JUDGMENT OF THE COURT
22 February 1990 *

In Case C-228/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bayerisches Landessozialgericht (Higher Social Court of Bavaria) for a preliminary ruling in the proceedings pending before that court between

Giovanni Bronzino, residing in Augsburg (Federal Republic of Germany),

and

Kindergeldkasse (Child Benefit Fund), Nuremberg (Federal Republic of Germany),

on the interpretation of Articles 3(1) and 73(1) 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, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (Official Journal 1983, L 230, p. 6, Annex I),

THE COURT

composed of: O. Due, President, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), T. Koopmans, G. F. Mancini, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: F. G. Jacobs
Registrar: J. A. Pompe, Deputy Registrar

* Language of the case: German.

after considering the observations submitted on behalf of

Giovanni Bronzino, the plaintiff in the main proceedings, by Luciano Fazi, Sozialsekretär,

the Government of the Federal Republic of Germany, by Martin Seidel and Professor Meinhard Hilf, acting as Agents,

the Netherlands Government, by Henri Johan Heinemann, Deputy Secretary-General at the Ministry of Foreign Affairs, acting as Agent,

the Portuguese Government, by Luís Inez Fernandes, Director of the Legal Department in the Directorate-General for the European Communities, and by Sebastião Pizarro, Deputy Director of the Department for International Relations and Social Security Agreements, acting as Agents,

the Italian Government, by Professor Luigi Ferrari Bravo, Head of the Legal Department at the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, avvocato dello Stato,

the Commission of the European Communities, by Jürgen Grunwald, a member of its Legal Department, acting as Agent,

having regard to the Report for the Hearing and further to the hearing on 19 September 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 17 October 1989,

gives the following

Judgment

1 By order of 21 July 1988, which was received at the Court on 8 August 1988, the Bayerisches Landessozialgericht referred a question to the Court pursuant to Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of Articles 3(1) and 73(1) 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, as amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (Official Journal 1983, L 230, p. 6, Annex I).

2 That question was raised in a dispute concerning the refusal of the Kindergeldkasse (Child Benefit Fund, hereinafter referred to as 'the Fund') to grant Mr Bronzino, an Italian worker employed in the Federal Republic of Germany, the allowance provided for by Article 2(4) of the Bundeskindergeldgesetz (Federal Law on Child Benefit, hereinafter referred to as the 'BKGG'), in respect of his children Rosa, Nunzia and Vincenzo, who reside in Ercolano (Italy) and are registered there with the employment office as persons seeking employment.

3 The Fund's refusal is based on the fact that Mr Bronzino's children are not at the disposal of the employment office as unemployed persons within the territory covered by the BKGG, which is a condition for the grant of the allowance in respect of dependent children aged over 16 but under 21 who are unemployed.

4 The Sozialgericht (Social Court) Augsburg ordered the Fund to pay Mr Bronzino the allowances which he claimed. The Fund then appealed to the Bayerisches Landessozialgericht, which, taking the view that the dispute raised a question concerning the compatibility of the BKGG with Community law, stayed the proceedings and referred to the Court the following question for a preliminary ruling:

'Are Articles 73(1) and 3(1) of Regulation (EEC) No 1408/71 or other provisions of Community law to be interpreted as meaning that a migrant worker is entitled to family benefits in the State of employment even when the family member is only

registered as unemployed and available for work in the State of residence and under that State's rules, or cannot begin or continue vocational training there because of a lack of places in training schemes, whereas the national law of the State of employment demands that these preconditions be fulfilled in its territory?'

5 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 Having regard to the facts of the case as set out by the national court, it must be inferred that, in its question, that court seeks in substance to ascertain whether Articles 3(1) and 73(1) of Regulation No 1408/71, or any other provisions of Community law, must be interpreted as meaning that where the legislation of a Member State which provides certain family benefits requires, as a condition for the grant of those benefits, that a member of the worker's family must be registered as unemployed with the employment office for the territory in which that legislation applies, that condition must be considered to be fulfilled where the family member is registered as unemployed with the employment office of the Member State in which he resides.

