

JUDGMENT OF THE COURT (Fourth Chamber)

22 May 2008*

In Case C-499/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Sąd Okręgowy w Koszalinie (Poland), made by decision of 13 November 2006, received at the Court on 8 December 2006, in the proceedings

Halina Nerkowska

v

Zakład Ubezpieczeń Społecznych Oddział w Koszalinie,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, G. Arestis, R. Silva de Lapuerta (Rapporteur), E. Juhász and J. Malenovský, Judges,

* Language of the case: Polish.

Advocate General: M. Poiares Maduro,
Registrar: R. Grass,

after considering the observations submitted on behalf of:

— Ms Nerkowska, by herself,

— the Zakład Ubezpieczeń Społecznych Oddział w Koszalinie, by W. Witkowicz,
adwokat,

— the Polish Government, by E. Ośniecka-Tamecka, acting as Agent,

— the Italian Government, by I.M. Braguglia, acting as Agent, and W. Ferrante,
avvocato dello Stato,

— the Commission of the European Communities, by D. Maidani and A. Stobiecka-
Kuik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2008,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 18(1) EC.

- 2 The reference was made in the course of proceedings between Ms Nerkowska and the Zakład Ubezpieczeń Społecznych Oddział w Koszalinie (Social Security Institution, Koszalin Branch) regarding the latter's refusal to pay Ms Nerkowska a disability pension for the damage to her health following the six years which she suffered as a deportee in the former Union of Soviet Socialist Republics (the former USSR).

National legislation

- 3 The relevant national legislation is constituted by the Law on provision for war and military invalids and their families (Ustawa o zaopatrzeniu inwalidów wojennych i wojskowych oraz ich rodzin) of 29 May 1974, as amended (Dz. U. (Journal of Laws), 2002, No 9, heading 87) ('the 1974 Law'), and the Law on combatants and certain persons who are the victims of wartime and post-war repression (Ustawa o kombatantach oraz niektórych osobach będących ofiarami represji wojennych i okresu powojennego) of 24 January 1991 (Dz. U. No 17, heading 75).

- 4 Article 5 of the 1974 Law states that the benefits provided for by that Law are to be paid to the person entitled to them whilst he is resident in the territory of the Republic of Poland, unless the Law or an international agreement stipulates otherwise.
- 5 Under Article 3 of the 1974 Law those pensions are financed by the Polish State.
- 6 Under Article 12(2) of the Law of 24 January 1991 on combatants and certain persons who are the victims of wartime and post-war repression, the cash benefits and other entitlements provided for by the 1974 Law are also to be received by persons who have been added to one of the groups of disabled persons on account of a disability connected, in particular, with a period spent in prison, in an internment camp, in a camp which was subject to the Main Administration for Affairs of Prisoners of War and Internees (GUPVI) of the People's Commissariat for Internal Affairs (NKVD) and, from March 1946, of the Ministry of Internal Affairs (MVD) of the former USSR, or in a camp subject to the Control and Filtration Camps Division of the NKVD and, from March 1946, of the MVD. Those benefits are also received by persons who were the victims of wartime and post-war repression, that is to say by people who, on account of their political, religious and national convictions, were forcibly exiled or were deported to the former USSR. A disability resulting from wounds, contusions and other lesions or from an illness which arose because of a period of deportation is considered to be a disability connected with a period of deportation.

The main proceedings and the question referred for a preliminary ruling

- 7 Ms Nerkowska, who currently has Polish nationality, was born on 2 February 1946 in the territory of present-day Belarus.

