



C-310/08 London Borough of Harrow v Nimco Hassan Ibrahim and C-480/08 Maria Teixeira v London Borough of Lambeth and Secretary of State for the Home Department, judgments of 23 February 2010

The Court of Justice analyses the relationship between the right of access to education of the children of workers and the right of residence of the parents who are their carers.

Ms Hassan Ibrahim is a Somali national who arrived in the United Kingdom in February 2003 to join her husband, a Danish citizen, who worked there at that time. Now separated and entirely dependent on social assistance, Ms Hassan Ibrahim is the primary carer of her four children, two of whom attend school. Ms Teixeira is a Portuguese national, who arrived in the United Kingdom with her husband in 1989, where she worked for a certain time. Now divorced and without employment, Ms Teixeira lives with her daughter, who is enrolled on a childcare course.

Both Ms Hassan Ibrahim and Ms Teixeira applied to the respective British competent authorities for housing assistance. Their applications – which were based on Article 12 of Regulation (EEC) No 1612/68 on freedom of movement for workers, which provides for a right of access to education for the children of migrant workers residing in their parents' host State under the same conditions as the nationals of that State – were rejected in particular on the grounds that the two women did not satisfy the required conditions to qualify for the right of residence under the European Union law applicable.

These decisions were challenged before the Court of Appeal, which referred questions to the Court of Justice on the interpretation of Regulation (EEC) No 1612/68, in the light of the modifications to the legal framework which have occurred following Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

The Court had already interpreted Article 12 of Regulation (EEC) No 1612/68 in Case C-413/99 *Baumbast* to mean that the right it provides for of access to education for the child of a migrant worker also implies a right of residence for this child and for the parent acting as primary carer, even if the parent migrant worker no longer resides or works in the Member State in question. The Court asserts that the entry into force of Directive 2004/38/EC does not affect the *Baumbast* case-law, since the Directive – which amends a certain number of provisions of Regulation (EEC) No 1612/68 – does not affect the aforesaid Article 12. This Article must therefore be applied independently of the requirements laid down by the Directive, as for that matter explicitly emerges from the preparatory work on the latter.

Consequently, the Court firstly confirms that the right of access to education, recognised by Article 12 of Regulation (EEC) No 1612/68, also applies to the children of former migrant workers, even if the parents cease to be workers at the start of the education of the child, and that this right necessarily entails the right of residence within the territory of the host Member State not only for the children concerned, but also for the parents who have custody of them.

In addition, the Court stresses that this right of residence is not subject to the conditions provided for under Directive 2004/38/EC, and in particular the condition of self-sufficiency, i.e. that the child and the parent have sufficient resources not to become a burden on the social assistance system of the host Member State.



Summaries of important judgments

Finally, in the Teixeira case, the Court also specifies that the right of residence of the parent who is the primary carer for a child in education in the host State, ends in principle when the child reaches the age of majority – i.e. at the time when the child is presumed to become self-sufficient – unless it is established that the child continues to need the presence and care of that parent in order to be able to pursue and complete his or her education.