Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

12 May 2021 *

(Reference for a preliminary ruling – Freedom of movement for workers – Equal treatment – Social advantages – Ceilings related to resources – Account taken of the resources received in the penultimate year preceding the period of payment of allowances – Worker returning to his Member State of origin – Reduction in the entitlement to family allowances)

In Case C-27/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal de grande instance de Rennes (Regional Court, Rennes, France), made by decision of 7 June 2019, received at the Court on 21 January 2020, in the proceedings

PF,

QG

v

Caisse d'allocations familiales (CAF) d'Ille-et-Vilaine,

THE COURT (Eighth Chamber),

composed of N. Wahl, President of the Chamber, F. Biltgen (Rapporteur) and L.S. Rossi, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– PF and QG, both in person,

– the French Government, by E. de Moustier and A. Ferrand, acting as Agents,

– the Czech Government, by M. Smolek, J. Vláčil and J. Pavliš, acting as Agents,

* Language of the case: French.

– the Italian Government, by G. Palmieri, acting as Agent, and by A. Giordano, avvocato dello Stato,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by D. Martin and B.-R. Killmann, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 20 and 45 TFEU, Article 4 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1) and Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

2 The request has been made in proceedings between the married couple, PF and QG, who are French nationals, and the Caisse d'allocations familiales (Family Allowances Fund; 'the CAF') of Ille-et-Vilaine (France) concerning the determination of the calendar year of reference for the purposes of assessing their entitlement to family allowances and the calculation of the amount of those allowances.

Legal context

European Union law

Regulation No 883/2004

3 Under Article 2(1) of Regulation No 883/2004, that regulation 'applies to nationals of a Member State … residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors'.

4 Under Article 4 of that regulation:

'Unless otherwise provided for by this regulation, persons to whom this regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.'

Regulation No 492/2011

5 Article 7(1) and (2) of Regulation No 492/2011 provides:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.'

French law

6 Under Article L. 521-1 of the code de la sécurité sociale (Social Security Code), family allowances are payable starting with the second dependent child. The amount of family allowances is to be determined on the basis of the number of dependent children and on the basis of the household's resources.

7 As regards the calculation of entitlement to family allowances, Article R 532-3 of the Social Security Code states that 'the resources retained shall be those received during the reference calendar year' and that 'the reference calendar year shall be the penultimate year preceding the payment period'.

The dispute in the main proceedings and the question referred for a preliminary ruling

8 In 2011 and 2012, the married couple PF and QG, who are French nationals, declared taxable income in the amount of EUR 59 734 and EUR 63 680 respectively. Having four minor dependent children, they received family allowances totalling EUR 458.02 per month.

9 The payment of those allowances was interrupted following the secondment of QG, a judge of the French judiciary, to the Court of Justice of the European Union in Luxembourg, for a period of three years. As a result of his new post, QG's annual income increased, corresponding to the sum of EUR 123 609 for 2015 and to the sum of EUR 132 499 for 2016.

10 Following QG's return to France and his reinstatement in his original employment in September 2017, resulting in a substantial drop in income, the applicants in the main proceedings submitted, on 1 December 2017, an application for family allowances to the CAF of Ille-et-Vilaine, claiming that the income to be taken into account should be that of the household on the date of that application and that the application of the provisions of Article R 532-3 of the Social Security Code, defining the reference calendar year as the penultimate payment period, namely, in this case, 2015, should be disregarded.

11 By decision of 24 January 2018, the CAF of Ille-et-Vilaine informed them that the monthly amount of family allowances would be EUR 115.65.

12 The applicants in the main proceedings lodged an administrative appeal against that decision, which was dismissed.

13 They brought an action before the referring court seeking annulment of that decision and a determination of the monthly amount of family allowances to be received at EUR 462.62, an amount which takes into account the current income and the number of dependent children.

14 According to the applicants in the main proceedings, the CAF of Ille-et-Vilaine did not comply with Articles 20 and 45 TFEU, Article 4 of Regulation No 883/2004 or Article 7 of Regulation No 492/2011. Furthermore, Article R 532-3 of the Social Security Code infringes the principle of equal treatment and is therefore manifestly unlawful.

