JUDGMENT OF THE COURT (Fourth Chamber)
15 June 1995 *

In Joined Cases C-422/93, C-423/93 and C-424/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain) for a preliminary ruling in the proceedings pending before that court between

Teresa Zabala Erasun

and

Instituto Nacional de Empleo,

and

Elvira Encabo Terrazos

and

Instituto Nacional de Empleo,

* Language of the case: Spanish.

and

Francisco Casquero Carrillo

and

Instituto Nacional de Empleo

on the interpretation of Articles 4(1)(g), 4(2), 5 and 97 of Council Regulation (EEC) No 1408/71 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 codified by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6),

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, C. N. Kakouris (Rapporteur) and J. L. Murray, Judges,

Advocate General: M. B. Elmer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of the Commission of the European Communities by C. Docksey, of its Legal Service, and J. Juste Ruiz, a civil servant on detachment to the Commission's Legal Service under the national civil service detachment scheme, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Spanish Government, represented by G. Calvo Díaz, Abogado del Estado, acting as Agent, and the Commission of the European Communities, represented by C. Docksey and J. Juste Ruiz, at the hearing on 12 January 1995,

after hearing the Opinion of the Advocate General at the sitting on 21 February 1995,

gives the following

Judgment

1 By three orders, the first two dated 1 June 1993 and the third dated 22 June 1993, received at the Court on 15 October 1993, the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty several questions concerning the interpretation of Articles 4(1)(g), 4(2), 5 and 97 of Council Regulation (EEC) No 1408/71 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 codified by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6).

2 The questions were raised in proceedings between Teresa Zabala Erasun, Elvira Encabo Terrazos and Francisco Casquero Carrillo and the Instituto Nacional de Empleo (hereinafter 'INEM') concerning the latter's refusal to grant them unemployment benefits in the nature of social assistance for which they had applied.

3 In Spain the Ley de Protección por Desempleo (Law on Unemployment Protection) No 31/84 of 2 August 1984 (Boletín Oficial del Estado No 186, p. 4009 of 4 August 1984, hereinafter 'Law No 31/84'), contains in Title I provisions concerning contributory unemployment benefits and in Title II provisions concerning social assistance benefits.

4 The plaintiffs in the main proceedings, who are of Spanish nationality, have worked for various periods in the French frontier area, close to the Spanish province of Guipúzcoa, where they reside.

5 When they lost their jobs they applied for and obtained contributory unemployment benefits as provided for in Title I of Law No 31/84.

6 After the period in which they were entitled to contributory benefits had expired, the plaintiffs applied to INEM for social assistance unemployment benefits as provided for by Title II of Law No 31/84 but their applications were rejected.

7 They thereupon brought proceedings before the Juzgado de lo Social (Social Court) de Guipúzcoa. Their claims were dismissed, however, by judgments of 8 October 1990, 21 November 1990 and 14 May 1991, on the grounds that in its declaration to the President of the Council of the European Communities pursuant to Article 5 of Regulation No 1408/71 (OJ 1987 C 107, p. 1), the Kingdom of Spain had included only the contributory unemployment benefits referred to in Title I of Law No 31/84, and not the social assistance benefits referred to in Title II of that Law.

8 They then appealed against those judgments to the Tribunal Superior de Justicia de la Comunidad Autónoma del Paìs Vasco, which decided to suspend proceedings in

the three cases and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does the declaration notified by the Kingdom of Spain to the President of the Council of the European Communities and published in the Official Journal of the European Communities on 22 April 1987 constitute a legal provision in respect of which questions of interpretation must not be resolved by the ordinary national courts?

2. If so, must the exclusion which the declaration reveals be accepted as valid in law, so as to exclude from the scope of the declaration the social assistance unemployment allowances provided for by Spanish legislation?

3. If the above interpretation is not possible, must the declaration by the Spanish State be deemed, by way of penalty, to include that cover so that it must be added to those expressly listed despite the fact that it is not mentioned?

