Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

2 April 2020*

(Reference for a preliminary ruling — Freedom of movement for workers — Regulation (EU) No 492/2011 — Children of frontier workers — Social advantages — System for reimbursement of school transport costs — Requirement of residence in a *Land* — Exclusion of children attending school in that *Land* and residing in a Member State other than that of the school attended — Exclusion of nationals residing in other *Länder*)

In Case C-830/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberverwaltungsgericht Rheinland-Pfalz (Higher Administrative Court, Rhineland-Palatinate, Germany), made by decision of 11 December 2018, received at the Court on 28 December 2018, in the proceedings

Landkreis Südliche Weinstraße

v

PF and Others,

Other party:

Vertreter des öffentlichen Interesses,

THE COURT (Ninth Chamber),

composed of S. Rodin, President of the Chamber, D. Šváby and N. Piçarra (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the European Commission, by C. Hödlmayr and B.-R. Killmann, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

2 The request has been made in proceedings between PF and the Landkreis Südliche Weinstraße, concerning payment by the *Land* of the school transport costs of children of frontier workers.

Legal context

EU law

3 Recitals 3 to 5 of Regulation No 492/2011 state:

‘(3) Provisions should be laid down to enable the objectives laid down in Articles 45 and 46 of the [FEU] Treaty in the field of freedom of movement to be achieved.

(4) Freedom of movement constitutes a fundamental right of workers and their families. … The right of all workers in the Member States to pursue the activity of their choice within the Union should be affirmed.

(5) Such right should be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services.’

4 Article 7(1) and (2) of that regulation provides that:

‘1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.’

5 Article 10 of that regulation provides:

‘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.

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.’

German law

6 Paragraph 56(1) of the Rheinland-pfälzisches Schulgesetz (Rhineland-Palatinate Law on the organisation of the school system) of 30 March 2004 (GVBl. RP 2004, p. 239), as last amended by Paragraph 10 of the Law of 16 February 2016 (GVBl. RP 2016, p. 37), provides:

'School attendance shall be compulsory for all children, adolescents and young adults having their place of residence or usual abode in Rhineland-Palatinate; this provision shall be without prejudice to international law and international agreements.'

7 Paragraph 69 of that law, concerning the school transport service, establishes that:

'(1) The *Landkreise* and towns not attached to a *Landkreis* shall be responsible for ensuring, as a mandatory task falling within the self-government of those authorities, the transport of students resident in Rhineland-Palatinate to the primary schools and special needs schools in their territory, provided that those students cannot reasonably be expected to travel to school without using a means of transport.

This provision also applies to the transport of students:

1. To the nearest secondary school …

If the school attended is outside Rhineland-Palatinate, the *Landkreis* or town not attached to a *Landkreis* in whose territory the student resides shall pay the transport costs.

(2) A student cannot reasonably be expected to travel to the school which he attends without using a means of transport if the journey is particularly dangerous or if the shortest distance on foot, and not posing any particular danger, between his residence and the primary or secondary school … which he attends is greater than two kilometres in the case of a primary school or four kilometres in the case of a secondary school. …

(3) If the school attended is not the nearest school for the purposes of subparagraph 1 [second sentence, point 1] above, the transport costs shall be paid only up to the amount which would have been paid for the transport of the student to the nearest school. When determining the nearest school, only schools offering the chosen first foreign language shall be taken into account. …

(4) The task shall be accomplished primarily by paying the transport costs for use of public means of transport. If the public transport network does not provide a service which the student can reasonably be expected to use, a school bus service should normally be provided. The costs of using any other means of transport shall be paid only up to the amount which would be incurred under the first sentence above.'

8 Paragraph 5(1) of the Rheinland-pfälzisches Landesgesetz über den öffentlichen Personennahverkehr (Rhineland-Palatinate Law on urban and inter-urban public transport) of 17 November 1995 (GVBl. RP 1995, p. 450), as last amended by Paragraph 12 of the Law of 22 December 2015 (GVBl. RP 2015, p. 516), provides:

'The organisation of urban and inter-urban public transport, within the meaning of Paragraph (2)(1) above, is a task for which the *Landkreise* and towns not attached to a *Landkreis* shall be responsible. It is an optional task falling within the self-government of those authorities, which they shall perform within the limits of their financial capacity. …'

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 PF, a German national, resides in France with his parents, who are also German nationals. He attends a secondary school in *Landkreis* Südliche Weinstraße in *Land* Rhineland-Palatinate, Germany. His mother's place of work is also in Germany.