- 8 At the age of three she lost her parents who were deported to Siberia pursuant to a court order.
- 9 In April 1951, Ms Nerkowska, her brother and her aunt were themselves deported to the former USSR. She lived there under difficult conditions until January 1957.
- 10 After almost six years she returned to Poland. She studied there and then, after completing her studies, she worked in an administrative post.
- 11 In 1985, she left Poland and settled permanently in Germany.
- 12 In October 2000, Ms Nerkowska submitted an application to the Zakład Ubezpieczeń Społecznych Oddział w Koszalinie to obtain a disability pension for the damage her health had suffered while she was a deportee.
- 13 By decision of 4 October 2002, the Zakład Ubezpieczeń Społecznych Oddział w Koszalinie accepted that Ms Nerkowska was entitled to a pension as a result of partial incapacity for work linked to her stay in places of isolation, but payment of this benefit was suspended on the ground that she did not reside in Polish territory.

- 14 Ms Nerkowska challenged that decision by lodging an appeal with the Sąd Okręgowy w Koszalinie (Regional Court, Koszalin), requesting that it hold her entitled to obtain payment of the disability pension sought. That court did not uphold her arguments and dismissed the appeal by judgment of 22 May 2003, which was delivered after the taking of evidence.
- 15 Ms Nerkowska submitted a fresh application for payment of the abovementioned benefit in September 2006. In support of her application, she submitted that the Republic of Poland had acceded to the European Union on 1 May 2004 and had consequently incorporated Community law into the Polish legal order.
- 16 Following the administrative procedure, on 14 September 2006 the Zakład Ubezpieczeń Społecznych Oddział w Koszalinie adopted the decision which forms the subject-matter of the main proceedings and refused to pay Ms Nerkowska the disability pension arising from the entitlement established previously, on the ground that she did not have a place of residence in the territory of the Republic of Poland.
- 17 Ms Nerkowska challenged that decision before the national court, requesting that it should be amended in such a way that her disability pension be paid to her. She submitted that, on account of the Republic of Poland's accession to the European Union, her present place of residence cannot constitute an obstacle to the payment of that benefit.

18 In those circumstances, the Sąd Okręgowy w Koszalinie decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does Article 18 EC, which guarantees citizens of the European Union the right to move and reside freely within the territory of the Member States, preclude the binding force of the national rules laid down in Article 5 of the [1974 Law] in so far as they make payment of a pension benefit for incapacity for work that is linked to a stay in places of isolation subject to fulfilment of the condition that the person entitled be resident in the territory of the Polish State?’

Consideration of the question referred for a preliminary ruling

19 By its question, the national court essentially asks whether Article 18(1) EC is to be interpreted as precluding legislation of a Member State under which it refuses to pay one of its nationals a benefit granted to civilian victims of war or repression although it has been acknowledged by a decision of the competent authority that that national is entitled to such a benefit, on the sole ground that the national is habitually resident in the territory of another Member State and not in that of the Member State in question.

20 It must be determined at the outset whether a situation such as that in the main proceedings falls within the scope of Community law, and in particular of Article 18(1) EC.

The applicability of Article 18(1) EC

- 21 First, regarding the scope *ratione personae* of this provision, suffice it to state that, under Article 17(1) EC, every person holding the nationality of a Member State is a citizen of the Union. In addition, Article 17(2) EC attributes to citizens of the Union the rights conferred and duties imposed by the EC Treaty, including those mentioned in Article 18(1) EC (Case C-192/05 *Tas-Hagen et Tas* [2006] ECR I-10451, paragraph 18).
- 22 As a Polish national, Ms Nerkowska enjoys the status of citizen of the Union established by Article 17(1) EC and may therefore rely where relevant on the rights conferred on those having that status, such as the rights to move freely and to reside freely laid down in Article 18(1) EC.
- 23 Secondly, as to the scope *ratione materiae* of Article 18(1) EC, it is to be noted that, as Community law now stands, a benefit such as that in issue in the main proceedings, which is intended to compensate civilian victims of war or repression for physical or mental harm which they have suffered, falls within the competence of the Member States (*Tas-Hagen and Tas*, paragraph 21).
- 24 However, Member States must exercise that competence in accordance with Community law, in particular with the Treaty provisions concerning the freedom accorded to every citizen of the Union to move and reside freely within the territory of the Member States (*Tas-Hagen and Tas*, paragraph 22).

