

JUDGMENT OF THE COURT
OF 30 SEPTEMBER 1975 ¹

Anita Cristini
v Société nationale des chemins de fer français
(preliminary ruling requested by the Cour d'appel Paris)

'Railway tariffs for large families'

Case 32/75

Summary

Freedom of movement — Migrant worker — Death — Family — National treatment — Social advantages — Extent

(Regulation (EEC) No 1612/68 of the Council, Article 7 (2))

Article 7 (2) of Regulation (EEC) No 1612/68 of the Council on freedom of movement for workers within the Community must be interpreted as meaning that it refers to all social and tax advantages, whether or not attached to the contract of employment. These

advantages therefore also include fares reduction cards issued by a national railway authority to large families and this applies even if this advantage is only sought after the worker's death, to the benefit of his family remaining in the same Member State.

In Case 32/75

Reference to the Court under Article 177 of the EEC Treaty by the Cour d'appel, Paris, for a preliminary ruling in the action pending before that court between

ANITA FIORINI (NÉE CRISTINI) WIDOW OF EUGENIO FIORINI, residing at Vénissieux, France,

and

SOCIÉTÉ NATIONALE DES CHEMINS DE FER FRANÇAIS, whose registered office is situated in Paris,

on the interpretation of Article 7 (2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the

¹ — Language of the Case: French.

Community (OJ L 257 of 19 October 1968 (English Special Edition 1968 (II), p. 475)),

THE COURT

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

Advocate-General: A. Trabucchi

Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The judgment containing the order of reference and the written 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 procedure

1. Mrs Fiorini, an Italian national, has resided in France since 1962. She is the widow of a worker who was also of Italian nationality and who died as a result of an industrial accident in France in 1968. She is not herself gainfully employed. She has four children born in 1956, 1958, 1966 and 1967.

In 1971 she asked for the issue of a reduction card for large families by the Société nationale des chemins de fer français (SNCF) for herself and her children.

This reduction card is provided for by the French Law of 29 October 1921, as

amended by the Law of 24 December 1940, and Decree No 61-1216 of 3 November 1961, which provides: 'in families of three or more children under 18 years of age . . . , the father, the mother and each child under 18 years of age shall receive a personal identity card which entitles them to a reduction of: . . . (30 to 75 %) on the ordinary fares set out in the general fares table of the SNCF'.

The SNCF refused this request on the grounds that Mrs Fiorini did not satisfy the conditions laid down in Article 44 of the Law of 22 March 1924 under which: 'except where reciprocal arrangements have been made . . . , the reductions on rail fares for the benefit of large families shall only apply to French citizens . . . '.

Mrs Fiorini brought an action against the SNCF before the Tribunal de grande instance, Paris, to obtain the reduction card' and invoked Article 7 (2) of Regulation No 1612/68 of the Council on freedom of movement for workers

within the Community, under which a worker who is a national of a Member State shall enjoy, in the territory of the other Member States, 'the same social... advantages as national workers'. The Tribunal dismissed her claim by a judgment of 8 November 1973, finding 'that the advantage claimed does not attach exclusively to an individual's status as a worker', and 'that it therefore falls outside the scope of Article 7 (2) of Regulation No 1612/68'.

Mrs Fiorini appealed against this judgment to the Cour d'appel, Paris, which decided, by judgment of 14 March 1975, to stay the proceedings and to ask the Court of Justice to give a preliminary ruling under Article 177 of the EEC Treaty on the question:

'whether the reduction card issued by the SNCF to large families constitutes for the workers of the Member States a "social advantage" within the meaning of Article 7 of Regulation No 1612/68 of the Council of the European Communities of 15 October 1968'.

2. The judgment making the reference was received at the Court Registry on 21 March 1975.

The appellant in the main action, represented by J. Schlissinger, Advocate of the Paris Bar, the respondent in the main action, represented by A. G. Michel, Advocate of the Paris Bar, the French Government, the Italian Government, represented by its Ambassador, A. Maresca, assisted by A. Marzano, State Advocate-General, and the Commission, represented by its Legal Adviser Marie-José Jonczy, submitted written observations.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without any preliminary inquiry.

