



Reports of Cases

OPINION OF ADVOCATE GENERAL
TANCHEV
delivered on 11 July 2019¹

Case C-447/18

UB

v

Generálny riaditeľ Sociálnej poisťovne Bratislava

(Request for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic))

(Equal treatment in matters of social security — Discrimination on the basis of nationality — No migration of a worker — Member State of worker's residence altered due to dissolution of a State — Member State law subordinating the right to an additional benefit for winning medals at the Olympics and other international championships to a nationality condition — Czech national resident in Slovakia)

1. The main proceedings furnish an opportunity for the Court to develop its case-law on the circumstances in which an additional benefit reserved to nationals of a Member State are to be extended to all EU nationals resident in that Member State. The benefit in issue here ('the additional benefit') is awarded for winning medals at the Olympics and other European and international sporting events.
2. The dispute is unusual because it arises not from the exercise of rights to free movement, but from the fact that the Czechoslovak Socialist Republic became two separate States prior to the accession of the Czech Republic and the Slovak Republic to the European Union on 1 May 2004. In consequence, a Czech national resident in Slovakia who is seeking payment of the additional benefit from the Slovakian social security authorities cannot be regarded as a *migrant* worker, given that he has lived for over 50 years within the borders of what is now the sovereign State of Slovakia.
3. The Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) asks whether such a person can, nevertheless, rely on Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems,² and the entitlement to social security benefits and social advantages under Article 34 of the Charter to secure the additional benefit?
4. I have reached a negative answer to this question for reasons that will be detailed in Part IV below.

¹ Original language: English.

² OJ 2004 L 166, p. 1, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, amending Regulation (EC) No 883/2004 on the coordination of social security systems, and determining the content of its Annexes OJ 2009 L 284, p. 43, and corrected by OJ 2004 L 200, p. 1

I. Legal framework

A. *European Union law*

5. Article 34 of the Charter of Fundamental Rights of the European Union is, entitled ‘Social security and social assistance’. Its first two paragraphs state:

‘1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.’

6. Recitals 4 and 5 of Regulation No 883/2004 state:

‘(4) It is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination.

(5) It is necessary, within the framework of such coordination, to guarantee within the Community equality of treatment under the different national legislation for the persons concerned.’

7. Article 1 of Regulation No 883/2004 states as follows at paragraph ‘w’:

“pension” covers not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement of contributions and, subject to the provisions of Title III, revaluation increases or supplementary allowances’.

8. Article 3(1), (3) and (5) of Regulation No 883/2004 is entitled ‘Matters covered’ and states:

‘1. This Regulation shall apply to all legislation concerning the following branches of social security:

- (a) sickness benefits;
- (b) maternity and equivalent paternity benefits;
- (c) invalidity benefits;
- (d) old-age benefits;
- (e) survivors’ benefits;
- (f) benefits in respect of accidents at work and occupational diseases;
- (g) death grants;
- (h) unemployment benefits;
- (i) pre-retirement benefits;
- (j) family benefits.

...

3. This Regulation shall also apply to the special non-contributory cash benefits covered by Article 70.

...

5. This Regulation shall not apply to:

- (a) social and medical assistance or
- (b) benefits in relation to which a Member State assumes the liability for damages to persons and provides for compensation, such as those for victims of war and military action or their consequences; victims of crime, assassination or terrorist acts; victims of damage occasioned by agents of the Member State in the course of their duties; or victims who have suffered a disadvantage for political or religious reasons or for reasons of descent.'

9. Article 4 of Regulation No 883/2004 is entitled 'Equality of treatment'. It states:

'Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.'

10. Article 5 is entitled 'Equal treatment of benefits, income, facts or events'. It states:

'Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

- (a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;
- (b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.'

11. Article 70 of Regulation No 883/2004 is entitled 'General provision'. It states:

'1. This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance.

2. For the purposes of this Chapter, "special non-contributory cash benefits" means those which:

- (a) are intended to provide either:
 - (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;

or

(ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned,

and

(b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone,

and

(c) are listed in Annex X.

3. Article 7 and the other chapters of this Title shall not apply to the benefits referred to in paragraph 2 of this Article.

4. The benefits referred to in paragraph 2 shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation. Such benefits shall be provided by and at the expense of the institution of the place of residence.'

