JUDGMENT OF THE COURT (Fourth Chamber)
17 December 1987 *

In Case 147/87

Reference to the Court under Article 177 of the EEC Treaty by the tribunal des affaires de sécurité sociale (Social Security Tribunal), Nanterre, for a preliminary ruling in the proceedings pending before that court between

Saada Zaoui, residing in Nanterre,

and

Caisse régionale d'assurance maladie (Regional Sickness Insurance Fund), Île-de-France, Paris **(CRAMIF),**

on the interpretation of Community law, in particular Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and members of their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416),

THE COURT (Fourth Chamber),

composed of: G. C. Rodríguez Iglesias, President of Chamber, T. Koopmans and C. Kakouris, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of:

the Government of the French Republic, by E. Belliard and C. Chavance, acting as Agents,

the Commission of the European Communities, by J. Griesmar, a member of its Legal Department, acting as Agent,

* Language of the Case: French.

having regard to the Report for the Hearing and further to the hearing on 17 November 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 9 December 1987,

gives the following

Judgment

1 By a judgment of 9 October 1986 which was received at the Court Registry on 11 May 1987, the tribunal des affaires de sécurité sociale, Nanterre, referred to the Court under Article 177 of the EEC Treaty two questions for a preliminary ruling on the interpretation of Community law, in particular Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and members of their families moving within the Community.

2 Those questions arose in a dispute between the caisse régionale d'assurance maladie de l'Île-de-France (Regional Sickness Insurance Fund, Île-de-France, hereinafter referred to as 'the Regional Fund'), and Mr Saada Zaoui, a recipient of a French invalidity pension, who was born in Algeria and is married to a woman of French nationality, and to whom the Regional Fund refused to grant the supplementary allowance payable by the fonds national de solidarité (National Solidarity Fund).

3 According to the relevant French legislation, the supplementary allowance is granted to the recipients of old-age or invalidity benefits who lack sufficient means of their own. It is granted by the fonds national de solidarité, an institution set up in 1956 in order to promote the welfare of old people, in particular by improving pensions, annuities and old-age benefits.

4 The grant of the supplementary allowance was refused by the Regional Fund on the ground that Mr Zaoui, not being a French national, did not qualify for that benefit. The national court points out in that regard that Mr Zaoui is not a French national, does not claim the nationality of any other country and, moreover, has

been denied the status of a stateless person by a decision of the Office français de protection des réfugiés et apatrides (French Bureau for the protection of refugees and stateless persons).

5 In the proceedings before the national court, Mr Zaoui argued that the allowance from the fonds national de solidarité should be granted to him in his capacity as a member of the family of a Community national, his wife being a French national. The Regional Fund contended that the supplementary allowance from the fonds national de solidarité does not fall within the scope of the Community regulations on social security since it constitutes not a social security benefit but social assistance which is not covered by those regulations.

6 In those circumstances, the national court requested the Court to give a preliminary ruling on the following questions:

(1) Does the operation of the fonds national de solidarité as laid down by Articles L 685 and L 707 (now both repealed) of the code de la sécurité sociale fall within the scope of Regulation No 1408/71 or any other Community regulation?

(2) Is Mr Zaoui, who is not a French national (and who has not, to date, been recognized as a stateless person) but whose wife is a French national, entitled to avail himself of the legislation of the European Communities?

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case and the observations submitted to the Court by the French Government and the Commission, which are mentioned hereinafter only in so far as is necessary for the reasoning of the Court.

First question

8 The first question is concerned with the scope *ratione materiae* of Regulation No 1408/71 in relation to the supplementary allowance paid, by virtue of the relevant

French legislation, by the fonds national de solidarité. That question has already been considered by the Court in its judgment of 24 February 1987 in Joined Cases 379 to 381/85 and 93/86 *Giletti* [1987] ECR 955. In that judgment, the Court held that, in so far as legislation such as that at issue in this case confers a right to supplementary benefits designed to increase the amount of pensions paid by way of social security, without any assessment of individual needs or circumstances, which is a characteristic of assistance, it comes within the social security scheme within the meaning of Regulation No 1408/71.

