

JUDGMENT OF THE COURT (Sixth Chamber)  
2 March 1989 \*

In Case 359/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour de cassation (Court of Cassation) of France for a preliminary ruling in the proceedings pending before that court between

**Pietro Pinna**

and

**Caisse d'allocations familiales de la Savoie** (Family Allowances Fund for Savoie)

on the interpretation of Article 73 of Regulation No 1408/71 of the Council on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community [Official Journal, English Special Edition 1971 (II), p. 416],

THE COURT (Sixth Chamber)

composed of: T. Koopmans, President of Chamber, T. F. O'Higgins, G. F. Mancini, F. A. Schockweiler and M. Díez de Velasco, Judges,

Advocate General: C. O. Lenz

Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

Pietro Pinna, by A. Lyon-Caen, F. Fabiani and L. Liard, SCP, lawyers with a right of audience before the conseil d'Etat and the Cour de cassation,

\* Language of the case: French.

the Caisse d'allocations familiales de la Savoie, by Desaché-Gatineau SCP, lawyer with a right of audience before the conseil d'Etat and the Cour de cassation,

the Government of the French Republic, in the written procedure, by Jean-Pierre Puissochet and Claude Chavance and, in the oral procedure, by Régis de Gouttes and Claude Chavance,

the Government of the Italian Republic, by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by Pier Giorgio Ferri, avvocato dello Stato,

the Government of the Hellenic Republic, in the written procedure, by Iannos Cranidiotis, Special Secretary at the Ministry of Foreign Affairs, assisted by Ioanna Galanis-Marangoudakis, Legal Adviser in the European Communities Litigation Department of the Ministry of Foreign Affairs, and, in the oral procedure, by N. Fragakis, acting as Agent,

the Government of the Portuguese Republic, by L. Inez Fernandes, Director of Legal Affairs in the Directorate-General for European Community Affairs, L. Real, a lawyer in the same Directorate-General, and S. Pizarro, Deputy Director-General of the Department for International Relations and Social Security Conventions,

the Commission of the European Communities, by its Legal Adviser, Dimitrios Gouloussis,

having regard to the Report for the Hearing and further to the hearing on 20 October 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 1 December 1988,

gives the following

## Judgment

- 1 By judgment dated 19 November 1987 which was received at the Court on 1 December 1987, the Cour de cassation of France referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Article 73 of Regulation No 1408/71 of the Council 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 [Official Journal, English Special Edition 1971 (II), p. 416].
- 2 The questions were raised in the course of proceedings concerning the refusal of the Caisse d'allocations familiales de la Savoie to grant Mr Pinna family benefits for periods in 1977 and 1978.
- 3 Mr Pinna, an Italian national, resides in France with his wife and their two children, Sandro and Rosetta. In 1977 the children went to Italy with their mother for an extended visit. The Caisse d'allocations familiales de la Savoie refused to pay Mr Pinna family benefits for Sandro in respect of the period from 1 October to 31 December 1977 and for Rosetta in respect of the period from 1 October 1977 to 31 March 1978 on the ground that the benefits should be paid by the Istituto nazionale della previdenza sociale (National Social Security Institution) at Aquila, the place in Italy where the children had been staying at the material times. That decision appears to have been based on Article 73(2) of Regulation No 1408/71.
- 4 Article 73(1) and (2) of Regulation No 1408/71 provides as follows:
  - '1. A worker subject to the legislation of a Member State other than France shall be entitled to the family benefits provided for by the legislation of the first Member State for members of his family residing in the territory of another Member State, as though they were residing in the territory of the first State.
  2. A worker subject to French legislation shall be entitled, in respect of members of his family residing in the territory of a Member State other than France, to the family allowances provided for by the legislation of such Member State; the worker must satisfy the conditions regarding employment on which French legislation bases entitlement to such benefits.'

