JUDGMENT OF THE COURT
OF 9 OCTOBER 1974 [1]

Caisse Régionale d'Assurance maladie de Paris v Giuseppina Biason (preliminary ruling requested by the Cour d'Appel de Paris)

Case 24/74

Summary

1. *Request for a preliminary ruling — Effects of a national law as against Community law — Powers of the Court — Limits*
(EEC Treaty, Article 177)

2. *Social security for migrant workers — Systems of social security and of social assistance — Distinction — Invalidity pension — Supplementary allowance — Benefit within the meaning of Article 1 (s) of Regulation No 3 — Person entitled — Transfer of residence to another Member State — Entitlement to continued payment of allowance*
(Regulation No 3, Article 1 (b), Article 1 (c), Article 3, Article 10 (1))

1. The Court can provide the national court with aids to interpretation derived from Community law which might guide it in an assessment of the effects of a national legislation.

2. Where a legislation which comes close to both a system of social security and a system of social assistance has ceased to concern itself with the assessment of need in the individual case — a characteristic feature of a system of assistance — and has conferred on the persons entitled a legally defined position, then it comes under the system of social security within the meaning of the Community regulations. This is the reason why a supplementary allowance, paid by a national solidarity fund on the basis of an invalidity pension to persons entitled to such pension, constitutes, to the extent that the persons concerned have a legally protected right to the grant thereof, a 'benefit' within the meaning of Article 1 (s) of Regulation No 3, and for that reason falls within the matters covered by this Regulation.

A person who transfers his residence to another Member State is entitled to continue to receive this benefit even if such supplementary allowance is by national legislation limited to persons residing within the national territory.

In Case 24/74

Reference to the Court under Article 177 of the EEC Treaty by the Cour

1 — Language of the Case: French.

d'Appel of Paris for a preliminary ruling in the action pending before that Court between

CAISSE RÉGIONAL D'ASSURANCE MALADIE DE PARIS, of Paris,

and

MISS GIUSEPPINA BIASON, of Pordenone (Italy),

on the interpretation of the provisions of Regulation No 3 of the Council 'concerning social security for migrant workers' so as to define the rules applicable to the exportation of social benefits.

THE COURT

composed of: R. Lecourt, President, C. Ó Dálaigh and Lord Mackenzie Stuart, Presidents of Chamber, A. M. Donner, R. Monaco (Rapporteur), J. Mertens de Wilmars, P. Pescatore, H. Kutscher, and M. Sørensen, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The judgment making the reference and the written observations submitted under Article 20 of the EEC Statute of the Court may be summarized as follows:

I — Facts and written procedure

1. Miss Giuseppina Biason, an Italian national, has since 15 June 1971 been in receipt of an invalidity pension pursuant to the French legislation. As from that date she also received a supplementary allowance ('allocation supplémentaire') from the Fonds National de Solidarité, established in France by Law of 30 June 1956.

The conditions for the grant of this allowance are in the main laid down by Article L 685 of the 'Code de la Sécurité Sociale' (Journal Officiel de la République française, 1956, No 294) pursuant to which a supplementary allowance may be granted to holders of

a benefit payable for life on the basis of an invalidity reducing by two-thirds or more 'the working or earning capacity'. Since it is further laid down by Article 707 of this code that this allowance is in the case of foreigners only payable provided there exists an international reciprocal convention, the French Law of 2 August 1957 extended the benefit thereof to holders of an invalidity pension under a French system of social security, or arising from an international reciprocal convention.

On 15 May 1972, Miss Biason informed the 'Caisse Régionale d'Assurance Maladie de Paris' (the 'Caisse') that she had changed her residence from France to Italy. The Caisse informed her that by reason of this move it had (as from 1 April 1972) of its own motion withdrawn her supplementary allowance.

