Court of Justice of the European Union
PRESS RELEASE No 137/16
Luxembourg, 15 December 2016

Press and Information

Judgment in Joined Cases C-401/15 to C-403/15
Noémie Depesme and Others v Ministre de l'Enseignement supérieur et de la Recherche

A child in a reconstituted family may be regarded as the child of a step-parent for the purposes of a cross-frontier social advantage

In this field, the parent-child relationship is defined not in legal but in economic terms, in that the child of a step-parent with the status of migrant worker can claim a social advantage where his step-parent contributes to his maintenance.

Between July 2013 and July 2014, Luxembourg law provided that the children of frontier workers employed or pursuing an activity in Luxembourg could apply for financial aid for higher education studies ('study grant') on the condition that the frontier worker has worked in Luxembourg for a continuous period of five years at the time of the application.[1]

Ms Noémie Depesme, Mr Adrien Kauffmann and Mr Maxime Lefort each live in a reconstituted family unit consisting of their biological mother and their stepfather[2] (the biological father being separated from the mother or deceased). Each of them applied for a study grant in Luxembourg for the 2013/2014 academic year on the basis that the stepfather had worked there continuously for more than five years (none of the mothersworked in Luxembourg at the time). The Luxembourg authorities refused the applications, on the ground that Ms Depesme, Mr Kauffmann and Mr Lefort were not legally the 'children' of a frontier worker but merely 'stepchildren'.

The three students challenged the decisions of the Luxembourg authorities, and the Cour administrative (Higher Administrative Court) of Luxembourg, which is hearing the cases, asks the Court of Justice whether, in connection with a social advantage, the concept of 'child' must also include stepchildren. In other words, it must be determined whether the parent-child relationship may be considered not from a legal but from an economic point of view.

In today's judgment, the Court recalls, first of all, that, under an EU Regulation,[3] a worker from a Member State must enjoy, in any other Member State in which he works, the same social and tax advantages as national workers. Further, it recalls that, in the field of EU citizenship, children are defined by an EU Directive[4] as direct descendants who are under the age of 21 years or are

---

[1] Whether or not that condition of a minimum and continuous period of work of five years, introduced following the Court's judgment of 20 June 2013 in the *Giersch* case C-20/12, see Press Release No. 74/13, is discriminatory under EU law is the subject matter of the *Bragança Linares Verruga and Others* case C-238/15 in which the Court gave its judgment yesterday, on 14 December (see PR 132/16). According to the Court, that condition constitutes unjustified discrimination since it is not necessary in order to attain the legitimate objective pursued by Luxembourg (namely of encouraging an increase in the proportion of Luxembourg residents with a higher education degree). It may be noted that, since the disputes arose, the Luxembourg law has been amended on this point: following the Law of 24 July 2014, it suffices that the frontier worker has worked in Luxembourg for a period of five years in the seven years preceding the application for the grant.

[2] 'Stepfather' is to be understood here as the man, distinct from the biological father, whom the mother has subsequently married or with whom she has concluded a registered partnership equivalent to marriage. Similarly, the term 'stepchild' must be understood here as a child whose biological mother has married again or concluded a registered partnership equivalent to marriage, with a man other than the biological father.

[3] 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).

[4] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC,

dependants, as well as **the direct descendants of a person's spouse or partner**. The Court takes the view that it follows from the development of EU legislation that the family members able to benefit from equal treatment under the regulation are those family members as defined in the directive. There is nothing to suggest that the EU legislature intended to establish, as regards family members, a watertight distinction under which family members of an EU citizen, within the meaning of the directive, would not necessarily be the same persons as the family members of that citizen when he is considered in his capacity as a worker under the regulation.

The Court therefore concludes that **the children of the spouse or recognised partner of a frontier worker may be considered to be the children of that frontier worker for the purposes of qualifying for a social advantage such as a study grant**, particularly given that another EU Directive,[5] which entered into force after the facts at issue, confirms that the expression 'family members' also applies to the family members of frontier workers.

As regards the degree of the contribution necessary to the maintenance of a student with whom the frontier worker has no legal connection, the Court recalls that **the status of dependent family member is the result of a factual situation**,[6] and that that case-law must also apply to a spouse's contribution to his stepchildren. Accordingly, **the contribution to the maintenance of the child may be evidenced by objective factors** such as marriage, a registered partnership or a joint household, and **it is not necessary to determine the reasons for the frontier worker's contribution to that maintenance or make a precise estimation of its amount**.[7]

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Press contact: Holly Gallagher ☎ (+352) 4303 3355

75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

[5] Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ 2014 L 128, p. 8)

[6] C-316/85 Lebon

[7] It may be noted that, as from 24 July 2014, Luxembourg has amended the law in question by providing expressly that children of frontier workers may receive study grants, provided that the worker continues to contribute to the student's maintenance. The Luxembourg law still does not, however, define expressly what is to be understood by 'child'.