B. Slovakian law

12. Paragraph 1 of zákon č. 112/2015 Z.z. o príspevku športovému reprezentantovi a o zmene a doplnení zákona č. 461/2003 Z.z. o sociálnom poistení v znení neskorších predpisov (Law No 112/2015 on an additional benefit for sportspersons who have represented the State; 'Law No 112/2015') in the version applicable to the main proceedings states;

'This law governs the granting of an additional benefit to sportspersons who have represented the State ("the additional benefit") as a State social benefit, the purpose of which is to provide a financial guarantee to sportspersons who — as representatives of the Czechoslovak Republic, the Czechoslovak Socialist Republic, the Czechoslovak Federative Republic, the Czech and Slovak Federative Republic or the Slovak Republic — have obtained medals in the Olympic Games, the Paralympic Games, the Deaflympics, the World Championships or the European Championships.'

13. Paragraph 2(1) of Law No 112/2015, in that same version, states:

'A natural person who:

(a) as a sporting representative of the Czechoslovak Republic, the Czechoslovak Socialist Republic, the Czechoslovak Federative Republic, the Czech and Slovak Federative Republic or the Slovak Republic has obtained

1. a gold medal (first place), a silver medal (second place) or a bronze medal (third place) in the Olympic Games, the Paralympic Games or the Deaflympics;

2. a gold medal (first place), a silver medal (second place) or a bronze medal (third place) in the World Championships or a gold medal (first place) in the European Championships in a sporting discipline included by the International Olympic Committee in the Olympic Games, by the International Paralympic Committee in the Paralympic Games, or by the International Committee of Sports for the Deaf in the Deaflympics immediately prior to the World Championships or the European Championships, or which were held in the year in which the World Championships or the European Championships were held;

- (b) is a citizen of the Slovak Republic;
- (c) is permanently resident in the Slovak Republic or is a person to whom a special provision applies
- (d) does not receive a similar benefit from abroad;
- (e) has reached pensionable age; and
- (f) has applied to exercise his right to a pension benefit in accordance with the special rules shall be entitled to the additional benefit.’

14. Under Paragraph 3 of Law No 112/2015, in that same version:

‘The amount of the benefit shall consist of the difference between

- (a) EUR 750 and the sum of the amounts of pension benefits granted under specific rules and similar pension benefits paid abroad, provided that the natural person has won
 - 1. a gold medal as referred to in Paragraph 2(1)(a)(1);
 - 2. a gold medal as referred to in Paragraph 2(1)(a)(2) in the World Championships; or
- (b) between the sum of EUR 600 and the sum of the amounts of pension benefits granted under specific rules and similar pension benefits paid abroad, provided that the natural person has won
 - 1. a silver medal as referred to in Paragraph 2(1)(a)(1);
 - 2. a silver medal as referred to in Paragraph 2(1)(a)(2) in the World Championships; or
- (c) EUR 500 and the and the sum of the amounts of pension benefits granted under specific rules and similar pension benefits paid abroad, provided that the natural person has won
 - 1. a bronze medal as referred to in Paragraph 2(1)(a)(1);
 - 2. a bronze medal as referred to in Paragraph 2(1)(a)(2) in the World Championships; or
 - 3. a gold medal as referred to in Paragraph 2(1)(a)(2) in the European Championships.’

II. Facts, and the question referred

15. The register of medals obtained kept by the Ministerstvo školstva, vedy, výskumu a športu Slovenskej republiky (the Ministry of Education, Science, Research and Sport of the Slovak Republic) shows that UB (‘the appellant’), a Czech national, obtained a gold medal at the Ice Hockey European Championships, and a silver medal at the World Ice Hockey Championships, both in 1971. On 17 December 2015 he invoked the right to the additional benefit in issue before the Slovak social security authorities.

16. They refused it, on the basis of paragraph 2(1)(b) of Law No 112/2015, because of his Czech nationality. In the proceedings before the Krajský súd v Košiciach (Regional Court, Košice, Slovakia), the appellant, referring to EU law, claimed that the Slovak legislation was discriminatory on the basis of his citizenship. He also pointed out that no account had been taken of the fact that he had been living in the Slovak Republic for 52 years.

