JUDGMENT OF THE COURT
29 JANUARY 1975 [1]

Mr Angelo Alaimo
v Préfet du Rhône
(preliminary ruling requested by the Tribunal administratif Lyon)

Case 68/74

Summary

Freedom of movement — Workers — Nationals of a Member State — Employment in the territory of another Member State — Children — Education — Admission under the same conditions as the nationals of the host State — Scope
(Regulation No 1612/68 of the Council, Article 12, first paragraph)

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 of Regulation No 1612/68 ensures for the children referred to an equal position with regard to all the rights arising from such admission.

In Case 68/74

Reference to the Court under Article 177 of the EEC Treaty by the Tribunal Administratif, Lyon, for a preliminary ruling in the action pending before that court between

ANGELO ALAIMO

and

PRÉFET DU RHÔNE

on 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 (OJ, Special Edition 1968 (II), p. 475),

1 — Language of the Case: French.

THE COURT

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

Advocate-General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

The facts, procedure 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

Nuziata Alaimo, daughter of Angelo Alaimo, of Italian nationality and working in France, was in receipt of a State grant when she was a pupil at the Collège d'Enseignement Technique at Villeurbanne. She could not remain a pupil of this school since she had not been accepted into the second year. She now attends the École Delegue where she can claim a grant only from the department and not a State grant. Mr Alaimo applied for a grant from the department on 7 February 1972 to the préfet du Rhône who, by letter dated 11 February 1972, notified Mr Alaimo of the rejection of his application for a grant on the ground that 'The Conseil Général du Rhône, because of the large number of requests for grants which it receives each year, has decided to restrict its financial aid solely to pupils of French nationality'.

By an application dated 11 February 1972 Mr Alaimo requested the Tribunal Administratif, Lyon, to annul the aforementioned decision of the Préfet du Rhône as being *ultra vires*. He maintains that this decision is contrary to 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 Special Edition 1968 (II), p. 475). The Préfet du Rhône submitted observations seeking the dismissal of the application on the grounds that when pupils of foreign nationality attend an establishment for technical education they can obtain either a State grant or an educational grant made available by the foreign workers' welfare service from the funds for welfare work for immigrants and that the Conseil Général which decided not to give educational grants to pupils of foreign nationality is the sole arbiter in determining the rules for allocating educational grants out of the budget of the department.

By judgment dated 5 September 1974 received at the Registry of the Court of Justice on 16 September 1974, the Tribunal Administratif, Lyon, decided to suspend the proceedings and request the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling on the question whether the words contained in Article 12 of Regulation (EEC) No 1612/68 of the Council

'The children of a national of a Member State ... shall be admitted ... under the same conditions as the nationals of that State ...

may be interpreted as ensuring that children of nationals of Member States enjoy equality only as regards the terms of enrolment for the courses or could be regarded as ensuring equality for them as regards all the rights arising from admission.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by Mr Alaimo, the Préfet du Rhône, the Government of the Italian Republic and the Commission of the European Communities.

After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without a preparatory inquiry.

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

1. Mr Alaimo claims that in France the inadmissibility of children of foreign nationals to educational establishments under the same conditions of enrolment as French children must be 'in accordance with the basic principles of education and human rights applied in French territory'. It must be assumed that Article 12 of Regulation No 1612/68 adds something to this position in providing that children of a national of any Member State shall be admitted under the same conditions as the nationals of the host State. If such 'conditions did not include financial conditions, there would be serious and intolerable discrimination. Such a restriction could force the persons concerned either to return to their country of origin to pursue their studies or to give up the idea of educational or vocational training for lack of financial aid which their parents are not able to give them. It follows from the prohibition on discrimination in the Treaty and the principle of equality of nationals of the various nationalities within the Community that their children must be placed on a equal footing in regard to all the rights flowing from their admission to educational courses.

2. The Préfet du Rhône observes that he maintains what he says in his statement of defence submitted to the Tribunal Administratif, Lyon. He observes further that it was only as from the 1973-1974 school year that State educational grants were extended to foreign pupils resident in France and enrolled in general secondary educational establishments and at the same time the Conseil Général du Rhône decided on 17 December 1973 that foreign children fulfilling the same conditions could likwise claim grants from the department.

3. The Italian Government observes that the interpretation of Article 12 of Regulation (EEC) No 1612/68 with which the present case is concerned has been settled by the Court in its judgment of 3 July 1974 in Case 9/74 *Donato Casagrande v Landeshauptstadt München* [1974] ECR 773. In that judgment the Court ruled that Article 12 of the aforementioned regulation refers not only to rules relating to admission but also to general measures intended to facilitate educational attendance. In view

of that decision it would be superfluous to pursue this question further.

It is obvious that the provision of the aforementioned article includes the financial conditions of admission, which embrace both the possible exemption from payment of school fees and the grant of financial aid. The Community rules on freedom of movement for workers seek to achieve substantial equality in all sectors, including the educational conditions for children, between national workers and nationals of Member Countries. Equality of financial aid for admission and assistance for educational courses constitutes a decisive and main factor of the rule in the aforementioned Article 12.

