JUDGMENT OF THE COURT (Sixth Chamber)
12 March 1998 *

In Case C-314/96,

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

Ourdia Djabali

and

Caisse d'Allocations Familiales de l'Essonne

on the interpretation of Article 39(1) of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, signed in Algiers on 26 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2210/78 of 26 September 1978 (OJ 1978 L 263, p. 1),

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, R. Schintgen (Rapporteur) and G. F. Mancini, Judges,

* Language of the case: French.

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted:

— by Mrs Djabali,

— on behalf of the French Government, by C. de Salins, Deputy Director of the Legal Affairs Directorate of the Ministry of Foreign Affairs, and C. Chavance, Secretary of Foreign Affairs in the same Directorate, acting as Agents,

— on behalf of the Commission of the European Communities, by John Forman, Legal Adviser, and M. Patakia, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the French Government and the Commission at the hearing on 7 May 1997,

after hearing the Opinion of the Advocate General at the sitting on 15 May 1997,

gives the following

Judgment

1 By judgment of 28 May 1996, received at the Court on 26 September 1996, the Tribunal des Affaires de Sécurité Sociale (Social Security Court), Evry (France),

referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 39(1) of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, signed in Algiers on 26 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2210/78 of 26 September 1978 (OJ 1978 L 263, p. 1, 'the Agreement').

2 That question was raised in proceedings between Mrs Djabali, an Algerian national, and the Caisse d'Allocations Familiales de l'Essonne ('CAF') concerning the award of a disabled adults' allowance.

3 According to the documents before the Court, Mrs Djabali is married to an Algerian national with whom she lives at Longjumeau (France). She has never worked in France.

4 After a surgical operation which she underwent in 1981, Mrs Djabali was left physically disabled; the rate of disability being recognised as 80% as from October 1993, she applied for the disabled adults' allowance with effect from that date pursuant to the French legislation.

5 The disabled adults' allowance was introduced in France by Law No 75/534 of 30 June 1975 making provision for disabled persons. It is governed by Title II of Book VIII of the new French Social Security Code. The conditions for awarding it are laid down in Articles L.821-1 to L.821-8.

6 The first paragraph of Article L.821-1 of that Code provides that any French national or national of a State which has concluded a reciprocal agreement concerning the grant of allowances for disabled adults who resides on French territory, who has already reached the age at which entitlement to the special education

allowance provided for in Article L.541-1 of the same Code is acquired and whose permanent disability is at least equal to a percentage fixed by decree is entitled to the disabled adults' allowance, provided that the person concerned is not entitled, under a social security or old-age pension scheme or some special legislation, to claim an old-age or invalidity benefit or an industrial accident pension for an amount at least equal to that allowance.

7 On 16 November 1993 the Technical Committee for Occupational Rehabilitation and Guidance, referred to in Article L.821-4 of the new Social Security Code, awarded Mrs Djabali the allowance she had claimed, subject to administrative conditions.

8 Nevertheless, on 13 July 1994 the CAF, which is responsible for paying the benefit in question, rejected Mrs Djabali's application on the ground that she was neither French nor a national of a country which had concluded with France a reciprocal agreement concerning the grant of allowances for disabled adults.

9 On 4 June 1995 Mrs Djabali brought an action before the Tribunal des Affaires de Sécurité Sociale, Evry, claiming that that decision was contrary to Article 39(1) of the Agreement.

10 Article 39(1) provides as follows:

'... [W]orkers of Algerian nationality and any members of their family living with them shall enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of the Member States in which they are employed.'

11 According to Mrs Djabali, it follows that the Agreement prohibits the authorities of a Member State from basing a refusal to award social security benefits on the ground that the claimant is of Algerian nationality.

12 The CAF maintains before the Tribunal, however, that the allowance at issue can be considered as a social security benefit within the meaning of the Agreement only where the applicant is a worker or former worker already in receipt of contributory social security benefits as a result of previous employment. Mrs Djabali does not satisfy that condition, however, and cannot therefore claim the payment of the disabled adults' allowance as a personal right.

13 Considering that settlement of the dispute depended on the interpretation to be given to Article 39(1) of the Agreement, the Tribunal des Affaires de Sécurité Sociale, Evry, decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Does Article 39 of Council Regulation (EEC) No 2210/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the EEC and the People's Democratic Republic of Algeria apply to Mrs Djabali in regard to the award of a disabled adults' allowance where she has never been employed but will be entitled possibly in December 1997 to a pension in her capacity as a "non-working mother" (mère au foyer)?'

14 By letter of 8 April 1997, the CAF informed the Court that the French Minister for Employment and Social Affairs had decided to grant the disabled adults' allowance to Mrs Djabali. An enclosure in the letter shows that she has received FF 148 188.45 arrears for the period October 1993 to December 1996 and that since 1 January 1997 she has been in receipt of monthly payments of FF 3 982. Consequently, Mrs Djabali has received full satisfaction and there is no longer any matter at issue between her and the CAF. The CAF enclosed with its letter copies of two letters informing the Tribunal des Affaires de Sécurité Sociale, Evry, and Mrs Djabali of the decision of the competent authorities to grant her the disabled adults' allowance with effect from 1 October 1993 and inviting her to withdraw her case from the national court.

15 First, it is not disputed that Mrs Djabali has not taken the necessary steps to discontinue her action before the national court.

16 Second, in reply to a letter from the Court Registry asking the Tribunal des Affaires de Sécurité Sociale, Evry, whether in those circumstances it intended to maintain its request for a preliminary ruling, the President of that court stated that under the national rules of procedure it had no power to withdraw a question duly referred to the Court for a preliminary ruling.

17 According to settled case-law, the procedure provided for in Article 177 of the Treaty is an instrument of cooperation between the Court of Justice and national courts by means of which the former provides the latter with interpretation of such Community law as is necessary for them to give judgment in cases upon which they are called to adjudicate (see *inter alia* Joined Cases C-297/88 and C-197/89 *Dzodzi* v *Belgian State* [1990] ECR I-3763, paragraph 33, and Case C-231/89 *Gmurzynska-Bscher* v *Oberfinanzdirektion Köln* [1990] ECR I-4003, paragraph 18).

18 It is clear from both the wording and the scheme of Article 177 of the Treaty 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, in which it is called upon to give a decision which is capable of taking account of the preliminary ruling (see, to that effect, Case 338/85 *Pardini* v *Ministero del Commercio con l'Estero* [1988] ECR 2041, paragraph 11, and Joined Cases C-422/93, C-423/93 and C-424/93 *Zabala Erasun and Others* v *Instituto Nacional de Empleo* [1995] ECR I-1567, paragraph 28).

19 The justification for a preliminary reference is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (see Case 244/80 *Foglia* v *Novello* [1981] ECR 3045, paragraph 18, and *Zabala Erasun*, cited above, paragraph 29).

20 In this instance, after the Tribunal des Affaires de Sécurité Sociale, Evry, had referred the question to the Court, Mrs Djabali received the benefits she had claimed.

21 It must therefore be stated that the claims of the applicant in the main proceedings have been satisfied in full, with the result that the case pending before the national court now has no purpose.

22 In those circumstances, for the Court to reply to the question referred would be of no avail to the Tribunal des Affaires de Sécurité Sociale, Evry.

23 Consequently, there is no need to reply to the question referred.

Costs

24 The costs incurred by the French Government 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 Tribunal des Affaires de Sécurité Sociale d'Evry by judgment of 28 May 1996, hereby rules:

There is no need to reply to the question referred.

Ragnemalm Schintgen Mancini

Delivered in open court in Luxembourg on 12 March 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber