

JUDGMENT OF THE COURT (First Chamber)
6 June 1985 *

In Case 157/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Commission de première instance du contentieux de la sécurité sociale [Social Security First Instance Appeals Board], Hauts-de-Seine, for a preliminary ruling in the action pending before that court between

Maria Frascogna

and

Caisse des dépôts et consignations

on the interpretation of Regulation 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 (Official Journal, English Special Edition 1971 (II), p. 416),

THE COURT (First Chamber)

composed of: G. Bosco, President of Chamber, R. Joliet and T. F. O'Higgins, Judges,

Advocate General: C. O. Lenz

Registrar: D. Louberman, Administrator

after considering the observations submitted on behalf of:

- the plaintiff in the main proceedings by Carlo Exio, Secretary General of the Patronato associazioni cristiane lavoratori Italiani,
- the defendant in the main proceedings by J. C. Cervera, Assistant Director of the Caisse des dépôts et consignations,

* Language of the Case: French.

— the Commission of the European Communities by its Legal Adviser, J. Griesmar, and by J. Currall, a member of its Legal Department,

— the Italian Government by P. G. Ferri, *Avvocato dello Stato*,

after hearing the Opinion of the Advocate General delivered at the sitting on 21 March 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

- 1 By judgment of 8 December 1983, which was received at the Court on 20 June 1984, the Commission de première instance du contentieux de la sécurité sociale [Social Security First Instance Appeals Board], Hauts-de-Seine (hereinafter referred to as 'the Appeals Board') referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Regulation 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 (Official Journal, English Special Edition 1971 (II), p. 416).
- 2 The question was raised in the course of proceedings between Mrs Frascogna and the Caisse des dépôts et consignations concerning the refusal to grant Mrs Frascogna a special old-age allowance.
- 3 Mrs Frascogna is an Italian national and the widow of an Italian national. By virtue of that status she is in receipt of a widow's pension from the Istituto nazionale della previdenza sociale [Italian National Social Welfare Institution]. Since 1976 she has lived in France with her son, who is in salaried employment in that country.

- 4 In November 1981 Mrs Frascogna applied to the Caisse des dépôts et consignations for the grant of the special old-age allowance which was introduced by Law No 52-799 of 10 July 1952. According to that law, an allowance is to be paid to old persons who are not in receipt of an old-age benefit under a social security scheme and who have insufficient income. The allowance is limited to French nationals or nationals of a State which has concluded a reciprocal agreement with France. In either case the claimant must be resident in the territory of Metropolitan France.
- 5 On 21 April 1982 the Caisse des dépôts et consignations rejected her application on the ground that she had not been resident in France for 15 years. It appears that France and Italy have not concluded any reciprocal agreement but are parties to the European Interim Agreement of 11 December 1953 on social security schemes in respect of old age, invalidity and survivors. Article 2 (1) (b) of that Agreement lays down, with regard to non-nationals, a condition requiring 15 years' residence in the territory of the State where they wish to be paid benefits provided for under a non-contributory scheme. Mrs Frascogna failed to comply with that requirement.
- 6 On 10 June 1982 Mrs Frascogna brought an action before the Appeals Board against the decision of the Caisse des dépôts et consignations rejecting her application. In support of her action she contended that the residence requirement laid down by the Interim Agreement was contrary to Regulation No 1408/71.
- 7 That argument led the Appeals Board to ask the Court whether 'the provisions of the European Interim Agreement [were] compatible with Regulation No 1408/71 of the Council'.
- 8 Written observations were submitted by Mrs Frascogna, by the Caisse des dépôts et consignations, by the Commission of the European Communities and by the Italian Government.

- 9 Mrs Frascogna considers that she falls within the scope *ratione personae* of Regulation No 1408/71 because she is a member of the family of a worker within the meaning of Article 2 (1) thereof. The benefit at issue falls within the scope of Regulation No 1408/71 since France included it in the declaration provided for by Article 5 of the regulation. The residence requirement laid down by the Interim Agreement is therefore contrary to the principle laid down in Article 3 of Regulation No 1408/71, namely that a Member State should accord to nationals of other Member States the same treatment as it accords to its own nationals.
- 10 The Caisse des dépôts et consignations considers that the special old-age allowance is in the nature of assistance and is therefore not covered by Regulation No 1408/71.
- 11 The Commission also takes the view that the allowance falls outside the scope of Regulation No 1408/71 since it is not intended to supplement a social security benefit.
- 12 Finally, the Italian Government considers that the allowance falls within the scope of Regulation No 1408/71 and that therefore the residence requirement laid down by the Interim Agreement is contrary to the principle of equal treatment laid down in that regulation.
- 13 It must be recalled that the Court has already held, in its judgment of 28 May 1974 (Case 187/73 *Callemeyn v Belgian State* [1974] ECR 553), that 'within its field of application ... Regulation No 1408/71 takes precedence over the European Interim Agreement on social security schemes in respect of old age, invalidity and survivors ... to the extent that this regulation is more favourable than the said agreement for those entitled'. If it is applicable in this case, Regulation No 1408/71 is, in view of the principle of equal treatment laid down in Article 3 thereof, unquestionably more favourable than the European Interim Agreement.
- 14 A reminder of those principles, however, is not a sufficient answer to the question referred to the Court by the Appeals Board. The latter also seeks to ascertain

whether Regulation No 1408/71 permits a relative in the ascending line of a worker of one Member State who has settled, together with that worker, in another Member State to obtain in the latter State an old-age allowance such as that concerned in this case. This question must therefore be considered.

- 15 In that regard it is true that, according to Article 2 (1) of Regulation No 1408/71, the regulation applies 'to workers who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States . . . as well as to the members of their families and their survivors'. However, the Court stated in its judgment of 23 November 1976 (Case 40/76 *Kermaschek v Bundesanstalt für Arbeit* [1976] ECR 1669) that the members of the family of a worker or his survivors can only claim derived rights under Regulation No 1408/71, that is to say rights acquired through their status as a member of the worker's family or as his survivor.
- 16 In this case it appears that the special old-age allowance introduced by Law No 52-799 of 10 July 1952 is paid to old persons whether or not they are related to a worker.
- 17 It must therefore be concluded that, since the right to the special old-age allowance does not constitute a derived right for the purposes of Regulation No 1408/71, a relative in the ascending line of a migrant worker cannot claim the benefit of the allowance under that regulation.
- 18 However, the Commission contended in its observations that since the special old-age allowance is a social advantage it must be granted under Article 7 (2) of Regulation No 1612/68 of the Council of 15 October 1968, on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475).
- 19 In order to provide the Appeals Board with all the information concerning the interpretation of Community law which may assist it in resolving the dispute before it, it is necessary to examine whether or not that argument is well founded.

- 20 As the Court has stated on several occasions (most recently in its judgment of 27 March 1985 in Case 249/83 *Hoeckx v Centre public d'aide sociale de Kalmthout* [1985] ECR 973) the term 'social advantage' includes all advantages which, 'whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community'.
- 21 Thus, as the Court has already held in its judgment of 12 July 1984 (Case 261/83 *Castelli v Office national des pensions pour travailleurs salariés (ONPTS)* [1984] ECR 3199), the term 'social advantage' within the meaning of Article 7 (2) of Regulation No 1612/68 includes the income guaranteed to old people by the legislation of a Member State.
- 22 It must therefore be concluded that the special old-age allowance granted to old persons whose income is insufficient falls within the scope of Regulation No 1612/68.
- 23 It follows from the Court's previous decisions that the fundamental principle of non-discrimination in the sphere of the free movement of persons, laid down in Article 7 (2) of Regulation No 1612/68, prohibits any discrimination against the relatives in the ascending line of a worker from another Member State where those relatives have exercised the right conferred upon them under Article 10 of Regulation No 1612/68 to install themselves with the worker.
- 24 Consequently, a requirement that relatives in the ascending line of workers who are nationals of other Member States must have resided in the territory of a Member State for a specified number of years constitutes discrimination contrary to Article 7 (2) of Regulation No 1612/68, if that requirement is not also imposed on relatives in the ascending line of workers who are nationals of that Member State.

- 25 In reply to the question referred to the Court it must therefore be held that the grant of a special old-age allowance which guarantees a minimum income to old persons under conditions such as those laid down by the national law applicable to the main proceedings constitutes a social advantage within the meaning of Regulation No 1612/68 of the Council of 15 October 1968 and that Article 7 (2) of that regulation must be interpreted to the effect that the grant of such a social advantage may not be made subject to a condition requiring actual residence in the territory of a Member State for a specified number of years if such a condition is not laid down in respect of nationals of that Member State.

Costs

- 26 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Commission de première instance du contentieux de la sécurité sociale, Hauts-de-Seine, by judgment of 8 December 1983, hereby rules:

- (1) The grant of a special old-age allowance which guarantees a minimum income to old persons under conditions such as those laid down by the national law applicable to the main proceedings constitutes a social advantage within the meaning of Regulation No 1612/68 of the Council of 15 October 1968.

- (2) Article 7 (2) of that regulation must be interpreted to the effect that the grant of such a social advantage may not be made subject to a condition requiring actual residence in the territory of a Member State for a specified number of years if such a condition is not laid down in respect of nationals of that Member State.

Bosco

Joliet

O'Higgins

Delivered in open court in Luxembourg on 6 June 1985.

P. Heim

Registrar

G. Bosco

President of the First Chamber