JUDGMENT OF THE COURT

17 September 2002

(Freedom of movement for persons - Migrant worker - Rights of residence of members of the migrant worker's family - Rights of the children to pursue their studies in the host Member State - Articles 10 and 12 of Regulation (EEC) No 1612/68 - Citizenship of the European Union - Right of residence - Directive 90/364/EEC - Limitations and conditions)

In Case C-413/99,

REFERENCE to the Court under [Article 267 TFEU] by the Immigration Appeal Tribunal (United Kingdom) for a preliminary ruling in the proceedings pending before that court between

Baumbast,

R

and

Secretary of State for the Home Department,

on the interpretation of [Article 21 TFEU] and Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the [Union] (OJ, English Special Edition 1968 (II), p. 475),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken (Rapporteur), N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, M. Wathelet, V. Skouris, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges,

Advocate General: L.A. Geelhoed,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Mr and Mrs Baumbast, Maria Fernanda Sarmiento and Idanella Baumbast, by N. Blake QC and L. Fransman QC, instructed by M. Davidson, Solicitor, and R, by N. Blake QC and S. Harrison, Barrister, instructed by B. Andonian, Solicitor,

- the United Kingdom Government, by J. E. Collins, acting as Agent, and P. Saini, Barrister,

- the German Government, by W.-D. Plessing and B. Muttelsee-Schön, acting as Agents,

- the Commission of the European [Union], by N. Yerrell and C. O'Reilly, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr and Mrs Baumbast, Maria Fernanda Sarmiento and Idanella Baumbast, of R, of the United Kingdom Government and of the Commission, at the hearing on 6 March 2001,

after hearing the Opinion of the Advocate General at the sitting on 5 July 2001,

gives the following

Judgment

1. By order of 28 May 1999, received at the Court on 28 October 1999, the Immigration Appeal Tribunal referred to the Court for a preliminary ruling under [Article 267 TFEU] four questions on the interpretation of [Article 21 TFEU] and Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the [Union] (OJ, English Special Edition 1968 (II), p. 475).

2. Those questions were raised in proceedings between, first, Mr and Mrs Baumbast, Maria Fernanda Sarmiento and Idanella Baumbast (together "the Baumbast family") and, second, R, on the one hand, and the Secretary of State for the Home Department ("the Secretary of State"), on the other, concerning the latter's refusal to grant them leave to remain within the territory of the United Kingdom.

Legal background

[Union] legislation

3. Under [Article 20 TFEU]:

"1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby."

4. [Article 21(1) TFEU] provides that every citizen of the Union is to have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the [FEU] Treaty and by the measures adopted to give it effect.

5. Articles 10 to 12 of Regulation No 1612/68 provide as follows:

"Article 10

1. The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

(a) his spouse and their descendants who are under the age of 21 years or are dependants;

(b) dependent relatives in the ascending line of the worker and his spouse.

2. Member States shall facilitate the admission of any member of the family not coming within the provisions of paragraph 1 if dependent on the worker referred to above or living under his roof in the country whence he comes.

3. For the purposes of paragraphs 1 and 2, the worker must have available for his family housing considered as normal for national workers in the region where he is employed; this provision, however, must not give rise to discrimination between national workers and workers from the other Member States.

Article 11

Where a national of a Member State is pursuing an activity as an employed or self-employed person in the territory of another Member State, his spouse and those of the children who are under the age of 21 years or dependent on him shall have the right to take up any activity as an employed person throughout the territory of that same State, even if they are not nationals of any Member State.

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.

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.□

6. Under the first subparagraph of Article 1(1) of Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26), Member States are to grant the right of residence to nationals of Member States who do not enjoy that right under other provisions of [Union] law and to members of their families as defined in Article 1(2) of that directive, provided that they themselves and the members of their families are covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence.

7. The second subparagraph of Article 1(1) of Directive 90/364 provides that the resources referred to in the first subparagraph of that paragraph are to be deemed sufficient where they are higher than the level of resources below which the host Member State may grant social assistance to its nationals, taking into account the personal circumstances of the applicant and, where appropriate, the personal circumstances of persons admitted pursuant to Article 1(2) of that directive.

8. The third subparagraph of Article 1(1) of Directive 90/364 provides that, where the second subparagraph of that paragraph cannot be applied, the resources of the applicant are to be deemed sufficient if they are higher than the level of the minimum social security pension paid by the host Member State.

9.

Under Article 1(2) of Directive 90/364:

□The following shall, irrespective of their nationality, have the right to install themselves in another Member State with the holder of the right of residence:

(a) his or her spouse and their descendants who are dependants;

(b) dependent relatives in the ascending line of the holder of the right of residence and of his or her spouse.□

10. Article 3 of Directive 90/364 provides that the right of residence is to remain for as long as beneficiaries of that right fulfil the conditions laid down in Article 1 of that directive.