25 Furthermore, it is accepted that citizenship of the Union, established by Article 17 EC, is not intended to extend the scope *ratione materiae* of the Treaty to internal situations which have no link with Community law (Joined Cases C-64/96 and C-65/96 *Uecker and Jacquet* [1997] ECR I-3171, paragraph 23; Case C-148/02 *Garcia Avello* [2003] ECR I-11613, paragraph 26; and *Tas-Hagen and Tas*, paragraph 23).

26 However, the Court has already held that situations which fall within the scope *ratione materiae* of Community law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty and those involving the exercise of the freedom, as conferred by Article 18 EC, to move and reside within the territory of the Member States (Case C-209/03 *Bidar* [2005] ECR I-2119, paragraph 33, and Case C-403/03 *Schempp* [2005] ECR I-6421, paragraphs 17 and 18).

27 In this case, it must be held that a situation such as that of Ms Nerkowska is covered by the right of citizens of the Union to move and reside freely in the Member States. By taking up residence in Germany, the applicant in the main proceedings exercised the right conferred by Article 18(1) EC on every citizen of the Union to move and reside freely within the territory of a Member State other than that of which he is a national.

28 Furthermore, it is clear from the documents sent to the Court by the national court that the refusal to pay the disability pension which had been granted to Ms Nerkowska was attributable solely to the fact that she had taken up residence in Germany.

29 It follows that a situation in which the exercise by Ms Nerkowska of a freedom accorded by Community law has an impact on her right to the payment of a benefit under national legislation cannot be considered to be a purely internal matter with no link to Community law.

30 It is therefore necessary to examine whether Article 18(1) EC, which is applicable to a situation such as that in the main proceedings, is to be interpreted as precluding national legislation requiring that the recipient of a disability pension paid to civilian victims of war or repression be resident in the territory of the Member State granting such a benefit.

The residence requirement

31 With regard to the scope of Article 18(1) EC, the Court has already held that the opportunities offered by the Treaty in relation to freedom of movement cannot be fully effective if a national of a Member State can be deterred from availing himself of them by obstacles raised to his residence in the host Member State by legislation of his State of origin penalising the fact that he has used them (Case C-224/02 *Pusa* [2004] ECR I-5763, paragraph 19, and *Tas-Hagen and Tas*, paragraph 30).

32 National legislation which places certain of the nationals of the Member State concerned at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State is a restriction on the freedoms conferred by Article 18(1) EC on every citizen of the Union (Case C-406/04 *De Cuyper* [2006] ECR I-6947, paragraph 39, and *Tas-Hagen and Tas*, paragraph 31).

33 The 1974 Law constitutes such a restriction. In making the payment of the disability pension established for civilian victims of war or repression conditional on the

recipients' being resident in the territory of Poland, that Law is liable to deter Polish nationals in a situation such as that of the applicant in the main proceedings from exercising their freedom to move and to reside in a Member State other than Poland.

34 National legislation which imposes such a restriction on the exercise of freedoms by nationals of the Member State concerned can be justified, under Community law, only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and is proportionate to the legitimate objective of the national provisions (*De Cuyper*, paragraph 40, and *Tas-Hagen and Tas*, paragraph 33).

35 As to the first condition, it is apparent from the observations submitted to the Court both by the defendant in the main proceedings and by the Polish Government that the restriction provided for by the 1974 Law results essentially from the Polish legislature's wish to limit the obligation of solidarity with civilian victims of war or repression solely to those who have a connection with the Polish people. In their submission, the residence condition is therefore an expression of the extent to which such victims are integrated in Polish society.

