Case C-664/23

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

9 November 2023

Referring court:

Cour d'appel de Versailles (France)

Date of the decision to refer:

9 November 2023

Appellant, defendant in the original proceedings:

Caisse d'allocations familiales des Hauts-de-Seine

Respondent, applicant in the original proceedings:

TX

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1. Subject matter and facts of the dispute:

1 In 2014, TX, an Armenian national, who entered France illegally on 7 January 2008 with his wife and two minor children, AX and RX, obtained a temporary residence permit for 'private and family life' bearing the words '*autorise son titulaire à travailler*' (authorises the holder to work). A third child, SX, was then born in France in 2011. TX now has a contract for paid employment and a multi-annual residence permit valid until 12 September 2024.

2 TX states that the children's passports were lost on their journey to reach France from the Netherlands. In 2015, the children AX (born in 2004) and RX (born in 2005) both obtained a travel document for alien minors issued by the Préfecture des Hauts-de-Seine. AX recently acquired a temporary 'private and family life' residence permit, which included authorisation to work, valid until 9 October 2023.

3 TX applied for family benefits for his three children, which was refused in respect of his two children born outside France.

4 That refusal was overturned at first instance by the Tribunal des affaires de sécurité sociale de Nanterre (Social Security Court, Nanterre, France) and subsequently confirmed on appeal by the Cour d'appel de Versailles (Court of Appeal, Versailles, France) by judgment of 14 November 2019.

5 By judgment of 23 June 2022, the Cour de cassation (Court of Cassation, France) quashed that judgment essentially due to failure to state reasons in respect of the plea in law based on Directive 2011/98/EU and referred the case back to the Court of Appeal, Versailles, with a different composition.

6 The Court of Appeal, Versailles, now asks the Court of Justice about the way in which Directive 2011/98/EU should be interpreted.

2. **Legal context**:

A. EU law

Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

7 Recital 20 reads:

'All third-country nationals who are legally residing and working in Member States should enjoy at least a common set of rights based on equal treatment with the nationals of their respective host Member State, irrespective of the initial purpose of or basis for admission. The right to equal treatment in the fields specified by this Directive should be granted not only to those third-country nationals who have been admitted to a Member State to work but also to those who have been admitted for other purposes and have been given access to the labour market of that Member State in accordance with other provisions of Union or national law, including family members of a third-country worker who are admitted to the Member State in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification …'

8 Recital 24 reads:

'Third-country workers should enjoy equal treatment as regards social security. … This Directive should grant rights only in relation to family members who join third-country workers to reside in a Member State on the basis of family reunification or family members who already reside legally in that Member State.'

9 Article 2 states:

'Definitions.

For the purposes of this Directive, the following definitions apply:

…

(c) "single permit" means a residence permit issued by the authorities of a Member State allowing a third-country national to reside legally in its territory for the purpose of work'.

10 Article 3 states:

'Scope

1. This Directive shall apply to:

…

(b) third-country nationals who have been admitted to a Member State for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002; and …'

11 Article 12 states:

'Right to equal treatment

1. Third-country workers as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to:

…

(e) branches of social security, as defined in Regulation (EC) No 883/2004;

…

2. Member States may restrict equal treatment:

…

(b) by limiting the rights conferred on third-country workers under point (e) of paragraph 1, but shall not restrict such rights for third-country workers who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed.

In addition, Member States may decide that point (e) of paragraph 1 with regard to family benefits shall not apply to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted for the purpose of

study, or to third-country nationals who are allowed to work on the basis of a visa.'

B. French law

Code de l'action sociale et des familles (The Social Action and Families Code)

12 The second paragraph of Article L.262-2, in the subsection entitled 'Conditions of entitlement', states:

'In order to be taken into account for the purposes of the entitlements of a foreign beneficiary who is not a national of a Member State of the European Union, of another State that is party to the Agreement on the European Economic Area or of the Swiss Confederation, foreign children must satisfy the conditions set out in Article L.512-2 of the Code de la sécurité sociale (Social Security Code).'

The Social Security Code

13 Article L.512-2 in Book V entitled 'Family benefits and equivalent benefits' reads in essence as follows (in the version applicable to the dispute):

'…

Foreign nationals who are not nationals of a Member State of the European Community, of another State which is party to the Agreement on the European Economic Area or of the Swiss Confederation and who hold a permit required of them under laws or regulations or international treaties or agreements in order to reside lawfully in France shall also automatically be entitled to family benefits under the conditions laid down in this Book.