National legislation

11. Section 7(1) of the Immigration Act 1988 provides:

□A person shall not under the [Immigration Act 1971] require leave to enter or remain in the United Kingdom in any case in which he is entitled to do so by virtue of an enforceable [Union] right or of any provision made under section 2(2) of the European Communities Act 1972.□

12. Article 3 of the Immigration (European Economic Area) Order 1994 (SI 1994, No 1895; □the EEA Order) lays down the general principle that nationals of a State which is a contracting party to the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3; □the EEA Agreement□) and the members of their families are to be admitted to the United Kingdom on production of a valid national identity card or passport.

13. Under Article 4(1) of the EEA Order, a qualified person is to be entitled to reside in the United Kingdom for as long as he remains a qualified person. That right is extended to family members including spouses by Article 4(2) of the EEA Order.

14. According to Article 6 of the EEA Order, a □qualified person□ means, *inter alia*, a national of a State which is a contracting party to the EEA Agreement who undertakes in the United Kingdom the activities of a worker.

15. Paragraph 255 of the United Kingdom Immigration Rules (House of Commons Paper 395) 1994 (□the Immigration Rules□) provides:

□An EEA national (other than a student) and the family member of such a person who has been issued with a residence permit or residence document valid for five years and who has remained in the United Kingdom in accordance with the provisions of the 1994 EEA Order for four years and continues to do so may, on application, have his residence permit or residence document (as the case may be) endorsed to show permission to remain in the United Kingdom indefinitely.□

The main proceedings

16. Mrs Baumbast, a Colombian national, married Mr Baumbast, a German national, in the United Kingdom in May 1990. Their family consists of two daughters, the elder, Maria Fernanda Sarmiento, Mrs Baumbast's natural daughter, who is a Colombian national and the younger, Idanella Baumbast, who has dual German and Colombian nationality.

17. According to the order for reference, for the purposes of the reference for a preliminary ruling, the parties to the main proceedings have agreed that, as regards questions of [Union] law, Maria Fernanda Sarmiento is to be treated as a member of Mr Baumbast's family. She is therefore referred to in the order for reference as one of the two children of that family.

18. In June 1990, the members of the Baumbast family were granted residence permits/documents valid for five years. Between 1990 and 1993, Mr Baumbast pursued an economic activity in the United Kingdom, initially as an employed person and then as head of his own company. However, since that company failed and he was unable to obtain a sufficiently well-paid job in the United Kingdom, he has been employed since 1993 by German companies in China and Lesotho. Although Mr Baumbast has from time to time sought work in the United Kingdom since that date, his employment situation had not changed at the time of the order for reference.

19. During the material period, Mr and Mrs Baumbast owned a house in the United Kingdom and their daughters went to school there. They did not receive any social benefits and, having comprehensive medical insurance in Germany, they travelled there, when necessary, for medical treatment.

20. In May 1995, Mrs Baumbast applied for indefinite leave to remain in the United Kingdom for herself and for the other members of her family. In January 1996, the Secretary of State refused to renew Mr Baumbast's residence permit and the residence documents of Mrs Baumbast and her children.

21. On 12 January 1998, that refusal was brought before the Immigration Adjudicator (United Kingdom). He found that Mr Baumbast was neither a worker nor a person having a general right of residence under Directive 90/364. As regards the children, the Adjudicator decided that they enjoyed an independent right of residence under Article 12 of Regulation No 1612/68. Moreover, he held that Mrs Baumbast enjoyed a right of residence for a period co-terminous with that during which her children exercised rights under Article 12 of that regulation. According to the Adjudicator, Mrs Baumbast's rights flowed from the obligation on Member States under that provision to encourage all efforts to enable children to attend courses in the host Member State under the best possible conditions.

22. Mr Baumbast appealed to the Immigration Appeal Tribunal against the Adjudicator's decision in his regard. The Secretary of State lodged a cross-appeal before that tribunal against the Adjudicator's decision regarding Mrs Baumbast and her two children.

R

23. R, a United States citizen, has, as a result of her first marriage to a French national, two children who have dual French and United States nationality. In 1990,

she moved to the United Kingdom in her capacity as the spouse of a [Union] national exercising rights conferred by the [FEU] Treaty and was granted leave to remain in the United Kingdom until October 1995.

24. R and her first husband were divorced in September 1992 but, as no measures were taken at that time by the Secretary of State affecting R's immigration status, she continued to reside in the United Kingdom. The divorce settlement provided that the children were to reside with their mother in England and Wales for a period of at least five years after the date of the divorce or until such other time as agreed by the parties. After the divorce, the children had regular contact with their father, who still resides and works in the United Kingdom and who shares responsibility with their mother for their upbringing from both an emotional and financial point of view.

25. The file in the main proceedings also shows that, during her residence in the United Kingdom, R purchased a house and established a business as an interior designer in which she has invested substantial sums of money. She married a United Kingdom national in 1997.

