

Case C-413/99

Baumbast and R

v

Secretary of State for the Home Department

(Reference for a preliminary ruling
from the Immigration Appeal Tribunal)

(Freedom of movement for persons — Migrant worker — Rights of residence of members of the migrant worker's family — Rights of the children to pursue their studies in the host Member State — Articles 10 and 12 of Regulation (EEC) No 1612/68 — Citizenship of the European Union — Right of residence — Directive 90/364/EEC — Limitations and conditions)

Opinion of Advocate General Geelhoed delivered on 5 July 2001 I-7094
Judgment of the Court, 17 September 2002 I-7136

Summary of the Judgment

1. *Freedom of movement for persons — Workers — Right of the children of a worker to be admitted to the education provided by the host Member State — Right of residence*

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in order to attend general educational courses — Parents' divorce, loss of the status of migrant worker by the only parent who is a citizen of the Union and children not themselves being citizens of the Union — Not relevant
(Regulation No 1612/68 of the Council, Art. 12)

2. *Freedom of movement for persons — Workers — Right of the children of a worker to be admitted to the education provided by the host Member State — Right of residence in order to attend general educational courses — Right of residence granted to the parent carer irrespective of his nationality — Parents' divorce and loss of the status of migrant worker by the only parent who is a citizen of the Union — Not relevant*
(Regulation No 1612/68 of the Council, Art. 12)
3. *Citizenship of the European Union — Right to move and reside freely in the territory of the Member States — Citizen of the Union no longer enjoying a right of residence as a migrant worker — Right of residence — Direct application of Article 18(1) EC — Limitations and conditions — Application in compliance with the general principles of Community law, in particular the principle of proportionality*
(Art. 18(1) EC)

1. Children of a citizen of the European Union who have installed themselves in a Member State during the exercise by their parent of rights of residence as a migrant worker in that Member State are entitled to reside there in order to attend general educational courses there, pursuant to Article 12 of Regulation No 1612/68 on freedom of movement for workers within the Community. The fact that the parents of the children concerned have meanwhile divorced, the fact that only one parent is a citizen of the European Union and that parent has ceased to be a migrant worker in the host Member State and the fact that the children are

not themselves citizens of the European Union are irrelevant in this regard.

(see para. 63, operative part 1)

2. Where children have the right to reside in a host Member State in order to attend general educational courses there pursuant to Article 12 of Regulation No 1612/68 on freedom of movement for workers within the

Community, that provision must be interpreted as entitling the parent who is the primary carer of those children, irrespective of his nationality, to reside with them in order to facilitate the exercise of that right notwithstanding the fact that the parents have meanwhile divorced or that the parent who has the status of citizen of the European Union has ceased to be a migrant worker in the host Member State.

3. A citizen of the European Union who no longer enjoys a right of residence as a migrant worker in the host Member State can, as a citizen of the European Union, enjoy there a right of residence by direct application of Article 18(1) EC. The exercise of that right is subject to the limitations and conditions referred to in that provision, but the competent authorities and, where necessary, the national courts must ensure that those limitations and conditions are applied in compliance with the general principles of Community law and, in particular, the principle of proportionality.

(see para. 75, operative part 2)

(see para. 94, operative part 3)