JUDGMENT OF THE COURT (Second Chamber)
16 December 1992 *

In Case C-206/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal des Affaires de Sécurité Sociale, Bobigny, for a preliminary ruling in the proceedings pending before that court between

Ettien Koua Poirrez

and

Caisse d'Allocations Familiales de la Seine-Saint-Denis (CAF), *in loco* Caisse d'Allocations Familiales de la Région Parisienne (CAFRP),

on the interpretation of Articles 7 and 48(2) of the EEC Treaty, of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475) and of Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402),

THE COURT (Second Chamber),

composed of: J. L. Murray, President of the Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: W. Van Gerven,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Ettien Koua Poirrez, by himself;

* Language of the case: French.

— the French Government, by Philippe Pouzoulet, Assistant Director in the Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agent, and Claude Chavance, Principal Attaché in the Central Administration of that Ministry, acting as Deputy Agent;

— the German Government, by Ernst Röder, Regierungsdirektor in the Federal Ministry of Economic Affairs, and Claus-Dieter Quassowski, of the same Ministry, acting as Agents;

— the United Kingdom, by S. Lucinda Hudson, of the Treasury Solicitor's Department, and Christopher Vajda, Barrister, acting as Agents;

— the Commission of the European Communities, by Dimitrios Gouloussis, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the French Government, the United Kingdom and the Commission, at the hearing on 1 October 1992,

after hearing the Opinion of the Advocate General at the sitting on 22 October 1992,

gives the following

Judgment

1 By order of 12 June 1991 received at the Court on 1 August 1991, the Tribunal des Affaires de Sécurité Sociale (Social Security Court), Bobigny, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 7 and 48(2) of the EEC Treaty, of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475) and of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402).

2 That question was raised in proceedings between Ettien Koua Poirrez (hereinafter 'the applicant') and the Caisse d'Allocations Familiales de la Seine-Saint-Denis, formerly Caisse d'Allocations Familiales de la Région Parisienne (CAFRP) (hereinafter 'the defendant') concerning the grant to Mr Koua Poirrez of a disablement allowance provided for under French law.

3 The applicant is a national of the Ivory Coast who was adopted in 1987 by Mr Poirrez. Mr Koua Poirrez's adoptive father is a French national, resident and working in France. However, the applicant did not thus acquire French nationality.

4 Mr Koua Poirrez applied for an adult disablement allowance under Article L. 821-1 of the Code Français de la Sécurité Sociale (French social security code), pursuant to which an adult disablement allowance may be awarded, subject to certain conditions, to 'any French national or national of a country which is a party to a reciprocal convention on allowances for disabled adults'. However, the *Guide de l'Allocataire* (hereinafter 'the Guide for Beneficiaries'), published by the defendant, states that, subject to the same conditions, the adult disablement allowance may be granted to nationals of Member States of the Community as well as to their dependent spouses and relatives in the ascending or descending line.

5 The application submitted by Mr Koua Poirrez was refused by the defendant on the ground that the Ivory Coast was not a signatory to a reciprocal convention on allowances for disabled adults. His appeal against that decision was dismissed by the Commission de Recours Amiable (arbitration committee) of the CAFRP.

Mr Koua Poirrez subsequently contested the decision refusing his application before the Tribunal des Affaires de Securité Sociale, Bobigny. Before that court, he argued *inter alia* that, as Mr Poirrez's adopted son, he should be regarded as the descendant of a national of a Member State of the Community. In that capacity, he claimed entitlement to the adult disablement allowance and based his claim in that respect on the Guide for Beneficiaries.

7 The defendant contended that the Guide for Beneficiaries related to Regulations Nos 1612/68 and 1251/70. Pursuant to those regulations, only members of the families of migrant workers who are nationals of a Member State may claim the allowance in question.

8 The national court takes the view that the interpretation suggested by the defendant would result in reverse discrimination: the applicant would not be entitled to the allowance in question because his adoptive father is a French national who both works and resides in France; on the other hand, if his adoptive father either worked in a Member State of the Community other than France, or worked in France but was a national of another Member State, the applicant would be entitled to the adult disablement allowance. The national court therefore decided to stay the proceedings pending a preliminary ruling from the Court of Justice on the following question:

'Is it consistent with Articles 7 and 48(2) of the EEC Treaty to exclude from entitlement to an adult disablement allowance a member of the family of an EEC national (in this case an adopted descendant) residing in the country of which the head of household is a national, on the ground that Directives (read: Regulations) Nos 1612/68 and 1251/70 apply only to migrant workers and that the head of household does not have that status?'

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the applicable legislation, 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.

10 As the Court has consistently held, Articles 7 and 48 of the Treaty may be invoked only where the case in question comes within the area to which Community law applies, which in this case is that concerned with freedom of movement for workers (see *inter alia* Joined Cases 35/82 and 36/82 *Morson and Jhanjan* v *State of the Netherlands* [1982] ECR 3723, paragraphs 15 and 16).

11 Similarly, the regulations adopted to implement those provisions cannot be applied to cases which have no factor linking them with any of the situations governed by Community law and all elements of which are purely internal to a single Member State (see Case 147/87 *Zaoui* v *Cramif* [1987] ECR 5511, paragraph 15, and Case C-153/91 *Petit* v *Office National des Pensions* [1992] ECR I-4973, paragraph 8).

12 Consequently, Community legislation regarding freedom of movement for workers cannot be applied to the situation of workers who have never exercised the right to freedom of movement within the Community.

13 That being so, a member of the family of a worker who is a national of a Member State cannot rely on Community law in order to claim one of the social security advantages granted to migrant workers and members of their families, when the worker of whose family he is a member has never exercised the right to freedom of movement within the Community.

14 It is clear from the findings of fact made by the national court that the applicant's adoptive father is a French national, has always resided in France and has never worked outside the territory of that Member State.

15 Consequently it should be stated in reply to the question submitted by the national court that Articles 7 and 48(2) of the EEC Treaty must be interpreted as not precluding a refusal to grant a benefit, such as an adult disablement allowance provided for under the legislation of a Member State, to a member of the family of a Community national who has never exercised the right to freedom of movement within the Community.

Costs

16 The costs incurred by the French and German Governments, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Second Chamber),

in answer to the question referred to it by the Tribunal des Affaires de Sécurité Sociale, Bobigny, by judgment of 12 June 1991, hereby rules:

Articles 7 and 48(2) of the EEC Treaty must be interpreted as not precluding a refusal to grant a benefit, such as an adult disablement allowance provided for under the legislation of a Member State, to a member of the family of a Community national who has never exercised the right to freedom of movement within the Community.

Murray Mancini Schockweiler

Delivered in open court in Luxembourg on 16 December 1992.

J.-G. Giraud J. L. Murray

Registrar President of the Second Chamber