36 Furthermore, the defendant in the main proceedings and the Polish Government maintain that only a residence condition such as that at issue in the main proceedings is capable of ensuring that it can be verified that the situation of the recipient of the benefit concerned has not been subject to changes which may affect his entitlement to that benefit. In that regard, they state that the fact that there cannot be recourse to the administrative and medical assistance of the other Member States, a possibility provided for in respect of social security benefits by Regulation (EEC) No 1408/71 of the Council 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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), renders the monitoring carried out by the competent Polish bodies ineffective. They also submit that other, less restrictive, measures would not be as effective as the residence condition.

37 It is true that both the wish to ensure that there is a connection between the society of the Member State concerned and the recipient of a benefit and the necessity to verify that the recipient continues to satisfy the conditions for the grant of that benefit constitute objective considerations of public interest which are capable of justifying the fact that the conditions for the grant or payment of the benefit may affect the freedom of movement of the citizens of that Member State.

38 As regards the requirement for a connection with the society of the Member State concerned, the Court has held, with regard to a benefit such as that at issue in the main proceedings, which is not covered by Community law, that Member States enjoy a wide margin of appreciation in deciding which criteria are to be used to assess the degree of connection to society, while at the same time being required to comply with the limits imposed by Community law (*Tas-Hagen and Tas*, paragraph 36).

39 It is thus lawful for a Member State to restrict, by means of conditions related to the nationality or to the place of residence of the person concerned, the compensation granted to civilian victims of war or repression to persons who are regarded as showing a certain degree of connection to the society of that Member State.

40 However, while the restriction found in paragraph 33 of the present judgment is capable of being justified by objective considerations of public interest such as those mentioned in the previous paragraph, that restriction must also not be disproportionate in the light of the objective pursued.

41 First, as regards the condition of continued residence in national territory throughout the period of payment of the benefit which is considered a factor connecting civilian victims of war or repression to Polish society, it must be held that, although it is true that residence constitutes a criterion capable of showing that there is such a connection, the fact remains that, in circumstances such as those of the main proceedings, such a condition goes beyond what is necessary to achieve the objective pursued.

42 It is common ground that Ms Nerkowska has Polish nationality and lived in Poland for more than 20 years, during which time she studied and worked there.

43 The fact that a person is a national of the Member State granting the benefit at issue in the main proceedings and lived in that State for more than 20 years studying and working may be sufficient to establish a connection between that State and the recipient of the benefit. In those circumstances, the requirement of residence throughout the period of payment of the benefit concerned must be held to be disproportionate, since it goes beyond what is necessary to ensure that such a connection exists.

44 Secondly, as regards the argument that the residence condition is the sole means of verifying that the recipient of a disability pension continues to satisfy the conditions for the grant of that pension, it is sufficient to reply that it cannot be reasonably claimed that the objective pursued cannot be achieved by other means which, although less restrictive, are just as effective.

- 45 If medical or administrative checks make it necessary for the recipient of a benefit such as that at issue in the main proceedings to be in the territory of the Member State concerned, nothing precludes that Member State from requesting that the recipient go to that State for the purpose of undergoing such a check, including on pain of suspension of payment of the benefit if there is an unwarranted refusal on the part of the recipient.
- 46 Consequently, a residence condition such as that at issue in the main proceedings goes beyond what is necessary to achieve the objective of verifying that the recipient of a benefit continues to satisfy the conditions for grant of the benefit and, therefore, it fails to comply with the principle of proportionality referred to in paragraphs 34 and 40 of this judgment.
- 47 In view of the foregoing considerations, the answer to the question referred must be that Article 18(1) EC is to be interpreted as precluding legislation of a Member State under which it refuses, generally and in all circumstances, to pay to its nationals a benefit granted to civilian victims of war or repression solely because they are not resident in the territory of that State throughout the period of payment of the benefit, but in the territory of another Member State.

Costs

- 48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 18(1) EC is to be interpreted as precluding legislation of a Member State under which it refuses, generally and in all circumstances, to pay to its nationals a benefit granted to civilian victims of war or repression solely because they are not resident in the territory of that State throughout the period of payment of the benefit, but in the territory of another Member State.

[Signatures]