Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

19 December 2024*

(Reference for a preliminary ruling – Directive 2011/98/EU – Rights of third-country workers who hold a single permit – Article 12 – Right to equal treatment – Social security – National legislation determining entitlements to family benefits – Legislation excluding the taking into account of the minor children of the single permit holder for lack of evidence that they have entered the national territory lawfully)

In Case C-664/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour d'appel de Versailles (Court of Appeal, Versailles, France), made by decision of 9 November 2023, received at the Court on the same day, in the proceedings

Caisse d'allocations familiales des Hauts-de-Seine

v

TX,

THE COURT (Fifth Chamber),

composed of I. Jarukaitis (Rapporteur), President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Gratsias and E. Regan, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– TX, by S. Potiron, avocate,

– the French Government, by R. Bénard and O. Duprat-Mazaré, acting as Agents,

– the European Commission, by F. Blanc-Simonetti and J. Hottiaux, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: French.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2011 L 343, p. 1).

2 The request has been made in proceedings between TX, a third-country national holding a single permit, and the Caisse d'allocations familiales des Hauts-de-Seine (Hauts-de-Seine Family Allowance Fund, France) ('the CAF') concerning the refusal of his application for his minor children born abroad to be taken into account when determining his rights to family benefits.

Legal context

European Union law

Directive 2011/98

3 Recitals 20, 21, 24 and 26 of Directive 2011/98 state:

'(20) 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 [(OJ 2003 L 251, p. 12)] …

(21) The right to equal treatment in specified fields should be strictly linked to the third-country national's legal residence and the access given to the labour market in a Member State, which are enshrined in the single permit encompassing the authorisation to reside and work and in residence permits issued for other purposes containing information on the permission to work.

…

(24) Third-country workers should enjoy equal treatment as regards social security. Branches of social security are defined in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [(OJ 2004 L 166, p. 1)]. The provisions on equal treatment concerning social security in this Directive should also apply to workers admitted to a Member State directly from a third country.

Nevertheless, this Directive should not confer on third-country workers more rights than those already provided in existing Union law in the field of social security for third-country nationals who are in cross-border situations. This Directive, furthermore, 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. 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.

…

(26) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at [EU] level, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law.'

4 Article 3 of Directive 2011/98, entitled 'Scope', provides, in paragraph 1 thereof:

'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 [Council] Regulation (EC) No 1030/2002 [of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ 2002 L 157, p. 1)]; and

(c) third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law.'

5 Article 12 of that directive, entitled 'Right to equal treatment', provides:

'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 [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.

…'

Regulation No 883/2004

6 Article 3(1)(j) of Regulation No 883/2004 provides that that regulation is to apply to all legislation concerning family benefits. It does not apply, pursuant to paragraph 5 of that article, to social and medical assistance.

7 Under Article 1(z) of that regulation, the term 'family benefit' means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I thereto.

French law

Social Action and Families Code

8 The second paragraph of Article L. 262-5 of the Code de l'action sociale et des familles (Social Action and Families Code) provides:

'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 [of 2 May 1992 (OJ 1994 L 1, p. 3)] 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)].'

Social Security Code

9 Article L. 511-1 of the Code de la sécurité sociale (Social Security Code) provides:

'Family benefits shall comprise:

…

(2°) family allowances;

(3°) the family supplement;

…

(7°) the school allowance;

…'

10 Article L. 512-2 of the Social Security Code provides:

'Foreign nationals who are 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 meet the requirements in order to reside lawfully in France … shall automatically be entitled to family benefits under the conditions laid down in this Book.

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 either 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 the children dependent on them and in respect of whom family benefits are claimed, of one of the following situations:

– their birth in France;

– their lawful entry under the family reunification procedure …

– their status as a family member of a refugee;

– their status as a child of a foreign national holding a residence permit …

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.'

11 Article D. 512-2 of that code provides:

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

…

2° A medical examination certificate of the child, issued by the Office français de l'immigration et de l'intégration [French Immigration and Integration Office ('the FIIO')] at the end of the procedure for entering the country or granting residence for the purposes of family reunification;

…

5° A certificate 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 granted residence …'

The dispute in the main proceedings and the question referred for a preliminary ruling

12 On 1 April 2014, TX, an Armenian national holding a 'private and family life' residence permit for authorising him to work in France, applied to the CAF for family benefits in respect of his three children, two of whom, born outside France, had entered the territory unlawfully.