II — Written observations submitted to the Court

1. Observations of the appellant in the main action

Mrs Fiorini emphasizes that she satisfies all the conditions laid down by the French legislation to obtain a reduction card. She only lacks French nationality.

The Court of Justice has already confirmed the principle of equality of treatment resulting from Article 7 of Regulation No 1612/68. In this connexion Mrs Fiorini refers in particular to the judgments of the Court of 15 October 1969 (Case 15/69, *Württembergische Milchverwertung-Südmilch-AG v Ugliola* [1969] ECR 363) and 11 April 1973 (Case 76/72, *Michel S. v Fonds national de reclassement social des handicapés* [1973] ECR 457). She considers the Court to have demonstrated that it has a very wide concept of equality of treatment in order to prevent migrant workers from being treated unfavourably and to enable their assimilation to be as complete as possible.

In reply to the arguments of the SNCF that the advantages provided for under Regulation No 1612/68 are only accorded by reason of the beneficiary's status as a worker and that the advantage in question is not a social advantage, Mrs Fiorini claims that, because he was an Italian national, Community regulations applied to her husband, a migrant worker residing in France, that the number of dependent children of the family was in accordance with French law and that the requirement of French nationality constitutes discrimination between the national workers of the different Member States which is prohibited under the Community regulations.

Mrs Fiorini also refers to the Code français de la famille et de l'aide sociale (French Family and Social Security Code) which, in Article 20 thereof, lists, though

not exhaustively, general types of compensation in respect of dependants, and refers to 'reductions on rail fares'. In her opinion the distinction between the advantages connected with the family and the social advantages referred to by the SNCF is contrary to the letter and spirit of the Community rules as well as to the case-law of the Court.

She therefore suggests that the reply by the Court to the question referred should be that 'the reduction card issued by the SNCF to large families constitutes a social advantage for the workers of the Member States of the Community allowing the establishment and the free movement of workers in accordance with the Community rules'.

2. *Observations of the Société nationale des chemins de fer français*

The SNCF examines first of all Articles 48 and 49 of the EEC Treaty and Regulation No 1612/68, adopted in implementation thereof.

It maintains that it is apparent from this examination that the advantages granted to the nationals of the Member States are exclusively those attaching to their status as workers and that other advantages fall outside the scope of Article 7 (2) and, therefore, cannot be granted to the workers concerned unless they are expressly provided for elsewhere in the legislation, as, for example, Article 9 of Regulation No 1612/68 concerning the housing of workers.

The SNCF then considers the above-mentioned judgment of the Court in Case 76/72, *Michel S. v Fonds national de reclassement social des handicapés*, in which the Court ruled that the benefits referred to by Article 7 of Regulation No 1612/68 'include measures provided by national legislation with a view to allowing the rehabilitation of the handicapped....'

In this connexion the SNCF observes, first, that in that judgment the Court

decided that the advantages referred to by Article 2 'are those which, being connected with employment, are to benefit the workers themselves. Benefits reserved for the members of their families on the other hand, are excluded from the application of Article 7'.

Secondly, it regards as improper the interpretation of this judgment suggested by certain commentators who say that, in order to determine the advantages referred to in Article 7, the Court no longer takes account of their connexion with conditions of employment and work. According to the SNCF the Court still upholds the principle, valid for all cases which do not constitute an express exception, of the need for a connexion between the advantages and 'the employment' or 'the conditions of employment and work'. It follows that exceptions to this principle must be interpreted restrictively.

In this connexion it refers to the 'Action Programme for Migrant Workers and their Families', submitted by the Commission to the Council on 18 December 1974 and drafted in the following terms:

'Moreover, equality of treatment, in living and working conditions, between national workers and migrant workers of Community States has not yet been fully realized; certain gaps and defects still remain.

To remedy this it is necessary: to extend these social benefits, which are not directly related to the exercise of paid employment and which are at present confined by the Member States to their own nationals, to workers from other Member States and their families'... and it adds in a note: 'For example: reduced fares on public transport, aid to large families and the handicapped, etc.'

