movement of persons across borders (Schengen Borders Code), as amended by Regulation (EC) No 81/2009 of the European Parliament and of the Council of 14 January 2009, are also applicable to third-country nationals subject to the requirement to obtain a visa who wish to return via the Schengen area external borders to the Member State which issued them with a temporary residence permit but not to enter for that purpose the territory of another Member State;

2. *Article 5(4)(a) of Regulation No 562/2006, as amended by Regulation No 81/2009, must be interpreted as meaning that a Member State which issues to a third-country national a re-entry visa within the meaning of that provision cannot limit entry into the Schengen area solely to points of entry to its national territory;*

3. *The principles of legal certainty and protection of legitimate expectations did not require the provision of transitional measures for the benefit of third-country nationals who had left the territory of a Member State when they were holders of temporary residence permits issued pending examination of a first application for a residence permit or an application for asylum and wanted to return to that territory after the entry into force of Regulation No 562/2006, as amended by Regulation No 81/2009.*

([1]) OJ C 72, 5.3.2011.

Judgment of the Court (Grand Chamber) of 12 June 2012 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Waldemar Hudziński v Agentur für Arbeit Wesel — Familienkasse (C-611/10), Jarosław Wawrzyniak v Agentur für Arbeit Mönchengladbach — Familienkasse (C-612/10)

(Joined Cases C-611/10 and C-612/10) ([1])

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Articles 14(1)(a) and 14a(1)(a) — Articles 45 TFEU and 48 TFEU — Temporary work in a Member State other than that in which work is normally carried out — Family benefits — Applicable legislation — Possibility for child benefit to be granted by the Member State in which the temporary work is carried out but which is not the competent State — Application of a rule of national law against overlapping of benefits which excludes that benefit in the case where a comparable benefit is received in another State)

(2012/C 227/05)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicants: Waldemar Hudziński (C-611/10), Jarosław Wawrzyniak (C-612/10)

Defendants: Agentur für Arbeit Wesel — Familienkasse (C-611/10), Agentur für Arbeit Mönchengladbach — Familienkasse (C-612/10)

Re:

References for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 14a(1)(a) of Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ English Special Edition 1971 (II), p. 416) — Determination of the applicable law — Right of a migrant worker to receive in the Member State in which he works family allowances for his children resident in his Member State of origin — Situation of a self-employed person working in his Member State of origin and carrying out employed work in another Member State for a period of four months

Operative part of the judgment

1. *Articles 14(1)(a) and 14a(1)(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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as not precluding a Member State, which is not designated under those provisions as being the competent State, from granting child benefits in accordance with its national law to a migrant worker who is working temporarily within its territory in circumstances such as those in the main proceedings, including in the case where it is established, first, that the worker concerned has not suffered any legal disadvantage by reason of the fact that he has exercised his freedom of movement, since he has retained his entitlement to family benefits of the same kind in the competent Member State, and, second, that neither that worker nor the child for whom the benefit is claimed habitually resides within the territory of the Member State in which the temporary work was carried out.;*

2. *The rules of the FEU Treaty on the free movement of workers must be interpreted as precluding the application, in a situation such as that at issue in the main proceedings, of a rule of national law, such as that resulting from Paragraph 65 of the Law on income tax (Einkommensteuergesetz), in so far as it involves, not a reduction in the amount of the benefit corresponding to the amount of a comparable benefit received in another State, but exclusion from that benefit.*

([1]) OJ C 103, 2.4.2011.