



## Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

29 September 2022\*

(Reference for a preliminary ruling – Social security for migrant workers – Regulation (EC) No 883/2004 – Coordination of social security systems – Family benefits – Back payment – Relocation of the beneficiary to another Member State – Article 81 – Concept of ‘claim’ – Article 76(4) – Duty of mutual information and cooperation – Non-compliance – 12-month limitation period – Principle of effectiveness)

In Case C-3/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 30 November 2020, received at the Court on 4 January 2021, in the proceedings

**FS**

v

**The Chief Appeals Officer,**

**The Social Welfare Appeals Office,**

**The Minister for Employment Affairs,**

**The Minister for Social Protection,**

THE COURT (Seventh Chamber),

composed of J. Passer, President of the Chamber, F. Biltgen (Rapporteur) and N. Wahl, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– FS, by S. Kirwan, Solicitor, A. McMahon, Barrister-at-Law, and D. Shortall, Senior Counsel,

\* Language of the case: English.

- The Chief Appeals Officer, The Social Welfare Appeals Office, The Minister for Employment Affairs and The Minister for Social Protection, by M. Browne, A. Joyce, J. Quaney, acting as Agents, and by K. Binchy, Barrister, and C. Donnelly, Senior Counsel,
  - the Czech Government, by J. Pavliš, M. Smolek and J. Vláčil, acting as Agents,
  - the European Commission, by B.-R. Killmann and D. Martin, acting as Agents,
- having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 76(4) and Article 81 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, and corrigendum OJ 2004 L 200, p. 1).
- 2 The request has been made in proceedings between the applicant in the main proceedings, FS, and the Chief Appeals Officer (Ireland), the Social Welfare Appeals Office (Ireland), the Minister for Employment Affairs and the Minister for Social Protection concerning the rejection of a claim for back payment of child benefit made by FS.

### **Legal context**

#### ***European Union law***

- 3 Article 76 of Regulation No 883/2004, entitled ‘Cooperation’, provides in paragraphs 4 and 5:  

‘4. The institutions and persons covered by this Regulation shall have a duty of mutual information and cooperation to ensure the correct implementation of this Regulation.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall in this connection provide the persons concerned with any information required for exercising the rights conferred on them by this Regulation.

The persons concerned must inform the institutions of the competent Member State and of the Member State of residence as soon as possible of any change in their personal or family situation which affects their right to benefits under this Regulation.
5. Failure to respect the obligation of information referred to in the third subparagraph of paragraph 4 may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Regulation.’

4 Article 81 of that regulation, entitled ‘Claims, declarations or appeals’, provides:

‘Any claim, declaration or appeal which should have been submitted, in application of the legislation of one Member State, within a specified period to an authority, institution or tribunal of that Member State shall be admissible if it is submitted within the same period to a corresponding authority, institution or tribunal of another Member State. In such a case the authority, institution or tribunal receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or tribunal of the former Member State either directly or through the competent authorities of the Member States concerned. The date on which such claims, declarations or appeals were submitted to the authority, institution or tribunal of the second Member State shall be considered as the date of their submission to the competent authority, institution or tribunal.’

### ***Irish law***

5 Section 220 of the Social Welfare Consolidation Act 2005 of 27 November 2005, in the version applicable to the dispute in the main proceedings (‘the 2005 Act’), provides that a person with whom a qualified child normally resides is to be qualified for child benefit in respect of that child and is referred to as ‘a qualified person’.

6 Section 241(1) of that law requires that it is to be a condition of any person’s right to any benefit that he or she makes a claim for that benefit in the prescribed manner.

7 Under Article 182(k) of the Social Welfare (Consolidated Claims, Payment and Control) Regulations 2007 (S.I. No 142 of 2007) – Prescribed time for making claim, in the version applicable to the dispute in the main proceedings, in respect of claims for child benefit, the prescribed period is to be 12 months from the day on which, apart from satisfying the conditions of making a claim, the claimant becomes a qualified person within the meaning of section 220 of the 2005 Act.