17. On the basis of the documentation concerning the legislative process, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic, ‘the referring court’) noted that the Government of the Slovak Republic, in a meeting of 22 April 2015, had discussed a proposed law on an additional benefit for sportspersons who have represented the State, reaching the conclusion that, for example, in Paragraph 2(1)(b), the Government considered that it was ‘necessary to lay down in subparagraph 1(b) the following wording: “(b) is a citizen of a European Union Member State, a citizen of a State which is a contracting party to the Agreement on the European Economic Area, or a Swiss citizen”’. It was deemed necessary to refer to EU laws concerning the coordination of social security systems in the proposed law.

18. Following a proposal by certain Members of the Národná rada Slovenskej republiky (National Council of the Slovak Republic) (‘the legislative body’), the proposed law on an additional benefit for sportspersons who have represented the State was amended so that in Paragraph 2 the words ‘of a European Union Member State’ were replaced by the words ‘of the Slovak Republic’.

19. The reason given for this proposed amendment was that the additional benefit was a State social benefit that was not a pension benefit and the aim of which was to contribute to the financial security of high-level sportspersons who, as Slovak citizens, had represented the Slovak Republic or its legal predecessors, and that, since the proposed law did not seek to guarantee the financial security of sportspersons who had represented the State but were citizens of other States, it was proposed to establish citizenship of the Slovak Republic as one of the conditions for entitlement to the additional benefit.

20. The proposed law on an additional benefit for sportspersons who have represented the State was ultimately adopted by the legislative body, together with a clause on the compatibility of the proposed law with EU law, pursuant to which the degree of compatibility was considered to be ‘full’, since EU primary, secondary and tertiary law do not apply to the proposal.

21. In formulating a request for a preliminary ruling on the basis of the Charter, the referring Court stated in the order for reference that it was aware that the Court of Justice will verify observance of the scope of the Charter in the light of Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing Union law.³

22. The referring court therefore emphasises that it is not asking for a standalone interpretation of the rights to social security benefits and social assistance, enshrined in Article 34 of the Charter, but is rather calling attention to the abovementioned basis of the dispute in the proceedings before the national court, in which a ruling must be given on the lawfulness of the way in which a public administrative body is proceeding.

23. In the view of the referring court, the additional benefit for sportspersons who have represented the State is not only a State social benefit as stated in the documents during the legislative process. From the individual provisions of Law No 112/2015 cited above it can be seen that that additional benefit is to be paid in parallel and regularly, together with the pension benefit, in order to bring the amount of the pension benefit up to EUR 750 (under point (a)), EUR 600 (under point (b)) or EUR 500 (under point (c)).

24. It is also an undisputed fact that the appellant, as a person who has represented the State in a team sport, finds himself in a position that is different from that of his teammates solely because of the fact that, unlike them, he is not a Slovak citizen, although he too contributed, through his own efforts and skills, to the collective result of the national team.

³ Judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, and order of 28 November 2013, *Sociedade Agrícola e Imobiliária da Quinta de S. Paio*, C-258/13, EU:C:2013:810.

25. The referring court states that, before deciding to submit the question referred for a preliminary ruling, it analysed in detail the judgments of the Court of Justice of the European Union in similar cases, namely the judgments of 22 June 2011, *Landtová*,⁴ of 16 September 2015, *Commission v Slovak Republic*,⁵ concerning Christmas bonuses, and *Commission v Slovak Republic*,⁶ C-433/13, but has come to the conclusion that the judgments were not applicable to the present case.

26. The referring court therefore stayed the proceedings, and sent the following question by way of preliminary ruling:

‘In the circumstances of the main proceedings, is it possible to interpret Article 1(w), Article 4 and Article 5 of [Regulation No 883/2004], considered in conjunction with the right to social security benefits and social advantages, as enshrined in Article 34(1) and (2) of the Charter of Fundamental Rights of the European Union, as precluding the application of a provision of national legislation pursuant to which the Slovak social security body is to take into consideration an applicant’s citizenship as a fundamental condition for the purposes of determining the right of national sports representatives to a benefit in addition to the old-age pension, even if another statutory requirement, namely the fact of having represented the legal predecessors of the State, including the Czechoslovak Socialist Republic, is also part of that provision of national legislation?’

27. Written observations were filed at the Court by the Czech Republic, the Republic of Slovakia, and the European Commission. All three participated at the hearing that took place on 7 May 2019.