15 The referring court recalls, first of all, that, as provided for in Article 45 TFEU, freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

16 It then raises the question whether the national provision at issue in the main proceedings is discriminatory and, if so, whether it can be justified on the basis of overriding reasons in the public interest. It would be incompatible with European Union law for a worker who is a national of a Member State to receive, following his return to that Member State, less favourable treatment than he would have received had he not availed himself of the opportunities offered by the Treaty in relation to freedom of movement.

17 In those circumstances, the Tribunal de Grande Instance de Rennes (Regional Court, Rennes, France), suspended the proceedings and referred the following question to the Court for a preliminary ruling:

‘Is EU law, in particular Articles 20 and 45 [TFEU], [Article] 4 of Regulation No 883/2004 and [Article] 7 of Regulation No 492/2011, to be interpreted as precluding a provision of national legislation, such as Article R 532-3 of the code de la sécurité sociale (Social Security Code), which defines the reference calendar year, for the purposes of calculating family allowances, as the penultimate year preceding the payment period, and results, in a situation where, after the income of the person claiming the allowance has risen substantially in another Member State, and then fallen [following] his or her return to his or her Member State of origin, in that person being deprived, unlike residents who have not exercised their right of free movement, of part of his or her rights to family allowances?’

Consideration of the question referred

18 As a preliminary point, it must be determined whether all the provisions referred to in the order for reference are applicable to the situation at issue in the main proceedings, concerning the secondment of a national official to an institution of the European Union.

19 With regard to the provisions of the FEU Treaty on the freedom of movement for workers, it follows from settled case-law that any EU national working in a Member State other than his Member State of origin and who has accepted a post in an international organisation comes within the scope of Article 45 TFEU (see, to that effect, judgments of 15 March 1989, *Echternach and Moritz*, 389/87 and 390/87, EU:C:1989:130, paragraph 11; of 6 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749, paragraph 24; and of 31 May 2017, *U*, C-420/15, EU:C:2017:408, paragraph 13).

20 It follows that EU nationals working for an EU institution or body in a Member State other than their Member State of origin may not be refused the rights and social advantages which Article 45 TFEU affords them (see, to that effect, judgments of 15 March 1989, *Echternach and Moritz*, 389/87 and 390/87, EU:C:1989:130, paragraph 12, and of 6 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749, paragraph 25).

21 As regards Article 20 TFEU, it should be noted that, while establishing citizenship of the Union, that article merely provides that citizens of the Union are to enjoy the rights conferred in the Treaty and are subject to the duties laid down in the Treaty. It cannot, therefore, in that respect, be applied independently of the specific provisions of the Treaty which govern the rights and the duties of the citizens of the Union, such as, in particular, Article 45 TFEU (see, to that effect, judgments of 16 December 2004, *My*, C-293/03, EU:C:2004:821, paragraph 32, and of 31 May 2017, *U*, C-420/15, EU:C:2017:408, paragraph 17).

22 Consequently, the interpretation of Article 20 TFEU is not relevant to the outcome of the dispute in the main proceedings.

23 Nor is the interpretation of the provisions on the coordination of social security systems relevant. In accordance with the case-law of the Court, EU officials cannot be classified as 'workers' within the meaning of Regulation No 883/2004, since they are not subject to national social security legislation, as required by Article 2(1) of that regulation, defining the personal scope thereof (see, to that effect, judgments of 3 October 2000, *Ferlini*, C-411/98, EU:C:2000:530, paragraph 41, and of 16 December 2004, *My*, C-293/03, EU:C:2004:821, paragraph 35).

24 As regards Article 7 of Regulation No 492/2011, it must be noted that it is merely the particular expression, in the specific field of employment and working conditions, of the principle of equal treatment enshrined in Article 45(2) TFEU, and must be accorded the same interpretation as that provision (judgments of 23 February 2006, *Commission* v *Spain*, C-205/04, not published, EU:C:2006:137, paragraph 15, and of 13 March 2019, *Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach*, C-437/17, EU:C:2019:193, paragraph 16).