Thereupon Miss Giuseppina Biason appealed against the decision to the 'Commission de Première Instance du Contentieux de la sécurité sociale', of Paris, which by decision of 21 March 1973 stayed the proceedings and referred to the Court of Justice of the European Communities the question 'whether an Italian national who is in France in receipt of a supplementary allowance from the Fonds National de Solidarité which was stopped, may have it restored consequent upon her departure from France, in particular by reason of the provisions of the Franco-Italian Convention (in particular Article 16) and that of 19 January 1951 between Belgium, France and Italy'.

The Caisse appealed against this decision to the Cour d'Appel of Paris, arguing that Miss Biason's appeal was unfounded. Miss Biason for her part persisted in her argument that she could under the provisions of Article 16 of the Franco-Italian Convention on Social Security of 31 March 1948, of Articles 7 and 10 (a) of the Convention between Belgium, France and Italy of 19 January 1951 and of Articles 4 and 10 of Regulation No 1408/71 of the Council of the European Communities keep her rights in existence, notwithstanding her residence in Italy.

The Cour d'Appel of Paris drew a distinction between the period subsequent to 1 October 1972, that is the date of bringing into effect Regulation No EEC 1408/71 of the Council of 14 June 1971 'on the application of social security schemes to employed persons and their families moving within the Community', and the period prior thereto when Regulation No 3 of the Council 'concerning social security for migrant workers' applied.

As regards the period subsequent to 1 October 1972, the Cour d'Appel held that the Caisse was liable to pay the supplementary allowance as from that date, since no capital payment had either occurred or been feasible.

As regards the period 1 April 1972 to 1 October 1972 the Cour d'Appel found that in conformity with Annex D of Regulation No 3, only Articles 17 and 24 of the Franco-Italian Convention of 31 March 1948 still remained in force.

Considering that this accordingly gives rise to a question of interpretation of the said Regulation, in particular of Article 2 (1) (b), the Cour d'Appel decided by judgment of 2 March 1974 to stay the proceedings and, pursuant to Article 177 of the EEC Treaty, to refer to the Court of Justice of the European Communities the following question for a preliminary ruling:

'Is an insured person who is in receipt of an invalidity pension acquired under a sickness insurance scheme by reason of her employment in a single Member State wherein she was resident, and who receives a supplementary allowance by virtue of that pension, entitled to rely, in Italy, on the provisions of Article 2 (1) (b) of Regulations No 3, at that time in force, for the period from 1. 4. 1972 to 1. 10. 1972, in the course of which she took up residence in Italy, and to continue to receive the allowance there in addition to her invalidity pension?'

2. A copy of the judgment referring the matter was registered at the Court on 20 March 1974.

Under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community written observations were submitted on behalf of the French Government, represented by Robert Luc, French Ambassador to Luxembourg, assisted by Guy de Lacharrière, Director of the Legal Service of the Ministry of Foreign Affairs, on behalf of the Government of the Italian Republic, represented by Ambassador Adolfo Maresca, assisted by Ivo M. Braguglia and on behalf of the Commission of the European Communities, represented by Richardt Larsen, Legal Adviser, acting as agent, assisted by Marie-José Jonczy, member of the Legal Service.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without a preparatory inquiry.

II — Observations presented under Article 20 of the protocol on the Statute of the Court of Justice

A — *Observations of the French Government*

The French Government considers that the legislation relating to the supplementary allowance of the Fonds National de Solidarité (the 'Fonds National') being a legislation concerned with assistance, does not fall within the matters covered by the Community regulations relating to the application of systems of social security to employed persons and their families moving within the Community.

In support of this contention, the French Government observes that the supplementary allowance involved in this case cannot be called 'social security benefits'. Social Security is a system of protection linked to the notion of 'work' (activité professionelle), so that the question whether a beneficiary belongs to a system of social security is determined on the basis of whether he is employed. Many provisions of the code of social security confirm this conclusion.

The Fonds National, on the other hand, is not based on the notion of 'work'. Articles L 685 and L 711 — 1 of the code of social security, relating to supplementary allowance, in fact relate to any person 'without any condition as to employment'. The fact that the provisions concerning the Fonds National are contained in the said code is not conclusive in this case since this text does not refer solely to the system of social security, and numerous provisions on social security are not included therein.

The supplementary allowance in this case is an assistance allowance based upon the principle set out in the preamble to the 1946 Constitution. As such, this allowance is subject to conditions as to means and has the purpose of supplementing benefits of different kinds, such as invalidity benefits, old age benefits, welfare grant ('allocation d'aide sociale'). etc. Notwithstanding its being linked to other benefits, it has its own rules and a distinct legal character.

This grant never appears in bilateral social security conventions. The grant thereof to foreigners is only provided for by specific protocols, distinct from the conventions. Being linked to benefits granted to all French citizens residing in France the grant is exported neither for the benefit of French nationals nor for foreigners.

Where it is added to an invalidity benefit, the aforementioned grant, insofar as its payment to Italian citizens is concerned, is based upon the supplementary agreement of 6 February 1960 to the Franco-Italian Protocol of 11 January 1957.

It would be incorrect to state that since this supplementary agreement was not reproduced in Annex D of Regulation No 3, it is replaced by this Regulation. The fact that the lastmentioned provision is silent on this point has quite a different explanation: in view of the fact that the benefit involved here does not, qua assistance benefit, fall under the said Regulation, there is no reason for bringing it up within the framework of the Community rules on social security.

Convinced that the supplementary grant does not fall under Article 2 (1) (b) of Regulation No 3 and that only clause (3) of this Article is in the event applicable, the French Government argues that the French authorities had always adhered to this view. Had they thought that their position on this point was not sufficiently clear, then they would not have failed to clarify it by inserting the necessary restrictions into the Regulations.

B — Observations presented by the Italian Government

The Italian Government agrees with the solution laid down by the national court which in ruling in the main issue, for the period subsequent to 1 October 1972, holds that the supplementary grant by the Fonds National de Solidarité is one of the benefits covered by Article 4 (1) (b) of Regulation No 1408/71 and also comes within the provisions of Article 10 (1) of that Regulation.

In support of this solution the Italian Government points out firstly that under the terms of the French Law of 2 August 1967, the supplementary allowance has the purpose of supplementing the invalidity pension paid to the beneficiary. Given the fact that the invalidity pension is in the nature of a social security benefit, the supplementary allowance, which has the purpose of increasing it must be recognized as having the same character.

The Italian Government further points out that the award of the allowance is not dependent on the discretionary power of the administration, since the interested party is 'entitled' to it as soon as he fulfils the conditions laid down by law for the grant thereof.

From the finding that the supplementary allowance in question is covered by Regulation No 1408/71, the Italian Government deduces that this allowance must — as regards the period prior to 1 October 1972 — necessarily fall under Regulation No 3, since the two regulations on this point cover the same ground.

Likewise, the principle of exportability of this allowance, applicable within the framework of Regulation No 1408/71, equally applies within the framework of Regulation No 3. Whilst it is true that the text of Article 10 (1) of the lastmentioned Regulation is not quite identical with that of Article 10 (1) of Regulation No 1408/71, the difference is due only to reasons of a technical or drafting nature and it has no substantial effect. Both provisions are in fact the expression of the principle laid down in Article 51 (b) of the Treaty.

On the basis of these observations and having affirmed that invalidity pensions including 'increments, revaluation allowances or supplementary allowances' (Article 1, (s) Regulation No 3) fall under the provisions of Regulation No 3 and benefit from the provisions of Article 10 (1) of this provision, the Italian Government suggests the following answer to the question referred:

'Pursuant to Regulation No 3 and Regulation No 1408/71, invalidity pensions, including those intended for the maintenance or improvement of earning capacity, cannot be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.'

C — *Observations presented by the Commission of the European Communities*

The Commission considers that the question submitted by the national Court raises three fundamental problems.

The first is whether Regulation No 3 is applicable to a worker who has only been employed in only one Member State. The second is whether the supplementary allowance of Fonds National is a social benefit within the meaning of Regulation No 3. The third, finally is whether by reason of a benefit being covered by Regulation No 3 it may *ipso facto* be exported.

As regards the first problem, the solution must be looked for in the Court's case law, from which it appears that Regulation No 3 applies to workers who have been subject to the legislation of only one Member State.

As regards the second and third problems, the distinction drawn by the Cour d'Appel of Paris between the period during which Regulation No 3 applied and the period governed by Regulation No 1408/71 is not justified, since the provisions of both regulations on the point in question cover the same ground, both as regards their substance and as regards the benefits in question.

This is why it would be more correct to consider the two problems in the light of each of the Regulations and not to limit the examination solely to Regulation No 3.

As regards the problem concerning the *nature* of the supplementary allowance, the Commission considers that the system instituted by the Fonds National has numerous points of resemblance with those of the guaranteed mininum income provided by the Belgian legislation and examined by the Court in its judgment of 22 June 1972 in the *Frilli* case (Case 1/72, Rec. 1972, p. 457). It in fact confers on beneficiaries 'a legally defined position giving them the right to a benefit similar to an old-age pension', a benefit which 'is to provide supplementary income to persons whose social security benefits are insufficient'. Furthermore, this system was set up and governed by legal provisions appearing in the French code on social security and falls under the provisions of the systems of social security to which the European Interim Agreements and the European Convention on Social Security apply.

For all these reasons it is right to conclude that for workers and those assimilated thereto, covered by Regulations No 3 and 1408/71, who are in France, entitled to an invalidity or old-age benefit, the supplementary allowance in question constitutes an invalidity or old-age benefit within the meaning of Article 2 (1) (c) or (b) of Regulation No 1408/71. The condition of reciprocity cannot be pleaded against nationals of the Member States.

As regards the exportability of such a benefit, the Commission draws a distinction between two systems of social security. Under the first, the classical system, social security has the purpose of guaranteeing to the parties interested an income in line with their previous earnings since social security benefits and especially pensions are considered as deferred earnings. This system, especially well-known to the original Member States, must of necessity result in the exportability of benefits in cash, granted by the legislation of the country where the worker is employed.

Following upon the accession of the new Member States and the evolution of the legislation of the original Member States, we are now witnessing the progressive abandonment of the classical conception of social security and in its place we are coming closer to another system, under which social security has the purpose of guaranteeing to all members of a national community or, in the case of some of these legislations to all residents, a basic income. With such a system, which involves the honouring of claims against the country of employment by

the country of residence, the principle of exportability of benefits does not seem to be a necessary element.

This is precisely the case with systems analogous to that of the Fonds National de solidarité. The very fact that the benefits which they provide retain 'need' as the essential criterion for their application, and are thus a form of social assistance, shows that in fact these systems are the expression of a form of solidarity within the national community, a solidarity such that one is bound to ask whether it must extend to members, whether nationals or not, who by reason of having established their residence in another country, are no longer part of that community. Furthermore, applying in such systems the principle of exportability of benefits cannot fail to create technical difficulties as regards assessing the resources of the person concerned, resident in another Member State, as regards the possibility of recovering maintenance payments due from relatives of the person concerned or from his estate and as regards the division of benefits in those cases where the Member State of residence also provides such a system.

Having found that the Court's case law does not seem to provide conclusive tests for deciding the present case, the Commission observes that if the general problem of exportability of benefits such as the supplementary allowance in the present case cannot be decided within the framework of Regulations No 3 and No 1408/71, it is nevertheless possible to say that where one is dealing with a benefit having the purpose of increasing an invalidity benefit due from the same Member State, and where the holder resides on the territory of this State at the moment when the risk materializes, the benefit must, as regards persons to whom Regulations No 3 and No 1408/71 are applicable, be considered an invalidity benefit within the meaning of these Regulations and one which by reason of this fact falls within Article 10 (1) of these provisions. On the basis of these observations it suggests the following answer to the question referred:

'A supplementary allowance under the legislation of a Member State which confers upon incapacitated persons residing in that State a right to a minimum invalidity pension must, as regards employed persons or those assimilated thereto within the meaning of Regulations No 3 and 1408/71, who are in that same State entitled to an invalidity pension from a sickness insurance scheme, be regarded as an invalidity benefit within the meaning of Articles 2 (1) (b) and 4 (1) (b) respectively, of those Regulations.

Accordingly, under Articles 10 (1) of Regulations No 3 and No 1408/71, where the person entitled resides in the territory of the Member State competent at the time when the risk materializes, this benefit shall not be subject to any reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the recipient resides in the territory of a Member State other than that in which the institution responsible for payment is situated.

III — Oral procedure

The oral observations of the Commission of the European Communites were made at the hearing on 9 July 1974.

These observations added no new elements to those put forward in the course of the written procedure.

The Advocate-General delivered his opinion on 17 September 1974.

Law

1 By judgment dated 2 March 1974, lodged at the Registry on 20 March 1974, the Cour d'Appel of Paris has referred to the Court, under Article 177 of the EEC Treaty, the question whether a person in receipt of an invalidity pension under a sickness insurance scheme, arising from her employment in a Member State wherein she was resident, and who is by virtue of that pension entitled to a supplementary allowance, can preserve this right in another Member State under the provisions of Article 2 (1) (b) of Regulation No 3 which was in force at that time, in respect of the period 1 April 1972 to 1 October 1972 during which she took up residence in another Member State, and continue to receive in that country the supplementary allowance in addition to the invalidity pension.

2 The record shows that Miss Biason, who has since 15 June 1971 been entitled to an invalidity pension under the French social security system, was as from that same date in receipt of a supplementary allowance from the Fonds National de Solidarité, established in France by a Law of 30 June 1956, and granted to holders of a benefit payable for to be on the basis of an invalidity reducing the working capacity by two-thirds or more, and who is resident in France.

3 When she changed her residence to Italy, she had this grant withdrawn by virtue of the French provisions and the supplementary agreement to the Franco-Italian Protocol of 11 January 1957.

4 The question referred amounts in essence to whether a party residing in another Member State may receive this grant under the provisions of Regulation No 3 of the Council.

5 To answer this question it is first of all necessary to know whether the benefit in question comes within the range of application of Regulation No 3.

6 Without in the framework of the present proceedings being able to label this benefit in the light of the French legislation, the Court can nevertheless provide the national court with aids to interpretation derived from

Community law which might guide it in an assessment of the effects of this legislation.

7 Under the provisions of Article 1 (b) thereof, Regulation No 3 applies to all legislation of Member States that concerns 'social security schemes and branches of social security' set out in paragraphs (1) and (2) of Article 2.

8 On the other hand, under the provisions of Article 2 (3), the Regulation shall not apply to 'social and medical assistance'.

9 Whilst it may seem desirable from the point of view of applying this Regulation to establish a clear distinction between legislative schemes that fall respectively within social security and assistance, one cannot exclude the possibility that by reason of the persons covered, its objectives and its method of application, a legislation can come close to both these categories, thus preventing any comprehensive classification.

10 In the event of such legislation, having ceased to concern itself with the assessment of need in the individual case—a characteristic feature with assistance—conferring on the persons entitled a legally defined status, then it falls within the system of social security, within the meaning of the Community Regulations.

11 This is the case where legislation provides supplementary benefits linked to a certain degree of invalidity and having the purpose of increasing the amount of an invalidity pension.

12 The fact that the same law also provides beneficiaries with advantages that come close to the concept of assistance cannot alter, for the purposes of the Community Regulations the intrinsic social security character of a benefit linked to an invalidity pension of which it is an automatic appendage.

13 Under the terms of Article 2 (1) (b), Regulation No 3 applies to all 'invalidity benefits, including benefits granted for the purpose of maintaining or improving earning capacity'.

14 Under Article 1 (s) of the same Regulation, the term 'benefits' must be understood in the widest possible sense as referring to all benefits 'including all fractions thereof, chargeable to public funds, increments, revaluation allowances or supplementary allowances'.

15 Accordingly, in the case of an employed person of someone assimilated thereto who is in a Member State benefits from an invalidity pension, a legislation which by reason of this pension confers on him a right to a legally protected supplementary allowance falls, insofar as this person is concerned, within the field of social security within the meaning of Article 51 of the Treaty and of the Regulations for carrying this provision into effect.

16 One can therefore conclude that a supplementary allowance, paid by a national solidarity fund and granted by national legislation by reason of an invalidity pension to persons entitled to this pension, whose working capacity is reduced by at least two-thirds, constitutes, to the extent that the persons concerned have a legally protected right to the grant thereof, a 'benefit' within the meaning of Article (1) (s) of Regulation No 3, and for that reason falls within the matters covered by this Regulation.

17 It is now necessary to answer the question whether such a benefit may be withdrawn because the beneficiary has transferred his residence to a Member State other than that where the benefit was acquired, where national law provides that this benefit is payable only to persons residing within the national territory.

18 Under the provisions of Article 10 (1) of Regulation No 3, pensions or death benefits payable under the legislation of one or more Member States shall not suffer reduction, modification, suspension, withdrawal or confiscation by reason of the fact that the beneficiary resides in the territory of a Member State other than that in which the institution responsible for payment is situated.

19 Article 10 (2) provides that the said provision shall not apply to certain benefits 'insofar as they are set out in Annex E to this Regulation'.

20 This Annex, setting out the 'benefits not payable abroad', refers, in the case of France, only to 'benefits payable to aged employed persons'.

21 The grant referred to by the national court does not fall within this category.

22 Consequently an insured person who is in receipt of an invalidity pension acquired under a sickness insurance scheme by reason of employment in a single Member State wherein he was resident, and who receives a supplementary allowance by virtue of that pension, is entitled to continue to receive such an allowance if he transfers his residence to another Member State, provided that such grant falls within the area of application of Regulation No 3, and this is so even if such supplementary allowance is by national legislation limited to persons residing within the national territory.

Costs

23/24 The costs incurred by the French Republic, the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable, and as these proceedings are, insofar as the parties to the main action are concerned, a step in the action pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the question referred to it by the Cour d'Appel of Paris by judgment of that court dated 2 March 1974, hereby rules:

An insured person who is in receipt of an invalidity pension acquired under a sickness insurance scheme by reason of employment in a Member State wherein he was resident, and who receives a supplementary allowance by virtue of that pension, is entitled to continue to receive such grant if he transfers his residence to another Member State, provided that such grant falls within the area for

application of Regulation No 3, and this is so even if such supplementary allowance is by national legislation limited to persons residing within the national territory.

Lecourt Ó Dálaigh Mackenzie Stuart Donner Monaco
Mertens de Wilmars Pescatore Kutscher Sørensen

Delivered in open court in Luxembourg on 9 October 1974.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 17 SEPTEMBER 1974 [1]

Mr President,
Members of the Court,

The 'Fonds National de Solidarité' was established in France by Law of 30 June 1956. It has the purpose of granting persons in need, i.e. persons whose income does not exceed certain limits, supplementary benefits for the purpose of supplementing various benefits paid in respect of old-age that are sufficient. Such supplements are paid to French citizens having their residence in France, if they are legally entitled to an old-age pension and are at least sixty-five years of age, or sixty in the case of incapacity to work. Pursuant to a Law of 2 August 1957 the supplement is also granted to those entitled to an invalidity pension for life, if their inability to work or earn is reduced by two-thirds or more and they have not yet attained the age of sixty. However, it is expressly laid down in Article L 699 of the Code de la Sécurité sociale that the supplement is withdrawn if a beneficiary transfers his residence outside the territory of the French Republic.

After the Law of 2 August 1957 had been passed, a supplementary agreement to the Franco-Italian Protocol on Social Security of 11 January 1957, was concluded on 6 February 1960. Under its provisions Italian nationals also are entitled to claim payment of the supplement where in case of invalidity they draw benefits pursuant to a French system of social security. Here too however, it is expressly laid down that only persons having their residence in metropolitan France are entitled to claim and that payment will cease upon the person entitled transferring his residence

1 — Translated from the German.