The SNCF emphasizes that, unlike the popular annual holiday tickets or the 'worker's' season tickets, which are

available to foreign nationals solely in their capacity as workers, the reduction card for large families is not an advantage attaching to this capacity. Furthermore, it follows from the legislation on the reduction card, which the legislature introduced principally out of a concern to encourage an increase in the birthrate in France, that the only two criteria to be taken into consideration in granting the reductions in question are the concepts of nationality and dependent children.

The SNCF concludes that the applicant was therefore rightly refused the reduction card for large families.

3. Observations of the French Government

The French Government considers that it can only support the argument put forward by the SNCF in the present case.

Article 7 of Regulation No 1612/68 states that a worker who is a national of another Member State must be treated in the same way as a national worker as regards all conditions of employment and work. The grant of a reduction card to large families is an essentially demographic measure the benefit of which extends to the entire French population, without being in any way linked to the status of the head of household as a worker.

The Government recalls that the provisions concerning the grant of the reduction card are included in the 'Code de la famille et de l'aide sociale' in Title 1 ('Social welfare of the family'), Chapter II, Section I ('General types of compensation in respect of dependants'). This is, therefore, a different question from those involved in the judgments given in the abovementioned Case 76/72, *Michel S. v Fonds national de reclassement social des handicapés*, and in Case 68/74 (*Angelo Alaimo v Préfet du Rhône*, judgment of 29 January 1975 [1975] ECR 109).

Finally, the Government refers to the content of the abovementioned Action Programme of the Commission. It considers that this document can only be regarded as an acknowledgment of the actual state of the law to which the SNCF referred in support of its decision.

4. Observations of the Government of the Italian Republic

The Italian Government considers that a positive reply must be given to the question referred as it clearly cannot be denied that the possibility of benefiting from reductions on rail fares by reason of the numerical size of the family constitutes a 'social advantage' within the meaning of Article 7 (2) of Regulation No 1612/68. In the judgments given in the abovementioned *Ugliola* case and in *Marsman v Roskamp* (Case 44/72, Rec. 1972, p. 1243), the Court of Justice has stated 'that the Community regulations on social matters are based upon the principle that the law of each Member State must ensure that the nationals of the other Member States who are employed within its territory receive all the advantages which it confers on its own nationals'.

The Italian Government refers to the fifth recital in Regulation No 1612/68 and maintains that the aim of the Community regulations is to integrate the family of the migrant worker into the social fabric of the host country. The mere fact of being unable to benefit from reductions which are granted by a Member State to its own nationals represents an obstacle to the mobility and integration which the Community rules seek to bring about.

In the opinion of the Italian Government the fact that the reductions are provided for by rules of a general nature which do not require the existence of a connexion between the advantage in question and employment cannot prevent their inclusion among the 'social advantages'. If only the national provisions expressly

relating to workers had to be applied to migrant workers it would be easy to circumvent the Community rules by extending the 'social advantages' to apply to all nationals. The fact that the national workers may benefit under rules of a general nature must be regarded as sufficient.

Moreover, the mere fact that the right of the migrant worker to benefit from the 'same social ... advantages' as those enjoyed by the national worker is laid down in a provision which is separate and distinct from that dealing with equality of treatment in 'the conditions of work' is sufficient to show that the social advantages are not only those which are connected with the performance of work.

If this were not the case it would have to be accepted that, for example, the migrant worker was no longer entitled to benefit from such social advantages whenever he was unemployed. Similarly, if the 'tax advantages' referred to in the same provision as the social advantages had to be limited to those which are connected with the actual performance of work, the reduced rates of tax laid down, for example, in respect of pensions, by the legislation of a Member State would only be applicable to the pensions of the national workers.

In the opinion of the Italian Government the clearly mistaken nature of these conclusions, the necessary consequence of a restrictive interpretation of Community rules, shows that in guaranteeing to migrant workers the same social, tax and housing advantages as are accorded to the national workers, the Community legislature did not limit itself only to those advantages which are connected with the performance of work.

