



Reports of Cases

Case C-542/09

European Commission
v
Kingdom of the Netherlands

(Failure of a Member State to fulfil its obligations — Freedom of movement for persons — Access to education for migrant workers and their family members — Funding for higher educational studies pursued outside the territory of the Member State concerned — Residence requirement)

Summary of the Judgment

1. *Freedom of movement for persons — Workers — Equal treatment — Social advantages*
(Art. 45 TFEU; Council Regulation No 1612/68, as amended by Regulation No 2434/92, Art. 7(2))
2. *Freedom of movement for persons — Workers — Equal treatment — Social advantages — Access to education for the children of a worker*
(Council Regulation No 1612/68, as amended by Regulation No 2434/92, Arts 7(2) and 12)

1. A Member State which requires that migrant workers and dependent family members comply with a residence requirement of at least three out of the six years preceding enrolment for higher educational studies pursued outside that Member State in order to be eligible to receive funding for such studies fails to fulfil its obligations under Article 45 TFEU and Article 7(2) of Regulation No 1612/68 on freedom of movement for workers within the Community, as amended by Regulation No 2434/92.

Such a requirement is liable to operate primarily to the detriment of migrant workers and frontier workers who are nationals of other Member States, in so far as non-residents are usually non-nationals. In that context, it is immaterial whether, in some circumstances, the contested measure affects, as well as nationals of other Member States, nationals of the Member State in question who are unable to meet such a criterion. In order for a measure to be treated as being indirectly discriminatory, it is not necessary for it to have the effect of placing all the nationals of the Member State in question at an advantage or of placing at a disadvantage only nationals of other Member States, but not nationals of the State in question.

The objective of avoiding an unreasonable financial burden cannot be regarded as an overriding reason relating to the public interest, capable of justifying the unequal treatment of workers from other Member States as compared with national workers. In that respect, as regards migrant workers and frontier workers, the fact that they have participated in the employment market of a Member State establishes, in principle, a sufficient link of integration with the society of that Member State, allowing them to benefit from the principle of equal treatment, as compared with national workers, as regards social advantages. That principle is applicable not only to all employment and working conditions, but also to all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the

mere fact of their residence on the national territory. The link of integration arises from, *inter alia*, the fact that, through the taxes which he pays in the host Member State by virtue of his employment, the migrant worker also contributes to the financing of the social policies of that State and should profit from them under the same conditions as national workers.

Moreover, such legislation is not justified by the encouragement of student mobility. It is true that such a justification constitutes an overriding reason relating to the public interest capable of justifying a restriction on the principle of non-discrimination on grounds of nationality. However, legislation which is such as to restrict a fundamental freedom guaranteed by the Treaty, such as the freedom of movement for workers, can be justified on grounds of the protection of public health if it is appropriate for securing the attainment of the objective pursued and does not go beyond what is necessary in order to attain it. By requiring specific periods of residence in the territory of the Member State concerned, the measure in question prioritises an element which is not necessarily the sole element representative of the actual degree of attachment between the party concerned and that Member State.

(see paras 38, 65, 66, 69, 72, 73, 86, 89, operative part)

2. The members of a migrant worker's family are the indirect recipients of the equal treatment granted to the worker under Article 7(2) of Regulation No 1612/68 on freedom of movement for workers within the Community as amended by Regulation No 2434/92. Since the grant of funding for studies to a child of a migrant worker constitutes a social advantage for the migrant worker, the child may himself rely on that provision in order to obtain the funding if, under national law, such funding is granted directly to the student. For the migrant worker, however, that benefit constitutes a social advantage for the purposes of that provision only inasmuch as he continues to support his descendant.

Article 12 of Regulation No 1612/68, on the other hand, grants the children of a migrant worker an autonomous right to education. That right is not dependent on the status of the dependent child, nor on the right of residence of the children's parents in the host Member State. Nor is it limited to the children of migrant workers, since it applies also to the children of former migrant workers. Article 12 requires only that the child have lived with his parents or with either parent in a Member State while at least one of the parents resided there as a worker.

Although it is true that the personal scope of Articles 7(2) and 12 of Regulation No 1612/68 are different, the fact remains that both of those provisions lay down, in the same way, a general rule which, in matters of education, requires every Member State to ensure equal treatment between, on the one hand, its own nationals and, on the other, the children of workers established within its territory who are nationals of another Member State.

In any event, the personal scope of the equal treatment obligation set out in Article 7(2) is not dependent on the type of discrimination involved.

(see paras 48-51, 53)