



## Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

11 September 2014\*

(Reference for a preliminary ruling — Social security for migrant workers — Regulation (EEC) No 1408/71 and Regulation (EC) No 883/2004 — National legislation applicable — Determination of the competent Member State for the purpose of granting a family benefit — Situation in which a migrant worker and her family live in a Member State in which their centre of interest is located and family benefit has been paid — Application for family benefit in the Member State of origin after entitlement to benefits in the Member State of residence has expired — National legislation of the Member State of origin providing that such benefits are to be granted to any person registered as permanently resident in that State)

In Case C-394/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Czech Republic), made by decision of 2 May 2013, received at the Court on 11 July 2013, in the proceedings

**Ministerstvo práce a sociálních věcí**

v

**B.,**

THE COURT (Ninth Chamber),

Composed of M. Safjan, President of the Chamber, A. Prechal (Rapporteur) and K. Jürimäe, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mrs B., by V. Soukup, advokát,
- the Czech Government, by M. Smolek and J. Vlácil, acting as Agents,
- the Greek Government, by T. Papadopoulou, acting as Agent,
- the European Commission, by D. Martin and P. Němečková, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

\* Language of the case: Czech.

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 76 of Council Regulation (EEC) No 1408/71 of 4 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), as amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008 (OJ 2008 L 177, p. 1) ('Regulation No 1408/71'), and of Article 87 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1; corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 43) ('Regulation No 883/2004').
- 2 The reference has been made in proceedings between the Ministerstvo práce a sociálních věcí (Ministry of Employment and Social Affairs) and Mrs B. concerning a decision withdrawing her entitlement to family benefits on the ground that the Czech Republic does not have competence to grant such benefits.

### Legal framework

#### *European Union law*

#### Regulation No° 1408/71

- 3 Article 1 of Regulation No 1408/71, entitled 'Definitions', provides in paragraph (h) thereof as follows:  
'residence means habitual residence'.
- 4 Article 13 of Regulation No 1408/71, entitled 'General rules', is worded as follows:  
'1. Subject to Articles 14c and 14f, persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.  
2. Subject to Articles 14 to 17:  
...  
(f) a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the foregoing subparagraphs or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.'

- 5 Article 76 of Regulation No 1408/71, entitled ‘Rules on priority in cases of overlapping entitlement to family benefits under the legislation of the competent State and under the legislation of the Member State of residence of the members of the family’, forms part of Chapter 7, in Title III. Article 76(1) provides as follows:

‘Where, during the same period, for the same family member and by reason of carrying on an occupation, family benefits are provided for by the legislation of the Member State in whose territory the members of the family are residing, entitlement to the family benefits due in accordance with the legislation of another Member State, if appropriate under Article 73 or 74, shall be suspended up to the amount provided for in the legislation of the first Member State.’

Regulation Nos 883/2004 and (EC) 987/2009

- 6 Regulation No 1408/71 was replaced by Regulation No 883/2004. The latter regulation has been applicable, in accordance with Article 91 thereof, from the date on which its implementing regulation entered into force. Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2009 L 284, p. 1) entered into force on 1 May 2010.
- 7 Article 1 of Regulation No 883/2004, entitled ‘Definitions’, states in paragraph (j) thereof that the term “residence” means the place where a person habitually resides.’
- 8 Article 11 of Regulation No 883/2004, entitled ‘General rules’, provides in paragraphs 1 and 3(e) thereof as follows:

‘1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.

...

3. Subject to Articles 12 to 16:

...

(e) any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other Member States.’

- 9 Article 87 of Regulation No 883/2004, entitled ‘Transitional provisions’, provides in paragraphs 1, 3 and 8 thereof as follows:

‘1. No rights shall be acquired pursuant to this Regulation for the period before its date of application.

...

3. Subject to paragraph 1, a right shall be acquired under this Regulation even if it relates to a contingency arising before its date of application in the Member State concerned.

...

8. If, as a result of this Regulation, a person is subject to the legislation of a Member State other than that determined in accordance with Title II of Regulation [No 1408/71], that legislation shall continue to apply while the relevant situation remains unchanged and in any case for no longer than 10 years from the date of application of this Regulation unless the person concerned requests that he/she be subject to the legislation applicable under this Regulation. ...'