III. Summary of written observations

28. The Czech Republic argues that the additional benefit in issue falls without doubt within the material scope of Regulation No 883/2004. Under the Court’s established case-law, a payment amounts to a social security payment only if it is made outside of any individual assessment or discretion based on personal needs of beneficiaries, on the basis of a legally defined situation, and if it is connected with one of the risks enumerated in Article 3(1) of Regulation No 883/2004.⁷

29. First, the additional benefit is a right under Slovak law. It is not, therefore, an optional benefit but is rather an obligatory payment. Second, it is paid automatically to those who meet objective criteria, that is having represented Slovakia or its predecessor State at identified international sporting events. In consequence, no power of individual assessment or discretion exists, the competent authority taking no account of the needs of the applicant. Thirdly, the additional benefit is a complement to the old-age pension, given that it is paid regularly and in parallel with the old-age pension. It is therefore a pension within the meaning of Article 1(w) of Regulation No 883/2004, which extends to supplements to pensions.⁸ The additional benefit equally amounts to an old-age benefit in the sense of Article 3(1)(d) of Regulation No 883/2004 under the Court’s case-law.⁹ The fact that the additional benefit paid does not depend on the amount of salary paid or periods of insurance completed does not detract from this assessment.¹⁰

4 C-399/09, EU:C:2011:415.

5 C-361/13, EU:C:2015:601.

6 Judgment of 16 September 2015, C-433/13, EU:C:2015:602.

7 In this regard the Czech Republic relies on the judgments of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraph 15, and of 16 September 2015, *Commission v Slovakia*, C-433/13, EU:C:2015:602, paragraph 71. The purposes and the conditions of grant are determinative, and not the qualification made by the Member State. See judgments of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraph 14; of 10 October 1996, *Zachow*, C-245/94 and C-312/94, EU:C:1996:379, paragraph 17; and of 16 September 2015, *Commission v Slovakia*, C-433/13, EU:C:2015:602, paragraph 70.

8 The Czech Republic relies in this regard on the judgment of 20 January 2005, *Noteboom*, C-101/04, EU:C:2005:51, paragraph 27.

9 The Czech Republic relies on the judgment of 30 May 2018, *Czerwinski*, C-517/16, EU:C:2018:350, paragraph 45.

10 Here the Czech Republic relies on judgment of 20 January 2005, *Noteboom*, C-101/04, EU:C:2005:51, paragraph 29.

30. Subordination of the payment of the additional benefit by a nationality condition is therefore precluded by Article 4 of Regulation No 883/2004. The determining element for the grant of the additional benefit is whether the person concerned has represented the State, or its antecedents, and obtained the required result, and not whether the person is a citizen of the Member State concerned.

31. The Slovak Republic contests this interpretation of EU law. It points out that it was initially envisaged that the Czech and Slovak Republics would take a coordinated approach to the additional benefit in issue, with both countries paying it to residents who had represented the Czechoslovak Republic at the designated international sporting events, whether they be Czech or Slovak, and provided that this did not result in double payment. For this reason, the Slovak Republic did not at first propose confining the payment of the additional benefit to Slovakian nationals. It only did so when the Czech Republic failed to pass a law extending the payment of the additional benefit to Slovakian nationals resident in the Czech Republic. Thus, if Slovakia was required to change the law, it would be furnishing the additional benefit to Slovakian nationals resident in both the Czech Republic and Slovakia, along with Czech nationals resident in Slovakia.

32. The Slovak Republic argues that the additional benefit in issue is not a social security payment under Regulation No 883/2004, and nor does it fall within special non-contributory benefits under Article 3(3) and 70 of the same regulation.

33. With regard to the former, this is determined by the constituent elements of the payment, notably its purpose and conditions of grant. It does not fall within one of the risks enumerated in Article 3(1) of Regulation No 883/2004.¹¹ It is not a retirement benefit under the Court's case-law.¹² The additional benefit is paid independently of retirement benefits. It is paid even if the former sports man or woman receives no pension. It is not paid when retirement benefits surpass a specified limit.¹³ Nor is the additional benefit paid out of the same sources as the old-age pension. It is paid directly by the State. Nor does the additional benefit aim at meeting the needs of beneficiaries.¹⁴ It rather aims, inter alia, at rewarding high level athletes for their achievement and encouraging young athletes. Nor is the amount paid determined by the number of contribution completed or the insurance period.¹⁵

34. With regard to special non-contributory benefits under Articles 3(3) and 70 of Regulation No 883/2004, the Slovak Republic points out that the additional benefit does not fall within one of the risks elaborated in Article 3(1). Nor does it seek to guarantee a minimum level of subsistence. Nor does it fall within the benefit for handicapped people under Article 70(2)(a), and nor is the additional benefit envisaged by Annex X of Regulation No 883/2004 as required by Article 70(2)(c).

