Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

21 June 2017*

(Reference for a preliminary ruling — Social security — Regulation (EC) No 883/2004 — Article 3 — Family benefits — Directive 2011/98/EU — Article 12 — Right to equal treatment — Third-country nationals holding single permits)

In Case C-449/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte d'appello di Genova (Court of Appeal, Genoa, Italy), made by decision of 8 July 2016, received at the Court on 5 August 2016, in the proceedings

Kerly Del Rosario Martinez Silva

v

Istituto nazionale della previdenza sociale (INPS),

Comune di Genova,

THE COURT (Seventh Chamber),

composed of A. Prechal, President of the Chamber, A. Rosas and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mrs Martinez Silva, by L. Neri and A. Guariso, avvocati,

— the Italian Government, by G. Palmieri, acting as Agent, and P. Gentili, avvocato dello Stato,

— the European Commission, by D. Martin and C. Cattabriga, acting as Agents,

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

gives the following

* Language of the case: Italian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1)(j) of 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, and corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 43), ('Regulation No 883/2004') and 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 Mrs Kerly Del Rosario Martinez Silva and the Istituto nazionale della previdenza sociale (INPS) (National Social Security Institution, Italy) and the Comune di Genova (Municipality of Genoa, Italy) concerning the rejection of an application for a benefit for households having at least three minor children ('ANF').

Legal context

EU law

3 A 'long-term resident's EC residence permit', in accordance with Article 2(g) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), is a residence permit issued by the Member State concerned upon the acquisition of long-term resident status as provided for by that directive.

4 Article 2 of Directive 2011/98, 'Definitions', provides:

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

(a) "third-country national" means a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU;

(b) "third-country worker" means a third-country national who has been admitted to the territory of a Member State and who is legally residing and is allowed to work in the context of a paid relationship in that Member State in accordance with national law or practice;

(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;

…'

5 Article 3(1) of that directive, 'Scope', provides:

'This Directive shall apply to:

…

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

6 In accordance with Article 12 of the directive, '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.

…'

7 Under Article 1(z) of Regulation No 883/2004, 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 to the regulation.

8 Article 3(1)(j) of Regulation No 883/2004 provides that it is to apply to all legislation concerning family benefits. In accordance with Article 3(5)(a), it does not apply to social and medical assistance.

Italian law

9 According to the order for reference, under Article 65 of Legge n. 448 — Misure di finanza pubblica per la stabilizzazione e lo sviluppo (Law No 448 on public finance measures for stabilisation and development) of 23 December 1998 (ordinary supplement to GURI No 210, 29 December 1998) ('Law No 448/1998'), households with at least three children below the age of 18 whose income is below a certain limit (EUR 25384.91 in 2014) are to receive ANF. The monthly amount of ANF for 2014 was EUR 141.02.

10 Originally reserved for Italian nationals alone, ANF was extended to nationals of the European Union in 2000, to third-country nationals with political refugee or subsidiary protection status in 2007, and finally, by Article 13 of Legge n. 97 — Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea — Legge europea 2013 (Law No 97 on provisions to comply with the obligations arising from Italy's membership of the European Union — European Law 2013) of 6 August 2013 (GURI No 194, 20 August 2013), to holders of long-term residence permits and families of EU nationals.

11 Directive 2011/98 was transposed into national law by Decreto legislativo n. 40 — Attuazione della direttiva 2011/98/UE relativa a una procedura unica di domanda per il rilascio di un permesso unico che consente ai cittadini di Paesi terzi di soggiornare e lavorare nel territorio di uno Stato membro e a un insieme comune di diritti per i lavoratori di Paesi terzi che soggiornano regolarmente in uno Stato membro (Legislative Decree No 40 on the transposition of Directive 2011/98) of 4 March 2014 (GURI No 68, 22 March 2014), which introduced a 'single work permit'.

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

12 Mrs Martinez Silva, a third-country national, resides in the municipality of Genoa and is the holder of a single work permit valid for longer than six months. Since she is the mother of three children under 18 and her income was below the limit laid down by Law No 448/1998, she applied in 2014 to be granted ANF, which was refused her on the ground that she did not have a long-term resident's EC residence permit.

