

harvested material of the protected variety acquired from an individual holding an exploitation right, taken certain measures in contravention of the limits prescribed in the licence agreement concluded with the holder of those rights.

### Operative part of the judgment

1. In circumstances such as those at issue in the main proceedings, Article 94 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, as amended by Council Regulation (EC) No 873/2004 of 29 April 2004, read in conjunction with Articles 11(1), 13(1) to (3), 16, 27 and 104 thereof, must be interpreted as meaning that the holder or the person enjoying the right of exploitation may bring an action for infringement against a third party which has obtained material through another person enjoying the right of exploitation who has contravened the conditions or limitations set out in the licensing contract that that other person concluded at an earlier stage with the holder to the extent that the conditions or limitations in question relate directly to the essential features of the Community plant variety right concerned. It is for the referring court to make that assessment.
2. It is of no significance for the assessment of the infringement that the third party which effected the acts on the material sold or disposed of was aware or was deemed to be aware of the conditions or limitations imposed in the licensing contract.

(<sup>1</sup>) OJ C 161, 19.6.2010.

### Judgment of the Court (Second Chamber) of 20 October 2011 (reference for a preliminary ruling from the Sozialgericht Nürnberg (Germany)) — Juan Perez Garcia, Jose Arias Neira, Fernando Barrera Castro, Dolores Verdún Espinosa successor in title to José Bernal Fernández v Familienkasse Nürnberg

(Case C-225/10) (<sup>1</sup>)

**(Social security — Regulation (EEC) No 1408/71 — Articles 77 and 78 — Pensioners entitled under the legislation of several Member States — Handicapped children — Family benefits for dependent children — Right to benefits in the former Member State of employment — Existence of a right to benefits in the Member State of residence — Failure to make a request — Choice of payment of an invalidity benefit incompatible with benefits for dependent children — Concept of ‘benefit for dependent children’ — Maintenance of rights acquired in the former Member State of employment)**

(2011/C 362/11)

Language of the case: German

### Referring court

Sozialgericht Nürnberg

### Parties to the main proceedings

**Applicants:** Juan Perez Garcia, Jose Arias Neira, Fernando Barrera Castro, Dolores Verdún Espinosa successor in title to José Bernal Fernández

**Defendant:** Familienkasse Nürnberg

### Re:

Reference for a preliminary ruling — Sozialgericht Nürnberg — Interpretation of Articles 77 and 78 of Regulation (EEC) No 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 (OJ 1997 L 149, p. 2) — Benefits for dependant handicapped children of several Member States and benefits for orphans which are subject to the legislation of several Member States — Right to a supplement paid by the State of employment where allowances for children in the State of residence are higher but not compatible with a non-contributory pension for invalidity which the party concerned has opted for

### Operative part of the judgment

1. Articles 77(2)(b)(i) and 78(2)(b)(i) 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006 must be interpreted as meaning that recipients of old age and/or invalidity pensions, or the orphan of a deceased worker, to whom the legislation of several Member States applied, but whose pension or orphan's rights are based on the legislation of the former Member State of employment alone, are entitled to claim from the competent authorities of that State the full amount of the family allowances provided under that legislation for handicapped children, even though they have not, in the Member State of residence, applied for comparable, higher, allowances under the legislation of that latter State, because they opted to be granted another benefit for handicapped persons which is incompatible with those, since the right to family allowances in the former Member State of employment was acquired by reason of the legislation of that State alone.
2. The answer to the third question is that the answer to it is the same as that to the first two questions where, under the legislation of the Member State of residence, the interested persons are unable to opt for payment of family allowances in that State.

(<sup>1</sup>) OJ C 221, 14.8.2010.