35. As for Article 34 of the Charter, it does not modify the position of the Slovak Republic. The additional benefit in issue falls outside the scope of application of EU law.¹⁶

11 The Slovak Republic refers to the judgment of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraphs 32 and 33.

12 The Slovak Republic refers to the judgment of 16 December 2015, *Commission v Slovakia*, C-361/13, EU:C:2015:601, paragraph 56.

13 The Slovak Republic relies on the judgments of 20 January 2005, *Noteboom*, C-101/04, EU:C:2005:51, paragraph 27, and of 16 September 2015, *Commission v Slovakia*, C-361/13, EU:C:2015:601, paragraph 56.

14 The Slovak Republic refers to the judgments of 5 July 1983, *Valentini*, 171/82, EU:C:1983:189, paragraph 14, and of 16 December 2015, *Commission v Slovakia*, C-361/13, EU:C:2015:601, paragraph 55.

15 Judgment of 5 July 1983, *Valentini*, 171/82, EU:C:1983:189, paragraph 14.

16 The Slovak Republic refers to the judgment of 16 September 2004, *Baldinger*, C-386/02, EU:C:2004:535.

36. The Commission points out that the additional benefit in issue, in effect, applies only to people who have reached retirement age and who have claimed a retirement pension. The fact that it is a complementary payment does not preclude it from being an old-age pension under Regulation No 883/2004.¹⁷ But at the same time, the Commission is not certain that it falls within the scope of application of Regulation No 883/2004. It is a supplement to reward exceptional achievements for representing the country, payable to a small circle of people. Thus, the Commission concludes that the additional benefit in issue does not fall within the scope of application of Regulation No 883/2004, but that it needs to be considered whether it falls within the scope of application of Regulation (EU) No 492/2011¹⁸ and the provisions of the TFEU.

37. The Commission concludes, however, that it is not necessary to decide whether the additional benefit is a social advantage under Article 7(2) of Regulation No 492/2011,¹⁹ because it is possible to reply to the question referred on the basis of the primary law of the TFEU.

38. In this context, the Commission refers to Article 18 TFEU, and the ruling of the Court in *Tas-Hagen and Tas*,²⁰ which it argues enables the appellant to invoke his status as a worker under Article 45 TFEU.

IV. Analysis

39. The additional benefit falls within neither Regulation No 883/2004, Regulation No 492/2011, or the primary EU law on free movement referred to by the Commission.²¹ That being the case, there is no scope for the application of Article 34 of the Charter, since the situation arising in the main proceedings is not ‘governed’ by EU law.²²

40. With regard to Regulation No 883/2004, it is established in the Court’s case-law that ‘the distinction between the benefits which are excluded from the scope of Regulation No 883/2004 and benefits which are covered essentially rests on the constituent elements of each benefit, in particular its purpose and the conditions for its grant, and not on whether the national law classifies it as a social security benefit or not’.²³ In any event, in order to fall within the scope of Regulation No 883/2004, a national law must cover one of the risks expressly listed in Article 3(1) of that regulation.²⁴

41. The additional benefit in issue in this case does not cover one of the risks expressly listed in Article 3(1) of Regulation No 883/2004 (listed above, point 8). The Court has consistently held that a benefit may be regarded as a ‘social security benefit’ in so far as it is granted to recipients without any individual and discretionary assessment of personal needs on the basis of a legally defined position and provided that it relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004.²⁵ The additional benefit is rather a reward for performance at international sporting events and national

17 The Commission refers to judgments of 20 January 2005, *Noteboom*, C-101/04, EU:C:2005:51, paragraphs 25 to 29; of 16 December 2015, *Commission v Slovakia*, C-361/13, EU:C:2015:601, paragraph 55; and of 30 May 2018, *Czerwinski*, C-517/16, EU:C:2018:350, paragraphs 33 and 34 and the case-law cited.

18 Regulation of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

19 The Commission refers to judgments of 31 May 1979, *Even and ONPTS*, 207/78, EU:C:1979:144; of 27 September 1988, *Matteucci*, 235/87, EU:C:1988:460, paragraph 16; and of 16 September 2004, *Baldinger*, C-386/02, EU:C:2004:535, paragraphs 17 to 19.