7 According to Article 73 of Regulation No 1408/71, as amended by Council Regulation (EEC) No 3427/89 of 30 October 1989 (Official Journal 1989, L 331, p. 1), which replaces the version in force at the time of the reference but amends it only with regard to its application to self-employed persons and to the abolition of the special arrangements for France, 'an employed or self-employed person subject to the legislation of a Member State shall be entitled, in respect of the members of his family who are residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI'. The term 'family benefits' is defined in Article 1(u)(i) of the regulation as 'all benefits in kind or in cash intended to meet family expenses under the legislation provided for in Article 4(1)(h), excluding the special childbirth allowances mentioned in Annex II'. Article 4(1)(h) provides that the regulation is to apply to all legislation concerning family benefits,

and it was as such legislation that the Federal Republic of Germany, in fulfilment of Member States' obligations under Article 5 to specify the legislation and schemes referred to in Article 4(1), declared the BKGG (Official Journal 1980, C 139, p. 1).

8 The Federal Government acknowledges that the allowance in question is intended to help families to meet the cost of supporting their children who are over 16 but under 21 and are unemployed. However, it considers that Article 73 covers only typical family benefits, that is to say those granted subject to conditions which normally reflect a social burden on the worker's family and not, like the contested allowance, to a specific situation in the State granting the benefits.

9 According to the Federal Government, the allowance provided for in Article 2(4) of the BKGG constitutes a measure designed to deal with the critical state of the employment market in the Federal Republic of Germany, which justifies the requirement that persons seeking employment must register with the employment office in that country.

10 The Federal Government also considers that Article 73 of Regulation No 1408/71 merely abolishes the territorial reference of conditions of residence and does not apply to other objectively justified conditions such as the one referred to above.

11 It must be observed that Article 73 applies to the family benefits defined in Article 1(u)(i). The benefits at issue in this case fall within that definition since they are designed to help families meet the financial cost of supporting children who are unemployed. It should be noted that the Federal Republic of Germany has itself described the benefits in question as family benefits both in its legislation and in the declarations made by the Federal Government to the Commission.

12 The purpose of Article 73 is to prevent a Member State from being able to refuse to grant family benefits on account of the fact that a member of the worker's family resides in a Member State other than that providing the benefits. Such a refusal could deter Community workers from exercising their right to freedom of movement and would therefore constitute an obstacle to that freedom. It follows that a condition of entitlement to certain family benefits whereby a worker's child must be registered with the employment office of the Member State providing the benefits, a condition which can be fulfilled only if the child resides within the territory of that State, comes within the scope of Article 73 and must therefore be considered to be fulfilled where the child is registered with the employment office of the Member State in which he resides.

13 Against that interpretation of Article 73 the Federal Government argues that if that provision were applicable in this case the employment office in the Federal Republic of Germany would be quite unable to relieve itself of the obligation to pay the benefits to the claimant by offering employment to the family member in question.

14 This argument, which may be relevant with regard to unemployment benefits, cannot be relied upon in order to refuse payment of a family benefit granted to the parents of a child who is unemployed. Indeed, disadvantages of the kind referred to by the Federal Government, which result from the application of Regulation No 1408/71, cannot call in question the interpretation, based on its wording and purpose, of one of the provisions of that regulation.

15 It follows from the foregoing that there is no need to take into account other provisions of Community law; the answer to the question submitted by the national court must be that Article 73 of Regulation 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 must be interpreted as meaning that where the legislation of a Member State which provides certain family benefits requires, as a condition for the grant of those benefits, that a member of the worker's family must be registered as unemployed with the employment office for the territory in which that legislation applies, that condition must be considered to be fulfilled where the family member is registered as unemployed with the employment office of the Member State in which he resides.

Costs

16 The costs incurred by the Government of the Federal Republic of Germany, the Italian Government, the Portuguese Government, the Netherlands Government and the Commission of the European Communities are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question submitted to it by the Bayerisches Landessozialgericht, by order of 21 July 1988, hereby rules:

Article 73 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 must be interpreted as meaning that where the legislation of a Member State which provides certain family benefits requires, as a condition for the grant of those benefits, that a member of the worker's family must be registered as unemployed with the employment office for the territory in which that legislation applies, that condition must be considered to be fulfilled where the family member is registered as unemployed with the employment office of the Member State in which he resides.

Due Schockweiler Zuleeg

Koopmans Mancini Moitinho de Almeida Rodriguez Iglesias

Delivered in open court in Luxembourg on 22 February 1990.

J.-G. Giraud
Registrar

O. Due
President