26. In October 1995, an application for indefinite leave to remain in the United Kingdom was made under domestic law on behalf of R and her two daughters. On 3 December 1996, the children were granted indefinite leave to remain in the United Kingdom as members of the family of a migrant worker. Mrs R's application was refused, however, on the ground that the Secretary of State was not satisfied that the family situation was so exceptional as to justify the exercise of his discretion. In his view, the children were young enough to adapt to life in the United States if they had to accompany their mother there.

27. One of the issues raised in the action brought before the Adjudicator against the Secretary of State's refusal to grant R indefinite leave to remain was whether that refusal would interfere with her children's [Union] law rights to be educated and to reside in the United Kingdom and with the right to family life. The Adjudicator dismissed that application by a decision against which R appealed to the Immigration Appeal Tribunal.

The questions referred for preliminary ruling

28. Taking the view that the cases before it depended on the interpretation of [Article 21 TFEU] and Regulation No 1612/68, the Immigration Appeal Tribunal decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

□ The questions in common

Question 1

(a) Are children of a citizen of the European Union who are themselves such citizens and who have installed themselves in primary education during the exercise by their father (or parent) of rights of residence as a worker in another Member State of which he is not a national (the host State) entitled to reside in the host State in order to undergo general educational courses there, pursuant to Article 12 of Council Regulation No 1612/68?

(b) In so far as the answer to the preceding question may vary in circumstances where:

(i) their parents are divorced;

(ii) only one parent is a citizen of the European Union and that parent has ceased to be a worker within the host State;

(iii) the children are not themselves citizens of the European Union;

what criteria are to be applied by the national authorities?

Question 2

Where children have the right to reside in a host State in order to undergo general education[al] courses pursuant to Article 12 of Council Regulation No 1612/68, is the obligation of the host State to □encourage all efforts to enable such children to attend these courses under the best possible conditions□ to be interpreted as entitling their primary carer, whether or not a citizen of the Union, to reside with them in order to facilitate such a right notwithstanding:

(i) their parents are divorced; or

(ii) the father who is a citizen of the European Union ceases to be a worker within the host State?

The questions exclusive to the Baumbast case

Question 3

(a) On the facts of Mr Baumbast's case, does he, as an EU citizen, enjoy a directly effective right of residence in another EU Member State pursuant to [Article 21 TFEU] in circumstances where he no longer enjoys rights of residence as a worker under [Article 45 TFEU], and does not qualify for residence in the host State under any other provision of EU law?

(b) If so, are his wife and children consequently able to enjoy derivative residence, employment and other rights?

(c) If so, do they do so on the basis of Articles 11 and 12 of Regulation No 1612/68 or some other (and if so, which) provision of EU law?

Question 4

(a) Assuming that the preceding question is answered in the EU citizen's disfavour, do that person's family members retain the derivative rights that they, as such members, originally acquired upon being installed in the UK with a worker?

(b) If so, what are the conditions that apply?□

Admissibility of the first two questions

As a preliminary point, it must be noted that, according to the observations submitted to the Court, between the commencement of the main proceedings and the reference for a preliminary ruling both Mrs Baumbast and her two children and R have been granted indefinite leave to remain in the United Kingdom. In the case of R, that leave was granted probably because of her marriage to a United Kingdom national, although no details in that regard have been provided by the national tribunal. Consequently, only Mr Baumbast has been denied indefinite leave to remain.

30. In those circumstances, it is necessary to determine whether the first two questions referred by the national tribunal for a preliminary ruling are admissible.

31. The procedure provided for in [Article 267 TFEU] is an instrument of cooperation between the Court of Justice and national courts by means of which the former provides the latter with interpretation of such [Union] law as is necessary for them to give judgment in cases upon which they are called to adjudicate (see Case C-231/89 *Gmurzynska-Bscher*[1990] ECR I-4003, paragraph 18).

32. It follows that it is for the national courts alone which are seised of the case and are responsible for the judgment to be delivered to determine, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court. Consequently, where the questions put by national courts concern the interpretation of a provision of [Union] law, the Court is, in principle, bound to give a ruling (see, *inter alia*, *Gmurzynska-Bscher*, paragraphs 19 and 20).

33. Thus in the division of functions in the administration of justice between national courts and the Court of Justice provided for by [Article 267 TFEU] the Court of Justice gives preliminary rulings without, in principle, having to examine the circumstances in which the national courts have been led to refer questions and propose to apply the provision of [Union] law which they have asked the Court to interpret (see*Gmurzynska-Bscher*, paragraph 22).

34. It would be otherwise only in cases where either it appears that the procedure of [Article 267 TFEU] has been misused and been resorted to, in fact, in order to elicit a ruling from the Court in the absence of a real dispute or it is obvious that the provisions of [Union] law submitted for the interpretation of the Court cannot apply, either directly or indirectly, to the circumstances of the case (see, to that effect, *Gmurzynska-Bscher*, paragraph 23, and Case C-130/95 *Giloy* [1997] ECR I-4291, paragraph 22).

