



Press and Information

Court of Justice of the European Union

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Judgment in Case C-802/18

Caisse pour l'avenir des enfants v FV and GW

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**A Member State is not entitled to refuse to pay a family allowance in respect of the child of the spouse of a frontier worker where there is no parent-child relationship with that worker**

*That allowance constitutes a social advantage and a social security benefit; therefore it is subject to the principle of equal treatment*

FV works in Luxembourg and resides in France with his wife, GW. The couple have two children. HY, GW's child from a previous relationship, who was born in 2000, lives with FV and GW. GW has sole parental responsibility in respect of HY.

Until the coming into force of the Luxembourg law of 23 July 2016, the household benefited from Luxembourgish family allowances for the three children on account of FV's status as a frontier worker.

From the coming into force of that law, which amended the Social Security Code by excluding the children of a spouse or partner from the concept of 'members of the family', the household was no longer entitled to those allowances in respect of HY. By a decision of 8 November 2016, the Caisse pour l'avenir des enfants (Children's Future Fund) (Luxembourg) considered that FV was no longer entitled to family allowance in respect of HY from 1 August 2016. As that child has no child-parent relationship with FV, the Caisse pour l'avenir des enfants considers that he does not have the status of 'family member', which excludes the right to the Luxembourgish family allowance.

FV brought proceedings before the Conseil arbitral de la sécurité sociale (Social Security Arbitration Board) (Luxembourg) in order to challenge the decision of the Caisse pour l'avenir des enfants and it held that Luxembourgish family benefits constituted a social advantage, within the meaning of the Regulation on freedom of movement for workers<sup>1</sup> and that those benefits relate to the pursuit of an activity as an employed person since, in order to be eligible for those benefits, FV must be a worker subject to Luxembourg law.

The Caisse pour l'avenir des enfants brought appeal proceedings before the Conseil supérieur de la sécurité sociale (Higher Social Security Board) (Luxembourg) because it disputed, inter alia, the treatment of family benefits as a social advantage. That board decided to refer questions for a preliminary ruling to the Court of Justice, inter alia, in order to ascertain whether a family allowance linked to a frontier worker's salaried employment in a Member State constitutes a social advantage, within the meaning of the regulation on freedom of movement for workers. In addition, the Conseil supérieur asks the Court whether EU law precludes a Member State from providing that frontier workers may receive a family allowance linked to the carrying out of salaried employment only in respect of their own children, to the exclusion of their spouse's children with whom they have no parent-child relationship, whereas there is a right to receive that allowance in respect of all children resident in that Member State.

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<sup>1</sup> Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April on freedom of movement for workers within the Union (OJ 2011 L 141, p.1).

By today's judgment, the Court begins by noting that the concept of social advantage in the case of workers who are nationals of other Member States includes all advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory. It states, next, that in the light of the documents before it, the family allowance at issue, which constitutes an advantage, is linked, for a frontier worker such as FV, to the carrying out of salaried employment in Luxembourg. It was not initially granted to FV only in so far as he was a frontier worker subject to Luxembourg law. The Court concludes from this that **a family allowance linked to the carrying out, by a frontier worker, of salaried employment in a Member State constitutes a social advantage.**

On the question of the nature of the relationship between the frontier worker and a child residing with that worker, the Court observes, first of all, that **the allowance concerned is paid in respect of all children residing in Luxembourg and in respect of all children of non-resident workers with a child-parent relationship with those workers.** That benefit is thus granted without any individual and discretionary assessment of personal needs, on the basis of a legally defined position. Furthermore, the Court notes that the benefit at issue represents a public contribution to a family's budget to alleviate the financial burdens involved in the maintenance of children. It concludes from this that **that family allowance is a social security benefit, which gives rise to the application of the Regulation on the coordination of social security systems.**<sup>2</sup> The Court goes on to state that, in the case of a frontier worker such as FV, that regulation applies since it applies to a national of one of the Member States residing in a Member State who is or has been subject to the legislation of one or more Member States, and it applies to the members of his or her family.

Moreover, the Court notes that the family members of a migrant worker are indirect beneficiaries of the equal treatment granted, as regards social advantages, to that worker by the Regulation on freedom of movement for workers. Furthermore, according to the Court, the child of a frontier worker, who is able to benefit indirectly from those social advantages, means not only a child who has a child-parent relationship with that worker, but also a child of the spouse or registered partner of that worker, where that worker supports that child.

The Court states that the principle of equal treatment prohibits not only direct discrimination, based on nationality, but also any indirect forms of discrimination, which, through the application of other distinguishing criteria, lead to the same result. It is therefore a question, in the light of FV's individual situation, of ascertaining whether there is discrimination. Under the relevant Luxembourg law, all children residing in Luxembourg, whatever their status in the worker's household, may claim that family allowance. By contrast, non-resident workers may only claim that allowance in respect of their own children, to the exclusion of the children of their spouse with whom they have no parent-child relationship. Such a distinction based on residence, which is liable to operate mainly to the detriment of nationals of other Member States as non-residents are in the majority of cases foreign nationals, constitutes indirect discrimination on the grounds of nationality which is permissible only if it is objectively justified, which is not the situation in the present case.

The Court notes that whilst it is true that persons who have the right to family benefits are determined in accordance with national law, the fact remains that Member States must comply with EU law, in the present case the provisions on freedom of movement for workers. Thus in the specific area of the grant of social advantages, **the principle of equal treatment precludes legislation of a Member State under which non-resident workers are entitled to receive an allowance, such as the family allowance claimed by FV, only in respect of their own children, to the exclusion of their spouse's children with whom they have no parent-child relationship, but who are their dependants, whereas all the children residing in that Member State have the right to receive that allowance.**

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<sup>2</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on coordination of social security systems (OJ 2004 L 166, p.1, corrigendum OJ 2004 L 200, p.1)

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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