13 In determining his rights, the CAF refused to take into account his two children born abroad, due to their irregular entry into France.

14 That refusal having been confirmed by the CAF's amicable settlement committee, TX filed an appeal with the Tribunal des affaires de sécurité sociale de Nanterre (Social Security Court, Nanterre, France).

15 By judgment of 21 December 2018, that court allowed TX's appeal and held that he was entitled to family benefits in respect of his two children born abroad from the date of his application.

16 By judgment of 14 November 2019, the Cour d'appel de Versailles (Court of Appeal, Versailles, France) overturned that judgment and confirmed the CAF's decision.

17 By judgment of 23 June 2022, the Cour de cassation (Court of Cassation, France) quashed that judgment for 'failure to state reasons' and referred the case back to the Court of Appeal, Versailles, with a different composition, which is the referring court.

18 The latter court notes that the legality of TX's residency in France is 'not at issue', since he holds a temporary residence permit authorising him to work, and that the only issue which arises is whether he is entitled to family benefits in respect of his two children born abroad.

19 That court states that, by two judgments of 3 June 2011 and by a judgment of 5 April 2013, the Court of Cassation held, in plenary session, that Articles L. 512-2 and D. 512-2 of the Social Security Code, which 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, to the production of the medical certificate issued by the FIIO, had an objective character justified by the need in a democratic State to monitor the reception conditions for children. The Court of Cassation inferred that those articles did not disproportionately infringe the right to family life guaranteed by Articles 8 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, or disregard the provisions of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989.

20 According to the referring court, that interpretation was confirmed by the European Court of Human Rights in its decision of 1 October 2015, *Okitaloshima Okonda Osungu and Selpa Lokongo v. France* (ECLI:CE:ECHR:2015:0908DEC007686011).

21 However, the referring court states that, in the dispute before it, the question is being asked from a different perspective, that of Directive 2011/98.

22 According to that court, that directive is intended to apply to that dispute since, first, the benefits at issue in the main proceedings fall within the scope of Regulation No 883/2004 and, second, TX is a third-country national who has been authorised to work in France, he holds a multi-annual residence permit authorising him to work and, moreover, he has an employment contract.

23 The referring court further considers that, although, under Article 12(2)(b) of the said directive, Member States are able to impose restrictions on the right to equal treatment based on the status of certain third-country nationals, that provision does not provide for any option to derogate from that right based on the conditions in which the family members of the holder of a single permit arrived in the territory of the host Member State. In the present case, however, the CAF's refusal of TX's application was based not on his status, but on the conditions of entry and stay on French soil of his two children born in Armenia.

24 The referring court nevertheless has doubts as to the scope of recital 20 and of the last sentence of recital 24 of Directive 2011/98, which refer, for the determination of the holders of the rights guaranteed in that directive, to the worker's family members from a third country who have been admitted to a Member State for the purposes of family reunification.

25 In that regard, first, that court observes that the family benefits at issue in the main proceedings are not paid to the applicant's family members, but are granted to that applicant based on the number of children who are dependent on him or her.

26 Secondly, in the light of the case-law arising from the judgment of 25 November 2020, *Istituto nazionale della previdenza sociale (Family benefits for the holder of a single permit)* (C-302/19, 'the judgment in *INPS*', EU:C:2020:957), that court questions whether it is possible to rely on the rules on family reunification in order to determine the entitlement to social security benefits of the holder of a single permit.

27 Thirdly, that same court notes that the European Commission submitted, on 27 April 2022, the Proposal for a Directive of the European Parliament and the Council 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 (recast) (COM(2022) 655 final), which seeks to bring recital 24 of Directive 2011/98 into line with the judgment in *INPS* by deleting the last two sentences of that recital.

28 In those circumstances, the Court of Appeal, Versailles, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Following [the judgment in *INPS*], must Article 12(1)(e) of Directive [2011/98] be interpreted as precluding legislation of a Member State, such as [the French Republic], which prohibits, for the purpose 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 [that holder], 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?'

