

Case 267/83

Aissatou Diatta

v

Land Berlin

(reference for a preliminary ruling
from the Bundesverwaltungsgericht)

‘Migrant workers — Right of residence for workers’ families’

Summary

1. *Free movement of persons — Workers — Right of residence of family — No requirement that the family must live under the same roof permanently — Independent right of residence under Article 11 of Regulation No 1612/68 — None*
(Council Regulation (EEC) No 1612/68, Arts 10 and 11)

2. *Free movement of persons — Workers — Right of residence of family — Spouse — Husband and wife living separately*
(Council Regulation (EEC) No 1612/68, Art. 10)

1. The right of residence provided for in Article 10 of Regulation No 1612/68 for the members of a migrant worker's family is subject to the requirement laid down in Article 10 (3) that the accommodation which the worker has available must be such as may be considered normal for the purpose of accommodating his family. However, it is not conditional on any requirement that the family must live under the same roof permanently.

Article 11 of Regulation No 1612/68 confers on the members of a migrant worker's family only a right to exercise any activity as employed persons throughout the territory of the host State. It cannot therefore constitute the legal basis for a right of residence without reference to the conditions laid down in Article 10.

2. For the purposes of Article 10 of Regulation No 1612/68, which provides for

the right of a migrant worker's spouse to install herself with him, the marital relationship cannot be regarded as dissolved so long as it has not been

terminated by the competent authority. It is not dissolved merely because the spouses live separately, even where they intend to divorce at a later date.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 7 November 1984 ¹

*Mr President,
Members of the Court,*

not live together. It is that refusal which is the subject of the proceedings before the Bundesverwaltungsgericht.

1. The Bundesverwaltungsgericht [Federal Administrative Court of the Federal Republic of Germany] has referred two questions to the Court for a preliminary ruling on the interpretation of Articles 10 and 11 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community ².

3. By an order of 18 October 1983, in pursuance of Article 177 of the EEC Treaty, the Bundesverwaltungsgericht stayed the proceedings in the action brought by Mrs Diatta and requested the Court to give a preliminary ruling on the following two questions:

2. The questions arise in connection with the following facts:

Mrs Aissatou Diatta, a Senegalese national, is married to a French national who resides and works lawfully in West Berlin. Shortly after her marriage she joined her husband and moved into the apartment which he occupies. She found employment as a domestic help and on 13 March 1978 obtained a residence permit which was valid until 16 July 1980. In August 1978 she separated from her husband, whom she intends to divorce, and moved into accommodation which she rented herself. On the expiry of her residence permit she requested its extension. That request was refused on the ground that the couple did

'(1) Is Article 10 (1) of Regulation (EEC) No 1612/68 to be interpreted as meaning that the spouse of a worker who is a national of a Member State and who is employed in the territory of another Member State may be said to live "with the worker" if she has in fact separated from her spouse permanently but none the less lives in her own accommodation in the same place as the worker?

(2) Does Article 11 of Regulation (EEC) No 1612/68 establish for a spouse who, though not a national of a Member State, is married to a national of a Member State who works and lives in the territory of another Member State, a right of residence which does not depend on the conditions set out in Article 10 of that regulation, if the spouse wishes to pursue an activity as an employed person in the territory of that Member State?'

¹ — Translated from the French.

² — Official Journal, English Special Edition 1968 (II), p. 475.