

Anonymised version

Translation

C-27/20 — 1

Case C-27/20

Request for a preliminary ruling

Date lodged:

21 January 2020

Referring court:

Tribunal de grande instance de Rennes (France)

Date of the decision to refer:

7 June 2019

Applicants:

PF

QG

Defendant:

Caisse d'allocations familiales d'Ille-et-Vilaine (CAF)

TRIBUNAL DE GRANDE INSTANCE DE RENNES

POLE SOCIAL

(REGIONAL COURT, RENNES, SOCIAL DIVISION)

[...]

DECISION

APPLICANTS:

[...]

PF
RENNES

[...]
 [...] **QG**
 [...] **RENNES**
 [...]

[...]

[...] **DEFENDANT:**

[...] **CAF D'ILLE-ET-VILAINE POLE**
JURIDIQUE
 [...] RENNES [...]

[...] **[Or. 2]**

DESCRIPTION OF THE DISPUTE

It is apparent from the documents provided that PF and QG, a married couple who are both French nationals, declared taxable income of EUR 59 734 in 2011 and EUR 63 680 in 2012, while receiving family allowances at the full rate, in the amount of EUR 458.02 per month, in respect of their four minor children.

Payment of this benefit ceased after QG, a magistrate at entry level within the judiciary, was seconded to the Court of Justice of the European Union in Luxembourg as a référendaire [...] for a period of 3 years, with a corresponding increase in net annual income, namely EUR 123 609 in 2015 and EUR 132 499 in 2016.

Following QG's return to France and reinstatement in his original post in September 2017, entailing a substantial drop in income, the applicants made an application to the CAF (family allowances office) on 1 December 2017, seeking family allowances calculated in accordance with QG's current income, on the basis that Article R 532-3 of the code de la sécurité sociale (Social Security Code), which defines the reference calendar year as the year before that preceding the payment period (in this case, 2015), was to be disappplied.

By letter of 24 January [2018], the CAF d'Ille-et-Vilaine responded to the application, stating that family allowances were payable in the amount of EUR 115.65 per month.

By registered letter with acknowledgment of receipt dated 20 February 2018, PF and QG brought the matter before the tribunal aux affaires de sécurité sociale de Rennes (Social Security Court, Rennes, France), seeking annulment of the decision by which the [CAF d'Ille-et-Vilaine] had determined that the amount of family allowances payable was EUR 115.65 per month, and EUR 462.62 per month as from September 2017, and to have that amount determined, on the basis of the updated income (EUR 63 680) and the number of children (4), as being EUR 462.62 per month (**Action [18.00200]**).

By registered letter with acknowledgment of receipt dated 13 May 2018, the applicants brought a further action before the Social Security Court, Rennes,

following an unfavourable decision of the amicable settlement committee dated 20 April 2018 (**Action [18.00480]**).

In that action, they submit:

- that the [family allowances] office did not have due regard to Articles 20 and 45 of the Treaty on the Functioning of the European Union, Article 4 of Regulation No 883/2004 on the coordination of social security systems or Article 7 of Regulation No 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union,

- that if there is doubt as to the application of EU law, a question should be referred to the Court of Justice of the European Union for a preliminary ruling, [...] [**Or. 3**]

[...] [proposed question]

- that Article R 532-3 of the Social Security Code is manifestly illegal, in that it infringes the principle of equal treatment.

In their summary submissions of 22 October 2018, which were repeated in their oral submissions at the hearing, and to which express reference is made, the applicants maintain their original claims.

The [CAF d'Ille-et-Vilaine] contends that the court should declare the action unfounded and uphold the decision of the amicable settlement committee, on the basis that there has been no contravention of EU law and in accordance with Article R [532-3] of the Social Security Code, which, in its view, does not infringe the principle of equal treatment.

GROUNDS FOR THE DECISION

Having regard to the connection between them, and in the interests of the proper administration of justice, it is appropriate to order the joinder of Actions 18.00200 and 18.00480.

As regards the calculation of family allowance rights, Article R 532-3 of the Social Security Code specifies:

The resources to be taken into account shall be those received during the reference calendar year. The reference calendar year shall be the year before that preceding the payment period.

Subject to Articles R. 532-4 to R. 532-8 and to the following paragraphs of the present article, the resources to be taken into account shall be the total of the specific classes of net income used for the purposes of calculating income tax in accordance with the scale for income subject to proportional taxation or subject to an income tax deduction at source, and the income received outside France or

paid by an international organisation, excluding any income of children which has been subject to joint taxation and after application of:

(a) the deduction relating to maintenance claims referred to in paragraph 2 in section II of Article 156 of the code général des impôts (General Tax Code) and increased as provided for in Article 158(7) of [that code];

(b) the abatement referred to in Article 157 bis of the General Tax Code payable to elderly or disabled persons.