10 PF's school transport costs were paid by the *Landkreis* in which he attends school until the school year 2014-2015. For the year 2015-2016, however, the *Landkreis* announced by notice of 16 June 2015 that PF's school transport costs would no longer be paid, in accordance with the legislative provisions in force in Rhineland-Palatinate. That legislation provided that the *Landkreis* was required to organise school transport only for students resident in that *Land*.

11 The complaint lodged by PF against the decision of the *Landkreis* was rejected. He then brought an action against that rejection before the Verwaltungsgericht Neustadt an der Weinstraße (Administrative Court, Neustadt an der Weinstraße, Germany). The latter upheld the action on the ground that PF, as a child of a frontier worker, was entitled to have his school transport costs paid by virtue of Article 7(2) of Regulation No 492/2011.

12 The *Landkreis* appealed against that judgment to the referring court, the Oberverwaltungsgericht Rheinland-Pfalz (Higher Administrative Court, Rhineland-Palatinate, Germany). The referring court seeks to ascertain whether a provision such as point 1 of the second subparagraph of Paragraph 69(1) of the Rhineland-Palatinate Law on the organisation of the school system infringes Article 7(2) of Regulation No 492/2011.

13 The referring court considers that Article 7(2) of Regulation No 492/2011 is applicable to the case before it. It takes the view, first, that payment of the school transport costs at issue in the main proceedings constitutes a social advantage for the purposes of Article 7(2) of Regulation No 492/2011. Secondly, it points out that, according to the judgment of 12 May 1998, *Martínez Sala* (C-85/96, EU:C:1998:217, paragraph 25), that concept covers all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States seems likely to facilitate the mobility of such workers.

14 However, the referring court asks whether the national measure at issue in the main proceedings leads to indirect discrimination against migrant workers for the purposes of Article 7(2) of Regulation No 492/2011.

15 In that regard, it points out, in particular, that, in the cases in which the Court has been required to give a ruling, the residence requirement extended to the entire territory of the Member State concerned. However, in the main proceedings, since the residence requirement is limited to a part of German territory, the national measure excludes almost exclusively the children of workers residing in that Member State from entitlement to the social benefit at issue in the main proceedings, whereas only a limited number of children of migrant workers are concerned.

16 If that national measure is nonetheless to be regarded as indirectly discriminatory, the referring court asks whether that national measure could be justified by an overriding reason in the public interest, in this case, the need to ensure the effective organisation of the school system. That legitimate objective relates to compulsory schooling, which is intended to guarantee the right to education enshrined both in Article 26 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948, and in Article 14 of the Charter of Fundamental Rights of the European Union.

17 The referring court states that there is an inextricable link between the organisation of the school system and the territory, which would justify the residence requirement laid down by the national legislation at issue in the main proceedings. It refers, in this regard, to Article 10 of Regulation No 492/2011, which makes the right to attend general educational courses subject to a requirement of residence in the Member State, as the Court held in its judgment of 13 June 2013, *Hadj Ahmed* (C-45/12, EU:C:2013:390, paragraph 31).

18 The referring court also indicates that waiving such a residence requirement would be difficult to implement. In the case of a student residing in a Member State other than that of the school attended, it would not be easy to determine the nearest school for the purpose of calculating the amount of school transport costs to be reimbursed.

19 In those circumstances, the Oberverwaltungsgericht Rheinland-Pfalz (Higher Administrative Court, Rhineland-Palatinate) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Is Article 7(2) of Regulation … No 492/2011 … to be interpreted as meaning that a provision of national law limiting the obligation of national local authorities (districts) regarding school transport to the residents of the wider constituent state (*Land*) has an indirectly discriminatory effect, even if it is established, on the basis of the factual circumstances, that the residence requirement quite predominantly excludes residents of the rest of the territory of the Member State from the benefit?

If Question 1 is to be answered in the affirmative:

2. Does the effective organisation of the school system constitute an imperative requirement of public interest which is capable of justifying indirect discrimination?’

The first question referred for a preliminary ruling

20 By its first question, the referring court asks, in essence, whether Article 7(2) of Regulation No 492/2011 must be interpreted as meaning that national legislation which makes the payment of school transport costs by a *Land* subject to a requirement of residence in the territory of that *Land* constitutes an indirectly discriminatory measure.

21 In order to answer this question, in the first place, it should be pointed out, on the one hand, that any EU national who, irrespective of his place of residence and his nationality, exercises the right to freedom of movement for workers and who is employed in a Member State other than that of his residence comes within the scope of Article 45 TFEU, a provision which Regulation No 492/2011 is intended to put into concrete terms (see, to that effect, judgment of 21 February 2006, *Ritter-Coulais*, C-152/03, EU:C:2006:123, paragraph 31).

