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Court of Justice of the European Union

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Judgments in Cases C-310/08 and C-480/08
London Borough of Harrow v Nimco Hassan Ibrahim
Maria Teixeira v London Borough of Lambeth

A parent caring for the child of a migrant worker who is in education in the host Member State has a right of residence in that State

That right is not conditional on the parent having sufficient resources not to become a burden on the social assistance system

The Community regulation on freedom of movement for workers¹ provided that the members of the family of a migrant worker who was a national of one Member State and employed in another Member State had the right to install themselves with that worker, whatever their nationality (Article 10 of the Regulation). It also provides that the children of such a worker are entitled to attend general educational, apprenticeship and vocational training courses if they are residing in the host Member State (Article 12).

In the *Baumbast* judgment² the Court of Justice held that that article must be interpreted as meaning that the child of a migrant worker has a right of residence if he or she wishes to attend educational courses in the host Member State, even if the migrant worker no longer resides or works in that Member State. That right of residence extends also to the parent who is the child's primary carer.

The directive on freedom of movement for citizens of the Union³ amended that regulation and replaced some earlier legislation on the freedom of movement of citizens. It provides that all citizens have the right to move and reside in the territory of another Member State as workers or students or if they have comprehensive sickness insurance cover and sufficient resources not to become a burden on the social assistance system. It repealed Article 10 of the regulation, on the right of residence of members of the family of a migrant worker, replacing it with a right of residence for members of the family of citizens who satisfy the conditions for residence. It did not, on the other hand, repeal Article 12 of the regulation, on the right of access to the educational system. It also provides that the right of residence of a child enrolled at an educational establishment, for the purpose of studying there, and that of the parent who has actual custody of the child are not affected by the departure or death of the citizen.

The Court of Appeal of England and Wales, which is hearing these two cases, asks the Court of Justice whether the interpretation of Article 12 of the regulation adopted in the *Baumbast* judgment still applies following the entry into force of the new directive, and whether the right of residence of the person who is the child's primary carer is now subject to the conditions laid down by the directive for the exercise of the right of residence, especially the requirement that the parent must have sufficient resources not to become a burden on the social assistance system.

¹ 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).

² Judgment of 17 September 2002 in [Case C-413/99 *Baumbast and R.*](#)

³ 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 No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 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, OJ 2005 L 197, p. 34, and OJ 2007 L 204, p. 28).

C-310/08 Ibrahim

Ms Nimco Hassan Ibrahim, a Somali national, arrived in the United Kingdom in February 2003 to join her husband, Mr Yusuf, a Danish citizen, who worked there from October 2002 to May 2003. The couple have four children of Danish nationality, aged from 1 to 9. The three eldest arrived in the United Kingdom with their mother and the fourth was born in the United Kingdom. The two eldest have attended State schools since their arrival.

From June 2003 to March 2004 Mr Yusuf claimed incapacity benefit. After being declared fit to work in March 2004, he left the United Kingdom. Between ceasing work and leaving the United Kingdom, Mr Yusuf ceased to satisfy the conditions for lawful residence there under Community law.

Ms Ibrahim separated from Mr Yusuf after his departure. She was never self-sufficient, and depends entirely on social assistance. She does not have comprehensive sickness insurance cover and relies on the National Health Service. In January 2007 she applied for housing assistance for herself and her children. The application was rejected on the ground that only persons with a right of residence under European Union law could make such an application, and neither Ms Ibrahim nor her husband were resident in the United Kingdom under European Union law. Ms Ibrahim appealed to the national courts against that decision.

C-480/08 Teixeira

Ms Maria Teixeira, a Portuguese national, arrived in the United Kingdom in 1989 with her husband, also a Portuguese national, and worked there until 1991. Their daughter Patricia was born there on 2 June 1991. Ms Teixeira and her husband were subsequently divorced, but they both remained in the United Kingdom. From 1991 to 2005 Ms Teixeira worked for intermittent periods in the United Kingdom, and Patricia went to school there.

In June 2006 a court ordered that Patricia should live with her father, but could have as much contact with her mother as she wished. In November 2006 Patricia enrolled on a child care course at the Vauxhall Learning Centre in Lambeth. In March 2007 Patricia went to live with her mother.

On 11 April 2007 Ms Teixeira applied for housing assistance for homeless persons. Her application was rejected on the ground that she did not have a right of residence in the United Kingdom, since she was not in work and was not therefore self-sufficient. She challenged that refusal before the national courts, arguing that she had a right of residence because Patricia was continuing her education.

In its judgments of today, the Court points out that **Article 12 of the regulation allows the child of a migrant worker to have an independent right of residence in connection with the right of access to education in the host Member State.** Before the entry into force of the directive on freedom of movement for citizens of the Union, when Article 10 of the regulation concerning the right of residence was still in force, the right of access to education laid down by Article 12 of the regulation was not conditional on the child retaining, throughout the period of education, a specific right of residence under Article 10. Once the right of access to education has been acquired, the right of residence is retained by the child and can no longer be called into question. Article 12 of the regulation requires only that the child has lived with at least one of his or her parents in a Member State while that parent resided there as a worker. That article must therefore be applied independently of the provisions of European Union law which expressly govern the conditions of exercise of the right to reside in another Member State.

That independence was not called into question by the entry into force of the new directive. The Court points out that Article 12 of the regulation was not repealed or even amended by the directive, unlike other articles of the regulation. Furthermore, the legislative history of the directive shows that it was designed to be consistent with the *Baumbast* judgment.

Next, the Court observes that **the grant of the right of residence for the children and the parent is not conditional on self-sufficiency**. That interpretation is supported by the directive, which provides that the departure or death of the citizen does not entail the loss of the right of residence of the children or the parent.

Consequently, the Court finds that **the right of residence of the parent who is the primary carer of a child of a migrant worker who is in education is not conditional on that parent having sufficient resources not to become a burden on the social assistance system** of the host Member State.

Finally, in answer to a further question raised in the *Teixeira* case, as to whether the parent's right of residence ends when the child reaches the age of majority – the question was raised because in 2009 Ms Teixeira's daughter reached the age of 18, thus coming of age under the law of the United Kingdom – the Court observes that there is no age limit for the rights conferred on a child by Article 12 of the regulation: the right of access to education and the child's associated right of residence continue until the child has completed his or her education.

In addition, although children who have reached the age of majority are in principle assumed to be capable of meeting their own needs, the right of residence of the parent may nevertheless extend beyond that age, if the child continues to need the presence and the care of that parent in order to be able to pursue and complete his or her education. It is for the national court to assess whether that is actually the case.

The Court concludes that **the right of residence of the parent** who is the primary carer for a child of a migrant worker, where that child is in education in the host Member State, **ends when the child reaches the age of majority, unless 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**.

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.

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The full text of the judgments ([C-310/08](#) and [C-480/08](#)) are published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355