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CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
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İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
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EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Case C-286/03

*Silvia Hosse v Land Salzburg*

**A MEMBER OF THE FAMILY OF A FRONTIER WORKER LIVING WITH THE  
WORKER MAY NOT BE DEPRIVED OF A CARE ALLOWANCE GRANTED BY  
THE AUTHORITIES OF THE PLACE OF EMPLOYMENT**

A Community regulation<sup>1</sup> governs the social security position of workers and members of their families moving within the Community. The regulation applies to all legislation concerning branches of social security relating inter alia to sickness benefits. It does not apply, on the other hand, to the legislation of a Member State on special non-contributory benefits, listed in an annex to the regulation, whose validity is confined to part of the State's territory. In the case of Austria, benefits granted under the legislation of the provinces for disabled persons and persons in the need of care are regarded as such special benefits.

Mr Hosse, of German nationality, is a frontier worker employed in Austria as a teacher in the Province of Salzburg. He pays taxes and social security contributions in Austria and is affiliated to sickness insurance in that State. He resides in Germany, near the Austrian frontier, with his daughter Silvia Hosse, who is severely disabled. In those circumstances, an application was made for a care allowance under a law of the Province of Salzburg for Silvia Hosse. The application was refused on the ground that under that law the person reliant on care must have his main residence in the Province of Salzburg in order to receive the care allowance. An appeal was brought before the Oberster Gerichtshof (Supreme Court), which decided to refer several questions to the Court of Justice of the European Communities for a preliminary ruling.

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<sup>1</sup> Council Regulation (EEC) No 1408/71 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, as amended and updated by Council Regulation (EC) No 1399/1999 of 29 April 1999 (OJ 1999 L 164, p. 1).

The Court of Justice finds, first, that the care allowance in question is indeed mentioned in the annex to the regulation listing special non-contributory benefits. It states, however, that **that mention on its own is not sufficient** to exclude the allowance from the scope of the regulation. Derogating provisions of the regulation which exclude certain specific benefits from the scope of the regulation must be interpreted strictly. Those derogations can apply only to benefits which satisfy cumulatively the conditions for exclusion it lays down, that is, benefits which are both special and non-contributory and are laid down by legislation whose application is limited to part of the territory of a Member State.

Next, the Court concludes that the care allowance in question **does not constitute a special non-contributory benefit** but a sickness benefit within the meaning of the regulation. It is a benefit which is granted objectively on the basis of a legally defined position and is intended to improve the state of health and life of persons reliant on care, its essential purpose being to supplement sickness insurance benefits.

Finally, the Court notes that that the entitlement to care allowance under the law of the Province of Salzburg is Silvia Hosse's **own right**, not a right derived from her father. However, that does not prevent her from being able to benefit from that entitlement even though she resides in Germany, if she satisfies the other conditions of grant under the regulation. The Court points out that the intention of the regulation is that **the grant of sickness benefits should not be conditional on the residence of the members of the worker's family** in the Member State of the place of employment, so as not to deter Community workers from exercising their right to freedom of movement. It would therefore be contrary to the regulation to deprive the daughter of a worker of a benefit she would be entitled to if she were resident in that Member State.

The Court therefore concludes that that, if Silvia Hosse fulfils the other conditions of grant, she can claim from the competent Austrian institution payment of a care allowance such as that at issue, in so far as she is not entitled to a similar benefit under the legislation of the State in whose territory she resides.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS DE EL EN ES FR HU IT NL PL SK*

*The full text of the judgment may be found on the Court's internet site*  
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-286/03>

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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