JUDGMENT OF THE COURT
27 September 1988 *

In Case 313/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the commission de première instance de sécurité sociale des Alpes-Maritimes (Social Security Appeals Board, Alpes-Maritimes) for a preliminary ruling in the proceedings pending before that court between

O. Lenoir

and

Caisse d'allocations familiales des Alpes-Maritimes, (Family Allowances Fund, Alpes-Maritimes),

on the interpretation of Article 77 of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation No 2001/83 of 2 June 1983 (Official Journal 1983, L 230, p. 6, Annex 1),

THE COURT

composed of: Lord Mackenzie Stuart, President, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot, C. N. Kakouris and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

* Language of the Case: French.

after considering the observations submitted on behalf of

the French Government, by G. Guillaume, acting as Agent, by C. Chavance, as Assistant Agent, and by E. Belliard, as Agent, in the written procedure, and by C. Chavance, as Agent, at the hearings on 13 January and 25 May 1988;

the Italian Government, by P. G. Ferri, avvocato dello Stato, acting as Agent, in the written procedure and at the hearings on 13 January and 25 May 1988,

the Government of the Federal Republic of Germany, by M. Seidel, its representative for proceedings before the Court, replying to a question put by the Court following the reopening of the oral procedure,

the Commission of the European Communities, by J. Griesmar, acting as Agent, during the written procedure and at the hearings on 13 January and 25 May 1988,

having regard to the Report for the Hearing and further to the hearing on 13 January 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 23 February 1988,

having regard to the supplementary Report for the Hearing and further to the reopening of the oral procedure on 25 May 1988,

after hearing the further Opinion of the Advocate General delivered at the sitting on 28 June 1988,

gives the following

Judgment

1 By judgment of 21 October 1986, which was received at the Court Registry on 15 December 1986, the tribunal des affaires de sécurite sociale (Social Security Tribunal), Alpes-Maritimes, referred to the Court for a preliminary ruling under Article 177 of the Treaty a question on the interpretation of Article 77 of Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation No 2001/83 of 2 June 1983 (Official Journal 1983, L 230, p. 6, Annex 1).

2 The question was raised in proceedings brought by Olivier Lenoir against the Caisse d'allocations familiales des Alpes-Maritimes (hereinafter referred to as 'the Caisse') in respect of the decision of the Caisse of 10 November 1984 to suspend the payment to Mr Lenoir of the 'rentrée scolaire' (school expenses) and 'salaire unique' (single wage or salary) allowances and to require him to repay the total amount of those allowances which, it claimed, he had received improperly since June 1983, the date on which he transferred his residence to the United Kingdom.

3 It is apparent from the order for reference and from the documents before the Court that Mr Lenoir, a French national, is in receipt of an old-age pension under French legislation and meets the requirements for the grant in France of the 'rentrée scolaire' and 'salaire unique' allowances. The latter allowance has not existed as such since 1 January 1978 but is now incorporated with other benefits in the 'complément familial' (supplementary family allowance); however, it continues to be paid to the existing beneficiaries as a vested right.

4 In June 1983, Mr Lenoir transferred his residence from France to the United Kingdom. 'Rentrée scolaire' and 'salaire unique' allowances were paid to him until 1984. Payment of those allowances was suspended by the abovementioned decision of the Caisse of 10 November 1984 on the ground that by reason of his departure from France his entitlement to family benefits was thereafter limited to family

allowances in the strict sense, to the exclusion of the 'rentrée scolaire' and 'salaire unique' allowances, which under the French legislation — whose applicability to this case has not been disputed — can be paid only to the recipient of an old-age pension who resides with the members of his family within the territory of the French Republic.

5 Following an appeal by Mr Lenoir, the decision in question was confirmed by the appeals committee of the Caisse on the ground that the payment of such allowances to persons not residing on French territory was contrary to Article 77 of Regulation No 1408/71. The appeals committee followed the interpretation given in an internal administrative document ('Guide des prestations' — Benefits Guide), according to which Article 77 (2) of the abovementioned regulation relates only to 'family allowances' in the strict sense and not to other 'family benefits'.

6 On 28 June 1985 Mr Lenoir lodged an appeal against that decision before the Tribunal des Affaires de Sécurité Sociale des Alpes-Maritimes, which, considering that the dispute raised a question of interpretation of Article 77 of Regulation No 1408/71, stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Must Article 77 of Community Regulation No 1408/71 of 14 June 1971 be interpreted as entitling a person in receipt of family benefits who is a national of a Member State of the Community and resides in the territory of another Member State to payment by the social security institution of his country of origin solely of family allowances and not of other family benefits, in particular the "rentrée scolaire" (school expenses) allowance and the "complément familial" (family supplement) allowance?'

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

8 The question submitted by the national court seeks to determine whether the term 'family allowances' in Article 77 of Regulation No 1408/71, in the version contained in Annex I to Regulation No 2001/83 (hereinafter referred to as 'Regulation No 1408/71'), must be interpreted as covering only family allowances in the strict sense or as also including other family benefits such as the 'rentrée scolaire' and 'salaire unique' allowances provided for by French legislation.