35. Admittedly, indefinite leave to remain in the United Kingdom was granted to Mrs Baumbast and her children on 23 June 1998, that is, before even the national tribunal's decision of 28 May 1999, and to R at a later, unspecified date.

36. However, it is apparent from the observations submitted at the hearing that that leave was granted under English law and that the question of the rights conferred under [Union] law on the persons concerned has not been resolved definitively.

37. Equally, these questions were raised in the context of a real dispute and the national tribunal has provided the Court with a statement of their factual and legal context as well as of the reasons which led it to take the view that an answer to those questions was necessary for it to make its decision.

38. It follows from the foregoing that the first two questions raised by the national tribunal are admissible.

The first question

39. By its first question, the national tribunal seeks essentially to ascertain whether children of a citizen of the European Union who have installed themselves in a Member State during the exercise by their parent of rights of residence as a migrant worker in that Member State are entitled to reside there in order to attend general educational courses there, pursuant to Article 12 of Regulation No 1612/68. Further, it queries whether those rights are affected by the fact that the parents have meanwhile divorced, that only one parent is a citizen of the Union and that parent has ceased to be a migrant worker in the host Member State or that the children are not themselves citizens of the Union.

Observations submitted to the Court

40. Even though they accept that the right of residence and the right to be admitted to the educational system of the host Member State under Articles 10 and 12 of Regulation No 1612/68 are not absolute, R and the Baumbast family submit that the conditions laid down for the enjoyment of the rights under Article 12 of that regulation are satisfied in the main proceedings. In fact, in the R case, there are no grounds for suggesting that the children ceased to be members of the family of their father, who continues to work in the host Member State. In the Baumbast case, the only basis for considering that the children ceased to qualify under Article 12 of that regulation is that their father no longer works in that State. However, in accordance with Joined Cases 389/87 and 390/87 *Echternach and Moritz* [1989] ECR 723, that fact is irrelevant to the continued existence of their rights.

41. The United Kingdom and German Governments also submit that the rights acquired by the child of a migrant worker under Article 12 of Regulation No 1612/68 continue in principle to subsist even where the parents leave the host Member State.

42. The German Government argues, however, that, in accordance with *Echternach and Moritz*, it is only where education cannot be continued in the Member State of origin that Article 12 of Regulation No 1612/68 grants the child an independent right of residence.

43. As regards, in particular, the R case, the United Kingdom Government claims that R's children enjoy rights to reside in the United Kingdom under Article 12 of Regulation No 1612/68 on the ground that, although R and their father are divorced, he continues to exercise rights as a migrant worker in the United Kingdom.

44. As regards the R case, the Commission submits that, even though the parents are divorced, as long as one of them retains the status of a migrant worker in the host State the children continue to enjoy a right of residence under Article 10 of Regulation No 1612/68 and a right of access to education under Article 12 of that regulation.

45. In respect of the Baumbast case, the Commission submits that, according to *Echternach and Moritz*, the child of a migrant worker retains the status of member of that worker's family for the purposes of Regulation No 1612/68 where the child's family returns to the Member State of origin and the child remains in the host Member State in order to continue studies which he could not pursue in the Member State of origin.

46. According to the Commission, even though the facts of *Echternach and Moritz* were particular, in that the child was not able to pursue his studies in the Member State of origin, the Court adopted a broad interpretation of Article 12 of Regulation No 1612/68. The situation of the children of the Baumbast family is not so very far removed from that in *Echternach and Moritz* and there is thus no *prima facie* reason to reach a different result. The Commission concludes that if the Court maintains the interpretation adopted in that case, the children of the Baumbast family may continue to reside in the United Kingdom in order to exercise their rights under Article 12 of Regulation No 1612/68.

Findings of the Court

47. In order to give a helpful answer to the first question, a distinction must be drawn between the two situations which form the basis of the national tribunal's question.

48. First of all, it must be recalled that Article 1(1) of Regulation No 1612/68, relating to the status of migrant worker, provides that any national of a Member State, irrespective of his place of residence, is to have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State.

49. As regards, first, the Baumbast case, it is apparent from the documents before the Court that this case is different from the R case in that Mr Baumbast, a German national who pursued an activity both as an employed person and as a self-employed person in the United Kingdom for several years and continues to reside there, no longer works in the United Kingdom. Under those circumstances, the national tribunal seeks to ascertain whether his children can continue their education in the United Kingdom under the provisions of Article 12 of Regulation No 1612/68.