Consideration of the question referred

29 By its question, the referring court asks, in essence, whether Article 12(1)(e) of Directive 2011/98 must be interpreted as precluding legislation of a Member State under which, for the purposes of determining the entitlement to social security benefits of a third-country national holding a single permit, the children born in a third country who are dependent on him or her are taken into account only if they prove that they have entered the territory of that Member State lawfully.

30 It should be noted at the outset that, as recital 26 of Directive 2011/98 states, EU law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at EU level, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States must comply with EU law (see judgment in *INPS*, paragraph 23 and the case-law cited).

31 It is apparent from Article 12(1)(e) of Directive 2011/98, read in conjunction with Article 3(1)(c) thereof, that third-country nationals who have been admitted to a Member State for the purpose of work in accordance with EU or national law are to enjoy equal treatment with nationals of the Member State where they reside with regard to branches of social security, as defined in Regulation No 883/2004.

32 In order to enjoy equal treatment under those provisions, it is therefore necessary, first, that the third-country national have been admitted to a Member State for the purpose of work in accordance with EU or national law. That is the case of a third-country national, like the applicant in the main proceedings, who holds a single permit within the meaning of Article 2(c) of that directive, since, under that provision, that permit allows such a national to reside lawfully in the territory of the Member State which has issued it, in order to work there (see judgment in *INPS*, paragraph 24 and the case-law cited).

33 It is necessary, second, that the benefits at issue fall within branches of social security as defined in Regulation No 883/2004. It is established, and not contested by the French Government, that the benefits at issue in the main proceedings are social security benefits falling within the family benefits referred to in Article 3(1)(j) of that regulation.

34 In those circumstances, it appears that a person placed in the situation of the applicant in the main proceedings is entitled, in accordance with Article 12(1)(e) of Directive 2011/98, to enjoy equal treatment with French nationals.

35 As to whether that right to equal treatment is undermined by a provision such as that at issue in the main proceedings, which, for the determination of the entitlement to family benefits of the holder of the single permit, excludes the taking into account of his or her dependent children for whom there is no proof of their lawful entry into the French territory, it must be held, subject to the checks which it is incumbent on the referring court to perform, that it follows from the first paragraph of Article L. 512-1 and the first paragraph of Article L. 512-2 of the Social Security Code that French nationals and nationals of a Member State of the European Union, of another State which is party to the Agreement on the European Economic Area or of the Swiss Confederation and who lawfully reside in France are to be automatically entitled to family benefits under the conditions laid down in Book V of that code. By contrast, the second paragraph of Article L. 512-2 of that code makes entitlement to family benefits of third-country

nationals who reside lawfully in France subject to an additional requirement, referred to in the third paragraph of Article L. 512-2, consisting in the proof that the children in respect of whom the family benefits have been applied for have entered the French territory lawfully.

36 It follows that such national legislation provides for less favourable treatment for third-country nationals holding a single permit than that enjoyed by nationals of the host Member State. Consequently, such legislation contravenes the right to equal treatment enshrined in Article 12(1)(e) of Directive 2011/98.

37 The referring court nevertheless has doubts, in the light of recitals 20 and 24 of Directive 2011/98, as to whether the right to equal treatment might be limited only to the children of the holder of the single permit who have joined him or her for the purposes of family reunification. Those doubts arise from the fact that recital 20 of that directive refers, in particular, among the beneficiaries of equal treatment, to the family members of a third-country worker who have been admitted to a Member State for the purposes of family reunification, whereas the last sentence of recital 24 of that directive provides that the rights conferred by the directive should be granted only in relation to family members who join third-country workers to reside in a Member State on the basis of family reunification or who already reside legally in that Member State.

38 However, the Court has noted, first, that it is apparent from the wording of recital 20 of Directive 2011/98 that that recital refers, in particular, to the situation in which the family members of a third-country worker who is the holder of a single permit benefit directly from the right to equal treatment provided for in Article 12 thereof, that right being conferred on those individuals in their own capacity as workers, although their arrival in the host Member State was due to the fact that they were family members of a worker who was a third-country national (see judgment in *INPS*, paragraph 30).

39 Secondly, the Court has found that the content of recital 24 of Directive 2011/98 has not been repeated in any of the provisions of that directive and has recalled that the preamble to an EU act has no binding legal force and cannot be relied on as a ground for derogating from the actual provisions of the act (see judgment in *INPS*, paragraphs 31 and 32).