9 In order to answer the question submitted, it must be borne in mind that according to the definition contained in Article 1 (u) of Regulation No 1408/71 the term 'family allowances' means 'periodical cash benefits granted exclusively by reference to the number and, where appropriate, the age of members of the family'.

10 However, Article 77 (1) of Regulation No 1408/71 provides that 'the term "benefits", for the purposes of this article, shall mean family allowances for persons receiving pensions . . . '. It thus gives a definition of 'benefits' for the purposes of that article which corresponds to the definition of the family 'allowances' referred to in Article 1 (u) (ii) of the same regulation, which defines family allowances according to the exclusive criterion of the number and, where appropriate, the age of the members of the family.

11 It must therefore be stated in reply to the question submitted by the national court that Article 77 of Regulation No 1408/71, as contained in Annex I to Council Regulation No 2001/83 of 2 June 1983, must be interpreted as giving a person entitled to family benefits who is a national of a Member State and resides in the territory of another Member State entitlement to payment by the social security institutions of his country of origin only of 'family allowances', to the exclusion of other family benefits such as the 'rentrée scolaire' allowance and the 'salaire unique' allowance provided for by French legislation.

12 According to the Italian Government, that interpretation renders that article invalid. Interpreted in that way, it says, that article is contrary to Articles 48 and 51 of the EEC Treaty because its effect is to discriminate against persons receiving

a pension who, after retirement, take up residence in another Member State and are thereby denied the possibility of continuing to receive family benefits other than family allowances in the strict sense, even though that possibility is provided for in Article 77 (2) (a) of Regulation No 1408/71.

13 That argument cannot be upheld. As the Court held in its judgment of 15 January 1986 in Case 41/84 *(Pinna* v *Caisse d'allocations familiales de la Savoie* [1986] ECR 1), Article 51 of the Treaty provides for the coordination, not the harmonization, of the legislation of the Member States. As a result, Article 51 leaves in being differences between the Member States' social security systems and, consequently, in the rights of persons working in the Member States. It follows that substantive and procedural differences between the social security systems of the Member States, and hence in the rights of the persons working in the Member States, are unaffected by Article 51 of the Treaty.

14 It is true that the Court stated in that judgment that the Community rules on social security must refrain from adding to the disparities which already stem from the absence of harmonization of national legislation and that the principle of equal treatment prohibits not only overt discrimination based on nationality but all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result.

15 However, as the Court held in its judgment of 28 June 1978 in Case 1/78 *(Kenny* v *Insurance Officer* [1978] ECR 1489), Articles 7 and 48 of the Treaty are not concerned with any disparities in treatment which may result, between Member States, from divergences existing between the laws of the various Member States, so long as the latter affect all persons subject to them in accordance with objective criteria and without regard to their nationality.

16 The provision of Article 77 of Regulation No 1408/71 at issue is a rule of general scope which applies without distinction to all nationals of the Member States and is based on objective criteria concerning the nature of the benefits in question and

the conditions for granting them. If the legislation of the Member State by which the pension is payable grants periodical cash benefits to the recipient's family exclusively by reference to the number and, where appropriate, the age of the members of the family, the grant of such benefits continues to be justified wherever the recipient and his family reside. By contrast, benefits of another kind or subject to other conditions, as in the case, for example, of a benefit intended to cover certain costs incurred at the beginning of the school year, are in most cases closely linked with the social environment and therefore with the place where the persons concerned reside.

17 Consequently, it cannot be concluded that the provision at issue adds further disparities to those already stemming from the absence of harmonization of national legislation or applies distinguishing criteria which in fact lead to discrimination based on nationality.

18 It follows that Article 77 (1) and (2) of Regulation No 1408/71, as contained in Annex I to Council Regulation No 2001/83 of 2 June 1983, cannot be regarded as contrary to Articles 48 and 51 of the EEC Treaty.

Costs

19 The costs incurred by the French, Italian and German Governments and the Commission of the European Communities, which have submitted observations to the Court, 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in reply to the question referred to it by the tribunal des affaires de sécurité sociale des Alpes-Maritimes by judgment of 21 October 1986, hereby rules:

Article 77 of Regulation No 1408/71, as contained in Annex I to Regulation No 2001/83 of 2 June 1983, must be interpreted as giving a person entitled to family benefits who is a national of a Member State and resides in the territory of another Member State entitlement to payment by the social security institutions of his country of origin only of 'family allowances', to the exclusion of other family benefits such as the 'rentrée scolaire' (school expenses) allowance and the 'salaire unique' (single wage) allowance provided for by French legislation.

Mackenzie Stuart Due Moitinho de Almeida Rodríguez Iglesias

Koopmans Everling Galmot Kakouris O'Higgins

Delivered in open court in Luxembourg on 27 September 1988.

J.-G. Giraud,
Registrar

A. J. Mackenzie Stuart
President