4. Should neither of the above interpretations be accepted, is the omission in the declaration by the Kingdom of Spain to be understood as intending not to exclude such unemployment protection definitively but to defer cover until a later date as yet undetermined?'

9 After the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco had referred the above questions to the Court, the benefits were paid to the claimants and the Kingdom of Spain notified a declaration pursuant to Articles 5 and 97 of Regulation No 1408/71 according to which the benefits in question do fall within the substantive scope of the regulation (OJ 1993 C 321, p. 2). In the circum-

stances INEM requested the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco to withdraw the questions referred to the Court.

10 On 30 March 1994 the Court of Justice was informed by the Kingdom of Spain that the case was likely to be withdrawn and asked the court which made the reference if it wished to maintain its request for a preliminary ruling.

11 The court which made the reference replied that it did wish to maintain that request. It attached to its reply three orders dated 19 May 1994 giving its reasons for maintaining its reference.

12 The reasons given in those orders raise a preliminary question concerning the jurisdiction of the Court. A reply must be given on that point before the questions referred to the Court are addressed.

13 According to the case-law of the Court (see the judgment in Case 126/80 *Salonia* v *Poidomani and Giglio* [1981] ECR 1563, at paragraph 6), Article 177 of the Treaty, which is based on a clear separation of functions between national courts and the Court of Justice, does not allow the latter to criticize the reasons for the reference.

14 It is only for national courts before which actions have been brought, and which must assume responsibility for the subsequent judgment, to assess, in the light of the circumstances of each case, both the necessity for a preliminary ruling in order to be able to give their judgment and the relevance of the questions they refer to the Court (see, for example, the judgment in Case C-369/89 *Piageme* [1991] ECR I-2971, at paragraph 10).

15 However, in exercising that power of appraisal the national court, in collaboration with the Court of Justice, fulfils a duty entrusted to them both of ensuring that in the interpretation and application of the Treaty the law is observed. Accordingly the problems which may be entailed in the exercise of its power of appraisal by the national court and the relations which it maintains within the framework of Article 177 with the Court of Justice are governed exclusively by the provisions of Community law (see the judgment in Case 244/80 *Foglia* v *Novello* [1981] ECR 3045, at paragraph 16).

16 Whilst the Court of Justice must be able to place as much reliance as possible upon the assessment by the national court of the extent to which the questions submitted are necessary, it must be in a position to make any assessment inherent in the performance of its own duties in particular in order to determine, as all courts must, whether it has jurisdiction (*ibid.*, at paragraph 19).

17 Furthermore, whilst Article 177 makes it a matter for the national court to assess the need to obtain a preliminary ruling on the questions of interpretation raised, regard being had to the circumstances of fact and of law involved in the main action, it is nevertheless for the Court of Justice, in order to confirm its own jurisdiction, to examine, where necessary, the conditions in which the case has been referred to it by the national court (*ibid.*, at paragraph 21).

18 The orders issued on 19 May 1994 in the main proceedings relate to two issues.

19 The first is a request by INEM, the respondent, that the amended declaration by the Kingdom of Spain notified in accordance with Articles 5 and 97 of Regulation

No 1408/71, pursuant to which the benefits in question are covered by the scope *ratione materiae* of the regulation, should be placed in the files.

20 The Spanish Government confirmed at the hearing that that amended declaration has retroactive effect; it is therefore claimed that the request for interpretation has become devoid of purpose as it relates to the fact that, in its previous declaration, the Kingdom of Spain had failed to include the benefits at issue.

21 In its orders the court which made the reference acknowledges the amended Declaration by the Kingdom of Spain and adds it to the files on the cases, but does not conclude that the proceedings are terminated.

22 The second point concerns a declaration by INEM to acquiesce in the appeal by recognizing that the appellants' claims are justified and acceding to them. That acquiescence raises the question whether the proceedings have been terminated, which would imply that the court making the reference should withdraw its questions.