10 Article 11 of Regulation No 987/2009, entitled 'Elements for determining residence', provides as follows:

'1. Where there is a difference of views between the institutions of two or more Member States about the determination of the residence of a person to whom the basic Regulation applies, these institutions shall establish by common agreement the centre of interests of the person concerned, based on an overall assessment of all available information relating to relevant facts, which may include, as appropriate:

- (a) the duration and continuity of presence on the territory of the Member States concerned;
- (b) the person's situation, including:
  - (i) the nature and the specific characteristics of any activity pursued, in particular the place where such activity is habitually pursued, the stability of the activity, and the duration of any work contract;
  - (ii) his family status and family ties;
  - (iii) the exercise of any non-remunerated activity;
  - (iv) in the case of students, the source of their income;
  - (v) his housing situation, in particular how permanent it is;
  - (vi) the Member State in which the person is deemed to reside for taxation purposes.

2. Where the consideration of the various criteria based on relevant facts as set out in paragraph 1 does not lead to agreement between the institutions concerned, the person's intention, as it appears from such facts and circumstances, especially the reasons that led the person to move, shall be considered to be decisive for establishing that person's actual place of residence.'

#### *Czech law*

11 It is apparent from the order for reference that, under Article 3 and the second sentence of Article 31(1) of Law No 117/1995 on social assistance (zákon č. 117/1995 Sb., o státní sociální podpoře), in the version in force at the time the administrative decision at issue in the main proceedings was adopted, any natural person who has registered as permanently resident in Czech territory in accordance with Articles 10 and 10a of Law No 133/2000 Sb., on the population register and the national registration number, amending certain laws (zákon č. 133/2000 Sb. o evidenci obyvatel a rodných číslech a o změně některých zákonů (zákon o evidenci obyvatel)) ('Law No 133/2000'), may claim the parental allowance.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 12 Mrs B. is a Czech national who lives in France with her husband and her daughter, who is a minor born in France. However, both Mrs B. and her husband each have a home in the Czech Republic, the addresses of which have been registered in accordance with Article 10 of Law No 133/2000.
- 13 Mrs B. has received unemployment benefit in France and her husband pursues an occupational activity there. The whole family is covered by health insurance in France. During the period from 9 February to 30 May 2009, Mrs B. was on maternity leave and, on that basis, received a maternity allowance in France. Subsequently, from 1 June to 30 November 2009, Mrs B. received in that Member State an additional family benefit known as ‘*prestation d’accueil du jeune enfant*’ (early childhood benefit) or ‘*PAJE*’, the amount of that benefit varying according to the income of the recipient. Once her entitlement to that benefit ceased, Mrs B. applied for family benefit in the Czech Republic.
- 14 By decision of 14 June 2010, the Úřad práce (employment agency) in Ostrava granted that benefit to Mrs B. with effect from 1 December 2009.
- 15 Taking the view that Mrs B.’s entitlement to family benefit should be reassessed as of the date on which Regulation No 883/2004 became applicable, namely 1 May 2010, the Krajský úřad Moravskoslezského kraje (regional authorities of the Moravia-Silesia Region), whose powers were transferred to the Ministerstvo práce a sociálních věcí, decided, by decision of 16 November 2010, to withdraw the benefit at issue with effect from 1 May 2010 on the ground that the Czech Republic was no longer the competent Member State as the centre of interests of Mrs B. and her family was in France.
- 16 The referring court is in some doubt as to whether the Czech Republic is the competent Member State in so far as concerns the grant of family benefits to Mrs B. It considers that, in the event that the Czech Republic is deemed to have been competent for the purpose of granting such family benefits, it is questionable whether it remained so after 1 May 2010, in view of the new rules relating to residence laid down in Regulation No 987/2009.
- 17 In those circumstances, the Nejvyšší správní soud (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Should Article 76 of Regulation [No 1408/71] be interpreted as meaning that the Czech Republic is the competent [Member] State for the purpose of providing a family benefit — the parental allowance — in circumstances such as those of the present case, that is to say, the applicant, her husband and child live in France, the husband works there, France is the centre of their interests, and the applicant has drawn her full entitlement of the *PAJE* (*prestation d’accueil du jeune enfant*) family benefit in France?’

