

JUDGMENT OF 3. 7. 1974 — CASE 9/74

In Case 9/74

Reference to the Court under [Article 267 TFEU] by the Bayerisches Verwaltungsgericht, III Chamber, for a preliminary ruling in the action pending before that court between

DONATO CASAGRANDE, Munich

and

LANDESHAUPTSTADT MÜNCHEN (City of Munich)

on the interpretation of the first paragraph of Article 12 of Regulation No 1612/68 of the Council of 15 October 1968 (OJ 1968, L 257, p. 2),

THE COURT

composed of: R. Lecourt, President, A. M. Donner (Rapporteur) and M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore, H. Kutscher, C. Ó Dálaigh and A. J. Mackenzie Stuart, Judges,

Advocate-General: J. P. Warner

Registrar: A. Van Houtte

gives the following

JUDGMENT

Grounds of judgment

- 1 By order dated 14 December 1973, filed at the Registry on 11 February 1974, the Bayerisches Verwaltungsgericht (Bavarian administrative court), Munich, referred to the Court under [Article 267 TFEU] the question of the interpretation of Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the [Union].
- 2 According to the order the plaintiff in the main action, who is of Italian nationality and a child of an Italian worker in the Federal Republic of Germany, attended secondary school for the school year 1971/1972 in Munich and claimed from the City of Munich, the defendant in the main action, an educational grant amounting to DM 70 per month, provided for in Article 2 of the Bayerisches Ausbildungsförderungsgesetz (Bavarian law on educational grants).
- 3 Since the defendant in the main action refused him the benefit of this measure on the ground that Article 3 of the said law refers only to German nationals, stateless persons and aliens granted asylum, it is asked whether this Article 3 is compatible with the first paragraph of Article 12 of Regulation No 1612/68.
- 4 Although under the procedure of Article 17, the Court cannot pronounce on the interpretation or the validity of legislative provisions of a national character it is however competent to interpret Article 12 of Regulation No 1612/68 and to say whether this Article does or does not refer to measures relating to educational grants such as the measure in dispute.
- 5 Under Article 12 'the children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory', and Member States are required to encourage 'all efforts to enable such children to attend these courses under the best possible conditions'.
- 6 According to the fifth recital of the Regulation, the latter was issued, *inter alia*, for the reason that 'the right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires ... that obstacles to the mobility of workers shall be eliminated, in particular as regards the worker's right to be joined by his family and the conditions for the integration of that family into the host country'.
- 7 Such integration presupposes that, in the case of the child of a foreign worker who wishes to have secondary education, this child can take advantage of benefits provided by the laws of the host country relating to educational grants, under the same conditions as nationals who are in a similar position.

- 8 It follows from the provision in the second paragraph of Article 12, according to which Member States are to encourage all efforts to enable such children to attend the courses under the best possible conditions, that the Article is intended to encourage special efforts, to ensure that the children may take advantage on an equal footing of the education and training facilities available.
- 9 It must be concluded that in providing that the children in question shall be admitted to educational courses 'under the same conditions as the nationals' of the host State, Article 12 refers not only to rules relating to admission, but also to general measures intended to facilitate educational attendance.
- 10 The *Staatsanwaltschaft* of the Verwaltungsgericht, the third party in the main action, stated that educational policy and educational grants were within the competence of Member States.
- 11 In the Federal Republic of Germany such policy is largely within the competence of the *Länder*, and therefore it must be asked whether Article 12 applies not only to the conditions laid down by laws emanating from the central power but also to those arising from measures taken by the authorities of a country which forms part of a Federal State, or of other territorial entities.
- 12 Although educational and training policy is not as such included in the spheres which the Treaty has entrusted to the [Union] institutions, it does not follow that the exercise of powers transferred to the [Union] is in some way limited if it is of such a nature as to affect the measures taken in the execution of a policy such as that of education and training.
- 13 Chapters 1 and [3] of Title [II] of Part [Three] of the Treaty in particular contain several provisions the application of which could affect this policy.
- 14 As regards Article 12 of Regulation 1612/68, although the determination of the conditions referred to there is a matter for the authorities competent under national law, they must however be applied without discrimination between the children of national workers and those of workers who are nationals of another Member State who reside in the territory.
- 15 Further, since Regulations, under [Article 288 TFEU], have general application and are binding in their entirety and directly applicable in all Member States, it is irrelevant that the conditions in question are laid down by rules issued by the central power, by the authorities of a country forming part of a Federal State or of other territorial entities, or even by authorities which the national law equates with them.

Costs

16 The costs incurred by the Commission of the European [Union], which has submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Bayerisches Verwaltungsgericht, Munich, by order dated 13 December 1973, hereby rules:

In providing that the children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to educational courses 'under the same conditions as the nationals' of the host State, Article 12 refers not only to rules relating to admission, but also to general measures intended to facilitate educational attendance.

Lecourt	Donner	Sørensen	Monaco	Mertens de Wilmars
Pescatore	Kutscher	Ó Dálaigh		Mackenzie Stuart

Delivered in open court in Luxembourg on 3 July 1974.

A. Van Houtte
Registrar

R. Lecourt
President