25 The fact that the worker in question in the main proceedings is employed by an EU institution is not decisive in that regard, the purpose of equal treatment pursued by Article 7(2) of Regulation No 492/2011 seeking precisely to extend to workers who are nationals of other Member States all advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory (see, to that effect, judgment of 18 December 2019, *Generálny riaditeľ Sociálnej poisťovne Bratislava and Others*, C-447/18, EU:C:2019:1098, paragraph 47 and the case-law cited).

26 In the light of those considerations, and in order to provide the referring court with a useful answer, it must be held that the question referred for a preliminary ruling concerns only the interpretation of Article 45 TFEU and Article 7 of Regulation No 492/2011.

27 Thus, by that question, the referring court asks, in essence, whether Article 45 TFEU and Article 7 of Regulation No 492/2011 must be interpreted as precluding national legislation which uses as the reference year for the calculation of family allowances to be allocated the penultimate year preceding the payment period, so that, in the event of a substantial increase in the income

received by a national official in the course of a secondment to an EU institution situated in another Member State, the amount of family allowances is, at the time of the return of that official to the Member State of origin, significantly reduced for two years.

28 As regards the existence of possible discrimination contrary to Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011, it should be noted that the national legislation at issue in the main proceedings, which fixes the amount of family allowances due on the basis of the amount of income received by the worker during the reference calendar year defined as being the penultimate year preceding the payment period, applies without distinction to all workers, irrespective of their nationality, so that it cannot give rise to discrimination based directly on nationality.

29 Furthermore, it is not apparent from the file submitted to the Court that the referring court is of the view that that legislation may give rise to indirect discrimination, in that it is liable to treat workers who are nationals of other Member States less favourably than national workers.

30 As regards whether national legislation such as that at issue in the main proceedings constitutes an obstacle to the freedom of movement for workers within the European Union, it must be borne in mind that Article 45(1) TFEU precludes any measure which, albeit applicable without discrimination on grounds of nationality, is liable to hinder or render less attractive the exercise by EU nationals of the fundamental freedoms guaranteed by the FEU Treaty (see, to that effect, judgments of 1 April 2008, *Gouvernement de la Communauté française et gouvernement wallon*, C-212/06, EU:C:2008:178, paragraph 45, and of 6 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749, paragraph 26).

31 In that regard, in accordance with settled case-law, Article 45 TFEU is intended to facilitate the pursuit by EU nationals of occupational activities of all kinds throughout the European Union, and precludes any national measure which might place those nationals at a disadvantage when they wish to pursue an economic activity in the territory of another Member State (judgments of 1 April 2008, *Gouvernement de la Communauté française et gouvernement wallon*, C-212/06, EU:C:2008:178, paragraph 44; of 21 January 2016, *Commission* v *Cyprus*, C-515/14, EU:C:2016:30, paragraph 39; and of 7 March 2018, *DW*, C-651/16, EU:C:2018:162, paragraph 21).

32 Thus, Articles 45 TFEU is intended in particular to prevent a worker who, by exercising his right of freedom of movement, has been employed in more than one Member State from being treated, without objective justification, less favourably than one who has completed his entire career in only one Member State (see, inter alia, judgments of 7 March 1991, *Masgio*, C-10/90, EU:C:1991:107, paragraph 17; of 21 January 2016, *Commission* v *Cyprus*, C-515/14, EU:C:2016:30, paragraph 42; and of 7 March 2018, *DW*, C-651/16, EU:C:2018:162, paragraph 23).

33 In the present case, it must be noted that the recipients of family allowances who have exercised the right to freedom of movement are not treated less favourably than recipients of such allowances who have not exercised that right.

34 Under national legislation such as that at issue in the main proceedings, a worker who is a national of a Member State and who, when moving to another Member State, has experienced variations in the amount of his income, upwards or downwards, is subject to the same method of calculating family allowances based on income received during the reference period as that applicable to a worker who has not left his Member State of origin while experiencing identical variations in his income.