50. In that respect, it must be borne in mind that the aim of Regulation No 1612/68, namely freedom of movement for workers, requires, for such freedom to be guaranteed in compliance with the principles of liberty and dignity, the best possible conditions for the integration of the [Union] worker's family in the society of the host Member State (see Case C-308/89 *Di Leo* [1990] ECR I-4185, paragraph 13).

51. As the Court pointed out in paragraph 21 of *Echternach and Moritz*, for such integration to come about, a child of a [Union] worker must have the possibility of going to school and pursuing further education in the host Member State, as is expressly provided in Article 12 of Regulation No 1612/68, in order to be able to complete that education successfully.

52. In circumstances such as those in the Baumbast case, to prevent a child of a citizen of the Union from continuing his education in the host Member State by refusing him permission to remain might dissuade that citizen from exercising the rights to freedom of movement laid down in [Article 45 TFEU] and would therefore create an obstacle to the effective exercise of the freedom thus guaranteed by the [FEU] Treaty.

53. Although the Court found in *Echternach and Moritz* that the child concerned could not, after his father's return to his Member State of origin, continue his studies there because there is no coordination of school diplomas, it is none the less the

case that the Court's reasoning sought essentially to ensure, in accordance with the aim of integration of members of the families of migrant workers pursued by Regulation No 1612/68, that a child of one of those workers could go to school and pursue further education in the host Member State, under conditions which do not constitute discrimination, in order to be able to complete that education successfully (see, also, Case 42/87 *Commission v Belgium* [1988] ECR 5445, paragraph 10).

54. In fact, to permit children of a citizen of the Union who are in a situation such as that of Mr Baumbast's children to continue their education in the host Member State only where they cannot do so in their Member State of origin would offend not only the letter of Article 12 of Regulation No 1612/68, which provides a right of access to educational courses for the children of a national of a Member State □who is or has been employed□ in the territory of another Member State, but also its spirit.

55. Consequently, the restrictive interpretation of that provision proposed by the German Government cannot be accepted.

56. As to whether the fact that the children are not themselves citizens of the Union can affect the answer to the first question, suffice it to state that, under Article 10 of Regulation No 1612/68, the descendants of a [Union] worker who are under the age of 21 or are dependants, irrespective of their nationality, are to be regarded as members of his family and have the right to install themselves with that worker and that, accordingly, they have the right to be admitted to the school system in accordance with Article 12 of that regulation.

57. Furthermore, the right of □his spouse and their descendants who are under the age of 21 years or are dependants□ to install themselves with the migrant worker must be interpreted as meaning that it is granted both to the descendants of that worker and to those of his spouse. To give a restrictive interpretation to that provision to the effect that only the children common to the migrant worker and his spouse have the right to install themselves with them would run counter to the aim of Regulation No 1612/68 noted above.

58. As regards, second, the R case, the children concerned enjoy, as members of the family of a worker who is a national of one Member State and who is employed in the territory of another Member State, a right of residence and a right to pursue their education under Articles 10 and 12 of Regulation No 1612/68.

59. As is apparent from paragraph 50 above, those provisions seek to facilitate the integration of the migrant worker and his family in the host Member State in order to attain the objective of Regulation No 1612/68, namely freedom of movement for workers, in compliance with the principles of liberty and dignity.

60. Even though R and her first husband have meanwhile divorced, it is apparent from the file that he continues to pursue an activity as an employed person in the United Kingdom and therefore enjoys the status of a worker who is a national of one Member State and who is employed in the territory of another Member State for the purposes of Articles 1 and 10 of Regulation No 1612/68.

61. Under those circumstances, it follows clearly from the provisions of Regulation No 1612/68, in particular Articles 10 and 12 thereof, that the children of R's first husband continue to enjoy a right to reside in the host Member State as well as the right to pursue their education there under the same conditions as the nationals of that State.

62. The fact that the children of R's first husband do not live permanently with him does not affect the rights which they derive from Articles 10 and 12 of Regulation No 1612/68. In providing that a member of a migrant worker's family has the right to install himself with the worker, Article 10 of that regulation does not require that the member of the family in question must live permanently with the worker, but, as is clear from Article 10(3), only that the accommodation which the worker has available must be such as may be considered normal for the purpose of accommodating his family (see Case 267/83 *Diatta* [1985] ECR 567, paragraph 18).

63. In the light of the foregoing, the answer to the first question must be that children of a citizen of the European Union who have installed themselves in a Member State during the exercise by their parent of rights of residence as a migrant worker in that Member State are entitled to reside there in order to attend general educational courses there, pursuant to Article 12 of Regulation No 1612/68. The fact that the parents of the children concerned have meanwhile divorced, the fact that only one parent is a citizen of the Union and that parent has ceased to be a migrant worker in the host Member State and the fact that the children are not themselves citizens of the Union are irrelevant in this regard.

