

In Case 9/74

Reference to the Court under Article 177 of the EEC Treaty 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

Facts

The facts, the course of the proceedings and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

The plaintiff, born on 29 December 1953, possesses Italian nationality, as

does his mother, and has lived since his birth in Munich. His father, who died on 24 January 1971, was employed as a worker in the Federal Republic of Germany.

The plaintiff in the main proceedings attended the transitional form 10 of the Fridtjof-Nansen-Realschule, Munich, during the school year 1971/72 up to 30 April 1972.

Under Article 2 of the Bayerisches Ausbildungsförderungsgesetz BayAföG

(Bavarian law on educational grants) a child who attends the fifth to tenth forms of a secondary school and who does not have sufficient means is entitled to receive an 'inducational grant' amounting to DM 70 per month.

The plaintiff in the main action claimed this sum from the City of Munich, the defendant in the main action, for the appropriate period he attended school.

The defendant in the main action refused the plaintiff the educational grant by reference to Article 3 BayAföG, under which educational grants are payable solely to the following classes of persons:

1. German nationals within the meaning of the Basic Law;
2. Stateless persons within the meaning of the Law of 25 April 1951 relating to the legal position of stateless persons in the territory of the Federal Republic (BGBl. I, p. 269), as last amended by the Law of 9 September 1965 (BGBl. I, p. 1273);
3. Aliens who permanently reside in Bavarian territory and who are recognized as enjoying the right of asylum under Article 28 of the Aliens Law of 28 April 1965 (BGBl. I, p. 353), as last amended by the Law of 23 June 1970 (BGBl. I, p. 805).

The plaintiff sought a declaration from the Bayerisches Verwaltungsgericht that the Bavarian law was void, whereupon that court, by order of 14 December 1973, registered on 11 February 1974, stayed the proceedings and referred to this Court under Article 177 of the EEC Treaty for a preliminary ruling on the question whether

'Articles 3 (2) and (3) of the Gesetz zur Ergänzung des Bundesgesetzes über individuelle Förderung der Ausbildung (Law supplementing the Federal Law on individual educational grants) (BayAföG) in the published version of 5 December 1972 (BFBl. 1973, p. 3) is compatible with the first paragraph of Article 12 of Regulation (EEC) No

1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ 1968, L 257, p. 2)'.
 The Staatsanwaltschaft (Public Prosecutor's Office) of the Bayerisches Verwaltungsgericht, the plaintiff in the main action, the Government of the Italian Republic, represented by its Ambassador Adolfo Maresca, acting as agent, assisted by Giorgio Zagari, on behalf of the Avvocato generale dello Stato, and the Commission of the European Communities, represented by its Legal Adviser Peter Karpenstein, submitted their written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

After hearing the report of the Judge-Rapporteur, and the opinion of the Advocate-General, the Court decided to proceed without a preparatory inquiry.

II — Observations submitted under Article 20 of the Statute of the Court of Justice of the European Economic Community

1. The *Staatsanwaltschaft* of the Bayerisches Verwaltungsgericht Munich considers that in its capacity as representing the public interest it is entitled to submit an opinion on an application for a preliminary ruling submitted by the Verwaltungsgericht. In the absence of special provisions of Community law, the question of legal capacity for taking part in proceedings must be decided according to the criteria of national law. In view of Article 63 (4) of the Verwaltungsgerichtsordnung — VwGO (Rules of the Verwaltungsgericht) the representative of the public interest must be regarded as a party within the meaning of Article 20 of the Statute of the Court of Justice of the European Economic Community.

1. The *Staatsanwaltschaft* of the Bayerisches Verwaltungsgericht Munich considers that in its capacity as representing the public interest it is entitled to submit an opinion on an application for a preliminary ruling submitted by the Verwaltungsgericht. In the absence of special provisions of Community law, the question of legal capacity for taking part in proceedings must be decided according to the criteria of national law. In view of Article 63 (4) of the Verwaltungsgerichtsordnung — VwGO (Rules of the Verwaltungsgericht) the representative of the public interest must be regarded as a party within the meaning of Article 20 of the Statute of the Court of Justice of the European Economic Community.

It appears from the wording of Article 12 of Regulation No 1612/68 that this provision provides, in favour of children of workers from other Member States, only a right to be admitted to educational courses under the same conditions as nationals, but not to receive individual educational grants. The Council had powers under Articles 48 and 49 of the EEC Treaty to issue Regulation No 1612/68. It follows from these provisions that the Council is simply responsible for regulating these questions in connexion with the conditions of workers. It is to be inferred that the worker can claim the benefit of assimilation with nationals only as regards social benefits which have a direct relation with the contract of work itself and with the family's stay. Since individual educational grants come under the sphere of educational policy, no such direct relationship can be shown in this case. The interpretation of Article 12 of Regulation No 1612/68 approved by the Verwaltungsgericht is therefore not justified.

