JUDGMENT OF THE COURT (Sixth Chamber)
23 November 1995 *

In Case C-394/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Landessozialgericht Rheinland-Pfalz, Mainz (Germany), for a preliminary ruling in the proceedings pending before that court between

Gabriel Alonso-Pérez

and

Bundesanstalt für Arbeit,

on the interpretation of Article 1(1) of Council Regulation (EEC) No 3427/89 of 30 October 1989 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1989 L 331, p. 1),

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, G. Hirsch, G. F. Mancini, F. A. Schockweiler and J. L. Murray (Rapporteur), Judges,

* Language of the case: German.

Advocate General: P. Léger,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Alonso-Pérez, by Manuel Rojas, Assessor Laboral, of the Social Service of the Spanish Embassy in Bonn, acting as Agent,

— the German Government, by Ernst Röder, Ministerialrat at the Ministry of Economic Affairs, acting as Agent,

— the Spanish Government, by Alberto José Navarro González, Director-General for Community Legal and Institutional Coordination, and Gloria Calvo Díaz, Abogado del Estado, a member of the State Legal Department, acting as Agents,

— the Commission of the European Communities, by Dimitrios Gouloussis, Legal Adviser, and Horstpeter Kreppel, a national civil servant seconded to the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Alonso-Pérez, the German Government, represented by Bernd Kloke, Regierungsrat at the Federal Ministry of Economic Affairs, acting as Agent, the Spanish Government, represented by Gloria Calvo Díaz and the Commission, represented by Dimitrios Gouloussis and Horstpeter Kreppel, at the hearing on 17 November 1994,

after hearing the Opinion of the Advocate General at the sitting on 13 December 1994,

gives the following

Judgment

1 By order of 28 July 1993, received at the Court on 31 August 1993, the Landessozialgericht (Higher Social Court) Rheinland-Pfalz referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 1(1) of Council Regulation (EEC) No 3427/89 of 30 October 1989 amending 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 and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ 1989 L 331, p. 1).

2 That question was raised in proceedings between Mr Alonso-Pérez and the Bundesanstalt für Arbeit (Federal Labour Office, hereinafter 'the Bundesanstalt') concerning the grant of family benefits for the period from January 1986 to September 1988.

3 According to the order for reference Mr Alonso-Pérez, a Spanish national, has been employed in Germany since 1978. His wife and his two daughters, born on 28 February 1966, live in Spain.

4 In April 1989 Mr Alonso-Pérez claimed, for the first time, *kindergeld* (children's allowance) in respect of his two daughters both for the future and retroactively for

the preceding six months, Paragraph 9(2) of the Bundeskindergeldgesetz (Federal Law on Child Benefit) limiting the retroactive effect of such applications to that period.

5 By decision of 12 July 1989 the Arbeitsamt (Employment Office) Koblenz granted him *kindergeld* backdated to October 1988.

6 On 30 October 1989 the Council adopted Regulation No 3427/89, cited above, Article 1(1) of which, applicable with effect from 15 January 1986, amended Article 73 of 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 amended and updated by Council Regulation (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6). Article 73 of Regulation No 1408/71 is presently worded as follows: 'An employed or self-employed person subject to the legislation of a Member State shall be entitled, in respect of the members of his family who are residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State, subject to the provisions of Annex VI.'

7 After the adoption of that regulation, on 27 May 1991 Mr Alonso-Pérez claimed payment of arrears of family allowances from 1 January 1986 to 30 September 1988. The Bundesanstalt dismissed that application by decision of 29 August 1991 and by a decision on his administrative appeal of 25 October 1991. The action brought before the Sozialgericht (Social Court) Koblenz was also dismissed by judgment of 15 October 1992. According to the documents before the Court, those decisions were based on the fact that Paragraph 9(2) of the Bundeskindergeldgesetz limited the retroactive effect of applications for children's allowances to a period of six months.

8 In the appeal proceedings before the Landessozialgericht Rheinland-Pfalz Mr Alonso-Pérez claimed that Article 1 of Regulation No 3427/89 amended Article 73 of Regulation No 1408/71 by granting entitlement to payment of family bene-

fits with effect from 15 January 1986. Furthermore, Mr Alonso-Pérez claimed that his application had been lodged within the two-year period laid down by Article 94(4) and (6) of Regulation No 1408/71.