Such foreign nationals shall receive family benefits provided that they can provide evidence, in respect of children dependent on them and in respect of whom family benefits are claimed, of one of the following situations:

…

– their lawful entry under the family reunification procedure referred to in Book IV of the Code de l'entrée et du séjour des étrangers et du droit d'asile (Code on the Entry and Residence of Foreign Nationals and the Right of Asylum);

…

A decree shall list the permits and evidence provided as proof of the lawful entry and residence of foreign national beneficiaries. It shall also determine the nature of the documents required to prove that the children for whom such foreign nationals are responsible and in respect of whom family benefits are claimed satisfy the conditions laid down in the preceding paragraphs.'

14 Article D.512-2 reads, in essence, as follows (in the version applicable to the dispute):

'The lawful entry and residence of foreign national children who are dependent on the recipient and in respect of whom he or she applies for family benefits shall be proven by the production of one of the following documents:

…

2. A medical examination certificate for the child, issued by the French Immigration and Integration Office at the end of the procedure for entering the country or granting residence for the purposes of family reunification;

…

5. A statement issued by the prefectural authority, confirming that the child entered France at the latest at the same time as one of his or her parents permitted to remain in France on the basis of … the Code on the Entry and Residence of Foreign Nationals and the Right of Asylum; …'

3. Submissions of the parties:

La Caisse d'allocations familiales des Hauts de Seine

15 Family benefits must be refused if the two children did not enter France through a family reunification procedure, meaning that TX is unable to produce the medical certificate referred to in the second paragraph of Article D.512-2 of the Social Security Code, and TX cannot prove that the two children entered France legally or at the same time as him.

16 Furthermore, Directive 2011/98/EU, which is relied on by TX, cannot frustrate the application of Articles L.512-2 and D.512-2 of the Social Security Code.

TX

17 TX takes the view that, as a third-country national holding a temporary residence permit with a duration of one year authorising him to work and as he can prove that he is working in France, he fulfils the conditions set out in Article 3(1)(b) of Directive 2011/98. Within its scope, he claims, in particular, treatment equal with that of nationals of the Member State, as enshrined in the Directive. In his view, it is irrelevant that his children did not enter France for the purposes of family reunification, since they are legally resident in France.

4. Findings of the Court of Appeal:

18 The legality of TX's residency in France is not at issue.

19 TX has not established that he took steps to obtain the prefectural authorisation specified in Article D.512-2 of the Social Security Code, even though that document is declaratory and documents are produced capable of demonstrating that his children entered France at the same time as him. However, the social security court cannot take the place of the administrative authority which, alone, is competent for issuing the document enabling the regularisation of the situation in the light of domestic law. The documents before the court show, moreover, that on 20 August 2018 the Caisse d'allocations familiales des Hauts-de-Seine sent a letter to the Préfecture des Hauts-de-Seine requesting that the abovementioned statement be drawn up. That letter appears to have remained unanswered.

20 Thus, TX does not prove that the two children, AX and RX, entered lawfully in the context of the family reunification procedure, by producing the documents required by Article D.512-2 of the Social Security Code.

21 In two judgments of 3 June 2011, the Court of Cassation held that the provisions of Articles L.512-2 and D.512-2 of the Social Security Code, in so far as they make the payment of family benefits subject to the production of a document certifying that foreign national children have entered France lawfully and, in particular for children who have entered France for the purposes of family reunification, of the medical certificate issued by the French Immigration and Integration Office, were objective in nature, which is justified by the need in a democratic state to monitor the reception conditions for children, and do not disproportionately infringe the right to family life guaranteed by Articles 8 and 14 of the European Convention on Human Rights or breach the provisions of Article 3 of the International Convention on the Rights of the Child.

22 The European Court of Human Rights confirmed that interpretation and held that the refusal to grant family benefits due to non-compliance with the rules applicable to family reunification laid down by French law was not contrary to the European Convention on Human Rights (ECtHR, 1 October 2015, No 76860/11 and No 51354/13, *Okitaloshima Okonda Osungu and Selpa Lokongo v. France*, CE:ECHR:2015:0908DEC007686011).

