JUDGMENT OF THE COURT
18 June 1987 *

In Case 316/85

REFERENCE to the Court under Article 177 of the EEC Treaty by the cour du travail (Labour Court), Mons, for a preliminary ruling in the proceedings pending before that court between

Centre public d'aide sociale (Public Social Welfare Centre), **Courcelles,**

and

Marie-Christine Lebon

on the interpretation of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) and Regulation (EEC) 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 having been employed in that State (Official Journal, English Special Edition 1970 (II), p. 402),

THE COURT,

composed of: Lord Mackenzie Stuart, President, Y. Galmot, C. Kakouris, T. F. O'Higgins and F. Schockweiler, Presidents of Chambers, T. Koopmans, O. Due, U. Everling, K. Bahlmann, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: C. O. Lenz
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of:

the government of the Kingdom of Belgium, by F. Behets Wydemans, Director-General at the Ministry of Public Health and Family Affairs, in the written procedure,

* Language of the Case: French.

the government of the Federal Republic of Germany, by Mr Dietmar Knopp, Rechtsanwalt, Cologne, in the oral procedure,

the government of the Kingdom of the Netherlands, by I. Verkade, Secretary-General at the Ministry of Foreign Affairs, in the written procedure,

the Commission of the European Communities, by Joseph Griesmar, Legal Adviser,

having regard to the Report for the Hearing and further to the hearing on 19 November 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 14 January 1987,

gives the following

Judgment

1 By decision of 18 October 1985, which was received at the Court on 24 October 1985, the cour du travail, Mons, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty four questions concerning the interpretation of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community and 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 having been employed in that State.

2 Those questions arose in a dispute concerning the claim submitted by Mrs Lebon to the Centre public d'aide sociale, Courcelles, (Public Social Welfare Centre, Courcelles, hereinafter referred to as 'the Courcelles Centre') for the grant of the minimum means of subsistence ('the minimex') provided for by the Belgian Law of 7 August 1974.

3 Mrs Lebon, a French national, lives in Belgium with her father, who is also a French national and who is in receipt of a retirement pension in Belgium. As is clear from the documents before the Court, Mrs Lebon has always lived in Belgium, except for the period from 1979 to 1981 during which she worked in France.

4 Since 3 May 1982 Mrs Lebon has been in receipt of the minimex, payment of which was discontinued by decision of the Courcelles Centre of 17 November 1982 on the ground of lack of evidence that she was looking for work. In December 1982 Mrs Lebon was admitted to hospital in Namur and, from 28 January 1983 until 28 October 1983, she was treated in Liège where she was given accommodation during the week, returning to Courcelles only on public holidays and at weekends.

5 On 31 March 1983 Mrs Lebon submitted a fresh claim for the grant of the minimex, which was rejected by the Courcelles Centre on the ground that she was residing in a hostel in Liège. Mrs Lebon brought an action challenging that decision before the tribunal du travail (Labour Tribunal), Charleroi, which held that the Courcelles Centre was territorially competent to deal with her claim.

6 On appeal by the Courcelles Centre, the cour du travail, Mons, decided that the Public Social Welfare Centre in Liège was territorially competent and considered it necessary to refer to the Court the following questions:

'(1) Where a national of a Member State of the European Economic Community has settled with his family within the territory of another Member State and remains there after having obtained a retirement pension, do his descendants who were living with him retain the right to equality of treatment granted by Regulation No 1612/68 when they have reached the age of majority, are no longer dependent upon him and do not have the status of workers?

(2) If so, do such descendants continue to retain that right where they no longer live with the migrant worker and have returned to the Member State of which they are nationals and have lived there independently for a certain period, either for more than one year or for more than two years (see Article 5 of Regulation No 1251/70)?

(3) If not, does the status of a "dependent member of a worker's family" result from a factual situation, to be assessed in each specific case, or from objective circumstances independent of the will of the person concerned which make it necessary for him to have recourse to the support of the worker?

(4) If not, in order that a national of a Member State may rely on his status as a worker in order to enter and establish himself within the territory of another

Member State, is it sufficient for him to claim that he wishes or intends to work? Must there be actual evidence of that wish in the form of serious and genuine efforts to find work or must he hold an offer of employment?'

