JUDGMENT OF THE COURT (Sixth Chamber)
4 May 1995 *

In Case C-7/94,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesverwaltungsgericht for a preliminary ruling in the proceedings pending before that court between

Landesamt für Ausbildungsförderung Nordrhein-Westfalen

and

Lubor Gaal,

with the

Oberbundesanwalt beim Bundesverwaltungsgericht,

intervener,

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

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler, President of the Chamber, P. J. G. Kapteyn (Rapporteur), G. F. Mancini, C. N. Kakouris and G. Hirsch, Judges,

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the German Government, by Ernst Röder, Ministerialrat at the Federal Ministry of Economic Affairs, acting as Agent,

— the Commission of the European Communities, by Christopher Docksey, of its Legal Service, and Horstpeter Kreppel, a German civil servant seconded to the Commission's Legal Service as part of an exchange scheme for national civil servants, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Lubor Gaal, represented by Rüdiger Diez of the Tübingen Bar, the German Government, represented by Ernst Röder, and the Commission, represented by Horstpeter Kreppel, at the hearing on 8 December 1994,

after hearing the Opinion of the Advocate General at the sitting on 9 February 1995,

gives the following

Judgment

1 By order of 20 October 1993, received at the Court on 11 January 1994, the Bundesverwaltungsgericht (Federal Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 12 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475; hereinafter 'the Regulation').

2 That question was raised in appeal proceedings on a point of law between the Landesamt für Ausbildungsförderung Nordrhein-Westfalen (Educational Assistance Department, North Rhine-Westphalia, hereinafter 'the Landesamt') and Mr Lubor Gaal, with the Oberbundesanwalt beim Bundesverwaltungsgericht (Senior Federal Counsel at the Federal Administrative Court) intervening.

3 Mr Gaal is a Belgian national born in 1967 who has been living in Germany since 1969. His only income is an orphan's allowance to which he is entitled owing to the death of his father, and he is not dependent on his mother. After successfully completing his secondary education in Germany in 1986, Mr Gaal enrolled at university to study biology. In order to be able to continue his university studies in the United Kingdom during the year 1989/1990, he applied for an education allowance.

4 By decision of 30 June 1989, that application was rejected by the Landesamt on the ground that the candidate had already reached 21 years of age and was not dependent on his parents.

5 The second subparagraph of Paragraph 5 of the Bundesausbil dungsförderungs-gesetz (Federal Law on Educational Support, hereinafter 'the BAföG') provides that an education allowance may be granted to students resident on the national territory for attending courses at an educational establishment abroad. Pursuant to the first subparagraph of Paragraph 8 of the same Law, that allowance is granted *inter alia* to 'students who, in accordance with the law on the right of residence for Community nationals, benefit, as children, from the free movement of persons or enjoy, as children, a right of residence'.

6 Residence for nationals of the Member States of the Community is governed by the Aufenthaltsgesetz/EWG (hereinafter 'the AufenthG/EWG'), Paragraph 1(2) of which defines members of the family as

'1) the spouse and any descendants who have not yet reached 21 years of age;

2) any ascendants or descendants of a person who meets the definition in subparagraph (1) or of his spouse, who are dependent on that person or on his spouse'.

7 The Landesamt's decision rejecting the application was annulled by the Verwaltungsgericht by judgment of 18 February 1991, which was upheld on 8 November 1991 by the Verwaltungsgerichtshof. The latter court ruled that Mr Gaal was not entitled to an allowance on the basis of the second subparagraph of Paragraph 5 and the first subparagraph of Paragraph 8 of the BAföG, in conjunction with Paragraph 1 of the AufenthG/EWG, but was so under the second subparagraph of Paragraph 5 of the BAföG in conjunction with Article 12 of the Regulation.

8 According to the order for reference, the point at issue between the parties in the appeal on a point of law to the Bundesverwaltungsgericht is whether, in the light of the context and purpose of Article 12 of the Regulation, its application *ratione personae* is to be limited by requirements concerning age or dependency.

9 Taking the view that an interpretation of Community law was necessary to resolve that issue, the national court referred the following question to the Court of Justice for a preliminary ruling:

'Is the concept of "child" for the purposes of Article 12 of Council Regulation (EEC) No 1612/68 of 15 October 1968 (OJ, English Special Edition 1968 (II), p. 475) subject to a condition of age or dependency in the same way as are the rights governed by Article 10(1) and Article 11 of that Regulation?'

The procedural point raised

10 Before addressing that question, it is necessary to dispose of a procedural point raised by the German Government at the hearing.

11 The German Government's Agent questioned the regularity of the composition of the Sixth Chamber on the ground that the second sentence of the second paragraph of Article 165 of the EC Treaty provides for Chambers consisting of five judges whereas, pursuant to Decision 94/C 304/03, adopted by the Court on 10 October 1994 (OJ 1994 C 304, p. 1), the Sixth Chamber consists of six judges, a number for which there is no basis in the Treaty.

12 That objection is unfounded.

13 The purpose of the provision relied upon by the German Government, the inclusion of which in the Treaty dates from a time when the Court consisted of 13 judges, was to enable the Court 'to adjudicate on particular categories of cases' in benches of three or five judges, rather than sitting in plenary session for which a quorum of seven judges is required (Article 15 of the EEC Statute of the Court of Justice). As is clear from the text, the second sentence of the second paragraph of Article 165 allows Chambers to be formed so that certain cases may be adjudicated by three or five judges. However, that provision is without prejudice to the fact that, for reasons relating to the judicial organization of the Court, the three or five judges assigned to adjudicate in a particular case may belong to a Chamber consisting of a higher number of judges.

