



Reports of Cases

Joined Cases C-401/15 to C-403/15

Noémie Depesme and Others

v

Ministre de l'Enseignement supérieur et de la Recherche

(Requests for a preliminary ruling from the
Cour administrative (Luxembourg))

(Reference for a preliminary ruling — Freedom of movement of persons — Worker's rights — Equal treatment — Social advantages — Financial aid for the pursuit of higher education studies — Requirement of a parent-child relationship — Concept of 'child' — Child of a spouse or registered partner — Contribution towards the maintenance of that child)

Summary — Judgment of the Court (Second Chamber), 15 December 2016

1. *Freedom of movement for persons — Workers — Equal treatment — Social advantages — Concept — Assistance granted for maintenance and training with a view to the pursuit of university studies leading to a professional qualification — Included — Persons benefitting from the principle of equal treatment — Children of migrant workers*

(Council Regulation No 1612/68, Art 7(2))

2. *Freedom of movement for persons — Workers — Equal treatment — Social advantages — Persons benefitting from the principle of equal treatment — Children of migrant workers — Concept — Children of a spouse or registered partner of that worker — Included*

(Art. 45 TFEU; European Parliament and Council Regulation No 492/2011, Art. 7(2))

1. See the text of the decision.

(see paras 38-40)

2. Article 45 TFEU and Article 7(2) of Regulation No 492/2011 on freedom of movement for workers within the Union must be interpreted as meaning that a child of a frontier worker, who is able to benefit indirectly from the social advantages referred to in the latter provision, such as study finance granted by a Member State to the children of workers pursuing or who have pursued an activity in that Member State, means not only a child who has a child-parent relationship with that worker, but also a child of the spouse or registered partner of that worker, where that worker supports that child.

The latter requirement is the result of a factual situation, which it is for the national authorities and, if appropriate, the national courts, to assess, and it is not necessary for them to determine the reasons for that contribution or make a precise estimation of its amount.

It has already been held, when interpreting Article 10 of Regulation No 1612/68 on freedom of movement for workers within the Community, that the status of dependent member of a family, within the meaning of that provision, did not presuppose a right to maintenance. If that were the case, the composition of the family provided for in that provision would depend on national legislation, which varies from one State to another, and that would lead to a lack of uniformity in the application of EU law. Article 10(1) and (2) of Regulation No 1612/68 has also been interpreted as meaning that the status of dependent member of a family is the result of a factual situation. The person having that status is a member of the family who is supported by the worker and there is no need to determine the reasons for recourse to the worker's support or to raise the question whether the person concerned is able to support himself by taking up paid employment. That interpretation is dictated by the principle that the provisions establishing the free movement of workers, which constitutes one of the foundations of the Union, must be construed broadly.

However, such an interpretation applies also where the contribution of a frontier worker to the maintenance of the children of his spouse or recognised partner is at issue.

The status of a family member of a frontier worker who is dependent on that worker may, when it relates to the case of a child of a spouse or recognised partner of that worker, be evidenced by objective factors, such as a joint household shared by that worker and the student.

(see paras 58-60, 64, operative part)