22 Thus, a national of a Member State who, while maintaining his employment in that State, transfers his residence to another Member State, comes within the scope of the provisions of the FEU Treaty on freedom of movement for workers, and hence of Regulation No 492/2011 (see, to that effect, as regards Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), repealed and replaced by Regulation No 492/2011, judgment of 18 July 2007, *Hartmann*, C-212/05, EU:C:2007:437, paragraph 19).

23 On the other hand, it should be recalled that Regulation No 492/2011 benefits frontier workers, as is apparent from recitals 4 and 5 of that regulation, according to which the right of all workers in the Member States to pursue the activity of their choice within the European Union should be enjoyed

without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services. Similarly, Article 7 of Regulation No 492/2011, which reproduces in exactly the same terms the wording of Article 7 of Regulation No 1612/68, refers, without reservation, to a 'worker who is a national of a Member State' (judgments of 27 November 1997, *Meints*, C-57/96, EU:C:1997:564, paragraph 50, and of 18 July 2007, *Geven*, C-213/05, EU:C:2007:438, paragraph 15).

24 Moreover, it is clear from the Court's case-law that a national of a Member State who, while maintaining his employment in that State, has transferred his residence to another Member State and has since then carried on his occupation as a frontier worker can claim the status of 'migrant worker' for the purposes of Regulation No 492/2011 (see, as regards Regulation No 1612/68, repealed and replaced by Regulation No 492/2011, judgment of 18 July 2007, *Hartmann*, C-212/05, EU:C:2007:437, paragraph 20).

25 In the present case, the dispute in the main proceedings concerns a German national who works in Germany but resides in France. The connection with EU law is therefore the residence of that worker in a Member State other than that of which he is a national. Since that worker has exercised his freedom of movement, he is therefore entitled to rely — as against the Member State of which he is a national — on Regulation No 492/2011, which is intended to implement freedom of movement for workers within the European Union, and in particular on Article 7(2) of that regulation.

26 In the second place, it should be pointed out that 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 492/2011 (see, as regards Article 7(2) of Regulation No 1612/68, now Article 7(2) of Regulation No 492/2011, judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 40).

27 As far as the concept of social advantage, referred to in Article 7(2) of that regulation, is concerned, this term encompasses all the advantages which, whether or not linked to a contract of employment, are generally granted to national workers by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States seems likely to facilitate the mobility of such workers (see, inter alia, judgments of 12 May 1998, *Martínez Sala*, C-85/96, EU:C:1998:217, paragraph 25, and of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 38).

28 It follows that payment of a family member's school transport costs constitutes a social advantage for the purposes of that provision.

29 In the third place, it is important to recall that Article 7(2) of Regulation No 492/2011 is a particular expression, in the specific area of the grant of social advantages, of the principle of equal treatment enshrined in Article 45 TFEU and must be accorded the same interpretation as that provision (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 21; see also, as regards Article 7(2) of Regulation No 1612/68, now Article 7(2) of Regulation No 492/2011, judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 35).

30 That principle of equal treatment prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 23; see also, as regards Article 7(2) of Regulation No 1612/68, now Article 7(2) of Regulation No 492/2011, judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 41, and the case-law cited).

31 Thus, a requirement of residence on national territory which is imposed by national legislation for the purpose of entitlement to a child-raising allowance constitutes indirect discrimination in that it is intrinsically liable to affect migrant workers more than national workers and there is a consequent

risk that it will place the former at a particular disadvantage (see, as regards Regulation No 1612/68, repealed and replaced by Regulation No 492/2011, judgment of 18 July 2007, *Hartmann*, C-212/05, EU:C:2007:437, paragraphs 28 to 31).

32 It follows that the national measure at issue in the main proceedings, in so far as it makes reimbursement of school transport costs subject to a requirement of residence in the *Land*, is intrinsically liable to place frontier workers residing in another Member State at a particular disadvantage. It therefore constitutes indirect discrimination, prohibited by Article 7(2) of Regulation No 492/2011.

33 Such a conclusion cannot be called into question by the fact that national workers resident in other *Länder* are also adversely affected by that national measure.

34 First, it should be recalled that, once it has been established that national legislation is intrinsically liable to affect frontier workers more than national workers, it is immaterial, for the purposes of categorisation as indirect discrimination, whether the national measure affects, as well as frontier workers, 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 frontier workers, but not nationals of the State in question (see, to that effect, judgment of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraphs 31 and 32; see also, as regards Regulation No 1612/68, repealed and replaced by Regulation No 492/2011, judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 45).