20 Judgment of 26 October 2016, C-192/05, EU:C:2006:676, paragraphs 16, 30 and the operative part.

21 The situation arising in the main proceedings is therefore fundamentally different from that considered by the Court in its judgment of 22 June 2011, *Landtová*, C-399/09, EU:C:2011:415.

22 See e.g. judgment of 8 May 2019, *PI*, C-230/18, EU:C:2019:383, paragraph 63.

23 Judgments 30 May 2018, *Czerwinski*, C-517/16, EU:C:2018:350, paragraph 33 and the case-law cited., and of 25 July 2018, *A*, C-679/16, EU:C:2018:601, paragraph 31

24 Judgment of 30 May 2018, *Czerwiński*, C-517/16, EU:C:2018:350, paragraph 34 and the case-law cited.

25 Judgment of 14 March 2019, *Dreyer*, C-372/18, EU:C:2019:206, paragraph 32 and the case-law cited.

representation. The fact that, in practice, it is paid to people who have reached retirement age is not sufficient to bring it within old-age benefits under Article 3(1). As explained by the agent for Slovakia at the hearing, the additional benefit is only linked to recipients of the old-age pension who receive the maximum of the benefit set by Member State law, so that the sum received has to be decreased for these people. Eligibility for the additional benefit has no link in law with the receipt of the pension.

42. Under the established case-law of the Court, in order to determine whether the additional benefit can be classified as an ‘old-age benefit’ within the meaning of Article 3(1)(d) of Regulation No 883/2004, and therefore a social security benefit, the constituent elements of that bonus, in particular its purpose and the conditions on which it is granted, must be examined.²⁶

43. The additional benefit in issue is granted to persons who have achieved high performance at international sporting events. It is intended as a reward for this performance, and to encourage younger athletes. I therefore conclude that the additional benefit is more akin to the Christmas bonus in *Commission v Slovakia*,²⁷ and held not to amount to an old-age benefit under Article 3(1)(d) of Regulation No 883/2004, than the holiday pay paid exclusively to persons entitled to a retirement or survivor’s pension, and financed by the same resources as the pension in the Court’s ruling in *Noteboom*,²⁸ and which was held to be an old age benefit.²⁹ Here the additional benefit is not paid out of the same fund as pensions but is rather funded directly by the State, and as explained above has no link with the pension system, aside from a reduction for former athletes in receipt of the maximum old-age pension under Slovakian law.

44. While I acknowledge that the payment in *Commission v Slovakia* was made to a wide group of beneficiaries, and the benefit at issue in the main proceedings to a narrow group, the discrete number of beneficiaries, linked as it is to performance at elite sporting events, only serves to underscore the difference between it and the supplements that attach to the old-age pension.

45. As for special non-contributory benefits under Articles 3(3) and 70 of Regulation No 883/2004, I agree with arguments made by the Slovak Republic at point 34 above, to the effect that it is impossible to fit the additional benefit in issue into Article 70. I note that Article 3(5)(a) expressly excludes ‘social assistance’ from the scope of Regulation No 883/2004,³⁰ and that Article 70(2)(a)(i) of Regulation No 883/2004 refers back to the branches of social security referred to in Article 3(1), and must be ‘supplementary, substitute, or ancillary cover ‘against one of the risks listed in Article 3(1).’³¹ As explained at point 41 above, I have reached the conclusion that the additional benefit in issue does not relate to any of the categories listed in that provision, and is rather a specific grant for rewarding sporting excellence. The additional benefit is not envisaged by Annex X of Regulation No 883/2004, and does not aim to provide a minimum level of subsistence.

²⁶ Judgment of 16 September 2015, *Commission v Slovak Republic*, C-361/13, EU:C:2015:601, paragraph 54.

²⁷ Judgment of 16 September 2015, *Commission v Slovak Republic*, C-361/13, EU:C:2015:601.

²⁸ Judgment of 20 January 2005, C-101/04, EU:C:2005:51, paragraph 27.

²⁹ Under Article 4(1)(c) 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 (OJ 1997 L 28, p. 1), as amended by Council Regulation (EC) No 1606/98 of 29 June 1998 (OJ 1998 L 209, p. 1). This provision was repealed by Article 90 of Regulation No 883/2004.