8 Section 241(4) of the 2005 Act states, in essence, that a person who fails to make a claim for child benefit within the prescribed time is to be disqualified from seeking any backdating of payment to before the date on which the claim is made, unless a deciding officer or appeals officer is satisfied that there was good cause for delay in making the claim, in which case, child benefit is to be payable from the first day of the month following that in which the claimant became a qualified person within the meaning of section 220 of that law.

9 Section 301 of the same law provides, inter alia, that a deciding officer may at any time revise any decision of a deciding officer, where there has been any relevant change of circumstances since the decision was given.

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

10 The applicant in the main proceedings, a Romanian national, married in 2012 in Romania, where she gave birth to a child in December 2015.

11 She made a claim for child benefit in that Member State, which was granted to her from December 2015 or January 2016.

- 12 In October 2016, the husband of the applicant in the main proceedings moved to Ireland to work there as a health care assistant. He did not make a claim for child benefit in that Member State. When, at the end of 2016, the applicant in the main proceedings and their child joined him in Ireland, she also did not submit a claim to that effect in Ireland, but continued to receive Romanian child benefit.
- 13 On 10 January 2018, the applicant in the main proceedings made a claim to the competent Irish authorities for Irish child benefit.
- 14 In accordance with Irish social law, that claim was characterised as out of time, since it had been made more than 12 months after the date on which the applicant in the main proceedings or her husband had settled in Ireland. According to that law, such an application may give rise to a back payment of child benefit only if the claimant states grounds justifying the late submission of his or her claim. It is settled practice, however, that failure on the part of a claimant to claim child benefit does not constitute such a ground.
- 15 In the present case, as the applicant in the main proceedings had not given any grounds of justification, the competent Irish authorities considered that she had not specifically requested a back payment and that, therefore, there were no grounds for granting her such a payment.
- 16 Thus, the application for child benefit submitted by the applicant in the main proceedings to those authorities was accepted by the latter in February 2018 and the payment of the Romanian child benefit ceased approximately at the same time.
- 17 On 13 August 2018, the applicant in the main proceedings requested a review of the decision of those authorities on the basis of section 301 of the 2005 Act, claiming that a back payment should have been considered in her case. That request for a review was rejected on 22 August 2018.
- 18 Since the action brought on 29 August 2018 by the applicant in the main proceedings before the Social Welfare Appeals Office was dismissed on 12 February 2019, she brought an action before the referring court on 10 May 2019 challenging that dismissal.
- 19 First of all, that court notes, without, however, endorsing that approach, that, according to the applicant in the main proceedings, being in receipt of Romanian child benefit constituted a claim within the meaning of Article 81 of Regulation No 883/2004, on the ground that the ‘active’ claim in Romania should have been regarded as a claim for Irish child benefit under Article 81 from the time Ireland became the competent Member State.
- 20 Next, that court raises the question of the applicability of Article 76 of Regulation No 883/2004 to the dispute before it, the applicant in the main proceedings claiming that failure to comply with the obligation laid down in that article does not have the effect of disapplying the provisions of Article 81 of that regulation. The obligation to process a claim is independent of that obligation, since the Court has held that a failure to inform did not necessarily jeopardise the continuity of social insurance cover.
- 21 Finally, the referring court considers that, in so far as the applicant in the main proceedings failed to fulfil her obligation to notify the relevant changes in her situation, it is appropriate to apply proportionate measures under national law which do not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by that regulation.

