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FLASH REPORT

Country:	France
Title:	Conseil d'Etat, 9 October 2019, n° 423937
Date:	18 October 2019
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<u>Context</u>	
Issue at stake:	Decision on the legality of a decision of local transport authorities to refuse access to special tariffs for the underprivileged to foreigners who do not hold residence permits Other ground
Grounds of discrimination:	
Field of application:	Goods and services
Source:	National court decision
Applicable law:	Article L 861-1 of the Code of Social Security, Article L251-1 of the Code of Social Welfare, Article L1113-1 of the Code of Transports

Content

Case: Regional authorities regulate transportation tariffs in the great Paris region (Ile-de France). In this context, Article L1113-1 of the Code of Transports allows the region to implement a special tariff for persons who have revenues under the limit set out in Article L861-1 of the Code of Social Security.

Article L861-1 of the Code of Social Security defines the limit of financial resources giving access to the social Medicare card called CMU and to a similar protection for non-legal residents (i.e. asylum seekers as well), who have been residing in France for more than three months called AME (provided by Article L251-1 of the Code of Social Welfare).

On 17 February 2016, regional authorities of the Paris region adopted a decree providing that persons benefiting from the protection provided by AME, who are all non-legal residents, were excluded from the benefit of the special public transportation tariffs for the underprivileged regardless of their revenue.

This decision was attacked before the administrative tribunal of Paris by a number of NGOs and the Defender of Rights and was found to be illegal.

The Paris region appealed the first instance decision before the Paris administrative court of appeal which confirmed the decision. The Paris region appealed again to the Conseil d'Etat.

Decision of the court: The Conseil d'Etat decided that article L1113-1 of the Code of Transports gave power to the region to adopt special tariffs in reference to the financial resources defined at article L861-1 of the Code of Social Security without stating any distinction on any other ground. Therefore, this provision does not allow the region to

create such a distinction without exceeding its authority and violating the principle of equality.

The Conseil d'Etat quashed the decree as illegal.

Key points of analysis: The Paris region public authorities clearly adopted this regulation to take a stand on the political issue of benefits given to illegal migrants and to advance policies supporting discrimination on the ground of nationality and legal residence.

The Supreme Administrative Court adopts the classic rhetoric approach of public law, restricting discussion to classic public law syllogisms. Even if this policy clearly pursued differential treatment on the ground of nationality and/or origin and was challenged as such, the Court does not discuss arguments alleging direct and indirect discrimination. It decides that the law did not delegate power to adopt any distinction based on the status of beneficiaries, the decrees adopted to implement this policy reaching beyond the realm of the Region's legislative competence.

The classic rules of decision making of the Conseil d'Etat only address two legal frameworks according to strictly defined parameters of analysis: excess of power or manifest error of appreciation. There is not accessory theoretical discussion motivating the rulings. However, the foundation of this decision is in fact the taking into account of an illegal distinction.

The Court does not go so far as to discuss the special legal value of transportation rights or comment on the purview of the principle of equality. It limits itself to stating its legal conclusion: the combination of the provisions defining legal resources for Medicare, whatever its status, and the regulatory power of the Paris region define the perimeter and object of the regulatory power of the regional authority, and impose a rule that must apply to legal and non-legal residents without distinction.

Internet link source:

https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CE_TATEXT000039198226&fastReqId=2097998677&fastPos=12.