

**Case 41/84**

**Pietro Pinna**

**v**

**Caisse d'allocations familiales de la Savoie**

(reference for a preliminary ruling  
from the Cour de cassation of the French Republic)

(Social security — Family allowances —  
Article 73 (2) of Regulation No 1408/71)

**Summary**

1. *Social security for migrant workers — Treaty provisions — Object — Coordination, not harmonization, of the legislation of the Member States — Differences in treatment stemming from differences between social security systems — Permissibility — Creation by the Community rules of disparities in treatment — Illegal*  
(EEC Treaty, Arts 48 to 51)
2. *Social security for migrant workers — Equal treatment — Family benefits — Applicable legislation — Legislation of the state of residence of members of the family — Covert discrimination — Article 73 (2) of Regulation No 1408/71 — Invalidity*  
(EEC Treaty, Arts 48 and 51; Council Regulation No 1408/71, Art. 73 (2))
3. *Preliminary rulings — Assessment of validity — Declaration that a regulation is invalid — Effects — Temporal limitation — Powers of the Court*  
(EEC Treaty, second paragraph of Art. 174, Art. 177)

1. Article 51 of the Treaty provides for the coordination, not the harmonization, of the legislation of the Member States and hence leaves in being differences between the Member States' social security systems and, consequently, in the rights of workers employed in the Member States. It follows that substantive and procedural differences between the social security systems of individual Member States, and hence in the rights of workers employed in the Member States, are unaffected by Article 51 of the Treaty. However, the objective of securing free movement for workers within the Community, as provided for by Articles 48 to 51 of the Treaty, will be imperilled and made more difficult to realize, if unnecessary differences in the social security rules are introduced by Community law. It follows that the Community rules on social security introduced pursuant to Article 51 of the Treaty must refrain from adding to the disparities which already stem from the absence of harmonization of national legislation.

2. The principle of equal treatment prohibits not only overt discrimination based on nationality but all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result.

That is the case when the criterion of the Member State in which the members of the family reside is used by the Community rules in order to determine the legislation applicable to the family benefits of a migrant worker. Even though the legislation of a Member State employs the same criterion to determine the entitlement to family benefits of a

national of that State employed in its territory, that criterion is by no means equally important for that category of worker, since the problem of members of the family residing outside the Member State of employment arises essentially for migrant workers. Consequently, the criterion is not of such a nature as to secure the equal treatment laid down by Article 48 of the Treaty and therefore may not be employed within the context of the coordination of national legislation which is laid down in Article 51 of the Treaty with a view to promoting the free movement of workers within the Community in accordance with Article 48.

It follows that 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.

3. Where it is justified by overriding considerations the second paragraph of Article 174 of the Treaty gives the Court discretion to decide, in each particular case, which specific effects of a regulation which has been declared void must be maintained. When the Court makes use of the possibility of limiting the effect on past events of a declaration in proceedings under Article 177 of the Treaty that a measure is invalid, it is for the Court to decide whether an exception to that temporal limitation of the effect of its judgment may be made in favour of the party which brought the action before the national court or in favour of

any other person who took similar steps before the declaration of invalidity or whether, conversely, a declaration of invalidity applicable only to the future

constitutes an adequate remedy even for persons who took action at the appropriate time with a view to protecting their rights.

OPINION OF MR ADVOCATE GENERAL MANCINI  
delivered on 21 May 1985 \*

*Mr President,  
Members of the Court,*

1. The French Cour de cassation [Court of Cassation] asks the Court to interpret, in connection with proceedings pending between Pietro Pinna and the Caisse d'allocations familiales de la Savoie [Family Allowances Fund, Savoie], Article 73 (2) of Regulation (EEC) 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). That article provides that: '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 the Member State in whose territory those members of the family reside; the worker must satisfy the conditions regarding employment on which French legislation bases entitlement to such benefits'. In particular the court making the reference wishes to know whether the provision is still valid and effective and how the concept of residence referred to therein is to be interpreted.

2. Pietro Pinna, an Italian national, works and resides, together with his family, in France, where he receives French family benefits. In Autumn 1977 his wife and two children travelled to Italy, his son, the elder of the two children, returning to France on 31 December 1977, his wife and daughter on 31 March 1978. In view of that stay in Italy the Caisse d'allocations familiales de la Savoie (hereinafter referred to as 'the Fund') refused to pay Mr Pinna the benefits payable for his son in respect of the period from 1 October to 31 December 1977 and for his daughter in respect of the period from 1 October 1977 to 31 March 1978. The Fund considered, in fact, that, as a result of Article 73 (2) of Regulation No 1408/71 (quoted above), the family allowances had to be paid by the Italian social security institution (Istituto Nazionale della Previdenza Sociale) at the place where the two children had resided in Italy (L'Aquila).

Following an unsuccessful appeal against that decision before the Commission des recours gracieux [Appeals Committee] Mr Pinna instituted proceedings before the Commission de première instance du contentieux de la sécurité sociale [Social

\* Translated from the Italian.