23 In the present dispute, the question of the compliance of domestic legislation with a higher-ranking law is, however, raised from the perspective of Directive 2011/98, the purpose of which is to establish a common set of rights for third-country workers legally residing in a Member State.

24 In this present case, in refusing the family benefits applied for, the Caisse d'allocations familiales des Hauts-de-Seine considered not the applicant's status but the conditions under which his two children born in Armenia found themselves on French soil. Article 12(2)(b) of Directive 2011/98 does not contain any derogation from equal treatment for family benefits on the basis of the conditions under which the family members of the third-country worker arrived in the territory of the host Member State.

25 The only possible reservation to the right to equal treatment could result from the application of recital 20 and, more particularly, of recital 24, which concludes by stating that 'this Directive should grant rights only in relation to family members who join third-country workers to reside in a Member State on the basis of family reunification or family members who already reside legally in that Member State.' Phrased in this manner, recital 24 seems to limit the right to equal treatment to the children of the worker concerned who have joined the worker for the purposes of family reunification, within the framework laid down in Directive 2003/86/EC of 22 September 2003.

26 However, three observations must be made.

– First, the benefits at issue are granted on the basis of the number of dependent children. In the present case, the Caisse d'allocations familiales des Hauts-de-Seine took into account only the couple's younger daughter, born in French territory, 'excluding' the other two children who were born outside France and entered French territory outside the family reunification procedure.

– Secondly, the provisions of Directive 2011/98 do not at any point deal with the rights of family members, nor do they reproduce the content of recital 24. In the judgment of 25 November 2020, *Istituto nazionale della previdenza sociale (Family benefits for the holder of a single permit)* (C-302/19, EU:C:2020:957, paragraph 32), the Court of Justice stated that 'the preamble to an EU act has no binding legal force and cannot be relied on as a ground either for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner that is clearly contrary to their wording'. This enabled the Court, without its reasoning appearing to it to be contrary to the penultimate sentence of that recital, which states that the Directive 'should not grant rights in relation to situations which lie outside the scope of Union law, such as in relation to family members residing in a third country', not to exclude from the right to equal treatment, in respect of family benefits, holders of single permits whose family members do not reside in the territory of the Member State concerned (paragraph 33). Applying the principle of equal treatment, the Court of Justice thus found that 'subject to the derogations permitted by Article 12(2)(b) of Directive 2011/98, a Member State may not refuse or reduce the social security benefit to the holder of a single permit on the grounds that some or all of his family members reside not in its territory, but in a third country, if it grants that benefit to its own nationals irrespective of the place of residence of their family members' (paragraph 39). In line with that case-law, it is legitimate to question the relevance of considerations relating to family reunification for the purpose of determining the right of the holder of a single permit to certain social security benefits, bearing in mind that such considerations concern, by definition, only foreign nationals of a third country who are not nationals of a Member State of the European Union, of another State party to the Agreement on the European Economic Area or of the Swiss Confederation.

– Thirdly, following the judgment of 25 November 2020, *Istituto nazionale della previdenza sociale (Family benefits for the holder of a single permit)* (C-302/19, EU:C:2020:957), a proposal for a recast seeks to bring recital 24 of Directive 2011/98 into line with the judgment handed down by deleting the last two sentences according to which the Directive should grant rights only to family members who join third-country workers to reside in a Member State (proposal of 27 April 2022, COM(2022) 650 final, Article 12). The reference to family reunification would therefore be deleted.

27 In the light of those factors, there is reasonable doubt as to the interpretation of Article 12(1)(e) of Directive 2011/98.

5. The question referred for a preliminary ruling:

28 It is therefore necessary to refer the following question to the Court of Justice for a preliminary ruling:

‘Following the judgment in *INPS* v *WS* of 25 November 2020 (C-302/19), must Article 12(1)(e) of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State be interpreted as precluding legislation of a Member State, such as France, which prohibits, for the purposes of determining entitlement to a social security benefit, the taking into account of the children, who are born in a third country, of the holder of a single permit, within the meaning of Article 2(c) of that directive, where those children, who are dependent on the holder of a single permit, have not entered the territory of the Member State for the purpose of family reunification, or where documents have not been produced to prove that they have entered the territory of that State lawfully, since that condition does not apply to the children of benefit recipients who are from that country or who are nationals of another Member State?’