22 In those circumstances the High Court (Ireland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Does the concept of “claim” in [Article] 81 of [Regulation No] 883/2004 include the ongoing state of being in receipt of a periodic benefit from a first Member State (where the benefit is correctly payable by a second Member State) on each and every occasion on which such benefit is paid, even after the original application and the original decision by the first Member State to grant the benefit?
- (2) If the answer to the first question is yes, then in circumstances where a claim for social security is made incorrectly to a Member State of origin, when it should have been made to a second Member State, is the obligation of the second Member State pursuant to [Article] 81 of [Regulation No] 883/2004 (specifically, the obligation to treat a claim to the Member State of origin as being admissible in the second Member State) to be interpreted as being entirely independent of the applicant’s obligation to give correct information regarding her place of residence pursuant to [Article] 76(4) of [Regulation No] 883/2004, such that a claim made incorrectly to the Member State of origin must be accepted as admissible by the second Member State for the purposes of [Article] 81, notwithstanding the failure of the applicant to provide correct information as to her place of residence in accordance with [Article] 76(4) [of that regulation], within the period for making a claim prescribed by the law of the second Member State?
- (3) [Does] the general EU law principle of effectiveness [have] the consequence that access to EU law rights is rendered ineffective in circumstances such as those in the present proceedings (in particular, in circumstances where the EU national exercising free movement rights is in breach of her obligation under [Article] 76(4) to notify the social welfare authorities of the Member State of origin of her change of country of residence) by a requirement of national law in the Member State in which the right of free movement is exercised that in order to obtain a backdating of claims for child benefit an EU national must apply for such a benefit in the second Member State within a period of twelve months prescribed by the domestic law of the latter Member State?

## **Consideration of the questions referred**

### ***The first question***

- 23 By its first question, the referring court asks, in essence, whether Article 81 of Regulation No 883/2004 must be interpreted as meaning that the concept of ‘claim’ within the meaning of that article refers only to an initial application made under the legislation of a Member State by a person who has subsequently exercised his or her right to freedom of movement, or whether it also covers an ‘ongoing’ application, occurring at the time of the periodic payment, by the competent authorities of that Member State, of a benefit normally payable at the time of the payment of that benefit by another Member State.
- 24 As regards the interpretation of a provision of EU law, it is necessary to consider, in accordance with the settled case-law of the Court, not only its wording but also its context and the objectives of the legislation of which it forms part, while the origins of the provision may also provide information relevant to its interpretation (see, to that effect, judgment of 8 May 2019, *Inspecteur van de Belastingdienst*, C-631/17, EU:C:2019:381, paragraph 29 and the case-law cited).

- 25 In the present case, the Court has already held, with regard to Article 83 of Regulation No 4 of the Council of 3 December 1958 on implementing procedures and supplementary provisions in respect of Regulation No 3 concerning social security for migrant workers (OJ 1958, 30, p. 597), the content of which is essentially equivalent to that of Article 81 of Regulation No 883/2004, that it is clear from the wording of Article 83 that it concerns the submission of claims by migrant workers (see, to that effect, judgment of 10 June 1982, *Camera*, 92/81, EU:C:1982:219, paragraph 7).
- 26 The objective of Article 81 of Regulation No 883/2004 is to facilitate the movement of migrant workers by simplifying the administrative formalities with which they must comply, in view of the complexity of the administrative procedures existing in the various Member States, and to prevent persons concerned from being deprived of their rights on purely formal grounds. Thus, by virtue of that article, the submission of a claim to an authority, institution or tribunal of a Member State other than the Member State called upon to pay the benefit has the same effect as if that claim had been submitted direct to the competent authority of the latter Member State (see, to that effect, with regard to Article 83 of Regulation No 4, judgment of 10 June 1982, *Camera*, 92/81, EU:C:1982:219, paragraph 7, and, with regard to Article 86 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 1971 L 149, p. 2), judgment of 27 May 1982, *Aubin*, 227/81, EU:C:1982:209, paragraph 23).
- 27 It follows that Article 81 of Regulation No 883/2004 is to be applied where an application for child benefit is submitted by a migrant worker to the authorities of a Member State which does not have jurisdiction to entertain the application by virtue of the conflict rules laid down by that regulation.
- 28 By contrast, where an application for child benefit is submitted to the authorities of a Member State solely on the basis of the national law of that State and the situation of the beneficiary is confined to that Member State, that application does not fall within the scope of Regulation No 883/2004 and cannot therefore be regarded as constituting a ‘claim’ within the meaning of Article 81 of that regulation.
- 29 In the present case, it must be stated that, at the time the initial application for child benefit was submitted in Romania, the family situation of the applicant in the main proceedings had no foreign element and the Romanian authorities alone were competent to determine that application.
- 30 It was only from the time when the applicant in the main proceedings transferred her residence to Ireland that she fell within the personal scope of Regulation No 883/2004 and that, consequently, the conflict rules laid down by that regulation became applicable to her.
- 31 However, it cannot be accepted that, in the absence of any administrative formality on the part of the person concerned, the fact of continuing to receive a periodic benefit from the authorities of a Member State may be treated in the same way as a ‘claim’ within the meaning of Article 81 of Regulation No 883/2004.
- 32 Such an interpretation would not be consistent with the objective of Article 81 of Regulation No 883/2004, which, as is apparent from paragraph 26 above, is precisely to simplify the administrative formalities which must be complied with by the persons concerned in view of the complexity of the procedures existing in the various Member States.