The need to separate the concept of 'social advantages' from the actual performance of work is finally confirmed in Regulation No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the

territory of a member State after being employed in that State (OJ (English special Edition 1970 (II), p. 402)), Article 7 of which provides that 'The right to equality of treatment, established by Council Regulation (EEC) No 1612/68, shall apply also to persons coming under the provisions of this Regulation'.

Although there is no disagreement between the parties to the main action over the application of Article 7 of Regulation No 1612/68 to the members of a worker's family, the Italian Government feels that it may, nevertheless, be expedient to consider this question as it has already been raised in other similar proceedings before the Court.

The Government maintains that the judgment referred to in the *Michel S.* case must not be interpreted as limiting, in principle, the benefit of the social advantages to the migrant workers themselves. The distinction was drawn in this judgment between the advantages accorded to the worker and those accorded to the members of his family not in order to exclude the latter from the advantages provided for the worker, but rather by reason of the special nature of Article 12 of that Regulation in relation to the point at issue and, therefore, in order to define the principle applicable to the particular case.

The Italian Government maintains that the arguments set out above in relation to the aims of the Community rules, render it impossible to discriminate, as regards social advantages, between the persons entitled thereto.

The Government maintains that for several reasons it is not possible to reach an opposite conclusion merely on the basis of the context of the various principles. The title given to the two groups of rules concerning the worker and his family satisfies requirements of form and system and is not intended to distinguish between the rights of the worker and those of the members of his family. The specific rules laid down in

favour of the members of the family do not constitute exceptions to a principle which restricts the benefit of the social advantages to the worker alone. They are themselves the independent expression of the principle of nondiscrimination on which the Community regulations are based.

The manifest injustice of a restrictive interpretation leads the Italian Government to consider that the present proceedings provide the Court with a very good opportunity to make a ruling in accordance with the wide interpretation which it has always adopted in relation to the rules on the free movement of workers.

In the opinion of the Government, such a decision would also result in an acceleration of the integration programme favoured and repeatedly called for by the Commission of the European Communities.

Finally, the Italian Government considers the importance of Article 7 of the EEC Treaty in relation to the decision of the Court. It recalls that this article, which prohibits any discrimination on grounds of nationality, establishes a fundamental principle of the Community legal system, of which Articles 48 to 51 are the illustration and application. By reason of its particular importance this principle constitutes a criterion for the interpretation of the Community rules and at the same time a guideline for the action by the institutions of the Community.

The refusal to issue the reduction card to the appellant in the main action is undoubtedly an infringement of Article 7. Consequently, as regards the settlement of the dispute in the main action, the Italian Government considers that it is unnecessary to resort to the special rules laid down in favour of migrant workers (which clearly could not form an exception to the prohibition on discrimination on grounds of nationality).

If this were not the case it must be accepted that there could be a disparity in the treatment of the nationals of the other Member States not only as regards benefits such as, for example, reductions granted by reasons of the status or age of the persons concerned, but also as regards all welfare and public service benefits and even as regards the prices of consumer products. The very absurdity of these hypotheses must exclude *a priori*, independently of the special rules issued in favour of migrant workers, any refusal to issue the reduction card to large families on grounds of nationality.

Furthermore, it would be extraordinary to accept discrimination in fares as regards individuals when such discrimination is expressly prohibited as regards goods by Article 79 (1) of the EEC Treaty.

5. *Observations of the Commission*

In its preliminary observations the Commission notes that it is the French State which finally bears the burden of the reductions granted by the rules on fares. It also observes that similar reductions for large families also exist, even if not in the same form, in Belgium, Denmark, the Federal Republic of Germany and Luxembourg. Indeed it appears that in the other Member States, as in France, the benefit of such reductions for large families is granted to all nationals, and to nationals alone, on the sole basis of the number of children in the family. The Commission considers that the question may therefore be asked whether, beyond the clear social advantage constituted by these reductions and without prejudging the meaning of this term as used in Article 7 (2) of Regulation No 1612/68, a failure to apply the rule of equal treatment with nationals to the nationals of the other Member States does not constitute a discriminatory practice prohibited by Article 7 of the EEC Treaty.