40 Consequently, it cannot follow from those recitals that Directive 2011/98 should be interpreted as meaning that the holder of a single permit whose family members cannot prove that they have entered the territory of the Member State concerned lawfully for the purposes of family reunification is excluded from the right to equal treatment provided for by that directive, when no provision of that directive, in particular Article 12(1) thereof, makes the benefit of that right subject to such a condition.

41 Furthermore, it should be noted that, contrary to what the French Government maintains in its written submissions, it cannot be argued that the EU legislature itself made the right to equal treatment in the field of family benefits subject to the legality of the applicant's residence in the territory of a Member State.

42 It is admittedly true that Article 12(1) of Directive 2011/98 recognises the right to equal treatment only for third-country nationals who reside lawfully in the territory of the Member States. That requirement meets the objective, set out in recital 21 of that directive, which is to link the right to equal treatment to the third-country national's legal residence in a Member State.

43 However, the legislation at issue in the main proceedings is being challenged not in so far as it makes the right to family benefits subject to a requirement of lawful residence of the third-country national who holds a single permit and who is applying for to the receipt of those benefits, but in so far as it provides for a condition of lawful entry which concerns the children of that national, in respect of whom those benefits are applied for.

44 Nor can the French government counter that the condition laid down by national legislation, in so far as it seeks to avoid the circumvention of the family reunification procedure, is among the penalties that may be adopted by the Member States in the event of infringement of the national provisions adopted pursuant to Directive 2003/86 and that it is objective in nature and justified by the need to verify the conditions in which the sponsor's family members will be received.

45 It should be noted that Directive 2011/98 provides, for certain third-country nationals, a right to equal treatment, which is the general rule, and lists the derogations from that right which the Member States have the option of establishing, which must be interpreted strictly (judgment in *INPS*, paragraph 26).

46 Thus, in accordance with the first subparagraph of Article 12(2)(b) of Directive 2011/98, Member States may limit the right to equal treatment as regards family benefits, except in respect of 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. Furthermore, under the second subparagraph of Article 12(2)(b) of that directive, Member States may decide that that right is not to 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.

47 It follows that, outside the situations thus exhaustively listed, in which Member States may derogate from equal treatment between third-country nationals holding a single permit and their own nationals, a difference in treatment between those two categories of nationals is, in itself, an infringement of Article 12(1)(e) of that directive (see, by analogy, judgment of 29 July 2024, *CU and ND (Social assistance – Indirect discrimination)*, C-112/22 and C-223/22, EU:C:2024:636, paragraph 55 and the case-law cited).

48 Firstly, none of the exceptions to the rights conferred by Article 12(1)(e) of Directive 2011/98 provides for a possibility for Member States to exclude from the right to equal treatment the worker holding a single permit whose children, born in a third country, cannot prove that they have entered the territory of the Member State concerned lawfully.

49 Secondly, even assuming that such a possibility had been recognised, it is apparent from the case-law that the derogations from the right to equal treatment can be relied on only if the authorities in the Member State concerned responsible for the implementation of that directive have stated clearly that they intended to rely on them (judgment in *INPS*, paragraph 26 and the case-law cited). However, the French Government, as it itself acknowledges, did not intend to rely on the option of limiting the right to equal treatment by resorting to the derogations provided for in Article 12(2)(b) of the said directive.

50 It follows that a Member State cannot rely on its obligation to ensure that infringements of Directive 2003/86 are penalised to justify a derogation from the right to equal treatment not provided for by the EU legislature in Directive 2011/98.

51 In the light of all of the foregoing considerations, the answer to the question referred is that Article 12(1)(e) of Directive 2011/98 must be interpreted as precluding legislation of a Member State under which, for the purposes of determining the entitlement to social security benefits of a third-country national holding a single permit, the children born in a third country who are dependent on him or her are taken into account only if they can prove that they have entered the territory of that Member State lawfully.

Costs

52 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

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

must be interpreted as precluding legislation of a Member State under which, for the purposes of determining the entitlement to social security benefits of a third-country national holding a single permit, the children born in a third country who are dependent on him or her are taken into account only if they can prove that they have entered the territory of that Member State lawfully.

[Signatures]