The second question

64. By its second question, the national tribunal seeks essentially to ascertain whether, where children have the right to reside in a host Member State in order to attend general educational courses pursuant to Article 12 of Regulation No 1612/68, that provision must be interpreted as entitling the parent who is the primary carer of those children, irrespective of his nationality, to reside with them in order to facilitate the exercise of that right notwithstanding the fact that the parents have meanwhile divorced or that the parent who has the status of citizen of the European Union has ceased to be a migrant worker in the host Member State.

Observations submitted to the Court

65. According to R and the Baumbast family, the provisions of [Union] law must be interpreted broadly so that the rights granted are effective, particularly where a right as fundamental as the right to family life is concerned. They thus submit that, in the case of minor children who have spent all their life living with their mother and continue to do so, the refusal to afford her a right of residence during the continuation of the children's education is an interference with their rights which impairs the exercise of those rights. They also submit that such a refusal is a disproportionate interference with family life, contrary to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention).

66. The United Kingdom and German Governments as well as the Commission propose that the Court answer the second question in the negative. They submit that it is not possible to deduce from Article 12 of Regulation No 1612/68 a right of residence in favour of parents who are nationals of a non-member country. Their rights are determined by the criteria which directly govern the exercise of freedom of movement. Following divorce or termination by the spouse who is a [Union] national of his activity as a migrant worker in the host Member State,

[Union] law does not confer on the spouse who is a national of a non-member country a right of residence derived from the children's right to be educated.

67. According to the United Kingdom Government, in circumstances where the host Member State is obliged to allow children to reside there in order to attend general educational courses under Article 12 of Regulation No 1612/68, its duty to encourage all efforts to enable such children to attend those courses under the best possible conditions is not to be interpreted as requiring that State to allow the person who is their carer to reside with them. The United Kingdom Government states that if and in so far as it is established that refusal of such a right of residence would unjustifiably interfere with family life as protected by Article 8 of the European Convention, the Home Office may grant exceptional leave to remain to the carer parent in derogation from the Immigration Rules.

Findings of the Court

68. First, Article 12 of Regulation No 1612/68 and the rights which flow from it must be interpreted in the context of the structure and purpose of that regulation. It is apparent from the provisions of the regulation, taken as a whole, that in order to facilitate the movement of members of workers' families the Council took into account, first, the importance for the worker, from a human point of view, of having his entire family with him and, secondly, the importance, from all points of view, of the integration of the worker and his family into the host Member State without any difference in treatment in relation to nationals of that State (see, to that effect, Case 249/86 *Commission v Germany* [1989] ECR 1263, paragraph 11).

69. As is clear from the answer to the first question, Article 12 of Regulation No 1612/68 seeks in particular to ensure that children of a [Union] worker can, even if he has ceased to pursue the activity of an employed person in the host Member State, undertake and, where appropriate, complete their education in that Member State.

70. Second, according to the case-law of the Court, just like the status of migrant worker itself, the rights enjoyed by members of a [Union] worker's family under Regulation No 1612/68 can, in certain circumstances, continue to exist even after the employment relationship has ended (see, to that effect, *Echternach and Moritz*, paragraph 21, and Case C-85/96 *Martínez Sala* [1998] ECR I-2691, paragraph 32).

71. In circumstances such as those of the main proceedings, where the children enjoy, under Article 12 of Regulation No 1612/68, the right to continue their education in the host Member State although the parents who are their carers are at risk of losing their rights of residence as a result, in one case, of a divorce from the migrant worker and, in the other case, of the fact that the parent who pursued the activity of an employed person in the host Member State as a migrant worker has ceased to work there, it is clear that if those parents were refused the right to remain in the host Member State during the period of their children's education that might deprive those children of a right which is granted to them by the [Union] legislature.

72. Moreover, in accordance with the case-law of the Court, Regulation No 1612/68 must be interpreted in the light of the requirement of respect for family life laid down in Article 8 of the European Convention. That requirement is one of the fundamental rights which, according to settled case-law, are recognised by [Union] law (see *Commission v Germany*, cited above, paragraph 10).

73.

The right conferred by Article 12 of Regulation No 1612/68 on the child of a migrant worker to pursue, under the best possible conditions, his education in the host Member State necessarily implies that that child has the right to be accompanied by the person who is his primary carer and, accordingly, that that person is able to reside with him in that Member State during his studies. To refuse to grant permission to remain to a parent who is the primary carer of the child exercising his right to pursue his studies in the host Member State infringes that right.

74. As to the Commission's argument to the effect that a right of residence cannot be derived from Article 12 of Regulation No 1612/68 in favour of a person who is not the child of a migrant worker, on the ground that possession of that status is a *sine qua non* of any right under that provision, having regard to its context and the objectives pursued by Regulation No 1612/68 and in particular Article 12 thereof, that provision cannot be interpreted restrictively (see, to that effect, *Diatta*, paragraph 17) and must not, under any circumstances, be rendered ineffective.