- 5 Mr Pinna brought proceedings against the abovementioned decision. In the course of an appeal brought by Mr Pinna, the Cour de cassation requested the Court for a preliminary ruling on:
- (1) the validity and continued applicability of Article 73(2) of Regulation No 1408/71 of 14 June 1971;
  - (2) the interpretation of the word 'residence' in the context of that provision.
- 6 In its judgment of 15 January 1986 in Case 41/84 [1986] ECR 1, the Court ruled on that request as follows:
- '(1) Article 73(2) of Regulation No 1408/71 is invalid in so far as it precludes the award to employed persons subject to French legislation of French family benefits for members of their family residing in the territory of another Member State.
- (2) Except as regards employed persons who have already brought legal proceedings or made an equivalent claim prior to the date of this judgment, the aforesaid invalidity of Article 73(2) of Regulation No 1408/71 cannot be relied on in order to support claims to benefits for periods prior to that date.'
- 7 As a result of that judgment, the Cour de cassation considered that, having regard in particular to the institutional rules laid down in Article 51 of the EEC Treaty, an uncertainty remained as to the provisions which now govern the provision of family allowances for migrant workers subject to French legislation.
- 8 For that reason the Cour de cassation once more stayed proceedings and referred the following questions to the Court for a preliminary ruling:
- '(1) Does the fact that Article 73(2) of Regulation No 1408/71 has been declared invalid mean that the system for the payment of family benefits which is defined in Article 73(1) of that regulation has become of general application or, to the contrary, that new rules must be adopted under the procedure laid down in Article 51 of the Treaty of Rome?

- (2) In the latter case, what is the system applicable during the transitional period to migrant workers subject to French legislation?’
- 9 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 10 In its first question, the Cour de cassation asks whether the fact that Article 73(2) of Regulation No 1408/71 has been declared invalid means that the system for the payment of family allowances defined in Article 73(1) of that regulation has now become of general application or whether new rules must be adopted in that regard.
- 11 It should first be pointed out that in its judgment of 15 January 1986 the Court found that Article 73 of Regulation No 1408/71 drew a distinction between workers employed in France and those employed in the other Member States.
- 12 The Court held in the aforesaid judgment that since Article 73 of Regulation No 1408/71 created two different systems for migrant workers depending on whether they were subject to French legislation or to the legislation of another Member State, it added to the disparities caused by national legislation and, as a result, impeded the achievement of the aims set out in Articles 48 to 51 of the Treaty. With regard more specifically to the assessment of the validity of Article 73(2) itself, the Court stated that the criterion set out in that provision was not of such a nature as to secure the equal treatment laid down by Article 48 of the Treaty and therefore could not be employed within the context of the coordination of national legislation prescribed by Article 51 of the Treaty with a view to promoting the free movement of workers within the Community in accordance with Article 48 of the Treaty.
- 13 As long as the Council has failed, following the judgment of the Court, to lay down new rules on that subject which are in conformity with Article 51 of the

Treaty, that provision precludes the national authorities from continuing to apply a system for the payment of family benefits which is contrary to Community law. It is incumbent on those authorities to draw the inferences in their legal system from a declaration of invalidity made in the context of Article 177 of the Treaty.

14 Those considerations mean that the national authorities are required to apply, even to workers subject to French legislation, the rules laid down in Article 73(1), which now remain the only valid system of reference.

15 In the observations submitted to the Court, the objection was made, in particular by the French Government, that such an interpretation of Article 73(1) could not be considered because the expression 'other than France' referred to the position of workers subject to the legislation of a Member State other than France and that French legislation thus remained expressly excluded from the scope of that provision.

16 That argument cannot be upheld. The phrase 'other than France' contained in Article 73(1) of the contested regulation may be interpreted only by reference to the specific system laid down in Article 73(2) of that regulation, with the consequence that the only effect that the Court's ruling in its judgment of 15 January 1986 whereby that provision was declared invalid could have had was to deprive that phrase of its *raison d'être* and effectiveness. That phrase must therefore be regarded as already implicitly declared invalid by the said judgment. Moreover, such an interpretation is necessary because any other interpretation would deprive the judgment of 15 January 1986 of all effectiveness.

17 The reply to the first question must therefore be that until such time as the Council adopts new rules which are in conformity with Article 51 of the Treaty, the fact that Article 73(2) of Regulation No 1408/71 has been declared invalid means that the system for the payment of family benefits laid down in Article 73(1) of that regulation is of general application.

- 18 Having regard to the reply given to the first question, there is no need to rule on the second question referred to the Court.

### Costs

- 19 The costs incurred by the Government of the French Republic, the Government of the Italian Republic, the Government of the Hellenic Republic, the Government of the Portuguese Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since 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 on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Cour de cassation of France, by judgment of 19 November 1987, hereby rules:

Until such time as the Council adopts new rules which are in conformity with Article 51 of the Treaty, the fact that Article 73(2) of Regulation No 1408/71 has been declared invalid means that the system for the payment of family benefits laid down in Article 73(1) of that regulation is of general application.

Koopmans

O'Higgins

Mancini

Schockweiler

Díez de Velasco

Delivered in open court in Luxembourg on 2 March 1989.

J.-G. Giraud

T. Koopmans

Registrar

President of the Sixth Chamber