7 The cour du travail, Mons, needs the interpretation which it seeks in order to give a judgment on the civil liability of the Courcelles Centre. The Courcelles Centre has failed to comply with Article 7 of the Royal Decree of 30 October 1974 which lays down that, if it receives a claim for the minimex, which it does not consider itself competent to grant, it must inform the claimant forthwith and forward the claim to the competent centre within three days. Since it acted wrongfully, the Courcelles Centre is liable for the damage thus caused. The existence of damage depends on the question whether Mrs Lebon was entitled to the minimex.

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the relevant Community legislation and the observations submitted to the Court by the governments and by the Commission, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

First question

9 The Commission and the Netherlands and German Governments maintain that the first question should be answered in the negative. In their view, a descendant who has reached the age of majority and is no longer dependent on a national of a Member State who exercises his right to remain within the territory of another Member State in accordance with Article 48 (3) (c) of the EEC Treaty and Regulation No 1251/70 is not covered by that regulation nor, consequently, is he entitled to equal treatment under Article 7 of Regulation No 1612/68.

10 It must be pointed out that the principle of equal treatment is derived in the first place from Article 7 of the EEC Treaty, according to which 'within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be

prohibited'. As the Court emphasized in its judgment of 17 April 1986 in Case 59/85 (*Netherlands* v *Reed* [1986] ECR 1283 *et seq.*), that principle was applied specifically with regard to freedom of movement for workers within the Community in Article 48 of the EEC Treaty, a provision implemented by Regulation No 1612/68 which provides in Article 7 (2) that in the host State a worker who is a national of another Member State must 'enjoy the same social and tax advantages as national workers'.

11 The equality of treatment enjoyed by workers who are nationals of Member States and are employed within the territory of another Member State in relation to workers who are nationals of that State, as regards the advantages which are granted to the members of a worker's family, contributes to the integration of migrant workers in the working environment of the host country in accordance with the objectives of the free movement of workers.

12 However, the members of a worker's family, within the meaning of Article 10 of Regulation No 1612/68, qualify only indirectly for the equal treatment accorded to the worker himself by Article 7 of Regulation No 1612/68. Social benefits such as the income guaranteed to old people by the legislation of a Member State (see the judgment of 12 July 1984 in Case 261/83 *Castelli* v *ONPTS* [1984] ECR 3199) or guaranteeing in general terms the minimum means of subsistence operate in favour of members of the worker's family only if such benefits may be regarded as a social advantage, within the meaning of Article 7 (2) of Regulation No 1612/68, for the worker himself.

13 It follows that, where a worker who is a national of one Member State was employed within the territory of another Member State and exercised the right to remain there, his descendants who have reached the age of 21 and are no longer dependent on him may not rely on the right to equal treatment guaranteed by Community law in order to claim a social benefit provided for by the legislation of the host Member State and guaranteeing in general terms the minimum means of subsistence. In the circumstances, that benefit does not constitute for the worker a social advantage within the meaning of Article 7 (2) of Regulation No 1612/68, inasmuch as he is no longer supporting his descendant.

14 The answer to the first question must therefore be that, where a worker who is a national of one Member State was employed within the territory of another Member State and remains there after obtaining a retirement pension, his descendants do not retain the right to equal treatment with regard to a social benefit provided for by the legislation of the host Member State and guaranteeing in general terms the minimum means of subsistence where they have reached the age of 21, are no longer dependent on him and do not have the status of workers.

15 In view of the answer given to the first question, there is no need to answer the second question.

Third question

16 In its third question, the national court seeks essentially to ascertain whether the status of dependent member of a worker's family, to which Article 10 of Regulation No 1612/68 refers, results from a factual situation, namely the provision of support by the worker, without there being any need to determine the reasons for recourse to the worker's support.

17 According to the Commission, the status of dependent member of a worker's family is the result of a factual situation, to be assessed in each specific case. That status must not depend on the existence of objective circumstances independent of the will of the person concerned which make it necessary for him to have recourse to another's support.