75. In the light of the foregoing, the answer to the second question must be that where children have the right to reside in a host Member State in order to attend general educational courses pursuant to Article 12 of Regulation No 1612/68, that provision must be interpreted as entitling the parent who is the primary carer of those children, irrespective of his nationality, to reside with them in order to facilitate the exercise of that right notwithstanding the fact that the parents have meanwhile divorced or that the parent who has the status of citizen of the European Union has ceased to be a migrant worker in the host Member State.

The third question

76. By the first part of its third question, the national tribunal seeks essentially to ascertain whether a citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the European Union, enjoy there a right of residence by direct application of [Article 21(1) TFEU].

Observations submitted to the Court

77. According to Mr Baumbast, the fact that the right to reside freely within the territory of the Member States under [Article 21 TFEU] is subject to restrictions and is laid down in the [FEU] Treaty does not deprive the right of direct effect. That provision should be interpreted to mean that Mr Baumbast continues to exercise a right of residence in the United Kingdom while he is working outside the European Union. Such an application of [Article 21 TFEU] would enable the right of freedom of movement laid down in the [FEU] Treaty to be exercised simply on proof of nationality, but is consistent with pre-existing legislation on the subject.

78. The United Kingdom and German Governments argue that a right of residence cannot be derived directly from [Article 21(1) TFEU]. The limitations and conditions referred to in that paragraph show that it is not intended to be a free-standing provision.

79. Whilst underlining the political and legal importance of [Article 21 TFEU], the Commission submits that the very wording of that provision, and in particular its

first paragraph, shows its limitations. As [Union] law stands at present, the right to move and reside established by that article is conditioned by the pre-existing rules, both primary and secondary, which define the categories of persons eligible for it. Those rights are still linked either to an economic activity or to sufficient resources. Since the point of departure for the third question is that Mr Baumbast has no other [Union] law foundation for his right to reside in the United Kingdom, the Commission concludes that [Article 21 TFEU] cannot, as the law stands at present and in such circumstances, be of any use to him.

Findings of the Court

80. According to settled case-law, the right of nationals of one Member State to enter the territory of another Member State and to reside there constitutes a right conferred directly by the [FEU] Treaty or, depending on the case, by the provisions adopted to implement it (see, *inter alia*, Case 48/75 *Royer* [1976] ECR 497, paragraph 31).

81. Although, before the Treaty on European Union entered into force, the Court had held that that right of residence, conferred directly by the [FEU] Treaty, was subject to the condition that the person concerned was carrying on an economic activity within the meaning of [Article 45, 49 and 56 TFEU] (see Case C-363/89 *Roux* [1991] ECR I-273, paragraph 9), it is none the less the case that, since then, Union citizenship has been introduced into the [FEU] Treaty and [Article 21(1) TFEU] has conferred a right, for every citizen, to move and reside freely within the territory of the Member States.

82. Under [Article 20(1) TFEU], every person holding the nationality of a Member State is to be a citizen of the Union. Union citizenship is destined to be the fundamental status of nationals of the Member States (see, to that effect, Case C-184/99 *Grzelczyk* [2001] ECR I-6193, paragraph 31).

83. Moreover, the Treaty on European Union does not require that citizens of the Union pursue a professional or trade activity, whether as an employed or self-employed person, in order to enjoy the rights provided in Part Two of the [FEU] Treaty, on [non-discrimination and] citizenship of the Union. Furthermore, there is nothing in the text of that Treaty to permit the conclusion that citizens of the Union who have established themselves in another Member State in order to carry on an activity as an employed person there are deprived, where that activity comes to an end, of the rights which are conferred on them by the [FEU] Treaty by virtue of that citizenship.

84. As regards, in particular, the right to reside within the territory of the Member States under [Article 21(1) TFEU], that right is conferred directly on every citizen of the Union by a clear and precise provision of the [FEU] Treaty. Purely as a national of a Member State, and consequently a citizen of the Union, Mr Baumbast therefore has the right to rely on [Article 21(1) TFEU].

85. Admittedly, that right for citizens of the Union to reside within the territory of another Member State is conferred subject to the limitations and conditions laid down by the [FEU] Treaty and by the measures adopted to give it effect.

86. However, the application of the limitations and conditions acknowledged in [Article 21(1) TFEU] in respect of the exercise of that right of residence is subject to judicial review. Consequently, any limitations and conditions imposed on that right do not prevent the provisions of [Article 21(1) TFEU] from conferring on

individuals rights which are enforceable by them and which the national courts must protect (see, to that effect, Case 41/74 *Van Duyn* [1974] ECR 1337, paragraph 7).

87. As regards the limitations and conditions resulting from the provisions of secondary legislation, Article 1(1) of Directive 90/364 provides that Member States can require of the nationals of a Member State who wish to enjoy the right to reside within their territory that they themselves and the members of their families be covered by sickness insurance in respect of all risks in the host Member State and have sufficient resources to avoid becoming a burden on the social assistance system of the host Member State during their period of residence.