9 Article 94(4) of Regulation No 1408/71 provides that: 'Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, on the application of the person concerned, be awarded or resumed with effect from 1 October 1972 or the date of its application [ie of this Regulation] in the territory of the Member State concerned provided that the rights previously determined have not given rise to a lump sum payment.'

10 Article 94(6) provides that: 'If an application referred to in paragraph 4 or 5 is submitted within two years from 1 October 1972 or from the date of its application [ie of this Regulation] in the territory of the Member State concerned, the rights acquired under this Regulation shall have effect from that date, and the provisions of the legislation of any Member State concerning the forfeiture or limitation of rights may not be invoked against the persons concerned.'

11 Taking the view that the outcome of the dispute before it depended on the interpretation of Article 73 of Regulation No 1408/71 as amended by Regulation No 3427/89, the Landessozialgericht Rheinland-Pfalz decided to stay the proceedings and submit the following question to the Court for a preliminary ruling:

'Does Article 1(1) of Council Regulation (EEC) No 3427/89 of 30 October 1989 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 provide a basis for entitlement to children's allowance in respect of periods prior to the

application for children's allowance and in particular, with effect from January 1986, in respect of children of employed persons living in another Member State, in the case where the application for children's allowance was made on or before 16 November 1991?'

12 In substance the national court seeks to ascertain whether Article 73 of Regulation No 1408/71, as amended by Regulation No 3427/89, prevents a national provision limiting the retroactive effect of applications for family allowances to a period of six months from being applied to an application by a Spanish national for payment as from 15 January 1986 of family allowances in respect of the members of his family resident in Spain.

13 In order to answer that question it is necessary to consider the context in which it is set.

14 Article 73(1) of Regulation No 1408/71 provided that a worker subject to the legislation of a Member State other than France was to be entitled to the family benefits provided for by the legislation of the first Member State for members of his family residing in the territory of another Member State, as though they were residing in the territory of the first State.

15 Under Article 73(2) of that regulation a worker subject to French legislation was to be entitled, in respect of members of his family residing in the territory of a Member State other than France, to the family allowances provided for by the legislation of the Member State in which the members of his family resided.

16 Article 99 provided:

'Before 1 January 1973 the Council shall, on a proposal from the Commission, re-examine the whole problem of payment of family benefits to members of families who are not residing in the territory of the competent State, in order to reach a uniform solution for all Member States.'

17 That derogating regime established by Article 73(2), which concerned migrant workers employed in France whose families resided in other Member States, was declared invalid by the Court of Justice in its judgment of 15 January 1986 in Case 41/84 *Pinna* v *Caisse d'allocation familiales de la Savoie* [1986] ECR 1, hereinafter '*Pinna I*') because it was discriminatory in nature. Nevertheless, on grounds of overriding considerations of legal certainty, the Court held that the invalidity of Article 73(2) of Regulation No 1408/71 could not be relied on in order to support claims regarding benefits for periods prior to the date of the judgment, except as regards employed persons who had already brought legal proceedings or made an equivalent claim prior to that date.

18 In a second judgment given on 2 March 1989 in Case 359/87 *Pinna* v *Caisse d'allocation familiales de la Savoie* [1989] ECR 585, hereinafter '*Pinna II*') the Court had to clarify the consequences of its judgment in *Pinna I*. It held that until such time as the Council had adopted new rules which were in conformity with Article 51 of the EEC Treaty, the fact that Article 73(2) of Regulation No 1408/71 had been declared invalid meant that the system for the payment of family benefits laid down in Article 73(1) of that regulation was of general application.

19 On 30 October 1989 the Council, in response to the judgments in *Pinna I* and *Pinna II*, adopted Regulation No 3427/89, Article 1 of which amended Article 73 of Regulation No 1408/71 and deleted Article 99. Regulation No 3427/89, which entered into force on the day of its publication in the *Official Journal of the European Communities* is, according to Article 3 thereof, applicable from 15 January 1986.

20 Article 60(1) of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic to the Community (OJ 1985 L 302, p. 23) established a transitional regime for Spanish workers who were employed in a Member State other than Spain, and the members of whose families were resident in Spain, under which Article 73(1) of Regulation No 1408/71 did not apply. That transitional regime was intended to continue until the entry into force of the uniform solution for all the Member States referred to in Article 99 of Regulation No 1408/71, and until 31 December 1988 at the latest.