23 In its decisions the court of reference does not accept INEM's acquiescence to the appellants' claims, on two grounds.

24 First, an acquiescence could not be accepted unless the court was in a position to give a valid ruling on the legal situation at issue. The court making the reference,

however, would appear to have 'ceased to have jurisdiction to give a ruling, at least provisionally, by reason of the reference for a preliminary ruling referred to in the second paragraph of Article 177 of the Treaty of Rome'.

25 Secondly, an acquiescence could not be accepted unless the party acquiescing had the power to dispose of the right or legitimate interest in fact protected. Thus that interest should not be of such importance that it could not be satisfied by way of acquiescence. According to the court which made the reference, it is not disputed that the interest at issue, which cannot be disassociated from an examination of the question referred for a preliminary ruling, goes beyond the limits of the dispute between the parties and the specific facts of the situation giving rise to the main proceedings. The reference to the Court concerns points relating to the application of Article 3(1), Article 4(1) and (2) and Articles 5 and 97 of Regulation No 1408/71. It seeks a definition from the Court of the scope of those rules of secondary Community law and amplification or clarification of those provisions which will have binding force as an adjunct to them.

26 In other words, the court making the reference could not accept the acquiescence, hold that the case had been terminated and withdraw the questions referred for a preliminary ruling, first because the case is no longer pending before the court itself but has been referred to the Court of Justice, and secondly because the questions are of such importance that they go beyond the dispute between the parties in so far as the interpretation which the Court will give will have general scope.

27 It should be noted that those two points of reasoning do not fall under national law, but relate to the interpretation of Article 177 of the Treaty, the provisions of which are absolutely binding on the national court (see the judgment in Case 166/73 *Rheinmühlen* v *Einfuhr-und Vorratsstelle Getreide* [1974] ECR 33, at paragraph 3).

28 On the first point, it is clear both from the wording and the scheme of Article 177 of the Treaty and Article 20 of the Statute of the Court of Justice that a

national court or tribunal is not empowered to bring a matter before the Court of Justice by way of a reference for a preliminary ruling unless a case is pending before it (see the judgment in Case 338/85 *Pardini* [1988] ECR 2041, at paragraph 11). Where a case is referred for a preliminary ruling, only the request for interpretation or a decision on validity is addressed to the Court; the case itself is not transferred. Consequently, the national court remains seised of the case, which is still pending before it. Only the procedure before that court is suspended until the Court has delivered its ruling on the reference.

29 On the second point in the reasoning, it must be observed that the justification for a preliminary reference, and hence for the jurisdiction of the Court, is not that it enables advisory opinions on general or hypothetical questions to be delivered (see the judgment in *Foglia* v *Novello*, cited above, at paragraph 18), but rather that it is necessary for the effective resolution of a dispute.

30 Accordingly, Community law does not preclude a court which has made a preliminary reference from finding that in national law the claims of the appellants have been acceded to and, where appropriate, that the main proceedings are thereby terminated. As long as the court which made the reference has not found that in national law the fact that the claims have been acceded to has not so terminated the proceedings, the Court has no jurisdiction to give a ruling on the questions referred to it.

Costs

31 The costs incurred by the Spanish Government 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 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 Superior de Justicia de la Comunidad Autónoma del País Vasco by orders of 1 and 22 June 1993, hereby rules:

Community law does not preclude a court which has made a preliminary reference from finding that in national law the claims of the appellants have been acceded to and, where appropriate, that the main proceedings are thereby terminated. As long as the court which made the reference has not found that in national law the fact that the claims have been acceded to has not so terminated the proceedings, the Court has no jurisdiction to give a ruling on the questions referred to it.

Kapteyn Kakouris Murray

Delivered in open court in Luxembourg on 15 June 1995.

R. Grass P. J. G. Kapteyn

Registrar President of the Fourth Chamber