If the answer to the first question is in the affirmative:

(2) Should the transitional provisions of Regulation [No 883/2004] be interpreted as requiring the Czech Republic to grant a family benefit after 30 April 2010, even though the competence of a State may be affected, as of 1 May 2010, by the new definition of residence in Regulation [No 987/2009] (Article 22 et seq.)?

If the answer to the first question is in the negative:

(3) Should Regulation [No 883/2004], in particular Article 87, be interpreted as meaning that, in circumstances such as those of the present case, the Czech Republic is the competent [Member] State for the purpose of providing a family benefit as of 1 May 2010?’

## Admissibility

- 18 Mrs B. contends that the questions referred are not relevant to the case before the national court, on the ground that they relate to her entitlement to family benefits from 1 December 2009, whereas it is not disputed that she is entitled to those benefits for the period from 1 December 2009 to 1 May 2010, the case concerning only the loss of that right as of 1 May 2010.
- 19 It should be noted that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling. The presumption of relevance attaching to questions referred by national courts for a preliminary ruling may be rebutted only in exceptional cases, where it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted (see, *inter alia*, the judgment in *Iberdrola Distribución Eléctrica*, C-300/13, EU:C:2014:188, paragraph 16).
- 20 In the present case, it is not apparent that the interpretation of EU law sought by the national court bears no relation to the actual facts of the main action or to its purpose, or that the problem identified by it is hypothetical. Accordingly, as the Court has before it the factual and legal material necessary to give a useful answer to the questions submitted, those questions are, contrary to Mrs B.'s submissions, admissible.

## Consideration of the questions referred

### Question 1

- 21 It should be observed as a preliminary point that, in the context of the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. In that light, the Court may have to reformulate the questions referred to it (the judgments in *Krüger*, C-334/95, EU:C:1997:378, paragraphs 22 and 23, and *Hewlett-Packard Europe*, C-361/11, EU:C:2013:18, paragraph 35).
- 22 In the present case, by its first question, the national court is asking, in essence, whether Regulation No 1408/71 is to be interpreted as precluding a Member State from being regarded as the competent State for the purpose of granting, under its national law, a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that Member State.
- 23 According to the Court's established case-law, the objective of the provisions of Title II of Regulation No 1408/71 is to ensure, in particular, that the persons concerned are, in principle, subject to the social security scheme of only one Member State in order to prevent more than one system of national legislation from being applicable and to avoid the complications which may result from that situation. That principle is expressed, in particular, in Article 13(1) of that regulation (see, *inter alia*, the judgment in *Hudzinski and Wawrzyniak*, C-611/10 and C-612/10, EU:C:2012:339, paragraph 41).
- 24 In the present case, the legislation applicable to Mrs B.'s situation, in so far as concerns her entitlement to family benefits, is determined by Article 13(2)(f) of Regulation No 1408/71. A person who has ceased all employment in the territory of a Member State and thus no longer satisfies the conditions



laid down in Article 13(2)(a) of that regulation and who, moreover, does not satisfy the conditions laid down in any other provision of that regulation for the legislation of a Member State to be applicable to him is subject, by virtue of Article 13(2)(f) of the regulation, to the legislation of the State in which he was previously employed, if he continues to reside there (see, to that effect, the judgment in *Kuusijärvi*, C-275/96, EU:C:1998:279, paragraphs 29 and 34).

