



Scottish referendum: the issue of tuition fees

Description

As the Scottish referendum is drawing closer (18 September), one may ask an important practical question for British students. Would an independent Scotland still practice double standard university fees – free tuition for Scottish-domiciled and EU students, high fees for the other UK students -? Not if Scotland is to remain in the EU apparently.

The [Scottish government](#) and the [Yes Campaign](#) as a whole have pledged the status quo. It is notably argued that charging the rest of the UK residents is an efficient means of avoiding massive flows of mainland students drawn by free higher education, while preserving the Scottish model.

There have been recent hints at the legal issue it represents, e.g. from the [European Commission](#) and [a former judge of the European Court of Justice](#). It boils down to the infringement of article 18 TFUE, which prohibits discrimination on the grounds of nationality. Imagine an independent Scotland, still member of the EU: this would make what would be left of the UK another EU country (at least until the next referendum!). And the principle of non-discrimination would apply to students from England, Wales and Northern Ireland. It would legally involve either free tuition, or full fees for *all*.

So far, the case law of the European Court of Justice seems to back up this hypothesis. In the 1980's, a series of cases confirmed the prohibition on making foreign EU nationals paying higher costs (*Forcheri*, *Gravier*), even when economic reasons for higher education institutions were invoked (*Blaizot*).

The [Brown judgement](#) (Case 197/86 [1988]) sums up the EU legal view. A French student wanting to study in Scotland was refused by the local authorities a "student's allowance", which included the state payment of his tuition fees. The Court reaffirmed that the principle of discrimination applied to tuition fees, as conditions of access to higher education which have to be nationality-blind. By contrast, grants for student's maintenance are not ruled by this principle (they are construed as a separate social policy matter).

Yet the Yes campaign has put forward [independent legal advice, provided to Universities Scotland](#), as evidence that the same double standards system could be compatible with EU law. But the examples

presented in the document do not quite fit. They represent legal exceptions based on residence criteria applied to *all* foreigners (not a certain country in particular), or on the ground of public health, which could have justified quotas in a Belgian medical school to ensure a high enough future number of professionals exercising in the country – but this is certainly not a rationale you can generally apply to any higher education institution. Preferential fees based on residence requirement ends up being the recommended solution, deemed compatible with EU law – but such residence criteria would then have to be indiscriminate. If applied, though, they would probably hamper the inflow of EU students as much as that of British students.

Independence comes at a price, and that of higher education should be seriously considered in a globalised world.