88. As to the application of those conditions for the purposes of the Baumbast case, it is clear from the file that Mr Baumbast pursues an activity as an employed person in non-member countries for German companies and that neither he nor his family has used the social assistance system in the host Member State. In those circumstances, it has not been denied that Mr Baumbast satisfies the condition relating to sufficient resources imposed by Directive 90/364.

89. As to the condition relating to sickness insurance, the file shows that both Mr Baumbast and the members of his family are covered by comprehensive sickness insurance in Germany. The Adjudicator seems to have found that that sickness insurance could not cover emergency treatment given in the United Kingdom. It is for the national tribunal to determine whether that finding is correct in the light of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the [Union] (OJ, English Special Edition 1971 (II), p. 416). Particular reference should be made to Article 19(1)(a) of that regulation which ensures, at the expense of the competent Member State, the right for an employed or self-employed person residing in the territory of another Member State other than the competent State whose condition requires treatment in the territory of the Member State of residence to receive sickness benefits in kind provided by the institution of the latter State.

90. In any event, the limitations and conditions which are referred to in [Article 21 TFEU] and laid down by Directive 90/364 are based on the idea that the exercise of the right of residence of citizens of the Union can be subordinated to the legitimate interests of the Member States. In that regard, according to the fourth recital in the preamble to Directive 90/364 beneficiaries of the right of residence must not become an □unreasonable□ burden on the public finances of the host Member State.

91. However, those limitations and conditions must be applied in compliance with the limits imposed by [Union] law and in accordance with the general principles of that law, in particular the principle of proportionality. That means that national measures adopted on that subject must be necessary and appropriate to attain the objective pursued (see, to that effect, Joined Cases C-259/91, C-331/91 and C-332/91 *Alluè and Others* [1993] ECR I-4309, paragraph 15).

92. In respect of the application of the principle of proportionality to the facts of the Baumbast case, it must be recalled, first, that it has not been denied that Mr Baumbast has sufficient resources within the meaning of Directive 90/364; second, that he worked and therefore lawfully resided in the host Member State for several years, initially as an employed person and subsequently as a self-employed person; third, that during that period his family also resided in the host Member State and remained there even after his activities as an employed and self-employed person

in that State came to an end; fourth, that neither Mr Baumbast nor the members of his family have become burdens on the public finances of the host Member State and, fifth, that both Mr Baumbast and his family have comprehensive sickness insurance in another Member State of the Union.

93. Under those circumstances, to refuse to allow Mr Baumbast to exercise the right of residence which is conferred on him by [Article 21(1) TFEU] by virtue of the application of the provisions of Directive 90/364 on the ground that his sickness insurance does not cover the emergency treatment given in the host Member State would amount to a disproportionate interference with the exercise of that right.

94. The answer to the first part of the third question must therefore be that a citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the Union, enjoy there a right of residence by direct application of [Article 21(1) TFEU]. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of [Union] law and, in particular, the principle of proportionality.

95. By the second and third parts of the third question, the national tribunal seeks to ascertain whether, if Mr Baumbast enjoys a right of residence on the basis of [Article 21(1) TFEU], the members of his family enjoy rights of residence on the same basis. In the light of the answers given to the first two questions, it is not necessary to answer those parts of the third question.

96. In the light of the answer given to the first part of the third question, nor is it necessary to answer the fourth question.

Costs

97. The costs incurred by the United Kingdom and German Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national tribunal, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Immigration Appeal Tribunal by order of 28 May 1999, hereby rules:

1. Children of a citizen of the European Union who have installed themselves in a Member State during the exercise by their parent of rights of residence as a migrant worker in that Member State are entitled to reside there in order to attend general educational courses there, pursuant to Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the [Union]. The fact that the parents of the children concerned have meanwhile divorced, the fact that only one parent is a citizen of the Union and that parent has ceased to be a migrant worker in the host Member State and the fact that the children are not themselves citizens of the Union are irrelevant in this regard.

2. Where children have the right to reside in a host Member State in order to attend general educational courses pursuant to Article 12 of Regulation No 1612/68, that provision must be interpreted as entitling the parent who is the primary carer of those children, irrespective of his nationality, to reside with them in order to facilitate the exercise of that right notwithstanding the fact that the parents have meanwhile divorced or that the parent who has the status of citizen of the European Union has ceased to be a migrant worker in the host Member State.

3. A citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the Union, enjoy there a right of residence by direct application of [Article 21(1) TFEU]. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of [Union] law and, in particular, the principle of proportionality.

Rodríguez Iglesias

Jann

Macken

Colneric

Von Bahr

Gulmann

Edward

La Pergola

Puissochet

Wathelet

Skouris

Cunha Rodrigues

Timmermans

Delivered in open court in Luxembourg on 17 September 2002.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President