- 25 Under Article 13(2)(f) of Regulation No 1408/71, Mrs B. has therefore remained subject to the legislation of the Member State in which she was previously employed and in which she still resides, that is, according to the information provided in the order for reference, French legislation.
- 26 In that regard, it should be recalled that, pursuant to Article 1(h) of Regulation No 1408/71, the term 'residence' for the purposes of that regulation means habitual residence, that is, the place in which the persons concerned habitually reside and in which the habitual centre of their interests is to be found, and thus constitutes an autonomous concept particular to EU law (see the judgment in *Swaddling*, C-90/97, EU:C:1999:96, paragraphs 28 and 29). It is apparent from the facts established by the national court set out at paragraphs 12 and 13 above that Mrs B.'s habitual residence and the habitual centre of her interests is in France.
- 27 As Mrs B. is subject to French legislation under Article 13 of Regulation No 1408/71, the question then arises as to whether the provisions of that regulation preclude the family benefits at issue in the main proceedings from being granted under the national law of a Member State which is not the competent Member State within the meaning of Regulation No 1408/71. It is apparent from the order for reference that, under Czech legislation, Mrs B. may claim such a benefit by virtue of the simple fact that she is registered as permanently resident in the Czech Republic.
- 28 It should be recalled that a Member State which lacks competence retains the possibility of granting family benefits if there are specific and particularly close connecting factors between the territory of that State and the situation at issue, on condition that the predictability and effectiveness of the application of the coordination rules of Regulation No 1408/71 are not disproportionately affected (see, to that effect, *Hudzinski and Wawrzyniak*, EU:C:2012:339, paragraphs 65 to 67).
- 29 However, the mere fact Mrs B. is registered as permanently resident in the Czech Republic but does not live in that Member State, while she would appear to be habitually resident in France with her family, where she received unemployment benefit, a maternity allowance from 9 February 2009 and, subsequently, a family benefit similar to that which she later claimed from the Czech Republic, would not appear, subject to final verifications to be carried out by the national court, such as to give rise, as between Mrs B. and the Czech Republic, to such close connecting factors.
- 30 In the light of all the foregoing considerations, the answer to Question 1 is that Regulation No 1408/71, in particular Article 13 thereof, must be interpreted as precluding a Member State from being regarded as the competent State for the purpose of granting a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that Member State. Article 13 of that regulation must be interpreted as also precluding a Member State which is not the competent State in so far as concerns the person in question from granting family benefits to such a person unless there are specific and particularly close connecting factors between the situation at issue and the territory of that first Member State.

### *Question 2*

- 31 In the light of the answer given to Question 1, there is no need to answer Question 2.

### Question 3

- 32 By its third question, the referring court is asking, in essence, whether Regulation No 883/2004 is to be interpreted as precluding a Member State from being regarded, as of 1 May 2010, as the competent State for the purpose of granting, under its national law, a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that Member State.
- 33 In the light of the Court's case-law cited at paragraph 21 above, it should be noted at the outset in the present case that Article 11 of Regulation No 883/2004, which is worded in the same terms as Article 13 of Regulation No 1408/71, provides that the persons to whom that regulation applies are to be subject to the legislation of a single Member State only, namely the competent State. Under Article 11(3)(e) of that regulation, and for reasons similar to those given in paragraphs 24 to 26 above, Mrs B. remains subject to the legislation of the Member State of residence.
- 34 'Residence' is defined in Article 1(j) of Regulation No 883/2004 as the place where a person habitually resides. Article 11 of Implementing Regulation No 987/2009 refers to residence in terms of the centre of interests of the person concerned. That provision also codifies the list of factors developed by the Court's case-law which may be taken into account when determining such a centre of interests, such as the duration and continuity of presence on the territory of the Member States concerned or the family status and family ties of the person concerned (see, to that effect, the judgment in *Wencel*, C-589/10, EU:C:2013:303, paragraph 50).
- 35 In those circumstances, without there being any need to rule on the transitional provisions laid down in Article 87 of Regulation No 883/2004, it is sufficient to point out that that regulation did not introduce any relevant change in relation to Regulation No 1408/71 in so far as concerns the provisions governing the designation of the competent Member State or the concept of residence, which are central to the outcome of the case before the national court. The Czech Republic is not, therefore, the competent State in the present case under the relevant rules of Regulation No 883/2004.
- 36 In the light of the foregoing considerations, the answer to Question 3 is that Regulation No 883/2004, in particular Article 11 thereof, must be interpreted as precluding a Member State from being regarded as the competent State for the purpose of granting a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that Member State.

### Costs

- 37 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 (Ninth Chamber) hereby rules:

- 1) **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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008, in particular Article 13 thereof, must be interpreted as precluding a Member State from being regarded as the competent State for the purpose of granting a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither**



**that person nor the members of his family work or habitually reside in that Member State. Article 13 of that regulation must be interpreted as also precluding a Member State which is not the competent State in so far as concerns the person in question from granting family benefits to such a person unless there are specific and particularly close connecting factors between the situation at issue and the territory of that first Member State.**

- 2) **Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, in particular Article 11 thereof, must be interpreted as precluding a Member State from being regarded as the competent State for the purpose of granting a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that Member State.**

[Signatures]