³⁰ See e.g. judgment of 27 March 1985, *Hoecx*, 249/83, EU:C:1985:139, paragraphs 11, 12, and 14.

³¹ Cf. judgment of 29 April 2004, *Skalka*, C-160/02, EU:C:2004:269, in which the payment in issue was a ‘special non-contributory benefit’ because it augmented a pension.

46. Nor does the additional benefit fall within Article 7(2) of Regulation No 492/2011 as a ‘social advantage’ the essential characteristics of which exclude benefits that are associated with service to the State. A scheme of national recognition cannot fall within Article 7(2) of Regulation No 492/2011.³² Further, non-payment of the additional benefit to Czech nationals resident in Slovakia is only inconsistent with facilitation of mobility of workers,³³ with respect to a tiny number of EU workers; namely Czech nationals who have represented the former Republic of Czechoslovakia and who wish to move from the Czech Republic to the Slovak Republic.

47. In other words, non-payment of the additional benefit to anyone but Slovak nationals results in no global or wholesale discouragement of movement to work in Slovakia across the EU,³⁴ which arises from the refusal of the Slovak authorities to pay an additional benefit to Czech nationals, although, as explained in the written observations of the Slovakian Government and by their agent at the hearing, talks were entered into between the two Member States prior to the passage of the law in issue in the main proceedings, a coordinated response having been envisaged in which both countries would pay the additional benefit in issue to their own nationals, irrespective of residence.

48. Finally, the Commission’s reliance on the Court’s ruling in *Tas-Hagen* is misapprehended. There, the refusal of the Dutch Government to pay its own nationals a benefit awarded to civilian war victims by that government due to their residence in Spain was caught by the prohibition on discrimination on the basis of nationality under Article 18 EC, rather than amounting to a purely internal situation, precisely because the persons concerned had exercised their right to free movement by going and living in Spain, a Member State other than that of which they were nationals.³⁵ The Court concluded that ‘as the exercise by Mrs Tas-Hagen and Mr Tas of a right recognised by the Community legal order has had an impact on their right to receive a benefit under national legislation, such a situation cannot be considered to be a purely internal matter with no link to Community law.’³⁶

49. It is uncontested, however, that the appellant has never exercised his ‘freedom of movement’ rights under Article 45 TFEU. Therefore, while the Court’s ruling in *Tas-Hagen* would be apposite in a dispute between a Czech national and the Czech social security authorities in the event of refusal to pay a benefit because of exercise by a Czech national of their right to free movement by taking up residence in a Member State other than the Czech Republic, including the Slovak Republic, those facts do not arise in the main proceedings. The architecture of the main proceedings pits a Czech national who has never exercised free movement rights against his Member State of residence, namely Slovakia, and in which he has always resided since accession of that Member State to the European Union.

50. The dispute falls outside of the material scope of EU law so Article 34 of the Charter is inapplicable.

32 Judgment of 31 May 1979, *Even and ONPTS*, 207/78, EU:C:1979:144, paragraphs 23 and 24. See also judgment of 16 September 2004, *Baldinger*, C-386/02, EU:C:2004:535, paragraphs 17 and 19.

33 Judgment of 27 March 1985, *Hoeckx*, 249/83, EU:C:1985:139, paragraph 20.

34 Cf. the situation considered by the Court in the judgment of 10 March 1993, *Commission v Luxembourg*, C-111/91, EU:C:1993:92 on prescribed periods of residence in Luxembourg before child birth and maternity allowance could be paid. It affected all EU national women.

35 Judgment of 26 October 2006, *Tas-Hagen and Tas*, C-192/05, EU:C:2006:676, paragraph 25.

36 *Ibid.*, paragraph 28.

V. Conclusion

51. I therefore propose the following answer to the question referred by the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic):

In the circumstances of the main proceedings, it is not possible to interpret Article 1(w), Article 4 and Article 5 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, considered in conjunction with the right to social security benefits and social advantages, as enshrined in Article 34(1) and (2) of the Charter of Fundamental Rights of the European Union, as precluding the application of a provision of national legislation pursuant to which the Slovak social security body is to take into consideration an applicant's citizenship as a fundamental condition for the purposes of determining the right of national sports representatives to a benefit in addition to the old-age pension, even if another statutory requirement, namely the fact of having represented the legal predecessors of the State, including the Czechoslovak Socialist Republic, is also part of that provision of national legislation.