13 She thereupon brought a civil action before the Tribunale di Genova (District Court, Genoa, Italy) against the Municipality of Genoa and the INPS for payment of the sum of EUR 1833.26 for 2014 and recognition of her right to ANF for the following years, arguing that the refusal was contrary to Article 12 of Directive 2011/98. Those claims were dismissed by order of 18 August 2015, on the grounds that the provisions of Regulation No 883/2004 relied on were merely programmatic in nature, that the regulation did not include maintenance payments among the social security benefits to be provided at public expense, and that it had not been proved that Mrs Martinez Silva had been lawfully present in Italy for at least five years.

14 The Corte d'appello di Genova (Court of Appeal, Genoa, Italy), before which an appeal was brought, states that it entertains doubts as to the compatibility of Article 65 of Law No 448/1998 with EU law, as that provision does not allow a third-country national who holds a single permit to receive ANF, contrary to the principle of equal treatment set out in Article 12 of Directive 2011/98.

15 That court explains, first, that ANF is a cash benefit intended to meet family expenses which is granted to families in particular need of it in view of the number of their children and their economic circumstances. It appears to the court to be one of the benefits referred to in Article 3(1)(j) of Regulation No 883/2004, not being an advance of maintenance or a benefit referred to in Annex I to the regulation.

16 Citing the judgment of 24 April 2012, *Kamberaj* (C-571/10, EU:C:2012:233), the referring court considers, next, that none of the limitations of the principle of equal treatment provided for in Article 12(2)(b) of Directive 2011/98 applies in the main proceedings, since the Italian Republic did not intend to exercise the option under that provision of restricting the application of that principle and, moreover, Mrs Martinez Silva is not in any of the situations mentioned in the second indent of that provision, as she is the holder of a single work permit valid for longer than six months. It considers that she is therefore among the persons to whom the principle of equal treatment applies.

17 In those circumstances, the Corte d'appello di Genova (Court of Appeal, Genoa) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does a benefit such as that provided for in Article 65 of Law No 448/1998, known as [ANF], constitute a family benefit within the meaning of Article 3(1)(j) of Regulation (EC) No 883/2004?

(2) If the answer to the first question is in the affirmative, does the principle of equal treatment laid down in Article 12(1)(e) of Directive 2011/98/EU preclude legislation, such as the Italian legislation at issue, under which a third-country worker in possession of a "single work permit" (which is valid for a period of more than six months) is not eligible for [ANF], even though she lives with three or more minor children and her income is below the statutory limit?'

Consideration of the questions referred

18 By its two questions, which should be considered together, the referring court essentially asks whether Article 12 of Directive 2011/98 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a third-country national holding a single permit within the meaning of Article 2(c) of that directive cannot receive a benefit such as ANF introduced by Law No 448/1998.

19 Since Article 12(1)(e) of Directive 2011/98 provides that third country workers as referred to in Article 3(1)(b) and (c) of the directive 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, it must, as the referring court suggests, be examined in the first place whether a benefit such as ANF is a social security benefit included among the family benefits referred to in Article 3(1)(j) of that regulation, or a social assistance benefit excluded from the scope of that regulation under Article 3(5)(a) of the regulation, as the Italian Government submits.

20 It should be recalled that, as the Court has repeatedly held in the context 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 (OJ, English Special Edition 1971(II), p. 416) that the distinction between benefits excluded from the scope of Regulation No 883/2004 and those which fall within its scope is based essentially on the constituent elements of the particular benefit, in particular its purposes and the conditions on which it is granted, and not on whether a benefit is classified as a social security benefit by national legislation (see, to that effect, inter alia, judgments of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraph 14; of 20 January 2005, *Noteboom*, C-101/04, EU:C:2005:51, paragraph 24; and of 24 October 2013, *Lachheb*, C-177/12, EU:C:2013:689, paragraph 28). A benefit may be regarded as a social security benefit if it is granted to recipients, without any individual and discretionary assessment of personal needs, on the basis of a legally defined position and concerns one of the risks expressly listed in Article 3(1) of Regulation No 883/2004 (see, to that effect, inter alia, judgments of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraph 15; of 15 March 2001, *Offermanns*, C-85/99, EU:C:2001:166, paragraph 28; and of 19 September 2013, *Hliddal and Bornand*, C-216/12 and C-217/12, EU:C:2013:568, paragraph 48).

21 The Court has explained that the method by which a benefit is financed, in particular the fact that its grant is not subject to any contribution requirement, is immaterial for its classification as a social security benefit (see, to that effect, judgments of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraph 21; of 15 March 2001, *Offermanns*, C-85/99, EU:C:2001:166, paragraph 46; and of 24 October 2013, *Lachheb*, C-177/12, EU:C:2013:689, paragraph 32).