35 Secondly, since the discrimination at issue in the main proceedings derives from a requirement of residence on a part of the territory of a Member State and not from a nationality requirement, it is irrelevant, for the purposes of determining the existence of discrimination as defined in paragraphs 30 and 31 of this judgment, that national workers who reside in another *Land* are also discriminated against by that residence requirement. Their situation comes, where relevant, within the concept of reverse discrimination and is not taken into consideration by EU law (see, to that effect, order of 19 June 2008, *Kurt*, C-104/08, not published, EU:C:2008:357, paragraphs 22 and 23).

36 In any event, such a national measure constitutes an obstacle to the free movement of workers, prohibited by Article 7(2) of Regulation No 492/2011, in that, even if it is applicable without distinction, it is liable to preclude or deter a national of a Member State from leaving his State of origin in order to exercise his right to freedom of movement (see, to that effect, judgment of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 96).

37 In the light of all the foregoing considerations, the answer to the first question referred is that Article 7(2) of Regulation No 492/2011 must be interpreted as meaning that national legislation which makes the payment of school transport costs by a *Land* subject to a requirement of residence in the territory of that *Land* constitutes indirect discrimination, in that it is intrinsically liable to affect frontier workers more than national workers.

The second question referred for a preliminary ruling

38 By its second question, the referring court asks, in essence, whether Article 7(2) of Regulation No 492/2011 must be interpreted as meaning that the need to ensure the effective organisation of the school system constitutes an overriding reason in the public interest that is capable of justifying a national measure categorised as indirect discrimination.

39 It is important to recall that indirect discrimination is in principle prohibited, unless it is objectively justified. In order to be justified, it must, first, be appropriate for securing the attainment of a legitimate objective and must, secondly, not go beyond what is necessary to attain that objective (judgments of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 46, and of 10 July 2019, *Aubriet*, C-410/18, EU:C:2019:582, paragraph 29).

40 In that regard, the Court has ruled that action undertaken by a Member State in order to ensure that its resident population is highly educated pursues a legitimate objective which can justify indirect discrimination and that higher education is an objective in the public interest, acknowledged at the level of the European Union (judgments of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 53, and of 10 July 2019, *Aubriet*, C-410/18, EU:C:2019:582, paragraph 31).

41 It follows that the objective mentioned by the referring court in the present case, that is to say, the effective organisation of the school system, in so far as it relates to the right to education guaranteed by Article 14 of the Charter of Fundamental Rights, may constitute a legitimate objective within the meaning of the case-law referred to in paragraph 39 of this judgment.

42 However, it is clear that, first, although the national provisions at issue in the main proceedings form part of a Rhineland-Palatinate Law on the organisation of the school system, they exclusively concern the organisation of school transport in that *Land*. Secondly, the very fact that Paragraph 69 of the Rhineland-Palatinate Law on the organisation of the school system provides that, if a school outside that *Land* is attended, transport costs are to be paid by the *Landkreis* or town not attached to a *Landkreis* in whose territory the student resides, confirms that the organisation of school transport at the level of the *Land* and the organisation of the school system within that *Land* are not necessarily linked to one other.

43 Accordingly, as the European Commission observes, the national provisions at issue in the main proceedings are not sufficiently closely linked to the organisation of the school system for those provisions to be regarded as pursuing such a legitimate objective.

44 In any event, the residence requirement raised against the parties to the main proceedings cannot be deemed necessary for planning and organising school transport since, as indicated by the referring court, other measures could be envisaged. In particular, in order to calculate the amount of school transport costs to be reimbursed, 'the place … where the linear distance between the actual residence and the nearest school crosses the *Land* border' could be taken into consideration as the place of residence of the student.

45 In that regard, it is important to point out that the fact, mentioned by the referring court, that such alternative measures are more difficult for the national authorities to implement is not sufficient in itself to justify the infringement of a fundamental freedom guaranteed by the FEU Treaty (see, to that effect, judgment of 26 May 2016, *Kohll and Kohll-Schlesser*, C-300/15, EU:C:2016:361, paragraph 59) and, therefore, to justify an obstacle under Article 7(2) of Regulation No 492/2011.

46 In the light of all the foregoing considerations, the answer to the second question referred is that Article 7(2) of Regulation No 492/2011 must be interpreted as meaning that practical difficulties linked to the effective organisation of school transport within a *Land* do not constitute an overriding reason in the public interest that is capable of justifying a national measure categorised as indirect discrimination.

Costs

47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

1. **Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as meaning that national legislation which makes the payment of school transport costs by a *Land* subject to a requirement of residence in the territory of that *Land* constitutes indirect discrimination, in that it is intrinsically liable to affect frontier workers more than national workers.**

2. **Article 7(2) of Regulation No 492/2011 must be interpreted as meaning that practical difficulties linked to the effective organisation of school transport within a *Land* do not constitute an overriding reason in the public interest that is capable of justifying a national measure categorised as indirect discrimination**.

[Signatures]