4. The Commission observes that the interpretation of Article 12 of Regulation No 1612/68 of the Council raises two questions:

(a) Does Article 12 contain a prohibition on discrimination?

(b) Must the scope of this prohibition, which the wording of Article 12 limits to the admission to courses, be understood in a wide or narrow sense?

The preliminary ruling sought in the present case is whether the words 'shall be admitted... under the same conditions as the nationals of that State' should be limited to the conditions of enrolment in the courses or whether the provision guarantees likewise equality as regards all the rights arising from admission.

The Tribunal Administratif, Lyon, seems to regard the aforementioned article as containing a prohibition on discrimination which is directly applicable in the legal system of every Member State.

The Court has confirmed this interpretation in its judgment in Case 9/74 *(Casagrande)*.

As to the determination of the scope of this prohibition on discrimination the Commission refers to the uniform case-law of the Court in the judgment of 15 October 1969 in Case 15/69, *Württembergische Milchverwertung-Südmilch-AG v Salvatore Ugliola,* Rec. 1969, p. 363, and the judgment of 13 December 1972 in Case 44/72, *Pieters Marsman v M. Rosskamp,* Rec 1972, p. 1243. According to those decisions 'The Community rules relating to matters of social security are based on the principle that the law of each Member State must ensure that nationals of other Member States employed within its territory receive all the benefits which it grants to its own nationals.' It follows moreover from the judgment of 11 April 1973 in Case 76/72 *Michel S. v. Fonds National de Reclassement Social des Handicapés* [1973] ECR 457 that Article 12 of Regulation No 1612/68 guarantees not only admission to courses. In Case 9/74 abovementioned the Court reaffirmed this interpretation and ruled that the wording of the provision contained in this article refers not only to rules relating to admission but also to general measures intended to facilitate educational attendance. In view of this interpretation by the Court there seems no doubt that the expression used in Article 12 of Regulation No 1612/68 must be understood in a broad sense involving equality of treatment as regards financial conditions and in particular the award of educational grants provided for in the legal system of the host country to facilitare attendance at courses.

III — Oral Procedure

The Commission of the European Communities, represented by its Legal Adviser Marie-José Jonczy, acting as Agent, presented oral argument at the hearing on 22 January 1975.

The Advocate-General delivered his opinion at the hearing on 22 January 1975.

Grounds of judgment

1 By judgment dated 5 September 1974, received at the Court on 16 September 1974, the Tribunal Administratif, Lyon, referred for a preliminary ruling under Article 177 of the EEC Treaty a question on 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 (OJ Special Edition 1968 (II), p. 475).

2 It appears from the file that the plaintiff in the main action requested the annulment of a decision of the Préfet du Rhône refusing an educational grant from the department for his daughter on the ground that 'The Conseil Général du Rhône . . . has decided to restrict its financial aid solely to puplis of French nationality.'

3 Since the above-mentioned Article 12 lays down 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 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', the question is asked whether such equality of treatment is limited to the conditions of enrolment in courses or extends to all the rights arising from admission to such educational courses.

4 Regulation No 1612/68, according to the fifth recital of its preamble, was adopted in particular on the ground 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'.

5 It follows from the judgment of the Court of 3 July 1974 in Case 9/74, *Donato Casagrande v Landeshauptstadt München* [1974] ECR 773 that such integration presupposes that, in the case of the child of a foreign worker who wishes to be admitted to an educational course, that child may 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.

6 In that case it was therefore ruled that 'Article 12 refers not only to rules relating to admission, but also to the general measures intended to facilitate educational attendance'.

7 The present proceedings relating to a similar case have disclosed no issue of fact or of law of such a nature as to lead to a different interpretation of this provision.

8 It is therefore necessary to reply that Article 12 of Regulation No 1612/68 must be interpreted as ensuring for the children referred to an equal position with regard to all the rights arising from such admission.

Costs

9 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

10 Since these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Tribunal Administratif, Lyon, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Tribunal Administratif, Lyon, by judgment dated 8 September 1974, hereby rules:

Article 12 of Regulation No 1612/68 must be interpreted as ensuring for

the children referred to an equal position with regard to all the rights arising from admission to educational courses.

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

Delivered in open court in Luxembourg on 29 January 1975.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 22 JANUARY 1975 [1]

My Lords,

In this Case I am able to deliver my opinion at once and in the language of the Case. It will be very brief as it seems to me sufficient to say that, as both the Commission and the Italian Republic have pointed out, the question raised by the order for reference of the Tribunal administratif de Lyon has already been settled by the Court's judgment in Case 9/74, *Casagrande v Landeshauptstadt München* ([1974] ECR 773) and I see no reason to suggest that your Lordships should depart from anything in that judgment. On the contrary I still hold the view which I expressed to you at that time.

Adapting the operative part of that judgment to the wording of the question put by the Tribunal de Lyon, I am of the opinion that you should rule that, 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 that State's educational courses 'under the same conditions as the nationals' of that State, Article 12 of Regulation (EEC) No 1612/68 of the Council refers not only to the conditions for admission to courses but also to the whole of the rights flowing from such admission.

1 — Translated from the French.