35 Thus, in the case of the applicants in the main proceedings, for the purposes of calculating the reduced amount of family allowances as a result of their return to the Member State of origin, the higher income received when they moved to another Member State was taken into account in the same way as a similar increase in the income received by a worker who had not exercised his right to freedom of movement would have led to a similar reduction in the amount of those allowances.

36 Accordingly, it is not the exercise of the right to freedom of movement as such which led to a reduction in the amount of the allowances due to the applicants in the main proceedings, but the fact that the income received by them when they moved to another Member State was higher than that received before or after that move.

37 Although the applicants in the main proceedings assert that they do not challenge the power of their home Member State to organise its social security system by adopting, inter alia, the detailed rules for determining the benefits to be received, they nevertheless submit that a household which has increased its resources in a manner similar to theirs while remaining on the territory of the Member State of origin would continue to receive increased family allowances for two years, despite the fact that the current income would exceed the income ceiling fixed by the legislation at issue in the main proceedings and it would be from only the third year that those allowances would be reduced.

38 By arguing that the situation of such a household was perfectly neutral, despite the deferred taking into account of the actual changes in its resources, the applicants in the main proceedings are in fact criticising not the detailed rules for determining the amount of family allowances but rather the fact that they were unable to continue to receive, with a view to possible compensation in the event of return, increased family allowances during their move to and residence in another Member State.

39 Primary law cannot guarantee to an insured person that moving to a Member State other than his Member State of origin will be neutral as regards social security, in particular as regards sickness benefits or old-age pensions, or even family allowances. It must be borne in mind that the movement of a worker to another Member State may be, depending on the case and due to the disparities between the systems and legislation of the Member States, more or less advantageous for the person concerned in terms of social protection (see, to that effect, judgments of 6 October 2016, *Adrien and Others*, C-466/15, EU:C:2016:749, paragraph 27, and of 18 July 2017, *Erzberger*, C-566/15, EU:C:2017:562, paragraph 34).

40 Consequently, the fact that the applicants in the main proceedings were unable, when they moved to another Member State, to receive family allowances from their Member State of origin and that the family allowances received in the event of their return to that Member State are not, for two years, in line with their income received during that period cannot constitute less favourable treatment contrary to freedom of movement for workers and, more particularly, Article 45 TFEU.

41 The same conclusion must be drawn in the light of Article 7(2) of Regulation No 492/2011, since that provision must, as recalled in paragraph 24 above, be interpreted in the same way as Article 45 TFEU.

42 Furthermore, as regards the argument of the applicants in the main proceedings that the national legislation at issue in the main proceedings is liable to affect the decision of a worker who is a national of one Member State to move to another Member State in order to work there and

receive a higher income, since, on his return to the Member State of origin, he finds himself penalised as a result of significantly reduced payments of family allowances, it must be borne in mind that the reasons for which a migrant worker chooses to avail himself of his freedom of movement within the European Union cannot be taken into account in assessing the discriminatory nature of a national provision (see, to that effect, judgment of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken*, C-514/12, EU:C:2013:799, paragraph 33).

43 In the light of all the foregoing considerations, the answer to the question referred is that Article 45 TFEU and Article 7(2) of Regulation No 492/2011 must be interpreted as not precluding national legislation which uses, as the reference year for the calculation of family allowances to be allocated, the penultimate year preceding the payment period, so that, in the event of a substantial increase in the income received by a national official in the course of a secondment to an EU institution situated in another Member State, the amount of family allowances is, at the time of the return of that official to the Member State of origin, significantly reduced for two years.

Costs

44 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

Article 45 TFEU and Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as not precluding national legislation which uses, as the reference year for the calculation of family allowances to be allocated, the penultimate year preceding the payment period, so that, in the event of a substantial increase in the income received by a national official in the course of a secondment to an EU institution situated in another Member State, the amount of family allowances is, at the time of the return of that official to the Member State of origin, significantly reduced for two years.

[Signatures]