22 Moreover, the fact that a benefit is granted or refused by reference to income and the number of children does not mean that its grant is dependent on an individual assessment of the claimant's personal needs, which is a characteristic feature of social assistance, in so far as the criteria applied are objective, legally defined criteria which, if met, confer entitlement to the benefit, the competent authority having no power to take account of other personal circumstances (see, to that effect, judgment of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraph 17). Benefits that are granted automatically to families meeting objective criteria relating in particular to their size, income and

capital resources, without any individual and discretionary assessment of personal needs, and are intended to meet family expenses must thus be regarded as social security benefits (judgment of 14 June 2016, *Commission* v *United Kingdom*, C-308/14, EU:C:2016:436, paragraph 60).

23 As to whether a particular benefit is among the family benefits referred to in Article 3(1)(j) of Regulation No 883/2004, it must be noted that, in accordance with 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 to the regulation. The Court has held that the phrase 'to meet family expenses' is to be interpreted as referring in particular to a public contribution to a family's budget to alleviate the financial burdens involved in the maintenance of children (see, to that effect, judgment of 19 September 2013, *Hliddal and Bornand*, C-216/12 and C-217/12, EU:C:2013:568, paragraph 55 and the case-law cited).

24 As regards the benefit at issue in the main proceedings, it appears from the documents before the Court, first, that ANF is paid to recipients who apply for it where the conditions relating to the number of minor children and to income laid down in Article 65 of Law No 448/1998 are satisfied. The benefit is consequently granted without any individual and discretionary assessment of the claimant's personal needs, on the basis of a legally defined situation. Secondly, ANF consists in a sum of money paid to those recipients each year in order to meet family expenses. It is therefore a cash benefit intended, by means of a public contribution to a family's budget, to alleviate the financial burdens involved in the maintenance of children.

25 It follows from all the above considerations that a benefit such as ANF is a social security benefit included among the family benefits referred to in Article 3(1)(j) of Regulation No 883/2004.

26 It must therefore be examined, in the second place, whether a third-country national holding a single permit within the meaning of Article 2(c) of Directive 2011/98 may be excluded from receiving such a benefit by national legislation such as that at issue in the main proceedings.

27 It is apparent from Article 12(1)(e) read in conjunction with Article 3(1)(c) of Directive 2011/98 that the equal treatment provided for in the former provision must be enjoyed in particular by third-country nationals who 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 holding 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.

28 However, by virtue of the first indent of Article 12(2)(b) of Directive 2011/98, Member States may limit the rights conferred on third country workers by Article 12(1)(e) of that directive, except for those who are in employment or who have been employed for a minimum period of six months and are registered as unemployed. In addition, under the second indent of Article 12(2)(b) of the directive, Member States may decide that Article 12(1)(e) of the directive relating to family benefits 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 to that territory for the purpose of study, or to third-country nationals who are allowed to work there on the basis of a visa.

29 Thus, like Directive 2003/109, 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. Those derogations can therefore 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 (see, by analogy, judgment of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraphs 86 and 87).

30 The referring court observes that the Italian Republic did not intend to exercise the option of restricting equal treatment by having recourse to the derogations provided for in Article 12(2)(b) of Directive 2011/98, as it did not demonstrate any such intention. The provisions of the Italian legislation limiting ANF, in the case of third-country nationals, to holders of a long term residence permit and to families of EU nationals, which were moreover adopted before that directive was transposed into national law, as may be seen from paragraphs 10 and 11 above, cannot therefore be regarded as introducing the restrictions of the right of equal treatment which Member States have the option of introducing under that directive.

31 It follows that a third-country national holding a single permit within the meaning of Article 2(c) of Directive 2011/98 may not be excluded from receiving a benefit such as ANF by such national legislation.

32 In the light of all the above considerations, the answer to the questions referred is that Article 12 of Directive 2011/98 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which a third-country national holding a single permit within the meaning of Article 2(c) of that directive cannot receive a benefit such as ANF established by Law No 448/1998.

Costs

33 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Seventh Chamber) hereby rules:

Article 12 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 national legislation, such as that at issue in the main proceedings, under which a third-country national holding a single permit within the meaning of Article 2(c) of that directive cannot receive a benefit such as the benefit for households having at least three minor children established by Legge n. 448 — Misure di finanza pubblica per la stabilizzazione e lo sviluppo (Law No 448 on public finance measures for stabilisation and development) of 23 December 1998.

[Signatures]