- 33 In that regard, it should be noted that the system for forwarding claims, declarations or appeals established by Article 81 of Regulation No 883/2004, under which the authorities of a Member State which does not have jurisdiction by virtue of the conflict rules laid down in that regulation are to forward without delay the claims, declarations or appeals brought before them to the authorities of the Member State which does have jurisdiction, is subject to compliance by the institutions and persons concerned with their mutual obligation to inform and cooperate.
- 34 It follows, in particular, from Article 76(4) of Regulation No 883/2004 that, while the authorities are required to respond to all queries within a reasonable period of time and to provide the persons concerned with any information required for exercising the rights conferred on them by that regulation, those persons are, for their part, required to inform the institutions of the competent Member State and of the Member State of residence as soon as possible of any change in their personal or family circumstances which affects their right to benefits under that regulation.
- 35 Furthermore, an interpretation of the concept of ‘claim’ which disregards any administrative procedures taken by the person concerned would make it impossible for the authorities involved to comply with the obligations arising from both Article 76 and Article 81 of Regulation No 883/2004, since they would be unable to determine either the time at which the information, claims, declarations or appeals concerned should be forwarded or the authorities to which they should be forwarded.
- 36 In the light of the foregoing, the answer to the first question is that Article 81 of Regulation No 883/2004 must be interpreted as meaning that the concept of ‘claim’ within the meaning of that article refers only to an application made by a person who has exercised his or her right to freedom of movement to the authorities of a Member State which is not competent under the conflict rules laid down by that regulation. Therefore, that concept does not include either the initial application made under the legislation of a Member State by a person who has not yet exercised his or her right to freedom of movement or the periodic payment, by the authorities of that Member State, of a benefit normally payable, at the time of that payment, by another Member State.

### ***The second question***

- 37 Having regard to the answer given to the first question, there is no need to answer the second question.

### ***The third question***

- 38 By its third question, the referring court asks, in essence, whether EU law, and in particular the principle of effectiveness, precludes the application of national legislation which makes the retroactive effect of an application for child benefit subject to a limitation period of 12 months.
- 39 In that regard, it should be borne in mind that EU law does not limit the power of the Member States to organise their social security systems and that it is for the legislation of each Member State to lay down the conditions under which social security benefits are granted, the amount of such benefits and the period for which they are granted, as well as the time limits for making applications for such benefits (see, to that effect, judgment of 18 November 2010, *Xhymshiti*, C-247/09, EU:C:2010:698, paragraph 43). However, those conditions must comply with EU law

and must not have the effect of excluding from the scope of national legislation persons to whom that legislation applies pursuant to Regulation No 883/2004 (see, to that effect, judgment of 4 June 2015, *Fischer-Lintjens*, C-543/13, EU:C:2015:359, paragraph 49).