21 It follows from the judgment in *Pinna I*, which declared Article 73(2) of Regulation No 1408/71 to be invalid *ab initio*, in conjunction with the judgment in *Pinna II*, which held that Article 73(1) was of general application to all Community workers, that the uniform solution referred to in Article 60(1) of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the Community existed with retroactive effect from the entry into force of Regulation No 1408/71.

22 Accordingly, it follows that Spanish nationals who worked in a Member State other than Spain, but whose families resided in Spain, were entitled to family benefits in the Member State in which they had been working since 1 January 1986, the date of accession of the Kingdom of Spain to the European Economic Community. Nevertheless, they can rely on that entitlement with retroactive effect only from 15 January 1986, the date of the judgment in *Pinna I*, which was in fact adopted by Article 3 of Regulation No 3427/89 as the date from which that regulation applied.

23 While the question of the availability of entitlement to family benefits is therefore expressly governed by Article 3 of Regulation No 3427/89, the question whether a Member State may apply its national provisions which limit the retroactive effect of applications for family allowances to a period of six months still remains.

24 In that regard, both the Spanish Government and Mr Alonso-Pérez accept that Regulation No 3427/89 does not govern the question of the retroactive effect of applications for family allowances.

25 Mr Alonso-Pérez nevertheless suggests that what he calls a 'legal vacuum' should be filled by having recourse to Article 94(6) of Regulation No 1408/71.

26 According to the Spanish Government, the terms of Regulation No 3427/89 were incorporated in Regulation No 1408/71, so that the period of two years laid down in Article 94(6) of Regulation No 1408/71 ought to be applied with effect from the entry into force of Regulation No 3427/89.

27 Such an interpretation cannot be accepted. As the German Government rightly points out, Article 94(6) is part of the transitional and final provisions of Regulation No 1408/71. It cannot therefore apply to Regulation No 3427/89, especially as the latter regulation has its own transitional and final provisions.

28 Indeed, the Court has consistently held (see, in particular, its judgments in Case 33/76 *Rewe* v *Landwirtschaftskammer Saarland* [1976] ECR 1989, and in Case 199/82 *San Giorgio* [1983] ECR 3597) that, in the absence of Community rules on the subject, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which citizens have from the direct effect of Community law, it being understood that such conditions cannot be less favourable than those relating to similar domestic actions, nor framed in a way such as to render virtually impossible the exercise of rights conferred by Community law.

29 Accordingly, contrary to the submissions of Mr Alonso-Pérez, the absence of Community rules does not create a 'legal vacuum' which must be filled.

30 Finally, it must be stated that a provision such as that at issue in the main proceedings does not render impossible the exercise of the rights conferred by Regulation No 3427/89. It merely limits the retroactive effect of applications for the benefit in question (see the judgments in Case C-338/91 *Steenhorst-Neerings* v *Bestuur van de Bedrijfsvereniging voor Detailhandel, Ambachten en Huisvrouwen* [1993] ECR I-5475, paragraph 21, and Case C-410/92 *Johnson* v *Chief Adjudication Officer* [1994] ECR I-5483).

31 Consequently, Community law does not preclude the application of a provision which, like Paragraph 9(2) of the Bundeskindergeldgesetz, also applies to applications for family allowances based solely on domestic law.

32 It follows from the foregoing that Regulation No 1408/71, as amended by Regulation No 3427/89, does not prevent a national provision limiting the retroactive effect of applications for family allowances to a period of six months from being applied to an application by a Spanish national for payment as from 15 January 1986 of family benefits in respect of the members of his family resident in Spain.

Costs

33 The costs incurred by the German and Spanish Governments and by 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 (Sixth Chamber),

in answer to the question referred to it by the Landessozialgericht Rheinland-Pfalz by order of 28 July 1993, hereby rules:

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 amended by Council Regulation (EEC) No 2001/83 of 2 June 1983, and as subsequently amended by Council Regulation (EEC) No 3427/89 of 30 October 1989 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, does not prevent a national provision limiting the retroactive effect of applications for family allowances to a period of six months from being applied to an application by a Spanish national for payment as from 15 January 1986 of family allowances in respect of the members of his family resident in Spain.

Kakouris Hirsch Mancini

Schockweiler Murray

Delivered in open court in Luxembourg on 23 November 1995.

R. Grass C. N. Kakouris

Registrar President of the Sixth Chamber