The following shall also be taken into account: [Or. 4]

1° the daily allowance referred to in paragraph 2 of Article L. 431-1, after application of the deduction corresponding to that referred to in the second subparagraph of paragraph 3 of Article 83 of the General Tax Code;

2° the remuneration referred to in Article 81 quater of the General Tax Code;

Amounts falling due under lifetime annuities payable to disabled persons, as referred to in paragraph 2 of Article 199 septies of the General Tax Code, shall be excluded from the calculation of resources.

Deductions made pursuant to Article 156-1 of the General Tax Code in respect of the carrying-forward of losses incurred in a year prior to that under consideration shall not be taken into account.

Where the resources of the recipient of a family allowance or his or her spouse or unmarried partner are not derived, in the reference year, from salaried employment, and are not known at the time of the application for or review of rights, the resources to be taken into account shall be the most recent known resources, determined in accordance with the conditions set out in the preceding paragraphs. Those resources shall be adjusted by applying the average annual rate of change in the household consumer prices index for the reference calendar year as set out in the economic and financial report annexed to the draft finance law.

In the case of unmarried partners, the resources to be taken into account shall be those received by each of the partners during the reference year, determined in accordance with the conditions set out in the preceding paragraphs.

Article 49 of the code de procédure civile (Civil Procedure Code) provides:

Any court hearing an application in respect of which it has jurisdiction may hear and determine any plea raised by way of defence, even if it necessitates the interpretation of a contract, except for pleas raising an issue which falls within the exclusive jurisdiction of another court.

Where the resolution of a dispute depends on an issue giving rise to serious difficulty and falling within the jurisdiction of the administrative courts, the judicial court before which the matter has initially been brought shall refer that issue to the competent administrative court, pursuant to Title I of Book III of the code de justice administrative (Administrative Justice Code). It shall stay the proceedings pending a decision on the question referred.

Under Article 267 of the Treaty on the Functioning of the European Union:

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Treaties;*
- (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;*

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.
[Or. 5]

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

Article 45(2) [TFEU] provides that freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

Under that principle, any national measure which prevents or hinders the exercise of the fundamental freedoms, or makes it less attractive, constitutes a restriction of free movement, though Member States are entitled to adopt national measures where there are overriding reasons in the public interest for doing so, provided that those measures are apt to ensure the attainment of the objective pursued and do not go beyond what is necessary for that purpose, it being understood that national legislation is not apt to ensure the attainment of the objective pursued unless it genuinely responds to a concern to attain that objective and does so in a coherent and systematic manner.

It should also be borne in mind that the principle of non-discrimination laid down in Articles 45 and 49 [TFEU] prohibits not only direct or overt discrimination but

also all covert forms of discrimination which, by the application of other distinguishing criteria, lead to the same result.

In the present case, the question arises of whether the provision at issue can be justified on the basis of overriding reasons in the public interest, or whether it is discriminatory.

Given that, in principle, a citizen of a Member State of the European Union must, in all Member States, receive the same legal treatment as nationals of those Member States who are in the same situation [and] in the light of that uncertainty [as to whether] it would be incompatible with the right of free movement for such a citizen to receive, in the Member State of which he or she is a national, less favourable treatment than he or she would have received if he or she had not exercised the rights of movement available to him or her under the [TFEU], it is appropriate to refer [a question] to the Court of Justice of the European Union [for a preliminary ruling].

[...]

ON THOSE GROUNDS

The court [...], [Or. 6]

[...]

- Refers the following question to the Court of Justice of the European Union:

‘Is EU law, in particular Articles 20 and 45 of the Treaty on the Functioning of the European Union, Article 4 of Regulation No 883/2004 and Article 7 of Regulation No 492/2011, to be interpreted as precluding a provision of national legislation, such as Article R 532-3 of the code de la sécurité sociale (French Social Security Code), which defines the reference calendar year, for the purposes of calculating family allowances, as the year before that preceding the payment period, and results, in a situation where the income of the person claiming the allowance has risen substantially in another Member State, and then fallen [following] his or her return to his or her Member State of origin, in that person being deprived, unlike residents who have not exercised their right of free movement, of part of his or her family allowance rights?’

- Stays the proceedings in the action brought by QG and PF,

[...]. [procedural matters]