In its observations on the question referred for a preliminary ruling the

Commission refers to the above-mentioned ground of judgment in the *Michel S.* case, according to which the benefits referred to by Article 7 of Regulation No 1612/68 'are those which, being connected with employment, are to benefit the workers themselves' and not the members of their families.

The Commission maintains first of all that the appellant in the main action is not herself a wage-earner, but she clearly benefits from the right to remain in the territory under Regulation No 1251/70 of the Commission and is the dependant of a worker. Thus, it is in relation to her husband that the question whether reduction cards represent a social advantage within the meaning of Article 7 (2) of Regulation No 1612/68 must be considered.

It then recalls that the reduction cards are issued independently of the individual's status as a wage-earner, which shows that they do not constitute a social advantage within the meaning of Article 7 of Regulation No 1612/68.

In the opinion of the Commission this does not imply that the rule on equal treatment with nationals, which as the Court has stated 'is one of the fundamental legal provisions of the Community', (judgment in Case 2/74, *Reyners v Belgian State* [1974] ECR 631) must not be applied in this instance. Even if all discrimination on ground of nationality cannot be abolished on the basis of a particular provision of the Treaty, in this instance Article 48, resort may be had to the general provision of the Treaty, that is to say Article 7, under which 'any discrimination on grounds of nationality shall be prohibited'. In this connexion the Commission maintains that in its judgment of 12 December 1974 (Case 36/74, *Walrave and Koch v Association union cycliste internationale*, [1974] ECR 1405), the Court impliedly acknowledged the direct applicability of the latter Article, which is a general principle governing the whole of Community law. It recalls on this subject

that in this judgment the Court found that 'Articles 7, 48, 59 have in common the prohibition, in their respective spheres of application, of any discrimination on grounds of nationality' and that in their respective spheres Articles 48 and 59 of the Treaty constitute 'the implementation of the nondiscrimination rule formulated by Article 7 for the general application of the Treaty'.

The Commission therefore proposes that the Court should give the following reply to the question asked by the Cour d'appel, Paris:

'The reduction cards for rail fares issued in a Member State to large families on the sole condition that they are of the nationality of the State concerned constitute discrimination on grounds of nationality, as regards the nationals of the other Member States, within the meaning of Article 7 of the EEC Treaty'.

The appellant in the main action, represented by J. Schlißinger, the SNCF, represented by A. G. Michel, and the Commission, represented by its Legal Adviser, Marie-José Jonczy, presented their oral observations at the hearing on 8 July 1975.

During this hearing the representative of the SNCF laid special emphasis on the fact that Article 7 of the EEC Treaty, to which the Italian Government and the Commission referred, is only applicable 'within the scope of application of this Treaty and without prejudice to any specific provisions contained therein'. However, in the first place, the provisions on the free movement of workers constitute such specific provisions and, secondly, in this instance, there is no connexion between the issue of a reduction card for large families and any kind of occupational or economic activity.

The Advocate-General delivered his opinion at the hearing on 18 September 1975.

Law

- 1 By judgment of 14 March 1975 which reached the Court on 21 March, the Cour d'appel, Paris, called upon the Court, pursuant to Article 177 of the EEC Treaty, to give a ruling on the issue whether the reduction card issued by the Société nationale des chemins de fer français for large families constitutes, for the workers of the Member States, a 'social advantage' within the meaning of Article 7 of Regulation (EEC) No 1612/68 of the Council of the European Communities of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257 of 19 October 1968).

- 2 It emerges from the judgment making the reference that the main action is concerned with the refusal by the SNCF of the request for such a reduction card, submitted by an Italian national, residing in France, whose husband, also of Italian nationality, worked in France where he died as the result of an industrial accident, leaving his widow and four infant children.

- 3 The refusal of the request, on the ground of the appellant's nationality, was based on provisions of French law which state that the reduction card for large families is in principle reserved solely for French nationals and that it is only issued to foreigners whose country of origin has entered into a reciprocal treaty with France on this particular subject, which is not the case so far as Italy is concerned.

