder de aspirant-studenten met een diploma uit een andere lidstaat dan Nederland die zich aanmelden voor een universitaire studie waarvoor moet worden geloot, mensen met een andere nationaliteit in de meerderheid zijn. Daarmee is gegeven dat sprake is van indirect of verkapt discriminerende werking van dit stelsel jegens Unieburgers met een andere dan de Nederlandse nationaliteit. . . . 2.13. Om desondanks de volle werking van het recht van de Europese Unie te waarborgen dient de rechter het nationale (proces)recht in deze zaak aldus uit te leggen en toe te passen dat dit een effectieve remedie vormt tegen de strijdigheid met het Europees recht die zich hier voordoet. De rechter stelt in dat verband ten aanzien van het voorliggende geval voorop dat verzoekster ter zitting aan de hand van de eindcijferlijst van haar vooropleiding aannemelijk heeft gemaakt dat zij beoordelingen heeft verkregen die gemiddeld 88% van het maximaal te behalen resultaat belopen en dat zij in alle vakken duidelijk hoger dan het gemiddelde van haar klasgenoten heeft gescoord. Nu niet is te verwachten dat de toepassing van de hardheidsclausule voor verzoekster soelaas biedt, is de rechter van oordeel dat verweerder in dit speciale geval in het kader van de heroverweging in bezwaar, zo nodig met voorbijgaan aan de in artikel 7.57g van de WHW opgenomen bijzondere beslistermijn, op basis van advisering door een interne of externe deskundige (instantie) de vraag had moeten beantwoorden of buiten twijfel staat dat het gemiddelde eindcijfer van het door verzoekster in België behaalde diploma vergelijkbaar is met een gemiddeld eindexamencijfer van het Nederlandse vwo dat hoger is dan een 8. Het bestreden besluit dient dan ook wegens strijd met de uit artikel 18 van de VWEU in samenhang met de artikelen 165 en 166 VWEU voortvloeiende eisen te worden vernietigd.

2.6 . . . The Court holds that – even without statistics being available – it is likely that among the prospective students with a diploma from another Member State than the Netherlands who apply for a study at university which involves the drawing of lots, people with another nationality are the majority. This means that this system indirectly, or in a hidden form, discriminates citizens of the Union with another nationality than the Dutch one. . . . 2.13. In order to safeguard (in spite of this) the full effect of the law of the European Union the Court should explain and apply national (procedural) law in such a way that it is an effective remedy against the present conflict with European law. The Court holds in this context in the present case first and foremost that the applicant has shown that it is likely that she has received scores that amounted to an average of 88% of the score that was possible and that she scored clearly higher than the average of her peers on the basis of her list of results of her prior education. It is not expected that the hardship clause will help her, so that the Court holds that the defendant should have answered the question that it is without doubt that the average final grade of the diploma obtained by the applicant in Belgium can be compared to an average final grade of the Dutch secondary education which is higher than an 8. He should have done so in this specific case in the context of a new evaluation after an objection had been filed, if necessary without taking into account the special term within which a decision should be taken, laid down in Article 7.57g of the Act on Higher Education and Scientific Research, on the basis of an advice by an internal or external expert (body). The decision which has been taken by the Minister and which was disputed should be annulled therefore due to a conflict with the requirements pursuant to Article 18 TFEU in conjunction

	with Articles 165 and 166 TFEU.
<b>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</b>	No.