

COMMISSION

ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES ON SOCIAL SECURITY FOR MIGRANT WORKERS

DECISION No 207

of 7 April 2006

concerning the interpretation of Article 76 and Article 79(3) of Regulation (EEC) No 1408/71 and of Article 10(1) of Regulation (EEC) No 574/72 relating to the overlapping of family benefits and allowances

(Text of relevance to the EEA and to the EU/Switzerland Agreement)

(2006/442/EC)

THE ADMINISTRATIVE COMMISSION OF THE EUROPEAN COMMUNITIES ON SOCIAL SECURITY FOR MIGRANT WORKERS,

Having regard to Article 81(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community ⁽¹⁾, under the terms of which it is responsible for dealing with any administrative question arising from Regulation (EEC) No 1408/71 and subsequent Regulations,

Having regard to Articles 76 and 79(3) of the said Regulation and to Article 10(1) of Council Regulation (EEC) No 574/72 ⁽²⁾,

Whereas:

- (1) It is essential to know the scope of family benefits or family allowances payable 'by reason of carrying on an occupation' or 'by virtue of the pursuit of a professional or trade activity' found in Article 76 and Article 79(3) of Regulation (EEC) No 1408/71.
- (2) Where family benefits are payable to two different persons in the course of the same period for the same member of the family under the legislation of one State and also under the legislation of the State in the territory of which the members of the family are residing, entitlement to family benefits or family allowances under the legislation of the first State shall be suspended, up to the amount of family benefits provided by the legislation of the latter State, under Article 76 of Regulation (EEC) No 1408/71 if the family benefits are payable 'by reason of carrying on an occupation' under the legislation of the latter State. Article 79(3) of Regulation (EEC) No 1408/71 contains a similar provision concerning benefits for pensioners and orphans.
- (3) Article 76 and Article 79(3) of Regulation (EEC) No 1408/71 do not distinguish between benefits or allowances payable by reason of a non-salaried occupation or professional or trade activity and those payable by reason of a salaried occupation or professional or trade activity.
- (4) Furthermore, the legislations of certain Member States provide that periods of suspension or interruption of actual occupation or professional or trade activity by reason of holidays, unemployment, temporary incapacity for work, strikes or lock-outs, shall be treated either as periods of occupation or professional or trade activity for the acquisition of entitlement to family benefits or family allowances or shall be regarded as periods of inactivity giving rise, where appropriate, either per se or as the result of a preceding occupation or professional or trade activity, to the payment of family benefits or family allowances.

⁽¹⁾ OJ L 149, 5.7.1971, p. 2. Regulation last amended by Regulation (EC) No 629/2006 of the European Parliament and of the Council (OJ L 114, 27.4.2006, p. 1).

⁽²⁾ OJ L 74, 27.3.1972, p. 1. Regulation last amended by Regulation (EC) No 629/2006.

- (5) In order to avoid any uncertainties or differences in interpretation, it is essential to define the scope of the expressions 'carrying on an occupation' and 'pursuit of a professional or trade activity'.
- (6) It is also essential to know the scope of the term 'professional or trade activity' as referred to in Article 10(1) of Regulation (EEC) No 574/72.
- (7) If family benefits or allowances are payable to two different persons in the course of the same period for the same member of the family under the legislation of one State and also under the legislation of another State according to which the acquisition of the right to benefits is not subject to conditions governing insurance, employment or self-employment, entitlement to family benefits under the legislation of the first State shall be suspended, up to the sum of family benefits provided for by the legislation of the latter State, under Article 10(1)(b)(i) of Regulation (EEC) No 574/72 where a professional or trade activity is carried out in the latter State. Article 10(1)(b)(ii) of Regulation (EEC) No 574/72 contains a similar provision concerning benefits for pensioners and orphans.
- (8) In the matter of overlapping of family benefits or allowances, the purpose of Article 10(1) is to impart to the pursuit of a professional or trade activity in a Member State where entitlement to family benefits or allowances does not result from the pursuit of such activity the same effect as in Member States where this entitlement does arise from the pursuit of such activity. Articles 76 and 79(3) of Regulation (EEC) No 1408/71 and Article 10(1) of Regulation (EEC) No 574/72 should be interpreted in the same way.
- (9) In a case where a worker's status of active employment was suspended due to this person's unpaid leave following the birth of a child and for the purpose of bringing up this child, the Court of Justice of the European Communities referred to Article 73 of Regulation (EEC) No 1408/71 in conjunction with Article 13(2)(a) of Regulation (EEC) No 1408/71 ⁽¹⁾. Such unpaid leave must therefore also be qualified as carrying out an occupation or professional or trade activity for the purposes of Articles 76 and 79(3) of Regulation (EEC) No 1408/71 and as well as for the purposes of Article 10(1) of Regulation (EEC) No 574/72. In this context the Court reiterated that the above mentioned provisions can only apply for as long as the person concerned has the status of an employed or self-employed person within the meaning of Article 1(a) of Regulation (EEC) No 1408/71 which requires that the person concerned is covered in at least one branch of social security. This excludes persons on unpaid leave who are no longer covered by any social security scheme of the relevant Member State.
- (10) There can only be a non-exhaustive list of cases where during a period of leave a person is deemed to be exercising an occupation or a professional or trade activity, due to the variety of systems for unpaid leave in Member States and ongoing changes in national legislation. Therefore it is not appropriate to define all the cases in which such unpaid leave is equivalent to an occupation or professional or trade activity and those where the necessary close link to the gainful activity does not exist.

After deliberation in the light of the conditions laid down in Article 80(3) of Regulation (EEC) No 1408/71,

HAS DECIDED AS FOLLOWS:

1. For the purposes of Article 76 and Article 79(3) of Regulation (EEC) No 1408/71, family benefits or family allowances shall be regarded as payable 'by reason of carrying on an occupation' or 'by virtue of the pursuit of a professional or trade activity' in particular:
 - (a) by the actual carrying on of an occupation or the pursuit of a professional or trade activity whether salaried or not; and also

⁽¹⁾ Judgment of 7 June 2005 in case C-543/03, 'Dödl and Oberhollenzer/Tiroler Gebietskrankenkasse'.

- (b) in the course of any period of temporary suspension of such occupation or professional or trade activity
 - (i) as a result of sickness, maternity, accident at work, occupational disease or unemployment, as long as wages or benefits, excluding pensions, are payable in respect of these contingencies; or
 - (ii) during paid leave, strike or lock-out; or
 - (iii) during unpaid leave for the purpose of child-raising, as long as this leave is deemed equivalent to such occupation or professional or trade activity in accordance with the relevant legislation.
2. For the purposes of Article 10(1) of Regulation (EEC) No 574/72 there shall be regarded as 'carrying out a professional or trade activity' in particular:
- (a) the actual exercise of any professional or trade activity, whether salaried or not; and also
 - (b) the temporary suspension of such professional or trade activity
 - (i) as a result of sickness, maternity, accident at work, occupational disease or unemployment, as long as wages or benefits, excluding pensions, are payable in respect of these contingencies; or
 - (ii) during paid leave, strike or lock-out; or
 - (iii) during unpaid leave for the purpose of child-raising, as long as this leave is deemed equivalent to such professional or trade activity in accordance with the relevant legislation.
3. This Decision shall replace Decision No 119 of 24 February 1983. It shall enter into force on the first day following its publication in the *Official Journal of the European Union*.

The Chairman of the Administrative Commission
Bernhard SPIEGEL