18 According to the Netherlands Government, the term 'dependent' means that the worker must 'wholly or largely support' the descendant. In its view, the claim by a descendant for the grant of the minimex means that that person is no longer dependent on his ascendant and, consequently, no longer comes within the scope of the definition in Article 10 (1) of Regulation No 1612/68.

19 The government of the Federal Republic of Germany maintained at the hearing that the status of dependent member of the family presupposes not only the existence of a situation in which the person concerned is unable to support himself but also the existence of a right to maintenance on the part of the worker himself.

20 It must be pointed out, in the first place, that a claim for the grant of the minimex submitted by a member of a migrant worker's family who is dependent on the worker cannot affect the claimant's status as a dependent member of the worker's family. To decide otherwise would amount to accepting that the grant of the minimex could result in the claimant forfeiting the status of dependent member of the family and consequently justify either the withdrawal of the minimex itself or even the loss of the right of residence. Such a solution would in practice preclude a dependent member of a worker's family from claiming the minimex and would, for that reason, undermine the equal treatment accorded to the migrant worker. The status of dependent member of a worker's family should therefore be considered independently of the grant of the minimex.

21 It must be pointed out, secondly, that the status of dependent member of a worker's family does not presuppose the existence of a right to maintenance either. If that were the case, the composition of the family would depend on national legislation, which varies from one State to another, and that would lead to the application of Community law in a manner that is not uniform.

22 Article 10 (1) and (2) of Regulation No 1612/68 must be interpreted as meaning that the status of dependent member of a worker's 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.

23 That interpretation is dictated by the principle according to which the provisions establishing the free movement of workers, which constitute one of the foundations of the Community, must be construed broadly (see, most recently, the judgment of 3 June 1986 in Case 139/75 *Kempf* [1986] ECR 1741 at p. 1746). Moreover, it corresponds to the wording of the provision in question, whose

German language version ('Unterhalt gewähren') and Greek language version ('efoson synthreitai') are particularly clear in that respect.

24 The answer to the third question must therefore be that the status of dependent member of a worker's family, to which Article 10 (1) and (2) of Regulation No 1612/68 refers, is the result of a factual situation, namely the provision of support by the worker, without there being any need to determine the reasons for recourse to the worker's support.

Fourth question

25 It is clear from the context that the fourth question seeks, in substance, to ascertain whether equal treatment with regard to social and tax advantages, which is laid down by Article 7 (2) of Regulation No 1612/68, also applies to persons who move in search of employment.

26 It must be pointed out that the right to equal treatment with regard to social and tax advantages applies only to workers. Those who move in search of employment qualify for equal treatment only as regards access to employment in accordance with Article 48 of the EEC Treaty and Articles 2 and 5 of Regulation No 1612/68.

27 The answer to the fourth question must therefore be that the equal treatment with regard to social and tax advantages which is laid down by Article 7 (2) of Regulation No 1612/68 operates only for the benefit of workers and does not apply to nationals of Member States who move in search of employment.

Costs

28 The costs incurred by the Belgian, Netherlands and German Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the cour du travail, Mons, by decision of 18 October 1985,

hereby rules:

(1) The descendants of a worker who is a national of a Member State, with whom they were living, who was employed within the territory of another Member State and who remains there, after obtaining a retirement pension, do not retain the right to equal treatment with regard to a social benefit provided for by the legislation of the host Member State and guaranteeing in general terms the minimum means of subsistence where they have reached the age of 21, are no longer dependent on him and do not have the status of workers;

(2) The status of dependent member of a worker's family, to which Article 10 (1) and (2) of Regulation No 1612/68 refers, is the result of a factual situation, namely the provision of support by the worker, without there being any need to determine the reasons for recourse to the worker's support;

(3) The equal treatment with regard to social and tax advantages which is laid down by Article 7 (2) of Regulation No 1612/68 operates only for the benefit of workers and does not apply to nationals of Member States who move in search of employment.

Mackenzie Stuart Galmot Kakouris O'Higgins Schockweiler

Koopmans Due Everling Bahlmann Moitinho de Almeida Rodríguez Iglesias

Delivered in open court in Luxembourg on 18 June 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President