9 The answer to the first question must therefore be that Regulation No 1408/71 does not exclude from its scope *ratione materiae* a supplementary allowance paid by a national solidarity fund and granted to recipients of old-age, survivors' or invalidity pensions with a view to providing them with a minimum means of subsistence, provided that the persons concerned have a legally protected right to the grant of such an allowance.

Second question

10 The second question is concerned with the scope *ratione personae* of Regulation No 1408/71 in relation to the position of a recipient of a pension in a Member State, who is not a national of a Member State and does not have the status of a stateless person, and is married to a worker who is a national of the first-mentioned Member State.

11 According to Article 2 (1) of Regulation No 1408/71, the provisions of that regulation apply 'to workers who are or have been subject to the legislation of one or more Member States and who are nationals of one of the Member States . . . as well as to the members of their families and their survivors'. As the Court stated in its judgment of 23 November 1976 in Case 40/76 *Kermaschek* v *Bundesanstalt für Arbeit* [1976] ECR 1669, the members of the family of a worker can only claim derived rights under Regulation No 1408/71, that is to say the rights acquired through their status as members of a worker's family.

12 In this case, it is clear from the documents before the Court that the supplementary allowance paid by the fonds national de solidarité is granted to the recipients of certain pensions, whether or not they are in any way related to a

worker. The conclusion must therefore be drawn that the right to that supplementary allowance does not constitute a derived right for the purposes of Regulation No 1408/71.

13 It follows that a member of the family of a worker who is a national of a Member State cannot rely on Regulation No 1408/71 in order to claim a supplementary allowance connected with a pension which he receives in that Member State in a capacity other than that of a member of a worker's family.

14 The Commission, in its observations to the Court, raised the question whether the person concerned was entitled, in a case such as this, to rely on Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475) in order to obtain in a Member State the same social advantages as workers who are nationals of that State, but it concluded that he could not.

15 That conclusion must be upheld. As the Court held in its judgment of 27 October 1982 in Joined Cases 35 and 36/82 *Morson and Jhanjan* v *Netherlands* [1982] ECR 3723, the Community rules on freedom of movement for workers do not apply to cases which have no factor linking them with any of the situations governed by Community law. Such is undoubtedly the case with workers who have never exercised the right to freedom of movement within the Community.

16 Accordingly, a member of the family of a worker who is a national of a Member State cannot rely on Regulation No 1612/68 in order to claim the same social advantages as workers who are nationals of that State when the worker of whose family he is a member has never exercised the right to freedom of movement within the Community.

Costs

17 The costs incurred by the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As 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 (Fourth Chamber),

in answer to the questions referred to it by the tribunal des affaires de sécurité sociale, Nanterre, by judgment of 9 October 1986, hereby rules:

(1) Regulation No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community does not exclude from its scope *ratione materiae* a supplementary allowance paid by a national solidarity fund and granted to recipients of old-age, survivors' or invalidity pensions with a view to providing them with a minimum means of subsistence, provided that the persons concerned have a legally protected right to the grant of such an allowance.

(2) A member of the family of a worker who is a national of a Member State cannot rely on:

(i) Regulation No 1408/71 in order to claim a supplementary allowance connected with a pension which he receives in that Member State in a capacity other than that of a member of a worker's family,

(ii) Regulation No 1612/68 on freedom of movement for workers within the Community in order to claim the same social advantages as workers who are nationals of that State when the worker of whose family he is a member has never exercised the right to freedom of movement within the Community.

Rodríguez Iglesias Koopmans Kakouris

Delivered in open court in Luxembourg on 17 December 1987.

P. Heim
Registrar

G. C. Rodríguez Iglesias
President of the Fourth Chamber