14 The German Government also maintains that the fact that the Sixth Chamber is to adjudicate on the present case in the form of a bench of five judges in no way alters the irregular nature of its composition, and further points out that it has no knowledge of the criteria on the basis of which judges were assigned to that bench.

15 It is enough to note that the German Government did not question the actual composition of the Chamber in the present case. Furthermore, the Chamber has been unable to identify any way in which its composition in the present case could prejudice the rights of the parties.

The question referred by the national court

16 The question referred by the national court seeks to ascertain whether the definition of 'child' for the purposes of Article 12 of the Regulation is limited, as in Article 10(1) and Article 11 of that Regulation, to children who are under 21 years of age or dependent.

17 Article 10(1) of the Regulation confers upon the spouse of a worker who is a national of one Member State and who is employed in the territory of another Member State, and upon those of his descendants who are under the age of 21 years or are dependants, the right to install themselves with him. Pursuant to Article 11 of that Regulation, the same persons have the right to take up any activity as employed persons throughout the territory of the State where the worker is employed.

18 According to the first paragraph of Article 12 of the Regulation — the provision at issue in the main proceedings — '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'.

19 It should be noted at the outset that, according to the case-law of the Court, Article 12 refers not only to the rules relating to admission itself, but also to general measures intended to facilitate educational attendance. In that regard, the Court considered *inter alia* that the status of child of a Community worker implies, in particular, that it is recognized in Community law that such children must be eligible for study assistance from the State in order to make it possible for them to achieve integration in the society of the host country. This means, according to the Court, that the children of Community workers are entitled to assistance granted

to cover the costs of students' education and maintenance under the same conditions as apply to the host country's own nationals (see Case C-308/89 *Di Leo* v *Land Berlin* [1990] ECR I-4185, paragraph 9).

20 The issue raised by the question submitted for a preliminary ruling is whether the right to equal treatment set out in Article 12 of the Regulation may also be invoked by a child of a migrant worker who is 21 years of age or older and who is no longer a dependant of that worker.

21 The German Government submitted that the close relationship between Article 10 and 11 of the Regulation, on the one hand, and Article 12, on the other, implies that Article 12 only grants that right to children who meet the conditions set out in Articles 10 and 11.

22 That view cannot be accepted.

23 In the first place, Article 12 contains no reference to Article 10 or Article 11 of the Regulation.

24 Secondly, as the Court has consistently held (see Joined Cases 389/87 and 390/87 *Echternach and Moritz* v *Netherlands Minister for Education and Science* [1989] ECR 723, paragraphs 29 and 30), the principle of equal treatment set out in Article 12 of the Regulation extends to all forms of education, whether vocational or general, including university courses. The same principle requires that the child of a migrant worker be able to continue his studies in order to complete his education successfully.

25 Consequently, Article 12 of the Regulation also encompasses financial assistance for those students who are already at an advanced stage in their education, even if they are already 21 years of age or older and are no longer dependants of their parents. Accordingly, to make the application of Article 12 subject to an age-limit or to the status of dependent child would conflict not only with the letter of that provision, but also with its spirit.

26 According to the German Government, however, that interpretation would lead to a paradoxical situation in which children possessing no derived right of installation might nevertheless be entitled to an education allowance on the basis of Article 12.

27 On that point, it need only be observed that, as the Court has already held (see Case 197/86 *Brown* v *Secretary of State for Scotland* [1988] ECR 3205, paragraph 30), Article 12 of the Regulation must be interpreted as granting rights only to a child who has lived with his parents or either one of them in a Member State at a time when at least one of his parents resided there as a worker.

28 At the hearing the German Government further contended that, according to the judgment in *Echternach and Moritz*, Article 12 of the Regulation should be interpreted in the same way as Article 7(2) thereof. Since, according to settled case-law, social advantages within the meaning of Article 7(2) of the Regulation are only accorded to members of the family of a migrant worker who are dependants of that worker, that requirement likewise applies in cases concerning the application of Article 12.

29 That view cannot be accepted.

30 As is clear from paragraphs 34 and 35 of the judgment in *Echternach and Moritz*, and from paragraphs 14 and 15 of the judgment in *Di Leo*, the reference to Article

7(2) of the Regulation, as a factor in interpreting Article 12, was not made for the purpose of laying down other requirements in addition to those set out in Article 12. The intention was rather to emphasize that the benefits granted under Article 7(2) to migrant workers themselves could not be denied to the children of those workers when they seek to rely on the right enshrined in Article 12 of the Regulation.

31 Consequently, it should be stated in reply to the question submitted for a preliminary ruling that the definition of 'child' for the purposes of Article 12 of the Regulation is not subject to the same conditions of age or dependency as are the rights governed by Article 10(1) and Article 11 of that Regulation.

Costs

32 The costs incurred by the German Government and by the Commission of the European Communities, 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 court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Bundesverwaltungsgericht, by order of 20 October 1993, hereby rules:

The definition of 'child' for the purposes of Article 12 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers

within the Community is not subject to the same conditions of age or dependency as are the rights governed by Article 10(1) and Article 11 of that Regulation.

Schockweiler Kapteyn Mancini

Kakouris Hirsch

Delivered in open court in Luxembourg on 4 May 1995.

R. Grass F. A. Schockweiler

Registrar President of the Sixth Chamber