2. The *plaintiff in the main action* observes that the discrimination practised against him is incompatible with the provisions of Article 12 of Regulation No 1612/68. The phrase 'under the same conditions' contained in the aforementioned provision confirms that the admission to classes cannot mean the theoretical possibility of being admitted to the course, but must above all mean the material possibility of exercising this right. It follows that the Member States cannot refuse children of migrant workers the grants and subsidies which they consider proper for their own nationals.

3. The *Government of the Italian Republic* observes first of all that the objective of the preliminary question is the interpretation of Article 12 of Regulation No 1612/68. The Government supports the opinion of the Verwaltungsgericht itself, expressed in the order or reference, according to

which the aforementioned Article 12 not only guarantees admission to general education, apprenticeship and vocational training courses, but refers also to the financial conditions for admission, which comprise both exemption from payment of school fees and educational grants.

This opinion is confirmed by the social objectives of Regulation (EEC) No 1612/68. The provision of Article 12 of this Regulation must be considered in the perspective of the principle of non-discrimination provided for in Article 48 of the Treaty. In this context equality in financial aid for admission and assistance in educational courses is a decisive factor in the rule contained in the said Article 12.

4. The *Commission* observes that the preliminary question from the Verwaltungsgericht must be understood in the following sense:

- (a) Does Article 12 of Regulation No 1612/68 contain a prohibition on discrimination?
- (b) Should this prohibition — limited to admission to educational courses — be interpreted strictly or broadly?

The Verwaltungsgericht is right in citing Article 12 of Regulation No 1612/68 against the discriminatory provisions of Article 3 of BayAföG. Article 7 of the EEC Treaty does not apply in this case, because this provision of a general nature is displaced by the specific provisions of Articles 48 and 49 of the Treaty and to the rules of secondary law based on Article 49 of the Treaty. Article 7 of Regulation No 1612/68 is not relevant either. The prohibition on discrimination contained in this provision relates only to employment and is for the benefit of the workers themselves, so that advantages intended for members of their family are excluded from the scope of Article 7. Under Article 12 of Regulation No 1612/68 the children of migrant workers shall be admitted to general educational, apprenticeship and vocational training

courses 'under the same conditions as the nationals of that (host) State, if such children are residing in its territory'.

Both the wording of Article 12 and its position in Regulation No 1612/68 leads to the conclusion that this provision involves a prohibition on discrimination which has a direct effect in the domestic legal order of Member States.

On the question of whether the admission to educational courses under the same conditions as nationals of the host Member State covers measures relating to educational grants, the Commission refers to the case law of the Court in its judgments of 13 October 1969 in Case 15/69 (*Ugliola*), Rec. 1969, 363, of 13 December 1972 in Case 44/72 (*Marsman*), Rec. 1972, 1243 and of 11 April 1973 in Case 76/72 (*Michael S.*) [1973] ECR 457. According to this case law the Community rules in social matters are based on the principle that the law of each Member State must ensure for nationals of other Member States, employed in its territory, all the advantages which it accords its own nationals. In the case of *Michel S.* the Court, referring to the fifth recital of Regulation No 1612/68, considered Article 12 applicable to the benefits provided for by the law of the host

country with regard to the social rehabilitation of the handicapped. In view of the clear guidance from the case law of the Court in the matter, there is no doubt that 'admission to general educational courses' must be understood in a broad sense, involving the equal treatment of children of migrant workers as regards the financial conditions provided for in the legal system of the host States for attendance at general educational courses.

III — Oral procedure

At the hearing on 7 May 1974 the plaintiff in the main action, the Staatsanwaltschaft of the Bayerisches Verwaltungsgericht, the City of Munich and the Commission of the European Communities put forward their oral observations.

The plaintiff in the main action was represented by Mr Del Vecchio, the Staatsanwaltschaft of the Bayerisches Verwaltungsgericht by Dr Walter, the City of Munich by Mr Goltz and the Commission by Dr Karpenstein.

The Advocate-General delivered his opinion on 11 June 1974.

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 177 of the EEC Treaty 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 Community.
- 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 Community institutions, it does not follow that the exercise of powers transferred to the Community 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 2 of Title III of Part Two 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 189 of the Treaty, 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 Communities, 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

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R. Lecourt

President