

Decision on higher education tuition fees in public universities

Constitutional Court (France, 2019)

Case at a glance

In 2019, the French Constitutional Court (*Conseil Constitutionnel*) was seized by student unions and associations regarding public higher education tuition fees concerning international students from outside of the European Union. The plaintiffs argued that under paragraph 13 of the preamble of the French constitution, public higher education should be equally accessible to all and free. The Constitutional Court found that modest tuition fees in public higher education, where appropriate and depending on the financial capacity of students, do not go against the principle of equal access to education and the principle of free higher education. The right to education should ensure that access to higher education is financially possible for every student. Thus, limited tuition fees can be set by legislators under the control of the judicial system. Therefore, the Court states that the right to education of international students to access French public higher education system was not violated.

Full citation

[Decision n° 2019-809 QPC of 11 octobre 2019](#)

Union nationale des étudiants en droit, gestion, AES, sciences économiques, politiques et sociales et autres [Droits d'inscription pour l'accès aux établissements publics d'enseignement supérieur].

Forum

French Constitutional Court (*Conseil Constitutionnel*), priority preliminary ruling on the issue of constitutionality (in French: *Question Prioritaire de Constitutionnalité*, QPC n° 2019-809)

Date of decision

11 October 2019

Summary of decision

The Constitutional Court found that modest tuition fees in higher public education, where appropriate and depending on the financial capacity of students, do not go against the principle of equal access to education and the principle of a free higher education. The setting of limited tuition fees can be done by the legislator under the control of the law.

Significance to the right to education

The Court recognises that access to higher education should be financially possible for every student. Modest fees are acceptable, under control of the judicial system.

Key words

Tuitions fees, right to higher education, public higher education, access to higher education, international students

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Context

In 2019, France faced social and political protests from the « yellow jacket » (“*Gilets jaunes*”) movement. Under a tense climate of opposition between the government and a part of the population, French Prime Minister Edouard Philippe presented a new strategy aiming to attract more international students to France until 2025. Called “Choose France”, it actually represented a raise in tuition fees for non-European citizens wishing to enrol in French universities. Tuition fees raised from 170 euros to 2,770 euros a year for an undergraduate program, and from 380 euros to 3,770 euros a year for a graduate program. In contrast, the government promised to grant more scholarships to international students. A few concerned students’ associations turned to the French Constitutional Court, considering that the substantial increase of tuition fees was against the national law and the right to education.

Previous decisions of the Constitutional Court have enshrined that the principle of freedom of education ([decision n°77-87 DC of the 23rd November 1977](#)) and principle of equal access to education ([decision n°2001-450 DC of the 11th July 2001](#)) are both fundamental rights. Another decision confirmed that both of the above-mentioned principles apply to higher education ([decision n° 2018-763 DC of the 8th March 2018](#)).

In this case, civil society was implicated because of the already existing tense social protests. As soon as the measure was announced by the government and the prime minister, French students and international students started protesting. Public universities were blocked, marches were organized, and multiple student unions alongside with some public universities decided to question the constitutionality of this new strategy. This case was also highly reported and followed by the media because the students’ strikes were preventing public universities from fully functioning.

Facts

The yearly tuition fees increased from 170 euros to 2,770 euros for undergraduate students and from 380 euros to 3,770 euros for graduate students. The increase is considered by the students’ unions as substantial and not limited or moderate, as prescribed by the law.

They believe that it can lead to a negative impact on low-budget and other already fragile students, who will be unable to afford to pursue higher education in a public university. According to the complainant, this raise in tuition fees can result in public university not being financially accessible for all, therefore undermining the principle of equal access to higher education. In addition, the complainant states that the high tuition fees for international students who are not from the European Union compared to the original ones results in selectivity based on economic means. Only the wealthiest will now be able to afford to study in France. The students’ unions denounce the encouragement of an elite social reproduction because “only one kind of international student will be able to come”, suppressing diversity among the student body.

In a nutshell, the complainant raised a flag about the tuition fees of higher education not being « moderate », which would deprive international students of the right to higher education violating equal access in terms of financial accessibility. It is supposed to be the duty of the State to ensure those principles.

Issue

The two main questions the Constitutional Court had to deliberate on were (i) the setting of tuition fees in public higher education and (ii) if those were going against the principle of an equal access to higher education and free education.

The Constitutional Court answered the question about the legality of tuition fees in public higher education. The legislator is allowed to do so under the control of the law and where appropriate, depending on the financial capacity of students.

Relevant legal instruments

This case focused mainly on French national law. Other than the procedural laws related to the priority preliminary ruling on the issue of constitutionality, the preamble of the French Constitution is quoted in its thirteen paragraph, which recognizes the right to equal access to education and higher education:

« The Nation guarantees equal access ... for adults to education ... The organisation of free public education ... on all levels is a duty of the State » (« *La Nation garantit l'égal accès ... de l'adulte à l'instruction ... L'organisation de l'enseignement public gratuit ... à tous les degrés est un devoir de l'État* »)

They also cited the law n° 51-598 of the 24 May 1951 of finance for the exercise 1951, and especially the third paragraph explaining that the rates and procedures for the collection of registration, tuition, examination, examination and diploma fees in State institutions are done by the legislator.

Decision

In this French case law, the setting of the tuition fees in public universities is legal as long as:

- 1) it is set by a legislator under the control of the law, meaning that it has to be set by a regulatory act coming from the government, and
- 2) the fees have to be limited or modest.

As there is a control over the setting of the tuition fees in public universities, this strategy does not violate the right to education and therefore the right to higher education for the Constitutional Court.

Additional resources:

Decision n° 2019-809 QPC of 11 November 2019

<https://www.conseil-constitutionnel.fr/decision/2019/2019809QPC.htm>

Commentary:

[Full commentary of the Conseil Constitutionnel](#)

Details of the legal arguments discussed on the decision:

[Conseil Constitutionnel](#)

List of the doctrinal references:

[Conseil Constitutionnel](#)

Online Press Articles:

[Le Conseil d'Etat entérine les frais d'inscription différenciés pour les étudiants internationaux](#)

["Choose France" again : la nouvelle stratégie pour attirer des étudiants internationaux](#)

Online Press Articles in English:

[France will increase university fees for non-EU students](#)

[France to increase non-EEA university tuition fees](#)

[Steep rise in non-EU student fees will now go ahead](#)

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