- 40 In the present case, it is important to note that the limitation period laid down by the Irish legislation does not have the effect of excluding the persons concerned from entitlement to child benefit, but merely reduces their entitlement to back payment where they do not apply for it within 12 months of the date on which the conditions for eligibility for that benefit are satisfied.
- 41 Thus, it cannot be ruled out that, if the applicant in the main proceedings had declared to the Romanian authorities or the Irish authorities that she had changed her place of residence as soon as possible, she would have been entitled to back payment of Irish child benefit.
- 42 As is apparent from paragraph 34 above, in accordance with the third subparagraph of Article 76(4) of Regulation No 883/2004, any person in receipt of a social benefit must inform the institutions of the competent Member State and those of the Member State of residence as soon as possible of any change in his or her personal or family situation which may affect his or her entitlement to benefits under that regulation.
- 43 In that regard, the Court has already held that a failure to respect the obligation of information referred to in that provision may result, in accordance with Article 76(5) of that regulation, only in the application of proportionate measures in accordance with national law, which must be equivalent to those applicable to similar situations under domestic law (principle of equivalence) and must not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by that regulation (principle of effectiveness) (see, to that effect, judgment of 4 June 2015, *Fischer-Lintjens*, C-543/13, EU:C:2015:359, paragraph 57).
- 44 As the referring court points out, since the applicant in the main proceedings has not claimed that there has been a breach of the principle of equivalence, the Court is not called upon to analyse that principle in the present case.
- 45 As regards the principle of effectiveness, it is settled case-law that the setting of reasonable limitation periods satisfies, in principle, the requirement of effectiveness, in that it constitutes an application of the fundamental principle of legal certainty, which protects both the individual and the authorities concerned. Such time limits are not liable to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (see, to that effect, judgments of 15 April 2010, *Barth*, C-542/08, EU:C:2010:193, paragraph 28, and of 8 July 2010, *Bulicke*, C-246/09, EU:C:2010:418, paragraph 36).
- 46 In addition, the Court has held that a national provision limiting the retroactive effect of claims for child benefit to six months does not make it impossible to exercise the rights conferred by EU law on migrant workers (see, to that effect, judgment of 23 November 1995, *Alonso-Pérez*, C-394/93, EU:C:1995:400, paragraphs 30 and 32), just as it has recognised that the setting of a national limitation period of three years is reasonable (see, to that effect, judgment of 15 April 2010, *Barth*, C-542/08, EU:C:2010:193, paragraph 28).
- 47 It follows that a limitation period of 12 months does not appear, in itself, to render practically impossible or excessively difficult the exercise of the rights conferred by Regulation No 883/2004.



- 48 In the light of the foregoing considerations, the answer to the third question is that EU law, and in particular the principle of effectiveness, does not preclude the application of national legislation which makes the retroactive effect of an application for child benefit subject to a limitation period of 12 months, since that period does not render practically impossible or excessively difficult the exercise by the migrant workers concerned of the rights conferred by Regulation No 883/2004.

### Costs

- 49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Seventh Chamber) hereby rules:

**1. Article 81 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**

**must be interpreted as meaning that the concept of ‘claim’ in that article refers only to an application made by a person who has exercised his or her right to freedom of movement to the authorities of a Member State which is not competent under the conflict rules laid down by that regulation. Therefore, that concept does not include either the initial application made under the legislation of a Member State by a person who has not yet exercised his or her right to freedom of movement or the periodic payment, by the authorities of that Member State, of a benefit normally payable, at the time of that payment, by another Member State.**

- 2. EU law, and in particular the principle of effectiveness, does not preclude the application of national legislation which makes the retroactive effect of an application for child benefit subject to a limitation period of 12 months, since that period does not render practically impossible or excessively difficult the exercise by the migrant workers concerned of the rights conferred by Regulation No 883/2004.**

Passer

Biltgen

Wahl

Delivered in open court in Luxembourg on 29 September 2022.

A. Calot Escobar  
Registrar

J. Passer  
President of the Seventh Chamber