- 4 The French Law of 29 October 1921, as amended by the Law of 24 December 1940 and the Decree of 3 November 1961, provides that in families of three or more children under the age of eighteen years the father, the mother and each child shall, at the request of the head of the family, receive an identity card entitling them to certain reductions in the fares of the SNCF.

- 5 Article 20 of the Code français de la famille et de l'aide sociale (French Family and Social Security Code) (Decree of 24 January 1956) provides that for the purpose of assisting families in bringing up their children, they shall be granted certain allowances and benefits, which are listed, albeit not exhaustively, and include, apart from family benefits provided for by the social security legislation and tax reductions or exemptions, reductions in the railway fares prescribed by the Law concerned in the present case.

- 6 Although the Court, when giving a ruling under Article 177, has no jurisdiction to apply the Community rule to a specific case, or, consequently, to pronounce upon a provision of national law, it may however provide the national court with the factors of interpretation depending on Community law which might be useful to it in evaluating the effects of such provision.

- 7 Article 7 (1) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 provides that a worker who is a national of a Member State may not, in the territory of the other Member States, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work.

- 8 Under paragraph (2) of that article he is to enjoy 'the same social and tax advantages as national workers'.

- 9 Under paragraph (3) of that article he must also, 'by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres'.

- 10 The respondent in the main action has argued that the advantages thus prescribed are exclusively those attaching to the status of worker since they are connected with the contract of employment itself.

- 11 Although it is true that certain provisions in this article refer to relationships deriving from the contract of employment, there are others, such as those concerning reinstatement and re-employment should a worker become unemployed, which have nothing to do with such relationships and even imply the termination of a previous employment.

- 12 In these circumstances the reference to 'social advantages' in Article 7 (2) cannot be interpreted restrictively.

- 13 It therefore follows that, in view of the equality of treatment which the provision seeks to achieve, the substantive area of application must be delineated so as to include all social and tax advantages, whether or not

attached to the contract of employment, such as reductions in fares for large families.

- 14 It then becomes necessary to examine whether such an advantage must be granted to the widow and children after the death of the migrant worker when the national law provides that, at the request of the head of the family, each member of the family shall be issued with an identity card entitling him or her to the reduction.
- 15 If the widow and infant children of a national of the Member State in question are entitled to such cards provided that the request had been made by the father before his death, the same must apply where the deceased father was a migrant worker and a national of another Member State.
- 16 It would be contrary to the purpose and the spirit of the Community rules on freedom of movement for workers to deprive the survivors of such a benefit following the death of the worker whilst granting the same benefit to the survivors of a national.
- 17 In this respect it is important to note the provisions of Regulation (EEC) No 1251/70 of the Commission on the right of workers to remain in the territory of a Member State after having been employed in that State.
- 18 Article 3 (1) of that regulation provides that if a worker has acquired the right to remain in the territory of a Member State, the members of his family who are residing with him shall be entitled to remain there after his death, whilst Article 7 provides that: 'The right to equality of treatment, established by Council Regulation (EEC) No 1612/68, shall apply also to persons coming under the provisions of this regulation'.
- 19 Accordingly the answer to the question should be that Article 7 (2) of Regulation (EEC) No 1612/68 of the Council must be interpreted as meaning that the social advantages referred to by that provision include fares reduction cards issued by a national railway authority to large families and that this applies, even if the said advantage is only sought after the worker's death, to the benefit of his family remaining in the same Member State.

Costs

20/21 The costs incurred by the French Government, the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the national court, 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 Cour d'appel, Paris, by judgment of 14 March 1975 hereby rules:

Article 7 (2) of Regulation (EEC) No 1612/68 of the Council on freedom of movement for workers within the Community must be interpreted as meaning that the social advantages referred to by that provision include fares reduction cards issued by a national railway authority to large families and that this applies, even if the said advantage is only sought after the worker's death, to the benefit of his family remaining in the same Member State.

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

Delivered in open court in Luxembourg on 30 September 1975.

A. Van Houtte
Registrar

R. Lecourt
President